

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.350 of 2019

In
Civil Writ Jurisdiction Case No.15549 of 2016

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Sonu Kumar, aged about 21 years, Gender-M, S/o- Late Kaushal Ram R/v-
Jamunapur, Chain Tola, P.O.- Madhomile, P.S.- Malsalami, Distt- Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Labour,
Government of Bihar, Patna.
2. The Labour Commissioner Government of Bihar, Vikash Bhawan, New
Secretariat, Patna.
3. The Canteen Manager, Old Secretariat Canteen Labour Department,
Government of Bihar, Patna.
4. Renu Devi W/o- Late Kaushal Ram resident of Village- Yarpur Janta Road,
Gautam Nagar, P.O.- G.P.O., P.S.- Gardanibagh, District- Patna.
5. Mohan Kumar S/o- Late Kaushal Ram resident of Village- Yarpur Janta
Road, Gautam Nagar, P.O.- G.P.O., P.S.- Gardanibagh, District- Patna.

... .. Respondent/s

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with
Letters Patent Appeal No. 353 of 2019
In
Civil Writ Jurisdiction Case No.1502 of 2016

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Sonu Kumar S/o Late Kaushal Ram R/v Jamunapur, Chain Tola, P.o.-
Madhomile, P.s.- Malsalami, Distt.- Patna

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Labour,
Govt. of Bihar, Patna
2. The Labour Commissioner Govt. of Bihar, Vikash Bhawan, New Secretariat,
Patna
3. The Canteen Manager Old Secretariat Canteen, Labour Department, Govt.
of Bihar, Patna
4. Renu Devi W/o Late Kaushal Ram Resident of Vill- Yarpur Janta Road,
Gautam nagar, P.o.- G.P.O., P.s.- Gardanibagh, Distt.- Patna
5. Mohan Kumar S/o Late Kaushal Ram Resident of Vill- Yarpur Janta Road,
Gautam nagar, P.o.- G.P.O., P.s.- Gardanibagh, Distt.- Patna

... .. Respondent/s

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Appearance :



For the Appellant/s : Mr.Vijay Kumar Sinha, Advocate
For the Respondent/s : Mr. Sushil Kumar Singh, A.C. to AAG-10

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

Date : 20-08-2019

Heard learned counsel for the appellant.

2. The appeal has been filed after the expiry of the statutory period and there is delay in the filing of the appeal. No Limitation Petition has been filed, but keeping in view the nature of the controversy and the submissions raised, we find it expedient to condone the delay and to treat the appeal within time and hear out the appeal on merits.

3. The claim is of compassionate appointment of the appellant after the death of his father Kaushal Ram who died in harness while working in the Labour Department, Government of Bihar.

4. It appears that Janki Devi, mother of the appellant and one Renu Devi both claimed themselves to be the lawfully wedded wife of late Kauhal Ram. Renu Devi claimed that she was the first wife and therefore her son Mohan Kumar is entitled for compassionate appointment.

5. This claim was countered by the appellant and his mother claiming the compassionate appointment on the same



grounds.

6. It appears that both the ladies Renu Devi and Janki Devi filed two writ petitions before this Court being C.W.J.C. No. 2087 of 2016 and C.W.J.C. No. 15365 of 2016 claiming post retiral dues of late Kaushal Ram. The same issue was raised about the petitioners there being the first or the second wife of late Kaushal Ram. The learned Single Judge observed that this disputed question of fact cannot be gone into exercising the writ jurisdiction and commanded the parties to approach the Civil Court, but at the same time, the authorities were directed to look into the claim of pensionary benefits so that the minor children may not suffer on account of this litigation. The order passed by the learned Single Judge dated 6th October, 2017 is extracted hereinunder:-

“Heard learned counsels for the petitioners and learned counsels for the State.

Both the writ applications have been filed by the widows of Late Kaushal Ram, claiming to be legally wedded wives, for payment of retiral benefits of Late Kaushal Ram, including pension.

From the pleadings of both the writ applications it appears that there is rival claim that they are lawfully claiming the post retiral dues of Late Kaushal Ram and it further appears



that there is serious dispute as to the claim which cannot be decided in writ proceeding.

From the materials available on record it appears that post retiral benefits have been granted in favour of Most. Janki Devi, writ petitioner of CWJC No. 15365 of 2016, and writ petitioner of CWJC No.2087 of 2016 claims that she is the first wedded wife of Late Kaushal Ram and, as such, she is entitled to all the post retiral dues, including pension and the authorities have committed error in granting such benefits in favour of Most. Janki Devi.

In view of serious dispute of fact as to who is the legally wedded wife or who is first wife of Late Kaushal Ram, this Court is not in a position to issue any specific direction to the respondents. Under compelling circumstances, parties are relegated to Civil Court where they seek declaration as to who is the first wife and on such declaration the authorities concerned will proceed and make further payment of post retiral dues. So far minor children of Late Kaushal Ram are concerned, irrespective of whether they are born from the first marriage or second marriage, they are entitled to payment of pensionary benefits in terms of Bihar Pension Rules. The authorities concerned are directed to see that minors in terms of Bihar Pension Rules are paid the pensionary benefits until they attain the age prescribed under the Bihar Pension Rules.



Needless to say that further payment of pensionary benefits, including regular pension will abide by the decision of the competent civil court.

With the aforesaid observation, both the writ applications are disposed of.”

7. Renu Devi filed a Review Application which was rejected, whereafter she filed L.P.A. No. 271 of 2018. The said appeal was disposed of accepting the judgment of the learned Single Judge with further observation that if the appellant Renu Devi or the respondent Janki Devi were not satisfied with the decree of the said proceedings, it was open to them to get a declaration with regard to the status and claim from the Civil Court of competent jurisdiction. The judgment is extracted hereinunder:-

“Challenge in the present Letters Patent Appeal is to the order dated 06.10.2017 passed by the learned Writ Court in Civil Writ Jurisdiction Case No. 2087 of 2016.

From the averments made in the writ application and the contest being made by the private respondent for payment of post-retiral dues including pension, the learned Writ Court found that there is a serious dispute of fact as to who is the legally wedded wife or who is the first wife of late Kaushal Ram and such issues of



facts cannot be decided by the Writ Court sitting in its jurisdiction under Article 226 of the Constitution of India.

From the counter affidavit filed before this Court on behalf of the respondent nos.1 to 3 it is gathered that the petitioner claims herself as being first wife of late Kaushal Ram. She has relied upon the order dated 24.03.1988 passed in Misc. Case No.160 (M)/1986 as well as the order dated 19.02.1996 passed by 5th A.D.J., Patna in Criminal Revision No.296 of 1988. The private respondent claims that she is the first wife and there are five sons and daughter from the wedlock between her and late Kaushal Ram. It is claimed that the private respondent and her sons are nominees in the GPF account, by virtue of which, she would get the same. The Department has opined that pension and gratuity is payable to both the widow in equal proportion whereas group insurance would go to the private respondent as she has been nominated for that by the deceased. It is in these circumstances that the competent authority has passed the order bearing No.143 dated 13.01.2016. It is also stated that the GPF amount has been directed to be paid in equal share among the two ladies and their sons.

As regards the family pension, it is submitted that the same is not admissible to the second wife of a government servant if marriage is solemnized in the lifetime of the first wife, but



minor children of the second wife are entitled to get the same.

From the aforesaid facts and circumstances the views taken by the learned Writ Court are fully justified. If the appellant is not willing to accept decision of the respondents or vice-versa, the appellant as well as the private respondent are free to get a declaration as regards their status and claims from the Civil Court of competent jurisdiction.

The Letters Patent Appeal is disposed off with the aforesaid observations.”

8. It appears that Renu Devi and her son Mohan Kumar also filed another writ petition being C.W.J.C. No. 1502 of 2016 which was disposed of on 10th January, 2019 with the observation that the respondents should take a final decision on the claim raised with regard to compassionate appointment. The judgment dated 10th January, 2019 is extracted hereinunder:-

“Heard learned counsel for the petitioner and the respondent-State.

2 It is submitted by the learned counsel for the State that claim of the petitioner for compassionate appointment of petitioner No 2 on account of death of his father Kaushal Ram in harness while posted as Service Boy under respondent No 3 that is Canteen Manager, Old Secretariat Canteen, Patna, is pending.



3 The issue is pending consideration before the authorities. Such stand has also been taken in paragraph 17 of the counter affidavit.

4 In view of such stand, this Court would only observe that such claim on account of compassionate appointment should not be kept pending inordinately as such pendency has the effect of frustrating the very object of compassionate appointment. The father of petitioner No 2 has died in harness on 09.07.2015. However, till date, respondents have not taken any decision on the claim of the petitioner for compassionate appointment.

5 This Court would only observe that the respondents should take a final decision on the claim of the petitioner expeditiously and preferably within a period of three months from the date of receipt/production of a copy of this order.

6 The writ petition is disposed of.”

9. From a perusal of the said judgment, we do not find any reference of the observations made earlier in the judgments extracted hereinabove where even though the claim was of family pension, yet the observations were made with regard to the nature of the status of the claim that may be required to be gone into before a court of competent civil jurisdiction. Nonetheless, we further find that Sonu Kumar, son



of Renu Devi had also filed another writ petition being C.W.J.C. No. 15549 of 2016 claiming compassionate appointment. The said writ petition has taken notice of certain litigation with regard to the marital status of the two ladies and the payment of maintenance as well as the equal distribution of the retiral dues under the orders issued by the Labour Commissioner, Bihar. The learned Single Judge disposed of the writ petition filed by Sonu Kumar by the impugned judgment in this appeal. Operative part of the said judgment- Paragraphs 4, 5 and 6 are extracted hereinunder:-

“4 This Court would also take note of the fact that in light of the order dated 31.08.2016 issued by the Labour Resource Department, the petitioner as well as his brothers including Smt Renu Devi (first wife) as well as her son Mohan Kumar have been availing the pensionary/post retirement dues which have been apportioned between them. Thus, there is sufficient sustenance to her legal heirs, namely, her sons Vijay Kumar, Raju Ram and the petitioner Sonu Kumar. Under order dated 31.08.2016 issued by Labour Commissioner, Bihar, Renu Devi is beneficiary of part of the retiral dues of Kaushal Ram as first wife. Under the same order of the Labour Commissioner, all sons of Janki Devi, i e, Vijay Kumar, Raju Ram,



as well as petitioner Sonu Kumar have been availing part of retiral benefits of late Kaushal Ram as sons of second wife, without ever raising any objection.

5 On specific query made whether the petitioner has ever challenged the order dated 31.08.2016, wherein petitioner has been described as son of second wife, the response of the petitioner's counsel is in the negative. Having accepted his status as son of second wife for the purpose of availing part of retiral dues of late Kaushal Ram under order of Labour Commissioner dated 31.08.2016 (Annexure 1 to the counter affidavit of respondent No 4) without any objection, petitioner is estopped from contending to the contrary in the instant proceedings and claim to be son of first wife.

6 Under such circumstances, this Court does not find any reason for interference in the matter or to issue any direction for appointment of the petitioner on compassionate ground.”

10. Sonu Kumar has also filed L.P.A. No. 353 of 2019 questioning the judgment of the learned Single Judge in C.W.J.C. No. 1502 of 2016 decided on the same day.

11. The gamut of facts that has been consolidated by us in this order hereinabove leaves no room for doubt that the



learned Single Judge has refused to interfere into the matter keeping in view the facts that have been noted by him. However, the observations made earlier of seeking such declaration from the Civil Court do not appear to have been noticed or may be were not brought to the notice of the learned Single Judge.

12. We therefore without interfering with the orders of the learned Single Judge leave it open to the appellant Sonu Kumar to also get his rights adjudicated along with his mother Renu Devi before the appropriate court of competent civil jurisdiction and the disposal of the matter by this Court will not be an impediment to the same.

13. Both the Letters Patent Appeal stand disposed of accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
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