

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14586 of 2017

- =====
1. Mosmat Jhariya Devi @ Jhariya Kunwar, Wife of Late Shivmuni Ram.
 2. Durga Shankar Sharma, Son of Late Shivmuni Ram.
Both Resident of Village- Newras, P.O. +P.S.- Kudra, District-
Kaimur (Bhabhua).

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Panchayat Raj, Government of Bihar,
Patna.
3. The Director, Panchayat Raj, Government of Bihar, Patna.
4. The District Magistrate, Rohtas, Sasaram.
5. The District Panchayat Raj Officer, Rohtas, Sasaram.
6. The Block Development Officer, Rajpur Block, Rajpur , Rohtas.
7. The District Provident Fund Officer, Rohtas, Sasaram.
8. The Accountant General, Bihar, Patna.
9. Rekha Muni Devi Wife of Late Shivmuni Ram, Both Resident of Village-
Newras, P.O. +P.S.- Kudra, District- Kaimur (Bhabhua).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-04-2018

Heard learned counsel for the petitioners; State;
Accountant General and respondent no. 9.

2. The petitioners have moved the Court for the
following reliefs:

*“i) That the respondents may be directed
to make payment of entire post retrial dues cum
death dues to the petitioner like pension,
gratuity, leave encashment, provident fund and
other post retrial dues to the petitioner and
recommend the name of the petitioner no. 2 for
compassionate appointment.*

*ii) That any other relief or reliefs may be
allowed which will be just proper and equitable*



on the opinion of this Hon'ble court."

3. The petitioner no. 1, claims to be the first wife of late Shiv Muni Ram, who was appointed as Panchayat Sevak in the year 1989 and thereafter died in harness on 06.07.2015. Before the State, in the nomination made for gratuity by the late employee, the name of the respondent no. 9 has been mentioned. However, due to the controversy, the authorities have not paid any amount to either party.

4. Learned counsel for the petitioners submitted that the petitioner no. 1 is the first wife of the deceased employee and was married in the year 1970 after the death of her first husband, who was the elder brother of the deceased. It was submitted that thereafter, the deceased employee married respondent no. 9 and from both of them, two sons and one daughter has been born. Learned counsel submitted that upon the death of the employee, the petitioner no. 2 being the eldest of the children of the late employee has the first right for being given appointment on compassionate ground and post retiral benefits are to be distributed among the two branches as both come under the category of heirs and are entitled to all the benefits which is payable to the heirs of the late employee. For such purpose, learned counsel has taken the Court through various annexures which are copies of various documents, to indicate that petitioner no. 1 was married to the deceased employee.



It was further submitted that the respondent no. 9 has dishonestly tried to create records showing that she was the only wife and ousting the claim of the petitioner no. 1 on the ground that she was never married to the deceased employee. Learned counsel submitted that during enquiry held earlier by the authorities on 07.04.2017, as per the findings given in the report dated 11.04.2017, the authorities have found that the petitioner no. 1 appears to be the wife of the deceased employee.

5. Learned counsel for the State submitted that the name of the respondent no. 9 has been given as nominee in the paper submitted by the deceased employee relating to Gratuity but when, upon his death in harness, the respondent no. 9 had submitted her claim for payment of death-cum-retiral benefits, due to objection made by the petitioner no. 1, they have not taken any further action and in the meantime, as the present writ application has been filed, the authorities are awaiting the decision of the Court. Learned counsel submitted that even as per their findings, no definite conclusion can be drawn with regard to the rival claims as there are documents in favour of both the sides which need to be properly looked into and finding given with regard to the status of the party. It was submitted that the State authorities only go on the basis of preponderance cannot give any authoritative finding on facts,



especially when both the sides claim to have materials in their favour.

6. Learned counsel for the respondent no. 9, who has filed counter affidavit, submitted that the deceased employee died in Varanasi and was cremated there and the death certificate has been issued locally whereas, the death certificate which has been brought on record by the petitioners has been issued by the authorities in the District of Kaimur in the State of Bihar, which is not valid in the eyes of law. He further drew the attention of the Court to copies of various documents, including sale deeds which indicate that till the year 1973, the first husband of the petitioner no. 1 i.e., elder brother of the deceased employee was alive. It was submitted that the District Selection Committee, Rohtas in its meeting held on 20.10.2017, has recommended for payment of post retiral dues and also compassionate appointment to the respondent no. 9.

7. At this juncture, on a query of the Court with regard to the nomination made by the deceased, learned counsel for the State submitted that only with regard to G.P.F., the respondent no. 9 has been nominated.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is unable to pass any positive order. The petitioners, though have



brought on record documents which may indicate that the petitioner no. 1 was also married to the deceased employee, but from the materials brought on record by the respondents including the respondent no. 9, there are materials to the contrary also. Thus, for this Court to grant relief in its writ jurisdiction under Article 226 of the Constitution of India, it has to come to a definite conclusion with regard to the claim of the petitioners and cannot be swayed on broad probabilities. Further, even with regard to nomination in favour of any person, the same is restricted to the person receiving the amount but the presumption in law is that the person who is the nominee and receiving the amount only acts as a trustee for all the heirs in law, who are entitled to receive any portion of the said amount and, thus, it is open to the remaining claimants to get their share from the nominee, by moving in accordance with law before the appropriate forum.

9. As many documents and reports are before the Court which indicate that either the petitioner no. 1 was the wife or the respondent no. 9 the only wife, for coming to a definite conclusion and giving a finding on such fact, in the considered opinion of this Court, only a Civil Court of competent jurisdiction is the forum to go into such aspect.

10. Thus, the writ petition stands disposed off with



liberty to the parties to move before the appropriate forum, in accordance with law, with regard to their claim on the death-cum-retiral benefits of late Shiv Muni Ram. The Court would make it clear that it has neither gone into the merits of the claim of either side or has expressed any opinion with regard to the same, which shall be decided as and when it is taken up before the appropriate forum, in accordance with law on its own merits.

(Ahsanuddin Amanullah, J.)

P. Kumar

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