

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5304 of 2011

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Sulaxana Devi (since dead)

1. Vijay Kumar, son of late Indradeo Singh
2. Amardip Kumar, son of late Indradeo Singh
3. Ajay Kumar, son of late Indradeo Singh

All resident Of Village- Ramji Chak, Bhatahari, P.O- Biyapur, P.S- Manaer,
District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Engineer, National Highway, Bihar, Patna.
3. The Superintendent Engineer, National Highway, Mach, Division, Muzaffarpur,
Bihar
4. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra with
Mr. Dhananjay Kr. Gupta, Advocates

For the A.G. : Mr. Viveka Nand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 13-07-2018

Heard learned counsel for the petitioners; State and
Accountant General.

2. The original writ petitioner had moved the Court for
the following reliefs:

*“That this writ application is being filed for
issuance of writ nature of mandamus for
direction to respondent to pay death cum retiral*



benefit to the petitioner and further issue direction to respondent to pay the death cum retiral benefit alongwith compound interest 28% alongwith litigation cost and further give other legal and consequential benefit.”

3. Due to the death of the original writ petitioner during the pendency of the case, she has been substituted by her heirs.

4. The original writ petitioner was the wife of late Indradeo Singh, who died in harness in the year 2009 while working on the post of Chowkidar under the Work Charge Establishment. In view thereof, the original writ petitioner, i.e., the wife was paid dues, except for family pension, which under the Rules was not permissible as the same is available only to a confirmed employee and because the husband of the original writ petitioner, that is, the father of the present petitioners, was not a confirmed government employee, no family pension was sanctioned. The writ petition was mainly with regard to payment of family pension as would be clear from the representation filed by the original writ petitioner before the authorities.

4. Learned counsel for the petitioners submitted that even the Work Charge employees, because of continuing in service for a long period, are entitled to pension/family pension. It was submitted that at least for the period the original writ petitioner was alive, family pension is required to be paid.



5. Learned counsel for the State and the Accountant General submitted that the contention is misconceived in view of the specific provision under the Bihar Pension Rules, 1950, which makes it clear that only a confirmed and permanent government employee shall be granted pension and admittedly as the late husband of the original writ petitioner was only a Work Charge employee, he and his spouse were not entitled to any pension/family pension.

6. Be that as it may, the Court is not adjudicating on the entitlement of the original writ petitioner with regard to family pension for the reason that, at best, it was only the original writ petitioner who could have had some sort of claim to family pension which the Court would have gone into, but keeping in mind that now the petitioners, who are sons of the deceased, are no more entitled to any family pension, the Court is not inclined to consider the plea, moreso, as only the right to pension/family pension is a continuing and recurring cause of action, but once the person entitled to pension/family pension is no more, the heirs have no recurring right and even the right which may accrue to them on the basis of being an heir, is governed by the common law, that it is to say, that all such claims for any monetary benefit has to be treated as a pure and simple money claim for which appropriate proceeding before the Civil Court of competent jurisdiction has to be instituted.



7. Accordingly, the writ petition stands disposed off with liberty to the heirs to move before the appropriate forum, which may be available to them, in accordance with law, for any claim which they may have against the respondents.

(Ahsanuddin Amanullah, J)

Anjani/-

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