

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1910 of 2016

In

Civil Writ Jurisdiction Case No.11047 of 2014

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Sunita Devi, W/o Late Ram Swarath Rai, Chaukidar MES - 228197, resident of village - Rampur, Kitcheni, P.O. & P.S. - Desari, District - Vaishali (Bihar).
... .. Appellant/s

Versus

1. The Union of India through the Secretary, Ministry of Defence, New Delhi.
 2. The Principal Office of the C.D.A. (Pensions). Allahabad (U.P.).
 3. The Senior Record Officer/Chief Engineer, Central Command MES, Head Quarters, Lucknow - 2.
 4. The Garrison Engineer, G.F. Office, Danapur, Patna (Bihar).
- Respondent/s

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Appearance :

For the Appellant/s : Mr. Bipin Bihari Singh, Advocate
For the Respondent/s : Mr. S.D Sanjay (ADDL. SOC. GEN.)
Ms. Kanak Verma, C.G.C.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-01-2018

Re.: Interlocutory Application No.9906 of 2016

Delay of 99 days in filing of the Letters Patent

Appeal is condoned.

Interlocutory Application stands allowed and disposed of.

Re.: Letters Patent Appeal No.1910 of 2016

Appellant claiming to be the legally wedded wife of late Ram Swarath Rai, who was working as a Chowkidar in the Military Engineering Services posted at Garrison Engineering Office, Danapur, has filed this appeal under Clause 10 of the Letters Patent.



Challenging an order dated 12.05.2016 passed by the Writ Court wherein the Writ Court refused to interfere into the matter on two counts. The first ground was that the jurisdiction to deal with the issue rests with the Armed Forces Tribunal under the Act of 2007. However, the Armed Forces Tribunal having refused to entertain the application, the writ petition was maintainable and therefore on this count, there is an error committed by the Writ Court. However, apart from the aforesaid, on merit we find that late Ram Swarath Rai, Chowkidar, was already married and the present appellant claims to be the second wife, the marriage with the appellant having been solemnized after divorce to the first wife and her death has occurred. However, when the Department requested the appellant to produce the documents showing annulment of the marriage with the first wife and proof of marriage of the petitioner with the employee concerned, the appellant did not submit any proof and therefore, the claim of the appellant was not decided.

On a perusal of the counter affidavit filed by respondents No.1 to 4, it is clear that the appellant was directed to produce the documents in support of the aforesaid factual aspect of the matter and the appellant having failed to do so, her claim has not been settled. In our considered view, in absence of established materials



as indicated hereinabove, no indulgence into the matter can be made and no relief can be granted to the appellant. As and when the appellant is able to prove her claim based on the facts indicated hereinabove, the respondents would consider her case in accordance to law.

With the aforesaid observation and liberty to the appellant, we dispose of the matter.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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