

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11928 of 2017

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Dipti Mishra, Daughter of- Late Shashi Bhushan Mishra, Resident of Village-
Kartahan Jagdishpur, P.S.- Kartahan, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Energy, Bihar, Patna.
3. The Managing Director, Bihar State Power Holding Company, Vidyut Bhawan, Bailey Road, Patna.
4. The Deputy General Manager, North Bihar Power Distribution Company Ltd, Vidyut Bhawan, Bailey Road, Patna
5. The Superintending Engineer, Electric Supply Division, Muzaffarpur.
6. The Executive Engineer, Electric Supply Division, Muzaffarpur.
7. The Assistant Engineer, Electric Supply Sub- Division, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar, Advocate
For the Respondent/s : Mr.Subhash Prasad Singh, G.A.3

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

4 24-08-2020 Heard the parties through the virtual court proceeding.

By way of filing the present writ application, the petitioner, inter alia, has sought a direction to the respondents for issuance of an appropriate writ, order/directing/commanding the respondents to pay all the retiral dues along with calculation chart of her late father who died on 24.06.1989 during his service period.

ii) Any other relief or reliefs for which the petitioner



is entitled under law as well as on facts.

Learned counsel for the petitioner submits that till date no retiral dues have been paid to the petitioner. Vide order dated 21.05.2020, learned counsel for the petitioner submits that he wants to verify the factual position and time has been granted to the petitioner to file rejoinder. Learned counsel for the petitioner has not filed any rejoinder to the counter affidavit filed by the respondent nos.3 and 7.

Learned counsel for the respondent nos.3 to 7, Bihar State Electricity Board submits that Smt. Poonam Mishra claiming as to the 2nd wife of Late Shahi Bhushan Mishra, Accounts Assistant filed a writ petition earlier before the Hon'ble Court which was registered as CWJC No.9903 of 1999 (Poonam Mishra vrs. BSEB & Others). The writ petition so filed was dismissed on 20.08.2002 with certain observation. The operating part of the order is as follows :-

“ Considering all the facts and circumstances, the prayer made on behalf of the petitioner is rejected and this writ petition is dismissed but with an observation that if so advised the daughters of the petitioner may apply for succession certificate in accordance with law and in case succession certificate is granted in their favour by the competent court then



the respondent board should pay the lawful dues on account of death of Shashi Bhushan Mishra without delay and in any case within three months from the date of filing of such claim by the daughters along with succession certificate (Annexure-A to the counter affidavit).”

Learned counsel for the respondents submits that Smt. Mishra knocked the door of the learned Division Bench of Hon'ble High Court vide LPA No.34 of 2003 (Poonam Mishra vrs. BSEB & Others). The appeal so filed was also dismissed on 20.02.2003 with some of these observations. “ That Shashi Bhushan Mishra was facing a complaint for marrying again during the life time of the first wife and faced an action under Section 494 of the Indian Penal Code, 1860. This complaint, Shashi Bhushan Mishra was sent to jail. This appears to be a very cursory exercise to a proceeding of original jurisdiction where a claim has to be certified before a succession certificate or for that matter letters of administration is granted. On the writ petition, the learned Judge also certified by a certiorari, that the status of the petitioner to seek any relief was just not there as her marriage has to be treated as void ab initio. Thus, one thing is clear and is an aspect on record beyond reasonable doubt that Shashi Bhushan Mishra took in another women while his wife



was alive and was living in adultery. The service conditions of the Board were violated. The Board suspended Shashi Bhushan Mishra from his service.

In the circumstances, the Court fails to understand how the District and Sessions Judge, Vaishali at Hajipur did not examine all these aspects while he was proceeding to grant a succession certificate under the Indian Succession Certificate Act, 1925, in the matter relating to the estate of late Shashi Bhushan Mishra when Poonam Mishra, who was not married, was laying claim to the estate.

A certified copy has been placed before the Court, which apparently seems to be a hurried exercise which carry the signature of the District Judge. The court is of the opinion that the order should have stopped after this observation once the learned Judge become conscious of the fact that the petitioner Poonam Mishra, in fact, had no status under the law to make any claim on the death-cum-retiral benefits of the deceased Shashi Bhushan Mishra. But it appears that the order went a little further. It grants certain benefits to those who may not be entitled for it. Today, it is of no consequence that the late Shashi Bhushan Mishra may not have any other heir. One thing is clear that the grant of estate is a question which directly involves



heirs. Whether these heirs are class – I or Class – II is a matter which has to be examined. When there is a claim, if the claim be resisted, then the claimant has to seek a succession certificate. It is entirely up to the court of original jurisdiction, where the claim had been filed for a succession, to examine these matters.

Thus, this Court is of the opinion that the writ petition clearly should have been thrown out as Poonam Mishra was not so clean when she was seeking reliefs from the High court. The record is, thus, certified.”

Learned counsel for the respondents submits that the petitioner had informed by her letter dated 22.02.2017 (Annexure-D of the counter affidavit) that she had got the payment of Rs.10,534.15. As per succession certificate, it was the amount of provident fund. So it was informed to her that G.P.F. amount has been paid to her. He further submits that Smt. Poonam Mishra is not legally wedded wife of deceased employee. Therefore, she is not entitled to get death cum retiral benefit of the deceased employee (Annexure-C of the counter affidavit).

Learned counsel for the petitioner has not filed the rejoinder of the counter affidavit. There is a disputed fact in the present case. The disputed fact cannot be decided in the writ



petition.

In the circumstances, the writ petition is dismissed.

(Anjani Kumar Sharan, J)

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