# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.128 of 2018**
**In**
**Civil Writ Jurisdiction Case No.7420 of 2015**

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Rinku Kumari, daughter of late Lallan Prasad Singh, wife of Ravi Ranjan Kumar Gautam, resident of village & P.O.-Koil Bhupat, P.S.-Mahandia, District-Arwal, presently residing at village-Simuara, P.O.-Mednipur Badhiya, P.S.-Kurtha, District-Arwal.

... ... Appellant/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Commercial Taxes Department, Government of Bihar, Patna
2. The Commissioner-cum-Secretary, Commercial Taxes Department, Government of Bihar, Patna,
3. The Commissioner (Accounts and Administrator), Pant Bhawan, Bailey Road, Patna,
4. The Deputy Secretary, Finance (Pay and Entitlement Cell) Department, Government of Bihar, Pant Bhawan, Bailey Road, Patna,
5. The Assistant Commissioner, Commercial Taxes Office, Buxer Circle, P.O. & District-Buxar,
6. The Treasury Officer, Buxar,
7. The Accountant General, Government of Bihar, Birchand Patel Path, Patna-1,
8. The District Provident Fund Officer, Arrah (Bhojpur),
9. The Commercial Taxes Officer, Buxer Circle, P.O. & District-Buxar.

... ... Respondent/s

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**Appearance :**

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| For the Appellant | : | Mr. Binod Kumar Singh, Advocate<br>Mr. Umesh Prasad Singh, Advocate<br>Ms. Vagisha Pragya Vacaknavi, Advocate |
| For the S t a t e | : | Mr. Manish Kumar, A.C. to AAG-6 |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**and**
**HONOURABLE JUSTICE SMT. ANJANA MISHRA**
**ORAL JUDGMENT**
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 10-12-2018**

Re: I.A. No. 6346 of 2018

Heard Sri Binod Kumar Singh, learned counsel for the appellant and Sri Manish Kumar, learned Assisting Counsel to AAG-6 appearing for respondent Nos.1 to 6, 8 and 9.

2. The appeal is reported to be delayed by 161 days.

3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No.6346 of 2018 stands allowed accordingly.

Re: L.P.A. No.128 of 2018

Heard Sri Binod Kumar Singh, learned counsel for the appellant and Sri Manish Kumar, learned Assisting Counsel to AAG-6 appearing for respondent Nos.1 to 6, 8 and 9.

2. The appellant claims herself to be the daughter of one Late Lallan Prasad Singh, who retired in the year 1993 from the Department of Commercial Taxes, Government of Bihar and died in the year 2007. The claim is of the terminal benefits and other service benefits to which the father of the appellant was entitled to, and to which she claims a succession. It appears that an application was moved by her in the year 2010, almost 17 years after the retirement of her Late father and after almost three years of his death. It is also evident that there was nothing to indicate that the father of the appellant had made any effort for collecting any such amount from the Department during his lifetime. In this background, the appellant approached this Court by filing

C.W.J.C. No.19307 of 2010, which was disposed of on 25th of November, 2010 by the following order:

> "Heard learned counsels for the petitioner, State as also the Accountant General.
>
> The grievance of the petitioner is that her father who was Commercial Tax Officer, Buxar retired on 31st of December, 1993 and later on died on 6th of December, 2007.
>
> It is submitted that petitioner represented before the Authority concerned for settling the family pension and other outstanding retiral dues vide Annexure-1 but the same has not been settled as yet.
>
> Learned counsel appearing for the respondent-State submits that the claims of the petitioner shall be considered without delay as per law.
>
> In the above circumstances, learned counsel for the petitioner submits that for expeditious disposal of the pending claims as highlighted in this writ application, petitioner proposes to file a representation before the respondent no.4 with a copy to respondent no.3 and also proposes to file a separate representation before the respondent no.7 with regard to the payment on account of provident fund dues.
>
> In view of the above, in case such representation stating details of unpaid claims is filed by the petitioner within a period of four weeks from today along with the certified copy of the present

> order as also the copy of the relevant documents, if any, in support of the claim, the grievances of the petitioner raised in the representation shall be considered in accordance with law expeditiously preferably within a period of four months on receipt of such representation so that the grievances of the petitioner may be settled without delay and upon consideration the admitted dues found payable may also be paid to the petitioner along with interest permissible under the rules.
>
> The writ applications stands disposed of with the above observations/directions."

3. Having failed to get any response, the appellant filed M.J.C. No.2955 of 2011, alleging disobedience of the said order, on which an affidavit was filed bringing on record the order passed by the Commercial Tax Commissioner, Bihar dated 20th of January, 2012. While disposing of the said application, the request for release of the amount, as claimed, was declined on the ground that there appears to be a doubt about the claim of the applicant-appellant as she had failed to provide a succession certificate in spite of having been demanded by the department. It was also observed that the father of the appellant superannuated on 31st of December, 1993 whereas the appellant's date of birth is indicated as 7th of February, 1993, that appeared to be unusual. The order also observed about the delay in the filing of the claim and also in

the difference in the name of the father of the appellant in the certificate, that has been relied on. It is this order dated 20th of January, 2012 which became subject-matter of challenge in the writ petition giving rise to the present appeal.

4. The learned single Judge referred to the controversial circumstances emerging from a perusal of the order dated 20th of January, 2012 and also the delay in staking of the claim by the appellant and there being no evidence of the claim having been contested by the father himself, the writ petition was dismissed on 13th of July, 2017 by the following judgment:-

> "There are controversial circumstances which emerge from reading of Annexure-1, which shows lack of bonafide of the claim of the present petitioner, which compelled the respondents to reject any such claim for settlement of the so-called retiral dues of the erstwhile employee who retired in the year 1993 and died in the year 2007. This Court also finds it strange that a retired Government servant that too in the Commercial Taxes Department could not make claim against the State for 14 years if there was any legitimate retiral dues which he was entitled to.
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> However, despite the above, if the petitioner still wants to wager, she is free to find ways and means in accordance with law. Writ Court will not come to her rescue.

Writ is dismissed with observation above."

5. Learned counsel for the appellant submits that even assuming for the sake of argument that there was a doubt, the same would not amount to proof inasmuch as a presumption drawn by the authority, which is unfounded, cannot be the basis for rejecting the entire claim of the appellant. He submits that if a succession certificate is essentially required, then in that event too, the appellant has not been informed by the Department about the amount, which is recoverable from the Department on the retirement and death of her Late father so to enable her to compute the same for the purpose of filing an application to obtain a succession certificate from a competent Court.

6. The contention is that unless the amount is computed, it will not be possible to move an application seeking a succession certificate under the law for the time being in force. He, therefore, submits that in the absence of complete denial of any information by the respondents on this score is also an impediment in the passage of appellant to seek a succession certificate.

7. We have considered the submissions raised and having gone through the order, that was impugned in the writ petition, what we find is that the succession certificate would have

obviated any such doubt in the mind of the authority as has been indicated in the order dated 20th of January, 2012. We are, therefore, of the opinion that the appellant ought to have applied for a succession certificate, and in the event the appellant was in need of any such information that was necessary, the appellant could have applied before the Department seeking such information and the Department would be under an obligation to provide the information to that effect. Consequently, in the event, the appellant is able to obtain a succession certificate, then in that event, the impugned judgment dated 13th of July, 2017 will not be a legal impediment in her claim, that can be staked on the basis of any such valid document. On that count, we may also observe that the order passed by the authority on 20th of January, 2012 would be liable to be revisited, in the event the appellant is able to establish that she is in possession of a valid succession certificate from a court of competent jurisdiction. For that, the Commercial Taxes Department through the appropriate authority shall provide the requisite information to the appellant in case she applies for it. In the event the appellant applies before the competent authority for supply of the information within two weeks from today, same may be made available within ten days thereafter.

8. The appeal is disposed of.

9. The disposal of this appeal in no way would amount to recognition either of the rights of the appellant or her status as a daughter of Late Lallan Prasad Singh, which shall obviously be subject to the outcome of the proceedings before the competent forum.

**(Amreshwar Pratap Sahi, CJ)**

**( Anjana Mishra, J)**

PNM/N.H.

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| **AFR/NAFR** | |
| **CAV DATE** | N.A. |
| **Uploading Date** | |
| **Transmission Date** | |