

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1194 of 2018
In
Civil Writ Jurisdiction Case No.14577 of 2017

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

... .. Appellant/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. The Renuka Sharma, 2nd Wife of Late Shail Suteshwar Prasad Narain Singh, Resident of Jagarnath Singh Lane, Chaudhary Tola, Sultanganj, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Dharendra Kumar Jha, Advocate
For Magadh University	:	Mr. Shivendra Kishore, Sr. Advocate
		Mr. Arabind Nath Pandey, Advocate

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

Date : 09-04-2019

Heard Shri Dharendra Kumar Jha, learned Counsel for
the appellant and Shri Shivendra Kishore, learned Senior Counsel
for the Magadh University.

2. Notices had been issued by us, but the 5th respondent
has not appeared before the Court and the notice report indicates
her non-availability at the given address. Learned counsel for the
appellant submits that the 5th respondent is a practising Advocate
in this Court and therefore she can be served, if so directed.



3. We have, however, proceeded to examine the question of the admissibility of this appeal on the ground raised and we find that the learned single Judge in paragraph 11 of the impugned judgment has recorded the following order:

“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.”

4. Learned counsel for the appellant contends that the petitioner is entitled to family pension being the widow of Late Professor Shail Suteshwar Prasad Narain Singh, who was admittedly in the employment of the respondent-University. The dispute is with regard to pensionary benefits upon his death that is being claimed by the appellant.



5. We have perused the records of the writ petition and the appellant herself has brought on record the memorandum of family arrangement which is dated 21st of May, 2001. The said memorandum contains the entire recital pertaining to the arrangement of family property keeping in view the status of the appellant as well as the 5th respondent. Both the appellant and the 5th respondent together with Late Shail Suteshwar Prasad Narain Singh as also the other family members are signatories to the said memorandum, that was drawn up after due deliberations and contains the following recital in so far as the present claim is concerned, which is extracted hereinunder:

“Further it is agreed that in case of demise of the signatory of the first part in the life time of signatory of the second and third part his entire retiral benefits and family pension would exclusively go to signatory of the third part and in the event of her death if payable will go to signatory of the tenth and eleventh part and the signatory of the second part, sixth part to tenth part would not claim interest therein on any ground whatsoever.”

6. Thus, under the aforesaid agreement, there was a final settlement and relinquishment of interests as also confirmation of absolute ownership in relation to the properties which were in question coupled with the aforesaid recital relating to the post-retiral benefits or otherwise the terminal benefits in favour of Respondent No.5, the dispute whereof has been raised in the present appeal.



7. Shri Jha, learned counsel contends that the University cannot act contrary to law by providing pension to the 5th respondent in view of the admitted family status of the appellant being the widow of the deceased Professor. He therefore submits that the learned single Judge has committed an error in proceeding to deny the said claim on grounds which cannot be sustained in law. In essence, the argument is that the University cannot act in a partisan way that too even in teeth of the Rules to extend the benefit of pension in its entirety to the 5th respondent. He submits that keeping in view the status of the appellant, she is also entitled to the benefits upon the death of her husband, the denial whereof is contrary to the rules and even otherwise is impermissible.

8. We have considered the submissions raised, but this Court also exercises its jurisdiction of *parens patriae*, apart from considering the legalities involved in a case. It cannot be lost sight of that a conscious agreement was entered into with a clear stipulation that the terminal benefits shall accrue only in favour of the 5th respondent and not to any other person to which all the signatories in the agreement had agreed consciously relinquishing their rights and claims whatsoever. This is therefore not a case of incorrect application of law by the University but a clear case of acquiescence on the part of the appellant and estoppel by conduct that comes into play in terms of the agreement quoted above and



consequently, the learned single Judge was justified in refusing to exercise discretion in favour of the appellant. We are conscious that a discretion has to be a judicious discretion and in accordance with law, but we are equally conscious that the appellant herself has brought forth the family arrangement which was undisputedly acted upon since 2001. The appellant may have her concerns with regard to any other dispute arising out of the said agreement but in so far as the terminal benefits are concerned, the same was clearly intended and made available to the 5th respondent to the exclusion of all other parties to the said agreement. The promise of all the signatories, including the appellant, was clearly irrevocable.

9. We therefore in exercise of our Writ jurisdiction and the nature of the claim keeping in view the relationship of the parties, are not inclined to interfere with the impugned judgment of the learned single Judge.

10. The appeal is, accordingly, consigned to records.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

