

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Civil Writ Jurisdiction Case No.12680 of 2019**

Roshan Kumar son of Late Nand Lal Mishra resident of Village-
Babhangama, PO- Benigir, PS- Muffasil, District- Munger.

... .. Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Director General of Police, Government of Bihar, Old Secretariat, Patna.
4. The Inspector General of Police, Rohtas Region.
5. The Deputy Inspector General of Police, Rohtas.
6. The Superintendent of Police, Rohtas.
7. The Accountant General, Bihar, Mahalekhakar Bhawan, R Block, Patna (Bihar).

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Mritunjay Kumar, Advocate Mr.Binodanand Mishra, Advocate
For the Respondent/s	:	Mr.Manish Kumar (GP4)

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

3 17-06-2020 Heard learned counsel for the petitioner and learned
counsel representing the State.

The petitioner in the present case is seeking the
following reliefs:-

- “i. For issuance of order, direction or writ in the nature of Mandamus Commanding the respondents to make payment of family pension of the late mother of the petitioner which was due for the period from May 2013 to 06.05.2014.
- ii. For issuance of an order, direction or writ including writ in the nature of Mandamus commanding the respondents to make payment



of family pension to the petitioner after the death of this mother.

iii. For issuance of order, direction or writ in the nature of Mandamus commanding the respondents to make payment of death cum retirement gratuity of the late father of the petitioner to the petitioner.

iv. For issuance of order, direction or writ in the nature of Mandamus commanding the respondents to make payment of leave encashment of the late father of the Petitioner.

v. For issuance of order, direction or writ in the nature of Mandamus commanding the respondents to make payment of provident fund amount with statutory interest of the late father of the petitioner.

vi. For issuance of order, direction of writ in the nature of Mandamus commanding the respondents to make payment of the interest at market rate to the petitioner on the aforesaid admissible lawful dues of the petitioner.

vii. For issuance of an appropriate declaration holding that the petitioner is entitled to receive the arrears of unpaid family pension amount of her late mother and the payments of other retirement benefits of his late father.

viii. For issuance of appropriate declaration holding that the respondent authority is required to make payment of the aforesaid lawful admitted dues to the petitioner with interest on



the delayed payment at the earliest.

ix. For any other relief(s) to which the petitioner may be found entitled in the facts and circumstances of the present case.”

The case of the petitioner is that he was taken in adoption by late Nandlal Mishra. Late Nandlal Mishra was appointed as a constable in Bihar Police in July, 1979 and was subsequently promoted as Assistant Sub-Inspector in the year 2006. He died in harness on 06.05.2013. Thereafter, the widow of late Nandlal Mishra who was the nominee to receive the post retiral benefits, received the same to the tune of Rs.13,70,000/- but according to the petitioner the entire retiral benefits had not been paid to her. The widow of late Nandlal Mishra also died on 30.11.2014.

It is the case of the petitioner that after her death, this petitioner being an adopted son claimed the amount and requested the office of Superintendent of Police, Rohtas to pay the remaining dues of his father along with the family pension of his mother and the family pension at the rate of 30 per cent to him because he had not attained the age of 25 years.

In order to strengthen his case, the petitioner has also obtained an order dated 30.12.2016 passed by learned Sub-Judge II Munger vide Annexure ‘5’ series in Succession Case



No. 5 of 2016. The learned Sub-Judge II, Munger has in his order declared the petitioner sole legal heir and successor of late Nandlal Mishra and his wife late Shanti Mishra.

Learned counsel for the petitioner has heavily relied upon this order to claim the benefits. He has also submitted that based on this order the State Bank of Indian, Katihar has transferred the amount lying in the saving bank account of late Shanti Mishra in favour of the petitioner.

A counter affidavit has been filed on behalf of respondent no. 6 in which it is stated that after death of late Nandlal Mishra the provisional family pension at the rate of Rs.8,127/- per month from 07.05.2013 to 30.04.2014 and provisional death-cum-gratuity amount of Rs.9 lakh has been paid to the widow Shanti Mishra and the Accountant General, Bihar Patna had also issued pension authority letter to her for payment of Rs.3,25,080/- on account of leave encashment which has been paid to the widow. Payment on account of group insurance scheme has also been paid. In the meantime, Shanti Mishra died. It is the specific case of the respondents that at the time of preparation of family pension form, Shanti Devi had not submitted any document or certificate of the adopted son. According to the respondents, in the list of dependent of the



deceased, there appears no name except that of Shanti Mishra due to which the payment of accumulated amount in general provident fund has not been made and no objection certificate has not been sent to the concerned Treasury Officer. In this regard the report received in the office of Superintendent of Police, Rohtas has been brought on record as Annexure 'A' to the counter affidavit.

In course of argument, learned counsel for the petitioner submits that by virtue of the Court's order as contained in Annexure '5' series now the petitioner is the successor of deceased late Nandlal Mishra. After perusal of the order passed by learned Sub-Judge II, Munger in Succession Case No. 5 of 2016 when this Court noticed that the said order nowhere declares that the petitioner was taken in adoption by deceased late Nandlal Mishra and the same was not an issue before the succession Court rather the Court has proceeded to declare the petitioner a successor without going into that issue of adoption, this Court specifically called upon learned counsel for the petitioner to say on instruction as to whether the matriculation certificate of the petitioner contains the father's name as late Nandlal Mishra. It is categorical statement of learned counsel for the petitioner that the matriculation



certificate of the petitioner contains his father's name as Maheshwar Mishra.

Learned counsel for the State has submitted that petitioner is indulged in fabricating documents and has indulged in making out a case for unlawful gain by showing himself as an adopted son of late Nandlal Mishra.

Having heard learned counsel for the petitioner and learned counsel for the State as also on going through the records and the submissions of the parties, this Court finds that in this case the records speak for themselves. According to the petitioner, late Nandlal Mishra died while in service on 06.05.2013. The petitioner has in his affidavit sworn before this Court on 09.05.2019 declared his age about 25 years.

If in the year 2019, the petitioner is aged about 25 years, by doing simple mathematical calculation of primary nature one can easily come to the conclusion that at the time of death of late Nandlal Mishra in the year 2013 the petitioner was about 19 years. There is neither any cogent material nor a finding of learned Sub-Judge that prior to his death Late Nandlal had adopted the petitioner. He has in his matriculation certificate and the Aadhar Card copy of which is available on record disclosed his age as 01.01.1994 and father's name as



Maheshwar Mishra. Copy of the Aadhar Card is enclosed with the writ application wherein the petitioner has been shown as son of Maheshwar Mishra, but in the affidavit sworn before this Court he has shown his father's name as late Nandlal Mishra. This in the opinion of the Court is an apparent attempt by the petitioner to take undue/unlawful benefit by a self-declaration that he happened to be an adopted son of late Nandlal Mishra. Admittedly in the pension papers petitioner has not been shown a dependent of Late Nandlal. Even before the learned Sub-Judge II, Munger in the succession certificate case the petitioner has not exhibited any adoption deed, he did not exhibit his educational institution certificate and there is no whisper by way of finding in the order of learned Sub-Judge that there was a valid adoption of the petitioner. It was not a suit for declaration and State was not a party in the succession case. The fact that the deceased Shanti Mishra had also not shown the petitioner as a dependent in the family pension document further strengthens the stand of the State and this Court would accept the same after having noticed that in his educational certificate and the Aadhar Card petitioner has shown himself son of Maheshwar Mishra. This is a clear attempt to get the family pension amount by a self-claimed declaration that he happened to be the son of late



Nandlal Mishra.

This writ application has, thus, no merit, it is dismissed accordingly.

Having noticed that the petitioner has indulged in misrepresentation and even before this Court though he enclosed the Aadhar Card showing his father's name as Maheshwar Mishra but in affidavit declared his father's name as late Nandlal Mishra, the Court was thinking of instituting an inquiry in the matter and to take appropriate steps accordingly but finding that the petitioner is a young man aged about 25 years and he might have acted on some wrong advice either in his family or elsewhere, this Court has restrained itself from issuing any direction for institution of inquiry.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

