

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11187 of 2017

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Smt. Sihanta Devi, Wife of Late Din Dayal Singh, (the then Executive Engineer
Water Resources Department, (Katihar), Resident of Village -Pandey Gangaut,
PO-Phuldih, PS-Rupau, District-Nawada. Petitioner

Versus

1. The State of Bihar
 2. The Principal Secretary, Water Resources Department, Bihar, Patna
 3. The Deputy Secretary (Management), Water Resources Department, Govt. of Bihar, Patna.
 4. The Chief Engineer, Water Resources, Department, Purnea.
 5. The Superintending Engineer, Ahar Anchal, Purnea.
 6. The Executive Engineer, Irrigation, Pramandal, Katihar.
 7. The Chief Election Officer, Bihar, 7 Sardar Patel Marg. (Manglas Road) Bihar, Patna.
 8. The District Magistrate, Banka-cum-District Election Officer, Banka
 9. The Accountant General, Birchan Patel path, Bihar Patna.
 10. Smt. Babuni Devi C/o Visheshwar Singh Resident of Vill Kadamtar, P.O. Vindidih, P.S. Silao, Distt Nalanda at Biharsharif Respondents
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Appearance :

For the Petitioner : Mr. Gajendra Pratap Singh, Adv.
For the State : Mr. Anjani Kumar, AAG X with
Mr. V.K. Singh, GA II & Mr. Kunal Tiwary, Adv.
For the AG : Mr. Bindhyachal Rai, Adv.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 23-01-2018

Heard learned counsel for the petitioner, State, respondent
no. 10 and the Accountant General.

2. The petitioner has moved the Court for the following
reliefs :

“(i) For issuance of a writ in the nature of writ of mandamus command and directing the concerned respondents to pay the petitioner (a) the entire amount of death compensation, (the deceased employees died in course of conducting 2010 Bihar Legislative Assembly Election) as well (b) the entire amount of retiral benefit payable to the employee to the petitioner being the nominee of her late husband (deceased employee) (c) the salary



payable to the deceased employee from the date of his death i.e. 31.10.2010 to the date of his superannuation of service which is 31.05.2012 (d) to start family pension to the petitioner(e) every consequential benefit legally payable to the deceased employee such as GPF, amount of GIC, salary of unutilized leave, gratuity, clubbed with every admissible dues be paid to the petitioner with reasonable interest.

(ii) For issuance of a writ in the nature of writ of mandamus command and directing the respondents state to pay the petitioner and adequate compensation for depriving the petitioner (the sole nominee) for depriving the petitioner as well her entire family members (four unmarried daughters, marriageable daughters and three sons) all dependent upon the income of their late father, husband of the petitioner has been deprived from living a respectable life for no fault in their part. On account of the death of deceased employee in election duty.

(iii) For any other relief(s) as your lordships may deem fit and proper in the facts and circumstances of the present case.”

3. The admitted facts of the case are that the husband of the petitioner died in harness while being posted as Executive Engineer at Katihar in the Water Resources Department on 31.10.2010 while discharging his duty in conducting election in the district of Banka for the Bihar Assembly Election, 2010. The claim filed by the petitioner for



death-cum-retiral benefits was not acceded by the State authorities on the ground that the respondent no. 10 had also filed a counter claim that she was the first wife of the deceased employee and, thus, entitled to her share in such benefits. The further admitted fact is that the respondent no. 10 for the first time appeared before the authorities to claim that she was the first wife of the deceased employee, only upon his death.

4. In view of the aforesaid, the Court earlier in C.W.J.C. No. 11826 of 2015 had remanded the matter to the authorities to decide the issue at their level without insisting for the parties to produce a succession certificate and they have taken a decision, which is impugned in the present writ application, after getting an enquiry conducted from the lower officials.

5. Though from the said, it transpires that the authorities have relied on certain documents in favour of the respondent no. 10, but all are much after the death of the employee, whereas with regard to the petitioner there are documents, including records which have come into being during the life time and service period of the deceased employee.

6. In view of the aforesaid, the Court was of the opinion that the petitioner had materials to justify payment of death-cum-retiral benefits in her favour and the onus was on respondent no. 10 to get a declaration or any order from a competent Court in her favour for any payment to be made to her. The Court was also tentatively of the view that admittedly, even from the counter filed by the respondent no. 10, there was absolutely no whisper as to why she had not moved before any authority till after the death of the deceased employee claiming to be the



first wife. On specific query to learned counsel for the respondent no. 10 how long she was married, it was submitted that she was married but after two days was left by the employee at her maternal home and never came to live in the matrimonial home even for a day. To a further query as to why she had not claimed her conjugal rights or even any support from her husband, that is, the deceased employee, the categorical answer was that she was being supported by her relatives.

7. The Court, thus, was of the view that even if it is accepted, for the sake of argument, that the respondent no. 10 had been the person to whom the deceased employee was married at the first instance, but, in view of the admitted position that she was never taken into the matrimonial home and her husband, i.e., the deceased employee, left her after two days of the marriage and there being no claim raised before any authority/forum/Court or complain made either with regard to the desertion or financial non-support raised by the respondent no. 10 against the deceased employee, in the considered opinion of the Court, the person who has not discharged her duties as a wife practically for any period, cannot take the advantage on the death of that person for the reason that admittedly family pension and other dues are given to a person who is the wife, who had actually lived with that person and had discharged her wifely duties and also borne children to him. When all such things have been performed by the petitioner, that too admittedly, the Court was inclined to pass order in favour of the petitioner on the ground that for all practical purposes the real status of wife can only be claimed by the petitioner and not the respondent no. 10, who remains in



oblivion, claiming to be wife only for two days after marriage without coming out before any authority to claim her status as wife, and furthermore, for the reason that the petitioner has three sons and five daughters, out of which only one daughter has been married.

8. At this stage, it was pointed out by learned counsel for the State that the petitioner herself has filed Title Suit No. 104 of 2012 before the Civil Court, Nawadah, seeking a declaration that she is the only legally wedded wife of late Din Dayal Singh, the deceased employee. The Court had, thus, called upon learned counsel for the petitioner to explain the position; pursuant to which a rejoinder has been filed to the counter affidavit on her behalf in which order dated 03.07.2017 passed in Title Suit No. 104 of 2012 has been brought on record from which it is apparent that the Title Suit was dismissed under Order 9 Rule 3 read with Order 17 Rules 2 and 3.

9. In such a situation, the Court does not deem it appropriate to pass any positive order, for the reason, that with regard to declaring the petitioner as the only legally wedded wife of the deceased employee, a Civil Court of competent jurisdiction has dismissed the case filed by the petitioner by order dated 03.07.2017 not simply on the ground of default or non-appearance but also technically on merits as is clear from the order itself.

10. Thus, this Court not being the appellate Court and also the fact that a Civil Court of competent jurisdiction has passed the order, feels handicapped to by-pass, override or overrule the said order and pass any order in favour of the petitioner in the present writ application in



view of such order staring against her.

11. Accordingly, the writ petition stands disposed off. However, the petitioner shall be at liberty to take steps in accordance with law for getting over the said legal hurdle coming in her way before seeking relief before the High Court under its writ jurisdiction under Article 226 of the Constitution of India. The disposal of the present writ application has been in the peculiar facts and circumstances of the case enumerated above and, thus, would not prejudice the cause and case of the petitioner on merits before any authority/forum/Court of law or from filing a fresh writ petition in light of the observations made hereinabove, after getting over the handicap of the order dated 03.07.2017, passed in Title Suit No. 104 of 2012.

(Ahsanuddin Amanullah, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23.01.2018
Transmission Date	N/A

