

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15882 of 2018

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Mrs. Sihanta Devi, wife of late Din Dayal Singh (The then Executive Engineer as he was then, at the time of his Death, Employed with Water Resources Department, Government of Bihar at Katihar) Resident of Village-Pandey Gangaut, P.O.-Phuldih, P.S.-Rupau, District-Nawada

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Deputy Secretary (Management) Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Purnea.
5. The Superintending Engineer, Nahar Anchal, Purnea.
6. The Executive Engineer, Water Resources Irrigation Region, Katihar.
7. The Chief Election Officer, Bihar, 7 Sardar Patel Marg (Mangles Road), Bihar, Patna.
8. The District Magistrate, Banka-cum-Election Officer, Banka.
9. The Accountant General, Birchand Patel Marg, Bihar, Patna.
10. Babuni Devi, C/o Visheshwar Singh, Resident of Village-Kadamtar, P.O.-Vindidih, P.S.-Silao in the District of Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Pratap Singh, Advocate
For the State	:	Mr. Harish Kumar, GP 8 with Mr. Sudhanshu Bhushan, AC to GP 8
For Accountant General/R9	:	Mr. Bindhyachal Rai, Advocate
For the Respondent No. 10	:	Mr. Birendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 14-07-2021

The instant writ petition has been taken up for



hearing *via* video-conferencing.

2. Heard Mr. Gajendra Pratap Singh, learned counsel for the petitioner; Mr. Harish Kumar, learned Government Pleader 8 along with Mr. Sudhanshu Bhushan, learned Assistant Counsel to GP 8 for the State; Mr. Bindhyachal Rai, learned counsel for the Accountant General and Mr. Birendra Kumar, learned counsel for the respondent no. 10.

3. The petitioner has moved the Court for the following reliefs:

“i) For issuance of a writ in the nature of a writ of mandamus commanding and directing the concerned respondents to pay the petitioner:

a) The entire amount of compensation for death (petitioner’s late husband died in course of Bihar Legislative assembly election in Banka, 2010) with an interest of 18% (percentum) per annum resting quarterly since his death on 31.10.2010.

b) The payment of entire amount of retiral benefit payable to the petitioner being the nominee of her late husband in the records of employees service record with the employer i.e. the State of Bihar, since the date of death till today with 18% annum interest which rests quarterly.

c) The entire salary receivable by the



petitioner's late husband from the date of his death i.e. 31.10.2010 to the date of his superannuation from service which is 31.05.2012 (as per service record available with the employer.

d) To start family pension as per her entitlement consequently and pay every type of benefits, deposits such as Provident Fund, Insurance, Gratuity, Unutilized leave dues and every admissible dues paid to an employee with 18% (percentum) of interest resting quarterly.

ii) For any other relief(s) as your Lordships may deem fit and proper in the facts and circumstances of the present case.

iii) For payment of adequate compensation to the petitioner for keeping her and her entire family deprived and forcing them to fight to finish for their basic human requirements.”

4. Earlier, on two occasions, the petitioner had moved this Court for the same relief(s). CWJC No. 11826 of 2015 filed by the Petitioner was disposed off by Judgment and Order dated 22.10.2016, whereby the Principal Secretary, Water Resources Department (Respondent No. 2 herein) was directed to decide the claim of the petitioner and respondent no. 10, after giving them an opportunity of being heard, and producing



whatever evidence they may have in favour of their respective stands. Later, the petitioner again moved the Court in CWJC No. 11187 of 2017.

5. Pursuant to the Judgement and Order dated 22.10.2016 in CWJC No. 11826 of 2015, the Principal Secretary, Water Resources Department passed order dated 10.07.2017 by which a decision was taken, to pay 50% pension, gratuity, unutilised earned leave and *ex-gratia* payment on account of death while on election duty, to the children of the petitioner and 50% to the respondent no. 10, whereas payment of Provident Fund and Group Insurance was decided to be made to the children of the petitioner. The order of the Principal Secretary, Water Resources Department dated 10.07.2017 concerning the payments in favour of the respondent no. 10, was sought to be challenged by the petitioner by filing Interlocutory Application No. 5900 of 2017 in CWJC No. 11187 of 2017. The same was allowed by order dated 16.08.2017 in CWJC No. 11187 of 2017 in the following terms:

“This interlocutory application has been filed by the petitioner for adding prayer to quash a part of the order dated 10.07.2017 passed by the Principal Secretary, Water Resources Department, Bihar, Patna whereby one Smt. Babuni Devi has



been ordered to be paid fifty per cent of the retiral benefits of the Executive Engineer, Water Resources Department, Katihar, late Din Dayal Singh. It has been submitted by the learned counsel for the petitioner that the petitioner came to know about the order dated 10.07.2017 only after the instant writ application was filed. He has submitted that in the interest of justice, the petitioner may be allowed to seek quashing of part of the order in the present writ petition.

On the other hand, learned counsel for the State has submitted that he has no objection to the prayer of the petitioner, but if such amendment is allowed, the petitioner must implead Smt. Babuni Devi as one of the respondents.

Having heard learned counsel for the parties, the prayer is allowed. The petitioner would be at liberty to seek quashing of the part of the aforesaid order dated 10.07.2017 while addressing the Court on merits in the writ application. However, the petitioner is directed to implead Smt. Babuni Devi, as respondent no.10 in the present writ application in the course of the day.

I.A. No.5900 of 2017 stands disposed of.”

6. The respondent no. 10, thus, also appeared in CWJC No. 11187 of 2017 and, incidentally, both learned counsel, for the petitioner and for the respondent no. 10, who are appearing in the instant case had appeared for the respective



parties in CWJC No. 11187 of 2017 as well. After hearing learned counsel at length, this Court had disposed off CWJC No. 11187 of 2017 *vide* Judgement and Order dated 23.01.2018. It is considered appropriate to reproduce the same:

“Heard learned counsel for the petitioner, State, respondent no. 10 and the Accountant General.

2. The petitioner has moved the Court for the following reliefs:

“(i) For issuance of a writ in the nature of writ of mandamus command and directing the concerned respondents to pay the petitioner (a) the entire amount of death compensation, (the deceased employees died in course of conducting 2010 Bihar Legislative Assembly Election) as well (b) the entire amount of retiral benefit payable to the employee to the petitioner being the nominee of her late husband (deceased employee) (c) the salary payable to the deceased employee from the date of his death i.e. 31.10.2010 to the date of his superannuation of service which is 31.05.2012 (d) to start family pension to the petitioner (e) every consequential benefit legally payable to the deceased employee such as GPF, amount of GIC, salary of unutilized leave, gratuity, clubbed with every admissible dues be paid to the petitioner with reasonable interest.

(ii) For issuance of a writ in the nature of writ of mandamus command and directing the



respondents state to pay the petitioner and adequate compensation for depriving the petitioner (the sole nominee) for depriving the petitioner as well her entire family members (four unmarried daughters, marriageable daughters and three sons) all dependent upon the income of their late father, husband of the petitioner has been deprived from living a respectable life for no fault in their part. On account of the death of deceased employee in election duty.

(iii) For any other relief(s) as your lordships may deem fit and proper in the facts and circumstances of the present case.”

3. The admitted facts of the case are that the husband of the petitioner died in harness while being posted as Executive Engineer at Katihar in the Water Resources Department on 31.10.2010 while discharging his duty in conducting election in the district of Banka for the Bihar Assembly Election, 2010. The claim filed by the petitioner for death-cum-retiral benefits was not acceded by the State authorities on the ground that the respondent no. 10 had also filed a counter claim that she was the first wife of the deceased employee and, thus, entitled to her share in such benefits. The further admitted fact is that the respondent no. 10 for the first time appeared before the authorities to claim that she was the first wife of the deceased employee, only upon his death.



4. In view of the aforesaid, the Court earlier in C.W.J.C. No. 11826 of 2015 had remanded the matter to the authorities to decide the issue at their level without insisting for the parties to produce a succession certificate and they have taken a decision, which is impugned in the present writ application, after getting an enquiry conducted from the lower officials.

5. Though from the said, it transpires that the authorities have relied on certain documents in favour of the respondent no. 10, but all are much after the death of the employee, whereas with regard to the petitioner there are documents, including records which have come into being during the life time and service period of the deceased employee.

6. In view of the aforesaid, the Court was of the opinion that the petitioner had materials to justify payment of death-cum-retiral benefits in her favour and the onus was on respondent no. 10 to get a declaration or any order from a competent Court in her favour for any payment to be made to her. The Court was also tentatively of the view that admittedly, even from the counter filed by the respondent no. 10, there was absolutely no whisper as to why she had not moved before any authority till after the death of the deceased employee claiming to be the first wife. On specific query to learned counsel for the respondent no. 10 how long she was married, it was submitted that she was



married but after two days was left by the employee at her maternal home and never came to live in the matrimonial home even for a day. To a further query as to why she had not claimed her conjugal rights or even any support from her husband, that is, the deceased employee, the categorical answer was that she was being supported by her relatives.

7. The Court, thus, was of the view that even if it is accepted, for the sake of argument, that the respondent no. 10 had been the person to whom the deceased employee was married at the first instance, but, in view of the admitted position that she was never taken into the matrimonial home and her husband, i.e., the deceased employee, left her after two days of the marriage and there being no claim raised before any authority/forum/Court or complain made either with regard to the desertion or financial non-support raised by the respondent no. 10 against the deceased employee, in the considered opinion of the Court, the person who has not discharged her duties as a wife practically for any period, cannot take the advantage on the death of that person for the reason that admittedly family pension and other dues are given to a person who is the wife, who had actually lived with that person and had discharged her wifely duties and also borne children to him. When all such things have been performed by the petitioner, that too admittedly, the Court was inclined to pass order in favour of the



petitioner on the ground that for all practical purposes the real status of wife can only be claimed by the petitioner and not the respondent no. 10, who remains in oblivion, claiming to be wife only for two days after marriage without coming out before any authority to claim her status as wife, and furthermore, for the reason that the petitioner has three sons and five daughters, out of which only one daughter has been married.

8. At this stage, it was pointed out by learned counsel for the State that the petitioner herself has filed Title Suit No. 104 of 2012 before the Civil Court, Nawadah, seeking a declaration that she is the only legally wedded wife of late Din Dayal Singh, the deceased employee. The Court had, thus, called upon learned counsel for the petitioner to explain the position; pursuant to which a rejoinder has been filed to the counter affidavit on her behalf in which order dated 03.07.2017 passed in Title Suit No. 104 of 2012 has been brought on record from which it is apparent that the Title Suit was dismissed under Order 9 Rule 3 read with Order 17 Rules 2 and 3.

9. In such a situation, the Court does not deem it appropriate to pass any positive order, for the reason, that with regard to declaring the petitioner as the only legally wedded wife of the deceased employee, a Civil Court of competent jurisdiction has dismissed the case filed by the



petitioner by order dated 03.07.2017 not simply on the ground of default or non-appearance but also technically on merits as is clear from the order itself.

10. Thus, this Court not being the appellate Court and also the fact that a Civil Court of competent jurisdiction has passed the order, feels handicapped to by-pass, override or overrule the said order and pass any order in favour of the petitioner in the present writ application in view of such order staring against her.

11. Accordingly, the writ petition stands disposed off. However, the petitioner shall be at liberty to take steps in accordance with law for getting over the said legal hurdle coming in her way before seeking relief before the High Court under its writ jurisdiction under Article 226 of the Constitution of India. The disposal of the present writ application has been in the peculiar facts and circumstances of the case enumerated above and, thus, would not prejudice the cause and case of the petitioner on merits before any authority/forum/Court of law or from filing a fresh writ petition in light of the observations made hereinabove, after getting over the handicap of the order dated 03.07.2017, passed in Title Suit No. 104 of 2012.”

7. The afore-stated position is not disputed by the



parties.

8. In the present writ petition, an objection was taken by the State to the effect that as the order dated 10.07.2017 had not been formally impugned in the present proceeding, the authorities were handicapped in taking a fresh decision with regard to making payment/s to the parties. Thus, Interlocutory Application No. 1 of 2021 was filed on behalf of the petitioner for impugning the order dated 10.07.2017 with regard to sharing the monetary benefits between the petitioner's children and the respondent no. 10 on a 50-50 basis.

9. Having considered the matter and after hearing the parties, the Court finds that the prayer made in Interlocutory Application No. 1 of 2021, being directly connected with the relief/s sought, is required to be allowed. Thus, Interlocutory Application No. 1 of 2021 is allowed. Hence, quashing of the order of the Principal Secretary, Water Resources Department dated 10.07.2017 shall form part of the relief sought for in the main writ petition.

10. Turning now to the merits of the main case, it transpires that all relevant aspects had been dealt with in detail by this Court on the previous occasion, as recorded in Judgement and Order dated 23.01.2018 in CWJC No. 11187 of



2017. As such, the Court requested learned counsel for the parties to address from the point where the matter was left earlier - that the Court, after recording its opinion and findings, had ultimately refrained from passing any positive order for the reason that Title Suit No. 104 of 2012 filed by the petitioner before the Civil Court, Nawada had been dismissed under Order IX Rule 3 read with Order XVII Rules 2 and 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code') which technically also amounted to a dismissal on merits. Thus, the Court had disposed off CWJC No. 11187 of 2017 observing that the same stood in the way of the petitioner getting relief from the High Court under its writ jurisdiction under Article 226 of the Constitution and, further it was observed that the same would not prejudice the cause and the case of the petitioner on merits before any authority/forum/court of law or from filing a fresh writ petition in light of the observations made in the order after getting over the handicap of the order dated 03.07.2017 passed in Title Suit No. 104 of 2012 dismissing the said suit.

11. The Court would place emphasis on “or from filing a fresh writ petition in light of the observations made hereinabove, after getting over the handicap of the order dated 03.07.2017, passed in Title Suit No. 104 of 2012.”, noted in the



Judgement and Order dated 23.01.2018 (*supra*).

12. After the Judgement and Order dated 23.01.2018 (*supra*), the petitioner filed an application under Order IX Rule 4 read with Section 151 of the Code, on 07.02.2018, seeking setting aside/recall of the order dated 03.07.2017 and for restoration of Title Suit No. 104 of 2012 to its original file, before the learned Munsif, Nawada in Title Suit No. 104 of 2012, who, by order dated 12.06.2018, allowed the same and restored Title Suit No. 104 of 2012 to its original file. By another order dated 07.07.2018, on the application filed by the petitioner on 03.07.2018, the learned Munsif, Nawada, allowed the same and granted permission to the petitioner to withdraw the suit with liberty to institute a fresh suit in respect of the same subject matter.

13. Thus, once the suit had been dismissed, as noted by this Court in CWJC No. 11187 of 2017, the Court had felt handicapped to adjudicate the matter straightaway at the level of the High Court but it was observed that the petitioner was at liberty to file a fresh writ petition after getting over the handicap of the order dated 03.07.2017 passed in Title Suit No. 104 of 2012. By virtue of the orders dated 12.06.2018 and 07.07.2018 of the learned Munsif, Nawada in Title Suit No. 104 of 2012, it



is clear that the suit which earlier, though technically, stood dismissed also on merits, such dismissal on merits stood recalled as the suit was restored to its original file and then permitted to be withdrawn. The position then, in law, would be that there was no adverse order operating as on date against the petitioner with regard to her claim and further she was at liberty to institute a fresh suit in respect of the very same subject matter. Admittedly, no fresh suit has been filed. Thus, the obvious and only import is that there is no order of any Court, either in favour of or against any of the parties, especially the petitioner, *qua* the subject matter of the instant writ petition.

14. Learned counsel for the petitioner, essentially, reiterated his submissions, as recorded in Judgement and Order dated 23.01.2018 in CWJC No. 11187 of 2017. The Court called upon him to disclose as to when the petitioner married the deceased employee *viz.* late Mr. Din Dayal Singh, the then Executive Engineer, Water Resources Department, Katihar, and in reply thereof, learned counsel for the petitioner submitted that it was in the year 1973.

15. At this stage, when the Court called upon learned counsel for the respondent no. 10 to disclose as to when she solemnised her marriage with the deceased employee, he



submitted that it was in the year 1964, which has also been stated in her counter affidavit.

16. The Court would pause here to note the admitted position that the deceased employee had joined service as Assistant Engineer, Water Resources Department, Government of Bihar on 30.01.1979.

17. The Court would further note a few more relevant dates which are not in dispute.

18. The Date of Birth of the deceased employee was 23.05.1952, as recorded in the Service Book, which also discloses that he obtained the degree of B.Sc. in Branch 'Civil' in the year 1974 from BIT, Sindri.

19. Learned counsel for the petitioner submitted that whatever has been submitted by him and noted in the Judgement and Order dated 23.01.2018 (*supra*) is sufficient. However, he wished to add that the stand taken by the respondent no. 10 in the counter affidavit, that she married the deceased in the year 1964, is patently false, for the reason, that the petitioner was hardly 12 years old at that point of time. Further, he submitted that the counter affidavit states that the deceased was pursuing his degree in Engineering at that time, which also is false since the deceased obtained the degree in 1974 and, thus, the same



being a four-year course, the deceased could not have been admitted into the course before the year 1970. Thus, it was contended that the claim by the respondent no. 10 admittedly, as per her own counter affidavit, stands exposed and falsified as the deceased could not have been a student of engineering in the year 1964 at the age of about 12 years, when his alleged marriage to the respondent no. 10 took place.

20. Learned counsel for the State submitted that he had no further submissions to make, except to restate that due to the order dated 10.07.2017 of the respondent no. 2 and order dated 14.08.2018 in the present case, the authorities were in a fix as their hands are tied to take a fresh decision.

21. Learned counsel for the respondent no. 10 submitted that he would also not go behind the Judgement and Order dated 23.01.2018 passed in CWJC No. 11187 of 2017. However, it was submitted that the petitioner herself, after passing of the order dated 07.07.2018 in Title Suit No. 104 of 2012, had again sought for review of the order dated 07.07.2018 but the plea was dismissed.

22. The Court called upon him to explain the import of his submission, as dismissal of such review application would only mean that the order dated 07.07.2018 remained intact, he



stated that the position in law would indeed be that order dated 07.07.2018 would remain.

23. It does indeed transpire that the petitioner had preferred an application under Order XLVII Rule 1 read with Sections 114, 151 and 153 of the Code seeking modification of order dated 07.07.2018. The learned Munsif, Nawada, however, rejected the same under Order XLVII Rule 4(1) of the Code on 09.10.2018.

24. On a specific query to learned counsel for the respondent no. 10 that in CWJC No. 11187 of 2017 when asked as to for how long she was married to the deceased, he had submitted that she was married to him, but after two days was left by the deceased at her maternal home and thereafter, never came to live in the matrimonial home even for a day, learned counsel did not controvert the same. On a query of the Court as to whether there were any other submission/s he would like to advance, learned counsel reiterated his arguments, drawing the Court's attention to his submissions noted in Judgement and Order dated 23.01.2018 (*supra*).

25. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the instant petition deserves to be allowed.



26. Noting the factum that, on merits, *in extenso*, the relevant aspects have been considered in the Judgement and Order dated 23.01.2018 (*supra*), the Court would only reiterate the same and adopt it for the purposes of the present judgement, adding to the reasoning.

27. There is merit in the contention of learned counsel for the petitioner that once, when in her counter affidavit, the respondent no. 10 herself has claimed that she was married to the deceased employee in the year 1964 and from the service record, it is clear that he was born in 1952, a serious doubt would arise – as to her marriage with the deceased – which would not be easy to dispel. Moreover, it was also not controverted that in all the records maintained by the deceased employer's *viz.* the Water Resources Department, pertaining to the deceased, only the petitioner has been shown, all along, as the deceased's wife without there being any inkling or indication whatsoever about the respondent no. 10 also being the wife at any point of time by the deceased employee himself.

28. The Court would next come to the issue of whether just because the respondent no. 10 claims that she was married to the deceased, she can assert full legal rights over the benefits accruable to the deceased employee in that capacity.



The said issue has already been dealt with by the Court in its Judgement and Order dated 23.01.2018 (*supra*), particularly at paragraph no. 7 therein. The further fact is that the respondent no. 10 had, at no point of time, right from 1964 till 2010, for a period of 36 successive years, raised any claim before any authority with regard to any maintenance/payment to her or that she was the first legally-wedded wife of the deceased. This, in the Court's opinion, is sufficient, at least, for the purposes of the present case, to disentitle her from laying claim to any benefit for the reason that her claim after 36 years against the deceased employee is barred on account of gross delay and laches. The principle embodied in '*Vigilantibus non dormientibus aequitas subvenit*' – the law assists the vigilant, is squarely attracted. The fact that the petitioner has three sons and five daughters out of which four daughters, on date, are still to be married is also a reason why the Court finds that payments have to be immediately made to the petitioner as already for over a decade such payment has been denied to her.

29. The writ petition stands allowed. As a consequence, the impugned order passed by the Principal Secretary, Water Resources Department, as contained in Memo No. 1862 dated 10.07.2017 stands set aside.



30. Accordingly, a direction is issued to the respondents concerned to make payment of the death-cum-retiral benefits as also the *ex-gratia* compensation due in favour of the petitioner, the timeline for which is indicated hereinafter.

31. For the purpose of convenience of the parties, let the petitioner appear before the respondent no. 2 on 26th July, 2021 at 11:30 AM in his office, with a self-attested web copy of this order. Upon such appearance, the respondent no. 2 shall ensure that formalities, if any, are still to be completed at the petitioner's end, they are done within a week. The petitioner shall cooperate in such exercise. Thereafter, the respondents concerned shall ensure that all payments are made to the petitioner, in accordance with law, latest by 31st August, 2021.

32. The Accountant General shall also ensure that whatever is required to be done at his level is completed without delay so that the timeline fixed for making payments to the petitioner is strictly adhered to.

33. After the order was dictated, learned counsel for the petitioner submitted that the petitioner had not been paid, for over a decade, her legitimate dues. He prayed that the Court may also consider the aspect of payment of interest.

34. It is noted that this Court, in ***Ram Bilash Singh***



v State of Bihar, 2021 (1) BLJ 466 [also MANU/BH/770/2020] and *Hira Lal Ram v State of Bihar, 2021 (2) PLJR 313* [also MANU/BH/0070/2021], in the light of various pronouncements of the Hon'ble Supreme Court, has held that interest must follow delayed payments, particularly when such delay is not attributable to the petitioner/beneficiary concerned. However, in the peculiar facts and circumstances of this case, it is further directed that the payments shall carry interest at the rate of 5% simple interest per annum. The same shall also be paid within the time indicated above.

35. However, if the payment(s) are not made by 31st August, 2021, the petitioner shall be at liberty to file an application in this case for further orders.

36. The Court records that, (a) no other point was urged by any of the parties; (b) this judgment has been dictated in open court, and; (c) the counsel for both, the petitioner and respondent no. 10 are present.

(Ahsanuddin Amanullah, J)

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