IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15781 of 2016
Along with
Interlocutory Application No.968 of 2018

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Shanti Devi, wife of Late Satyanarain Sharma, Resident of Village-Pakka Kuan, Bhanwar Pokhar, Post Office-Bankipur, Police Station-Pirbahore, District-Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Patna
2. The Director in Chief, Department of Health, Government of Bihar, Patna
3. The Director, Indira Gandhi Institute of Cardiology, Patna
4. The Superintendent, Nalanda Medical College and Hospital, Patna.
5. The District Provident Fund Officer, Patna
6. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Narain Yadav, Advocate
Ms. Pooja Shree, Advocate
Ms. Sweta Kumari, Advocate

For the State : Mr. Manish Kumar, AC to GP-12

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 19-07-2018

Heard learned counsel for the petitioner and State.

Re.: Interlocutory Application No.968 of 2018

2. The Interlocutory Application has been filed on behalf of the petitioner seeking amendment in the writ petition by adding a further relief seeking quashing of the order dated 31.01.2018, copy of which has been made Annexure-20 to the Interlocutory Application by which the claim of the family pension of the petitioner has been rejected by respondent no.3.

3. Since the relief sought is in continuation of and

related to the relief sought for in the main writ application, the prayer is allowed. The order of the respondent no.3 dated 31.01.2018 shall form part of the challenge in the main writ application itself.

4. Interlocutory Application No. 968 of 2018 stands disposed off.

Re.: Civil Writ Jurisdiction Case No.15781 of 2016

5. The petitioner has moved the Court for the following reliefs :-

> "For issuance of a writ in the nature of mandamus and/or any other appropriate writ, order or direction commanding upon the respondents to pay all the death-cum-retirement benefits including the provident fund and family pension to the petitioner forthwith along with the interest at the rate of 12% per annum and the arrears thereof."

6. The petitioner is mother of Late Draupati Devi, who was working on the post of Grade-A Nurse in Indira Gandhi Institute of Cardiology, Patna when she died on 05.11.2003. It appears that in the Group Insurance Scheme, she had nominated her brother Giridhar Kumar Sharma and had also separately sworn an affidavit on 12.09.2003 that the amount of gratuity, pension, Life Insurance, Provident Fund or any amount payable to her upon her death, be paid to her brother Giridhar Kumar Sharma. The authorities treating the

affidavit to be her nomination for the purposes of retiral dues, including pension, had paid all her dues except for family pension in favour of the brother but on the basis of an affidavit from him actual payment was made in favour of the petitioner, i.e., their mother. The present controversy relates to only family pension. The sole ground for denial of the same is that in the affidavit of the deceased employee, the brother has been shown as the nominee even for pension but he having crossed the age of 18 years on the date the employee died, no family pension was payable and now there cannot be any change in the nomination in favour of the mother.

7. Learned counsel for the petitioner submitted that first of all, the affidavit affirmed by the deceased employee dated 12.09.2003 is not a nomination in the eyes of law for the purpose of payment of post retiral dues especially family pension. It was further submitted that even if for the sake of argument, it is accepted that the same was a nomination, then also such nomination has to be considered invalid in the eyes of law, for the reason that nomination in favour of a person who is not entitled in law to receive such payment is a nullity. It was submitted that as far as family pension is concerned, the brother of the deceased was aged about 44 years at the relevant time, and, thus, clearly not eligible for family pension as the law stipulates that only an unmarried brother till the age of 18 years is

entitled to family pension. Learned counsel submitted that in absence of a valid nomination, the law requires that the person who in law is entitled to receive such payment has to be paid. For such proposition, learned counsel relied upon a judgment in the case of **Gyatri Devi vs. State of Bihar** reported as **2000(1) PLJR 872**.

8. Learned counsel for the State submitted that since the rules require mandatory nomination with regard to payment of family pension, there being nomination in favour of the brother and he not being entitled, the petitioner being the mother, cannot be granted such benefit.

9. On a specific query of the Court as to whether there was any dispute that the petitioner was the mother of the deceased, learned counsel submitted that there was no dispute. This is further proved from the fact that the authorities have made actual payment to the petitioner accepting that she was the mother, on the request made by the brother of the deceased.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner is entitled to family pension. The relationship of the petitioner with the deceased being that of mother and daughter and the rules providing that family pension is payable to the mother till her death, the ground for denial of family pension in the present

case is untenable. The provision shown by the learned counsel for the State, contained in Finance Department Memo No.21288 Vi. dated 20.09.1960, which talks of nomination being mandatorily required, has no adverse effect on the case of the petitioner. The provision only mandates that there has to be a nomination but does not speak that where there is no nomination, no payment shall be made; rather it is a binding direction on the sanctioning authority to ensure that nomination is filled up with regard to the employee who is retiring so that there is no delay in payment. Neither the circular mentions nor it is the import of the circular that in the absence of nomination or in the event of wrong nomination, the real beneficiary in law shall be disentitled to such benefit and shall not receive family pension. Further, the decision relied upon by the learned counsel for the petitioner in the case of **Gyatri Devi** (supra) covers the present case also.

11. For the reasons aforesaid, the order impugned dated 31.01.2018 is set aside. The respondent no.3 is directed to ensure that family pension is paid to the petitioner, along with arrears from the date of death of the employee, expeditiously and latest within two months from the date of receipt/production of a copy of this order before him.

12. The writ petition stands allowed in the

aforementioned terms.

(Ahsanuddin Amanullah, J)

N.H./-

AFR/NAFR	AFR
Uploading Date	