

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7714 of 2016

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Rehana Khatoon Wife of Late Jamal Ahmed Resident of Ward No. 2, Village -
Bahadurganj, Nueganj, Post - Samastipur, Police Station - Waris Nagar, District -
Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary-cum-Commissioner, Department of Human Resources, Secretariat, Patna.
2. The Accountant General, Bihar, Patna
3. The Director General of Provident Fund, Pant Bhawan, Patna.
4. The Director Primary and Secondary Education, Bihar, Patna.
5. The District Magistrate, Samastipur.
6. The District Provident Fund Officer, Samastipur.
7. The District Education Officer, Samastipur.
8. The District Superintendent of Education Officer, Samastipur.
9. The Treasury Officer, Samastipur.
10. The Block Education Officer, Waris Nagar, District - Samastipur.
11. The Head Master, State Primary Urdu School, Begumpur, Waris Nagar, District - Samastipur.
12. Helal Ahmad Khan Son of late Hadi Ali Khan Resident of Village- Nagarbasti (Bahadurganj) Police Station- Warishnagar, District Samastipur.
13. Civil Surgeon cum Chief Medical Officer, Patna.
14. The Superintendent of Police, Samastipur.
15. Principal Secretary, Department of Health, Government of Bihar, Patna.
16. Director, Forensic Science Laboratory, Bihar, Patna.
17. The Principal Secretary, Department of Homes, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Syed Asgher Najmi with Ms. Nuzhat Perween, Advocates
For the State	:	Mr. Mukul Prasad, AC to GP 18
For the A.G.	:	Mr. Binod Kr. Labh, Advocate



For the O.P. No. 12 : Mr. Bijay Bhushan Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 24-07-2018

Heard learned counsel for the petitioner; State;
Accountant General and respondent no. 12.

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

*“(i) For issuance of writ/writs, order/orders,
direction/directions in the nature of mandamus
commanding the respondent authorities to make
the payment of death-cum-retiral benefits along
with statutory interest to the petitioner and to
start the family pension of the petitioner as well
as to make payment of arrears of family pension
since the death of her husband in service period.*

*(ii) For issuance of any other appropriate
writ/writs, order/orders, direction/directions
which your lordships may deem fit and proper in
the facts and circumstances of the petitioner’s
case.”*

3. By various orders, as the respondent no. 12 had taken
the entire death-cum-retiral benefits of his son, whom the petitioner
claims to be her husband, on the ground that the petitioner was not the



wife of the deceased and even her two sons were not fathered by the deceased employee, the Court had got D.N.A. test conducted of the two sons of the petitioner and the respondent no. 12. The result of the test is that there is complete match in the D.N.A. sequence of all the three persons, meaning thereby that the two sons of the petitioner were from the lineage of the respondent no. 12. Under such circumstances, the Court, in its earlier order, had held that since there is nothing to the contrary to prove that the petitioner was not married to the deceased employee and her two sons having been found to have been fathered by the deceased employee, the law would come in support of legitimacy, rather than illegitimacy and on such established principle of law, the Court had declared the petitioner to be the legally wedded wife of the deceased and obviously the concerned two sons to be the legitimate children of the deceased and the petitioner. Further, under various orders, once the Court had upheld the claim of the petitioner to be the wife of the deceased employee, namely Jamal Ahmed, in law, she being the first claimant to family pension, the authorities have now paid the family pension with up-to-date arrears.

4. The controversy does not rest here. The employee died in harness on 21.05.2015 and soon thereafter the petitioner represented before the respondent no.10 on 20.06.2015 for payment of death-cum-retiral benefits. Though some enquiry was conducted, but



the authorities paid the dues to the respondent no. 12, due to which the petitioner filed the present writ petition.

5. Learned counsel for the petitioner submitted that she being the wife and there being two sons from the deceased employee, in law, they are entitled to all his death-cum-retiral benefits, including family pension, and the amount wrongly taken by the respondent no. 12 is required to be paid to the petitioner. It was further submitted that despite there being a representation before the authorities making claim for payment, without taking such enquiry to its logical conclusion, in a hurry, the authorities have paid the amount to the respondent no. 12. It was further submitted that the petitioner has filed a Succession Case before the District Judge, Samastipur in July, 2015, which is still pending and, thus, when the authorities had already been approached for making payment to the petitioner and the petitioner had also filed a Succession Case with full knowledge to the authorities, payment being made much after that to the respondent no. 12 is both *mala fide* and collusive. Learned counsel submitted that the petitioner and her two sons have no other means of support as they were fully dependant on the deceased employee and further that there has been an application for appointment of one of her sons, born out of the wedlock to the deceased, for compassionate appointment, which is still pending consideration.



6. Learned counsel for the State submitted that the payments made to the respondent no. 12 were in terms of the nomination made by the deceased in his favour. However, on a direct query of the Court as to why the authorities were in such a hurry, when they were aware about the claim of the petitioner and of a Succession Case having been filed in the matter, learned counsel had no reply. Learned counsel submitted that now the family pension has been sanctioned to the petitioner and also paid with up-to-date arrears.

7. Learned counsel for the Accountant General, who has also filed affidavit, submitted that pursuant to the sanction order received from the authorities, the authority letter in favour of the petitioner relating to family pension has already been issued.

8. Learned counsel for the respondent no. 12 submitted that the payments made to him were valid and that the petitioner is not the legally wedded wife of his deceased son. It was further submitted that the money received by him has already been used. At this stage, when the Court made a direct query to learned counsel as to why it should not be ordered for him to return the amount in view of findings recorded in the earlier orders, especially in the background of matching of D.N.A. of the two sons of the petitioner with the respondent no. 12, which initially in the proceedings was hotly contested and categorically denied, but later on established through



D.N.A. test, learned counsel submitted that the money received has been spent on various purposes.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the present extraordinary, prerogative and discretionary jurisdiction of the High Court, under Article 226 of the Constitution of India, the Court is inclined to interfere in the matter to the extent indicated hereinbelow:

10. As the Court has given a definite finding in favour of the petitioner holding her to be the lawful wife of the deceased and legitimacy of the two sons of the petitioner from the deceased employee, all death-cum-retiral benefits which, in law, were required to be paid to the petitioner and her sons, having been taken by the respondent no. 12, he cannot be allowed to retain the same.

11. Accordingly, the respondent no. 12 is directed to return whatever amount he has taken by way of death-cum-retiral benefits of his deceased son Jamal Ahmed to the respondent no. 7 within three months from today. If the same is not done, the authorities, especially the respondent no. 5, i.e., the District Magistrate, Samastipur shall get the amount recovered as a public demand under the Bihar and Orissa Public Demands Recovery Act, 1914 treating it as arrear of revenue. Upon the same being received, it shall be paid to the petitioner within one month from the date the



amount is deposited/recovered from the respondent no. 12.

12. The Court has passed the order being conscious of the fact that there is a Succession Case pending before the Civil Court, but in its extraordinary jurisdiction under Article 226 of the Constitution of India, once pursuant to a scientific test, it has been held beyond doubt that the two sons of the petitioner have been fathered by the deceased employee, who is the son of the respondent no. 12, the natural corollary, in law, based on the settled principles, that is of deeming the marriage and children to be legitimate, the proceeding before the Civil Court in the Succession Case becomes redundant. Thus, under such special and peculiar facts and circumstances of the present case, this order has been passed.

13. As the original report of the D.N.A. test has been sent to the Court, since it is of no use to the Court, a copy of it be retained on record and the original be handed over to learned counsel for the petitioner for use in future, as and when it may be required.

14. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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