

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No. 4261 of 2014

Arising out of

Miscellaneous Jurisdiction Case No. 4004 of 2012

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Manti Devi Wife of Late Deo Narayan Resident of Village-P.O. and P.S.-
Rautara, District-Katihar.

... .. Petitioner/s

Versus

1. The Union of India through Shri Bhushan Patil Divisional Railway Manager,
N.F. Railway, Katihar, Police Station and District- Katihar.
2. Shri Bhushan Patil, Divisional Railway Manager, N.F. Railway, D.R.M.
Office, Katihar, P.S. and District- Katihar.
3. Vijay Kumar Yadav, Son of Late Deo Narayan Resident of Village-P.O. and
P.S.-Rautara, District-Katihar.
4. Superintendent of Police, Katihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Uday Chand Prasad, Advocate
For the Railways	:	Mr. Anil Singh, Advocate
For the Opposite Party/s	:	Mr. Sushanta Kumar Das, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 05-09-2019

Heard Mr. Uday Chand Prasad, learned counsel for the
petitioner; Mr. Anil Singh, learned counsel for the Railways; Mr.
Jharkhandi Upadhyay, learned APP for the State and Mr. Sushanta
Kumar Das, learned counsel for the opposite party no. 3.

2. Pursuant to previous orders, the Superintendent of
Police, Katihar has appeared through Mr. Jharkhandi Upadhyay,
learned APP. The Superintendent of Police, Katihar has filed Show
cause. The reason why he was called was that despite him being



directed to submit a report personally vetted by him, the same was not done and the Deputy Superintendent of Police, Traffic, Katihar had submitted his report to the Court directly.

3. In the show cause, unconditional and unqualified apology has been tendered. The Superintendent of Police, Katihar submitted that he was under some personal family pressure and, thus, inadvertently such mistake was committed. He assured the Court that in future such mistake shall not be repeated.

4. Having considered the matter, the Court is inclined to accept the apology.

5. Accordingly, the issue with regard to disobedience of the order by the Superintendent of Police, Katihar, stands consigned.

6. Personal appearance of the Superintendent of Police, Katihar, stands dispensed with.

7. The petitioner has moved the Court for initiating contempt proceeding against the opposite party no. 3 for non compliance of the order dated 01.05.2013 passed in MJC No. 4004 of 2012, which reads as under:

“Heard counsel for the parties.

While this Court for the present in view of the show cause reply filed by the Railway authorities is not inclined to initiate any proceeding of contempt, inasmuch as whatever amount found admissible has been paid to the petitioner



alongwith a calculation chart, as contained in Annexure 'A', this much must be observed that if O.P. No.3, the employee of the Railways and the son of the petitioner, is not complying the terms and conditions of his compassionate appointment or misbehaving in any manner with the petitioner, it would be incumbent upon the employer to take appropriate action as is permissible in accordance with law.

With the aforementioned observation and direction, this application is disposed of.”

8. From the aforesaid, it is clear that MJC No. 4002 of 2012, had been filed alleging violation of order dated 22.05.2009 passed in Miscellaneous Appeal No. 102 of 2006. The said Miscellaneous Appeal was disposed off on the basis of a compromise between the petitioner, opposite party no. 3 and ultimately, the Court had passed the following order:

“The appellant-wife as agreed amongst the parties now would go back to her family and reside with his sons and daughter and it has been assured by all of them namely, the grand-mother, two sons and daughter that she will be given her due respect and therefore, it would be in the interest of justice to also direct all the concerned courts where any criminal case(s) has been filed by one party against another, to drop them on filing of a joint compromise petition along with a copy of this order.

If any civil proceedings have been initiated by the parties against each other pertaining to the property or rights of late Deo Narayan, the same shall also be now also withdrawn by the concerned parties as each and every aspect even pertaining to the properties of Deo Narayan whether movable or immovable, including the pensionary rights have been made part of the compromise petition.

Such compromise petition and their terms and conditions are made Rule of the Court and if



there be any non-compliance of the terms and conditions of such compromise petition as extracted and quoted above in this order or aforementioned direction given by this Court by any of the party the same would be treated to be violation of the order of this Court and such party would become directly liable for being proceeded under the provisions of Contempt of Courts Act.

In that view of the matter, this appeal is allowed. The order of the Court below is set aside and the succession case filed by Vijay Kumar Yadav is hereby dismissed.”

9. Thereafter, the opposite party no. 3 had filed MJC No. 3629 of 2010, in which the petitioner was respondent no. 3.

10. MJC No. 3629 of 2010 was also disposed off in the following terms:

“Considering that a mutual voluntary offer has been made by both the petitioner and O.P. No.3 for entering into compromise in keeping with the earlier direction of this Court in the order dated 22.5.2009 in M.A. No. 102/2006, being the subject matter of this contempt application, this Court would direct the concerned court to dispose of such joint compromise petition on the same day if the petitioner and O.P. No.3 would appear in person and also convey their willingness to compromise the matter. In view of the aforesaid subsequent development and the resultant direction, this application has become infructuous specially when Mr. Siddhartha Prasad, learned counsel for the Railways, has also conveyed that the arrears of family pension to respondent no.3 to tune of Rs. 1,05,570/- has already been credited in her Bank account on 30.11.2011. Mr. Uday Chand Prasad, learned counsel for O.P.No.3, would however submit that the authorities of Railway have not complied the directions in letter and spirit and that O.P. No.3 was still entitled for payment of some more



amount of arrear of family pension. This Court however had never quantified any specific amount by way of arrears of family pension payable to opposite party no. 3 and therefore no contempt can be said to have been committed by the Railway authorities. It would be still open for the opposite party no. 3 to approach Railway authorities for claiming any higher amount of arrear of family pension and if in course of such re-examination the Railway authorities would find that something more was payable to O.P. No.3 on the head of arrears of family pension, they will also pay the same to opposite party no.3 an early date.”

11. When still the opposite party no. 3 did not adhere to the terms of the compromise, MJC No. 4004 of 2012 was filed by the petitioner.

12. The petitioner is the mother of the opposite party no. 3. She was agreed to the opposite party no. 3 getting appointment on compassionate ground when her husband died in harness while in service under the Railways. In terms of the compromise, the opposite party no. 3 was to take care of the petitioner, her younger son and also the daughter who was at that time unmarried and also required to bear the burden of marriage of the sister. However, it is an admitted position that in spite of having got employment in January, 2011, he has not paid a single rupee to the petitioner or the younger brother or the sister.

13. In view of the stand taken by parties in the present proceeding, the Court had directed the Superintendent of Police,



Katihar to get an enquiry conducted with regard to whether the opposite party no. 3 who had claimed to be taking care of the younger brother was correct and generally to report with regard to the financial arrangement of the parties. A report in such terms has been submitted which discloses that the opposite party no. 3 is living in Railway Colony along with his grandmother who is also getting family pension of about Rs. 8,000/-. It has also come in the enquiry that he is not giving any money either to the petitioner or to the younger brother and has also not contributed to the marriage of the sister which was performed in April, 2011, i.e., after him getting employment.

14. Today, the opposite party no. 3 is also present in Court. On a query to him as to how much salary he receives, the Court was informed that it was more than Rs. 21,000/-.

15. However, from the materials on record, it transpires that in the year 2016, the amount was over Rs. 16,000/-.

16. At this juncture, the Court called upon the opposite party no. 3 to take stand as to what amount he was agreeable to pay in view of learned counsel appearing for him taking an unequivocal stand that he was still ready to support the petitioner and the brother. On this, he informed that he was ready to pay Rs. 4,000/- per month and was also willing to pay the arrears from the



date of his appointment, though he submitted that the same be fixed in installment as payment of the same one time would be too harsh and he may not be able to bear the burden.

17. Learned counsel for the petitioner submitted that the opposite party no. 3 had agreed to take care of the petitioner and the younger brother and the sister and also the expenses of marriage of sister which has not been done.

18. Having heard learned counsel for the parties, in view of the fact that at one point of time the petitioner was agreeable to receive Rs. 4,000/- per month from the Railways when the opposite party no. 3 was resisting and was agreeable to only Rs. 3,000/- per month and today the opposite party no. 3 has agreed to pay Rs. 4,000/- and the petitioner who is also present in Court being ready for such arrangement, the Court deemed it appropriate that the issue finally be settled between the parties once and for all.

19. In the aforesaid background the Court intended to dispose off the application in the following agreed terms in the presence of the petitioner, opposite party no. 3 and the younger son of the petitioner, by directing that the opposite party no. 3 shall pay Rs. 4,000/- to the petitioner starting from the very first salary drawn by him in the year 2011.



20. At this juncture, the opposite party no. 3 surprisingly took a u-turn and submitted that he was not agreeable to pay from the date he had joined service. The Court finds this to be shocking. Such shift in stand shows lack of *bona fide* on the part of the opposite party no. 3 which proves the allegation of the petitioner that only to take employment he had taken a very pious stand that he would take care and full responsibility of his mother, sister and younger brother, but upon getting such employment has not bothered to provide any assistance whatsoever to them. From the admitted position and what has transpired in the Court today, the Court has no hesitation to record that the conduct of the petitioner is outright dishonest. The same is borne out from the fact that since joining his job, not even a single rupee has been given by him for support of the mother, younger brother and sister, much less for her marriage, as was promised by him, and even before the Court today, after initially agreeing to an arrangement, he developed second thoughts, which clearly proves that the intention is not clean.

21. The opposite party no. 3 had got employment since the petitioner and other family members had agreed to the same and the condition was that he would maintain the petitioner and



the younger brother and sister and also take care of the wedding expenses of the sister. This admittedly had not been done.

22. In view thereof, the Court deems it appropriate to direct the Railways that from September, 2019 onwards, the amount of Rs. 5,000/- shall be directly transferred from the salary of the opposite party no. 3 to the account of the petitioner. Further, an additional amount of Rs. 5,000/- shall also be deducted and transferred into the account of the petitioner till the time the arrears of payment from the first salary of the petitioner in the year 2011, till August, 2019 at the rate of Rs. 4,000/- is satisfied.

23. The Court has been informed that the opposite party no. 3 is living in a Railway Quarter along with his grandmother who draws a family pension of Rs. 8,000/- and his own salary is over Rs. 21,000/- per month.

24. The additional 5,000/- shall continue to be deducted and paid to the petitioner till the time the arrears at the rate of Rs. 4,000/- from January, 2011 i.e., the first salary drawn by the opposite party no. 3 till August, 2019, stands satisfied.

25. The application stands disposed off in the aforementioned terms.

26. In view of the prayer made by the petitioner to the Court that she is now entitled to revised family pension after



coming into effect of the new Pay Commission, the Court would only observe that she may represent to the authorities concerned and raise her grievance.

27. Mr. Anil Singh, learned counsel for the Railways fairly submitted that if such a representation is filed, the authorities shall look into it and whatever legal and due is admissible be paid to her.

(Ahsanuddin Amanullah, J.)

P. Kumar

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