

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14577 of 2017

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Shanti Devi Wife of Late Shail Suteshwar Prasad Narain Singh, Resident of
Khatangi Kothi, P.O. Buniyadganj, P.S. Mufassil, District Gaya.

.... Petitioner/s

Versus

1. The Magadh University, Bodh Gaya through its Registrar.
2. The Vice Chancellor, Magadh University, Bodh Gaya.
3. The Registrar, Magadh University, Bodh Gaya.
4. The Principal, B.S. College, Danapur, Patna.
5. Renuka Sharma, Second Wife of Late Shail Suteshwar Prasad Narain Singh,
Resident of Jagarnath Singh Lane, Choudhary Tola, Sultanganj, District-Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhirendra Kumar Jha, Advocate
For the Magadh University	:	Mr. Shivendra Kishore, Sr. Advocate
		Mr. Arabind Nath Pandey, Advocate
For the Respondent No. 5	:	Mr. Navin Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 25-07-2018

Heard learned counsel for the petitioner; Magadh
University (hereinafter referred to as the 'University) and respondent
no. 5.

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

*“(i) For directing the respondents to pay
the petitioner the family pension of the husband of*



the petitioner who died on 07.12.2016 and who was retired as a Reader in Philosophy at the B.S. College, Danapur and superannuated on 31.12.2000.

(ii) For directing the Respondents that the said family pension be paid to the petitioner with effect from the date of death of her husband i.e. from 07.12.2016 alongwith all the necessary allowances etc.

(ii) For any other relief/reliefs to which the Petitioner may be found entitled to, in the facts and circumstances of the case.”

3. The petitioner who is the first wife of late Shail Suteshwar Prasad Narain Singh, has claimed death-cum- retiral benefits of her husband, who had superannuated on 31.12.2000 from the post of Reader-cum-Head of the Department of Philosophy, B.S. College, Danapur, a constituent Unit of Magadh University and died on 07.12.2016.

4. The respondent no. 5 is the second wife of the employee and a few months prior to his superannuation, the deceased had filled up his pension papers in which the respondent no. 5, her two sons and daughter were shown as being part of the family and the respondent no. 5 was made nominee also. On 21.05.2001, the family arrangement between the brothers and two branches of the two wives of the deceased was entered into *inter se* between the parties, the total number being 11 and all of them had signed on such document which has never been questioned at any point of time



before any forum. In fact, the parties have acted in terms of the same till the death of the employee. The controversy arose only consequent thereto. It is relevant to indicate here that the petitioner, her four sons and the respondent no. 5 and her two sons were signatory to the agreement along with others except for the daughter of respondent no. 5, which is not of any consequence for she has not come forward with any claim or has raised any dispute at any point of time, before any authority or forum.

5. Learned counsel for the petitioner submitted that she is the first wife of the deceased employee and, thus, in law, she is required to be paid the pensionary benefits. His further stand was that there cannot be a waiver of a statutory right which has accrued to a person and which shall also not be superseded by a private agreement between the parties.

6. Learned counsel for the University submitted, on the basis of counter affidavit filed, that whatever papers the deceased had filled up and submitted to the University relating to grant of death-cum-retiral benefits, the respondent no. 5 is shown as the wife along with her two sons and daughter and, thus, the nomination being in her favour, for all practical purposes, the University has to act in terms of such nomination.

7. Learned counsel for the respondent no. 5 drew the



attention of the Court to the relevant clause in the agreement which has been brought on record by the petitioner herself in the writ petition by way of Annexure-1 to indicate that there was a specific provision; that in case of demise of the husband of the petitioner/respondent no. 5, entire retiral benefits and family pension would exclusively go to the respondent no. 5 and in the event of her death, if payable, to the sons and with a clear stipulation that the petitioner and son of the petitioner shall not claim any interest therein on any ground whatsoever. It was submitted that such agreement not only binds the parties but by conduct also the petitioner stands bound by the same as she has acted upon the same and has taken the benefit which has accrued to her branch of the family and is still enjoying such benefit only in terms of the said family agreement. Learned counsel submitted that there can be waiver of an advantage of a law made solely for the benefit and protection of the individual in his private capacity which does not infringe any public right or public policy. It was submitted that in the present case, no prejudice or infringement to any third party or public right or policy is involved as petitioner and respondent no. 5 are wives and the authorities are committed to pay pension to the spouse of the deceased. It was submitted that among the spouses, if an agreement is reached then it cannot be said to be illegal or unactionable. Learned counsel further



submitted that the agreement also stipulated that each party had agreed to relinquish all claims to properties other than those falling to his or her share under such family arrangement and recognizing thereto the rights of others to the portions and properties allotted to them respectively. It was submitted that if any plea which is available, either on facts or law, to a party, the same has to be raised at the earliest point of time, in accordance with law, and if not done and consent given, the parties would be precluded from raising such plea at a later stage on the principle of waiver and acquiescence, and further, that if permitted to raise, it would cause prejudice to the other party. For such proposition learned counsel referred to and relied upon a decision of the Hon'ble Supreme Court in the case of **Union of India v. Susaka (P) Ltd.** reported as **(2018) 2 SCC 182**, the relevant being at paragraphs no. 26 and 27.

8. Learned counsel further submitted that in a recent case, the Hon'ble Supreme Court by judgment dated 02.04.2018 in Civil Appeal No (S). 3479 of 2018, in the case of **Lakshmi @ Lakshmamma & Ors. vs. Chamundamma & Ors.**, has affirmed the agreement between the parties where the dispute was also between two wives and in terms of the agreement, one wife got all other benefits whereas son from the other wife got compassionate appointment.



9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the writ application. As a matter of pure and abstract question of law, learned counsel for the petitioner may be right that being the first wife, she is entitled to pensionary benefits of her late husband. However, the law cannot be applied in a vacuum. But necessarily, it has to be applied in the facts and circumstances of a particular case. In the present case, the family arrangement/agreement was entered into between the parties in the year 2001 and in terms thereof, the allotment of various properties among the signatories was not totally in accordance with the requirement of law or as per other Statutes relating to inheritance/succession/share etc. Once the parties were competent to decide with regard to apportionment among themselves of properties which were available with them or may have accrued in future on account of some contingency or on the basis of later developments, the party on account of whom such benefit accrues having expressed his desire and will and further the parties who would have been beneficiaries in future also agreeing to such future apportionment of properties or benefits, which may accrue to them, in the considered opinion of the Court, would bind the parties, except in a situation where any agreement is impermissible or illegal under the Constitution of India



or under any law.

10. In the present case, the policy of the authorities/State is for payment of family pension to the spouse. Further, the authorities are committed to pay only one pension and not two pensions. In that background, the decision among the parties as to who would take the benefit when the status of wife of both the petitioner and the respondent no. 5 has neither been questioned nor disputed before any authority or anyone of them have been held not to be the wife of the deceased. Once the status of wife of both the petitioner and respondent no. 5 has not been disputed till date, it was well within the competency of the two spouses to get into an agreement with regard to apportionment of the retiral benefits of their husband. In the present case, by a conscious written agreement, such right has been granted to the respondent no. 5, that too, in the year 2001, and more importantly with regard to the other terms of the agreement, the petitioner having enjoyed the benefits, which also were beyond her legal rights, now, would clearly preclude the petitioner from turning around and taking the stand that since the Statute prohibits payment of family pension to the second wife and only the first wife is entitled, she be granted the same.

11. On 16.07.2018, at the request of learned counsel for the parties the Court had heard the matter in Chambers when the



petitioner and respondent no. 5 were personally present. The Court distinctly remembers that to a direct query to the petitioner with regard to the agreement, she had stated that she was not very clear about the terms when she had put her signature. The Court would pause here to comment that such stand is totally unbelievable and unacceptable for the simple reason that not only she, but her four sons, who were major and educated, had also signed on the agreement and, thus, it cannot be expected or accepted that even they were unaware of what the agreement was and moreover, when the petitioner and her branch of the family got properties, which may not, under the Succession Act, be legally due to them, and to which the respondent no. 5 and her branch may have had the right under law, and they having taken possession and enjoyed the fruits, it cannot be accepted that they were not aware that only pursuant to an agreement between the parties, they were getting the benefit of such assets/properties. The Court had further made a query to the petitioner as to whether she was living with her husband, to which she had stated that right after marriage with the respondent no. 5, she had not been given the status of wife and her husband was not living with her, and rather with respondent no. 5. The Court would again pause here. The relationship between husband and wife being pious, holy and sensitive, is for sustenance and support to each other. When



during almost the entire period of married life, the respondent no. 5 had given company to the deceased, in the capacity of a wife, which has been accepted by the petitioner before the Court, the spirit of law for grant of family pension being that the employee is taken care of by the spouse, who is granted such benefit. In the present case, on the basis of what has been admitted by the petitioner herself, it was respondent no. 5, who has lived as a wife with the deceased right from the time of her marriage in the year 1967. This, in the considered opinion of the Court, would be a major factor in deciding the present case and has also persuaded the Court to take the view it has taken. Moreover, from the records before the University, by way of nomination etc., it is only the respondent no. 5, who has been reflected as the wife and, thus, even on that account, the University is required to pay the pensionary benefits to the respondent no. 5. The said nomination by the husband, that too, prior to his retirement in the year 2000, not being challenged, opposed or contested by the petitioner, at any point of time, before any authority, would further persuade the Court to hold that she had waived her right in favour of respondent no. 5 to such benefit and had acquiesced to the position, both in terms of the desire of her husband and the written family arrangement/agreement between the parties. The view taken by the Court finds support from the judgments of the Hon'ble Supreme



Court in **Union of India v. Susaka (P) Ltd.** (supra) and **Lakshmi @ Lakshmamma & Ors.** (supra).

12. For the reasons aforesaid, the writ petition stands dismissed.

13. The University is directed to ensure that all pensionary benefits payable upon the death of the husband of the respondent no. 5, is paid to her, latest within three months from the date of production of a copy of this order before the Registrar of the University.

(Ahsanuddin Amanullah, J.)

P. Kumar

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