

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1673 of 2015

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Mostt. Sharda Devi W/O Late Ayodhya Prasad, resident of Mohalla- Shadipur,
P.S.- Kotwali, District- Munger.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Health, Bihar, Patna.
3. District Magistrate, Munger.
4. The Civil Surgeon-Cum-Chief Medical Officer, Munger.
5. The In-charge Medical Officer, Primary Health Centre, Jamalpur, Munger.
6. The Accountant General, Bihar.
7. Mostt. Manju Devi W/o late Ayodhya Prasad, resident of Saidpur, Yadav Tola,
P.S. Kotwali, PO & Distt- Munger.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Vivekannand Singh, Advocate
Mr. Aarsh Kumar, Advocate
For the State : Mr. Arun Kumar Bhagat, AC to AAG-XII

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-02-2017

The present writ application has been filed for a direction upon the respondent authorities to pay the death-cum-post retiral benefits to the petitioner on account of sudden demise of her husband, who died on 29.12.2010 working on the post of health worker at Primary Heath Centre, Jamalpur in the district of Munger.



2. The husband of the petitioner late Ayodhya Prasad joined on the post of Dresser on 3rd July, 1990, subsequently, while working on the post of health worker at Primary Heath Centre, Jamalpur in the district of Munger, he died on 29th December, 2010.

3. Learned counsel for the petitioner submitted that the petitioner, being wife of the deceased Ayodhya Prasad got three married daughters, namely, Kiran Devi, Anju Devi and Yashoda Devi. Out of the wedlock; she blessed with one son Subhash Yadav, who died at the age of 25 years leaving behind his wife, one son and one daughter. He submitted that the deceased employee had got the name of the petitioner and Subhash Yadav entered in the service book showing them as his wife and son.

4. It is submitted that after death of her husband, the petitioner made several representations to the respondents requesting them to make payment of retiral benefits, but the respondent authorities paid no heed to her representations. It is submitted that family pension and other retiral benefits to the petitioner are being denied on the pretext that one Manju Devi has also claimed herself to be the wife of deceased employee and has filed a succession case in the court of Sub-Judge-II, Munger vide



Succession Case No. 08 of 2011. It is also submitted that Manju Devi has filed succession case just to grab the property of the petitioner by playing fraud on the government record.

5. The State has filed its counter-affidavit through respondent no. 5. The facts stated in the writ application have not been disputed in the counter-affidavit filed on behalf of respondent no. 5. However, a plea has been taken that since Manju Devi has filed succession case claiming herself to be the wife of the deceased employee in which the petitioner has also been made a party, it is difficult for the authorities to grant any relief to the petitioner till the disposal of succession case.

6. Learned counsel for the State submitted that since both the petitioner and the respondent no. 7 Most. Manju Devi are claiming themselves to be the wives of the deceased employee Ayodhya Prasad, the payment of retiral dues can be made only after a succession certificate is issued in favour of either of the parties.

7. Respondent no. 7 Most. Manju Devi has also filed counter-affidavit in the present case wherein it has been stated that in succession case, the petitioner has already entered into appearance and has filed objection petition.

8. Learned counsel for respondent no. 7 submitted



that since the subject matter of the dispute is *sub judice* before the court of Sub-Judge-II, Munger in Succession Case No. 08 of 2011, no relief can be granted to the petitioner in the present writ application and the same is liable to be dismissed. He submitted that the parties to the writ application may put forth their claim in the succession case by way of leading oral/documentary evidence in respect of properties, including the post retiral dues of late Ayodhya Prasad and the court of Sub-Judge may pass appropriate order in this regard.

9. In reply, learned counsel for the petitioner submitted that the contention of the State and the respondent no. 7 are contrary to the ratio laid down by a Division-Bench of this Court in *Ati Razia Devi vs. State of Bihar and Ors.*, reported in **2016 (1) PLJR 835**. He submitted that in the aforesaid case, the Bench held that the very purpose of the nomination in the service book of late employee is to enable the State to meet its obligation and get a valid discharge in respect thereof.

10. I have heard learned counsel for the parties and perused the record.

11. There is no dispute to the fact that the deceased employee has mentioned the name of the petitioner in the service book as his wife. The petitioner has not only made a statement in



this regard in her writ application, but has also annexed a xerox copy of the service book. From perusal of the same, it would be evident that Smt. Sharda Devi has been shown as the wife of the deceased employee Ayodhya Prasad. As noted above, both the State and the respondent no. 7 have filed their respective counter-affidavits, but none of them has disputed the factum of incorporation of petitioner's name in the service book as the wife of the deceased employee.

12. So far as the contention of the respondent no. 7 that the parties to the dispute may put forth their claim in the succession case by way of leading oral/documentary evidence and the competent court would pass appropriate order in respect of properties, including the post-retiral dues of late Ayodhya Prasad is concerned, in the opinion of this Court, family pension can not be compared with other properties.

13. In order to provide special security to their employees, the State Government introduced Family Pension Scheme for Government employees vide Memo No. Pen-103/64-9505 F dated 3.10.1964. The Scheme has been revised and liberalized from time to time. In clause (ii) of para 7 of the Finance Department's Resolution No. PC-1-9-16/87-1853 F. dated 19.04.1990, following relatives of the officer have been



included as “family” for the purpose of Family Pension Scheme :-

- (a) wife, in the case of a male officer ;
- (b) husband, in the case of a female officer ;
- (c) minor sons ; and
- (d) unmarried minor daughters.

14. Hence, it would be evident that only designated relatives of the deceased employee would be entitled to receive family pension. So far as the other properties of the deceased employee are concerned, they may be governed by ordinary civil law, but family pension is to be regulated by the provision made under the Bihar Pension Rules. Any other person, who is not designated and included within the definition of family to receive family pension, would not be entitled to receive family pension under the Family Pension Scheme.

15. Since the petitioner’s name finds place in the service book as the wife of the deceased employee, the case of the petitioner is squarely covered by the decision of this Court in *Ati Razia Devi* (supra). In that case, the appellant Ati Razia Devi claimed herself to be the legally wedded wife of the deceased employee in order to establish entitlement to receive family pension. On the other hand, the State submitted that as per nomination in the service book of the deceased employee, the nominee was Sahodri Devi. The stand of the State was that in



terms of nomination as made by the deceased employee, the State was bound to pay the family pension to the nominee. Since the writ application filed by Ati Razia Devi was dismissed, she filed an appeal before the Division Bench and the Bench after considering the material dismissed the letters patent appeal and held the view of the learned Single Judge to be correct. The Bench held that very purpose of the nomination is to enable the State to meet its obligation and get a valid discharge in respect thereof. It held that if the appellant disputes this fact and claims to be the first lawfully wedded wife, and thus, in civil law, entitled to the family pension, then, it was for her to establish her right, title and interest in this regard in a court of competent jurisdiction and get an order to override the nomination made by the employee concerned.

16. In view of the ratio laid down by this Court in *Ati Razia Devi* (supra), I am of the opinion that till the respondent no. 7 establishes her right in the succession case, the payment of retiral dues, including the family pension cannot be kept in abeyance. Since the petitioner is nominated in the service book as the wife of the deceased employee, she is entitled to receive the death-cum-post retiral benefits. In that view of the matter, the official respondents are directed to sanction and authorize the



payment of death-cum-post retiral benefits to the petitioner within three months from the date of receipt/production of a copy of this order. If any application is to be filed in this regard, the petitioner shall file the same without any delay.

17. In case the respondent no. 7 succeeds in establishing her right in succession case, she may take appropriate steps in accordance with law and request the respondent authority to change and depart from the nomination made in favour of the petitioner for the payment of family pension.

18. With the aforesaid observations and directions, the writ application is disposed of.

(Ashwani Kumar Singh, J.)

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CAV DATE	...
Uploading Date	09.02.2017
Transmission Date	

