Yumkham Rother

Digitally signed by Yumkham Rother
Date: 2020.12.01 15:58:24 +05'30'

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

W.P.(C) No.886 of 2018

Ng. Nakinai @ Ng. Nakini Gloria, a minor girl of about 15 years, D/O late Th. Ngaopunii of Kangpokpi Daily Village, P.O., P.S. & District- Senapati, Manipur represented by her next friend and natural mother Smt. Elangbam Premi presently staying at Singjamei Yumnam Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur.

……. *Petitioner/s*

– Versus –

1. The State of Manipur represented by the Commissioner (Transport), Old Secretariat Building, Babupara, Government of Manipur- 795001;
2. The Director (Transport), HQ-Motor Vehicle Office, Babupara, Government of Manipur- 795001;
3. The Accountant General, Babupara, Imphal West, Manipur- 795001;
4. Lunaru (55 years), W/O late Th. Ngaopunii of Kangpokpi Daily Village, P.O., P.S. & District- Senapati, Manipur- 795129;
5. Adozna (28 years), D/O late Th. Ngaopunii of Kangpokpi Daily Village, P.O., P.S. & District- Senapati, Manipur-795129;

6. Oziinai @ Zaunai (55 years) W/O late Th. Ngaopunii of Kangpokpi Daily Village, P.O., P.S. & District- Senapati, Manipur- 795129.

…. *Respondent/s*

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner/s	:	Mr. H. Kenajit, Advocate
For the Respondent/s	:	Mrs. Ch. Sundari, GA for R1&R2 Mr. S. Suresh, ASG for R3
Date of hearing	:	14.09.2020
Date of Judgment & Order	**:**	**24.11.2020**

JUDGMENT & ORDER
(CAV)

This writ petition has been filed by the petitioner, who is a minor, represented by her mother Elangbam Premi, seeking direction on the respondents 1 to 3 to disburse the death cum gratuity and other service benefits of late Th. Ngaopunii to her.

[2] The case of the petitioner is that her mother Elangbam Premi and Th. Ngaopunii started living together as husband and wife since 2001 and they were blessed with the petitioner. The mother of the

petitioner came to know that Th. Ngaopunii already had two wives i.e., respondent No.4 (first wife) and respondent No.6 (second wife) and his first wife had two children, but one of their child had expired and respondent No.5 is the other child. Respondent No.6 had no issue from late Th. Ngaopunii. The petitioner learnt that late Th. Ngaopunii had completed divorce with respondent No.4 during his life time as per the customary law, respondent No.5 is working in Pune and is able to maintain herself and the second wife has no issue and as such the petitioner is entitled to all the properties left by late Th. Ngaopunii, including his service benefits. However, respondent Nos.4 to 6 have colluded and tried to take out the death cum gratuity and other benefits from the office of the official respondents without stating the true facts of the existence of the petitioner. Hence, the petitioner has filed the present writ petition.

[3] Resisting the writ petition, respondent Nos.1 and 2 filed affidavit-in-opposition stating that no official record is found in the Directorate of Transport regarding the marriage of late Th. Ngaopunii with Elangbam Premi and the report from the District Transport Officer, Kangpokpi reveals that there is neither official knowledge of late Th. Ngaopunii having three wives, nor the petitioner is the

daughter from the marriage of late Th. Ngaopuni with Elangbam Premi. It is stated that due to the information of the deceased employee having multiple wives and other legal heirs, the Transport Department could not initiate the process of death cum gratuity and other benefits. The Transport Department does not have any official information regarding the divorce of late Th. Ngaopunii with respondent No.4. Hence, prayed for dismissal of the writ petition.

[4] Respondent No.3 filed affidavit-in-opposition stating that the pension papers as well GPF final payment in respect of late Th. Ngaopunii have not been received from the concerned authority till date. Until and unless pension papers are received from the concerned authority, the third respondent will not be in a position to examine the entitlement of late Th. Ngaopunii or his legal survivors. Hence, prayed for dismissal of the writ petition.

[5] The learned counsel for the petitioner submitted that the mother of the petitioner and Th. Ngaopunii, who was working as LDC in Transport Department lived together and they were blessed with the petitioner and the father of petitioner Th. Ngaopunii died on 08.08.2018 and the petitioner being a legal heir is entitled to get the

death cum gratuity and other benefits. He would submit that the mother of the petitioner came to know that the deceased Th. Ngaopunii had already two wives viz., respondent Nos.4 and 6 and respondent No.5 is the daughter of respondent No.4 and respondent No.6 had no issue.

[6] The learned counsel for the petitioner next submitted that during the life time of Th. Ngaopunii, he divorced respondent No.4 as per the customary law. Since respondent No.5 is working in Pune and is able to maintain herself, she has no right to claim the benefits due to Th. Ngaopunii. He further submitted that the second wife viz., respondent No.6 had no issue. As such the petitioner being a legal heir, the petitioner is entitled to all the properties left by the deceased Th. Ngaopunii, including the service benefits. While being so, the respondents 4 to 6 colluded together and tried to take out the death cum gratuity and other benefits from the office of the official respondents without disclosing the true facts. According to the learned counsel, being a legal heir born through Th. Ngaopunii, the petitioner is entitled to death cum gratuity and other benefits. Hence, a direction may be issued to the official respondents to disburse the same to the petitioner.

[7] Per contra, the learned Government Advocate submitted that the office of the District Transport Office, Kangpokpi, has no official knowledge of late Th. Ngaopunii having three wives nor the petitioner is the daughter born through late Th. Ngaopunii and Elangbam Premi. That apart, there is no official record found in the Directorate of Transport regarding the marriage of late Th. Ngaopunii with the mother of the petitioner. Since the information reveals that the deceased Th. Ngaopunii having multiple wives and other legal heirs, the Transport Department could not initiate the process of death cum gratuity and other benefits.

[8] The learned Government Advocate further submitted that the Transport Department has not initiated the process for withdrawal of the death cum gratuity and other service benefits of the deceased employee, as a representation dated 31.08.2018 was received from Elangbam Premi, which led to the information of existence of multiple legal heirs of the deceased employee and the Transport Department is ready to act as per the direction of the competent Court's decision.

[9] The learned counsel for the third respondent submits that the pension papers as well as GPF final payment of late Th. Ngaopunii

have not been received from the department and as and when they received the papers, they are ready to examine the same.

[10] This Court considered the submissions made by the learned counsel for the parties and also perused the materials available on record.

[11] The grievance of the petitioner is that late Th. Ngaopunii and Elangbam Premi started living together as husband and wife and the petitioner was born through them. The deceased Ngaopunii was working as LDC in Transport Department and died on 08.08.2018. The case of the petitioner is that the deceased Ngaopunii earlier had two wives viz., respondent Nos.4 and 6 and respondent No.5 is the daughter of first wife and respondent No.6 had no issue. Since respondent No.5 was working in Pune and she is able to maintain herself and respondent No.6 had no issue, the petitioner alone is entitled to get the death cum gratuity benefits due to late Th. Ngaopunii.

[12] Along with the writ petition, the petitioner has produced the Aadhar card of the petitioner and ID card issued by the school and

also the photographs. In the Aadhar card and the school ID, the name of the father of the petitioner has been mentioned as Th. Ngaopunii.

[13] It is to be mentioned that late Th. Ngaopunii was serving as Head Clerk and Cashier incharge at Ukhrul District Transport Office at the time of his death on 08.08.2018. The admitted case of the petitioner is that the deceased had two wives and her mother and Th. Ngaopunii was living together since 2001. Thus, according to the petitioner, the deceased Th. Ngaopunii had three wives, firstly respondent No.4 and from her he had a son and daughter. The son predeceased and the daughter had been arrayed as respondent No.5, who is working in Pune. The second wife, viz., respondent No.6 does not have any issue and thirdly, the mother of the petitioner.

[14] It is able to be mentioned that the official respondents have filed their affidavit-in-opposition contending that they have no official knowledge of information regarding the marriage of Th. Ngaopunii with the mother of the petitioner and there is neither official knowledge of late Th. Ngaopunii having three wives, nor the petitioner is the daughter from the marriage of late Th. Ngaopuni with Elangbam Premi. When that being the case of the official respondents, it is

difficult for this Court to decide the succession of the petitioner and the petitioner has to approach the competent Civil Court for succession certificate.

[15] Placing reliance upon the order dated 16.11.2016 made in *W.P. (S) No.7777 of 2012 (Jasmati Devi @ Ghurni Devi and another v. The State of Jharkhand and others)* on the file of Jharkhand High Court, the learned counsel for the petitioner submits that in similar circumstances, the High Court of Jharkhand issue a direction to the authority concerned to apportion the amount of death cum retiral benefits between the first wife of the petitioner in one part and second part among sons of second wife in equal share and with regard to family pension between the first wife of the petitioner and sons of second wife till they attains the majority.

[16] On a perusal of the said order of the Jharkhand High Court, this Court finds that the direction of apportionment was passed based on the consent of the parties. Here, there is no consent from the private respondents and on the other hand, the petitioner is exclusively claiming right over the death cum gratuity and other benefits. Further, the law does not permit, in such a situation, to issue

a direction on the official respondents to disburse the retiral benefits due to Th. Ngaopunii exclusively to the petitioner. When there are other legal heirs stated to be there as per admitted case of the petitioner herself, this Court cannot issue a mandamus to the official respondents to disburse the death cum gratuity and other benefits exclusively to the petitioner. In such circumstances, this Court is not inclined to entertain the writ petition, however, the petitioner is at liberty to approach the competent Civil Court for succession certificate in accordance with law.

[17] In the result,

a) The writ petition is dismissed.

b) The petitioner is given liberty to approach the competent Civil Court and file an appropriate suit for succession certificate by impleading all the legal heirs of late Th. Ngaopunii.

c) The official respondents viz., respondent Nos.1 to 3 are directed to act upon the succession certificate, if any, produced by the petitioner or

the other legal heirs of late Th. Ngaopunii in accordance with law.

d) No costs.

JUDGE

FR/NFR

-Larson