

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13699 of 2019

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1. Sunita Devi @ Ankush Kumari, Wife of Late Gauri Shankar Prasad, Resident of Village- Yarpur, P.O.- Yogipur, P.S.- Hilsa, District- Nalanda.
 2. Amar Kumar Jyoti, Minor Son of Late Gauri Shankar Prasad through his mother and natural guardian Sunita Devi @ Ankush Kumari, Resident of Village- Yarpur, P.O.- Yogipur, P.S.- Hilsa, District- Nalanda.
 3. Supriya Kumari, Minor Daughter of Late Gauri Shankar Prasad through her mother and natural guardian Sunita Devi @ Ankush Kumari, Resident of Village- Yarpur, P.O.- Yogipur, P.S.- Hilsa, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary-cum-Commissioner, Department of Home, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Govt. of Bihar, Patna.
4. The Superintendent of Police, Katihar at Katihar, P.S. and District- Katihar.
5. The Provident Fund Officer, Hilsa at Hilsa, P.S.- Hilsa, District- Nalanda.
6. Most. Ram Pyari Devi, Wife of Late Gauri Shankar Prasad, Resident of Village- Yarpur, P.O.- Yogipur, P.S.- Hilsa, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashhar Mustafa, Advocate Mr. Falakyar Askari, Advocate Mr. Md. Murad Ashraf, Advocate
For the State	:	Mr. Md.N.H. Khan (SC-1)
For Respondent No. 6	:	Mr. Siddhartha Prasad, Advocate Mr. Om Prakash Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 03-09-2021

Petitioner No. 1 Sunita Devi claims that her alias name is Ankush Kumari. In the present writ application, she asserts herself to be the second wife of late Gauri Shankar Prasad, who died in harness as a Sub-Inspector in Bihar Police. It has been claimed in the writ application that petitioners no. 2 and 3, who



are minor children, are born out of the marriage between the petitioner no. 1 and late Gauri Shankar Prasad.

2. The Respondent No. 6 is, admittedly, the first wife of late Gauri Shankar Prasad. This writ petition has been filed seeking quashing of a communication dated 29.11.2018, issued by the Superintendent of Police, Katihar addressed to the District Provident Fund Officer, Katihar for payment of General Provident Fund amount in favour of Respondent No. 6, consequent upon death of the deceased employee.

3. The petitioners are seeking a direction from this Court, commanding the respondents to first consider the claim of the petitioners, who, it is stated, are wife and minor children of the deceased employee, and then issue an order afresh in accordance with law.

4. I have heard Mr. Ashhar Mustafa, learned counsel for the petitioners, Mr. N.H. Khan, SC-1 for the State of Bihar and Mr. Siddhartha Prasad, learned counsel appearing on behalf of Respondent No. 6, online.

5. Certain documents have been brought on record on behalf of petitioners to convince this Court that petitioner no. 1 is the second wife and petitioners no. 2 and 3 are children of the deceased employee, which I shall refer to at appropriate stage.



6. Mr. Ashhar Mustafa, learned counsel appearing on behalf of the petitioners, has submitted at the very outset that it is true that petitioner no. 1 cannot be treated to be legally wedded wife of the deceased employee, question of determination of legitimacy of petitioners no. 2 and 3 does not arise there being overwhelming evidence in the nature of documents to substantiate that they are children of petitioner no. 1 with the deceased employee. He has drawn my attention to judgment dated 30.06.2013, passed by learned Principal Judge, Family Court, Nalanda at Biharsharif in Maintenance Case No. 77M of 2013 filed by Respondent No. 6, which has been brought on record by way of Annexure-8 to a supplementary affidavit filed on behalf of the petitioners to contend that she (Respondent No. 6) herself had alleged in an application filed under Section 125 of the Cr.P.C. before the said court that the deceased employee had developed illicit relationship with 'one Sunita Devi'. He has also drawn my attention to a copy of the sale-deed and SBI Life Insurance premium receipt to make out a case that petitioner no. 1 is the second wife of the deceased employee who was made nominee in the Insurance Policy. Faced with an observation made by this Court as to how this Court, exercising plenary jurisdiction of judicial review under Article 226 of the Constitution of India,



can go into the facts which are in dispute, he has relied on Supreme Court's decision in case of *Rameshwari Devi vs. State of Bihar and others* reported in (2000) 2 SCC 431 to contend that the petitioners, particularly petitioners no. 2 and 3, being minors and presently having become destitutes, consequent upon death of their sole bread-earner, may not be relegated to face the rigours of regular trial or seek succession certificate. He has submitted that the documents, which have been brought on record, raise a strong presumption in favour of petitioner no. 1 of having lived with the deceased employee for a long spell as husband and wife. He has urged that though marriage of petitioner No. 1 with the deceased employee during the life time of his first wife (Respondent No. 6) cannot be treated to be lawful, sons born out of the said relationship are still legitimate by virtue of Section 16 of the Hindu Marriage Act, 1955 which states that children of a void marriage are legitimate. Such being the position, a heavy burden lies on Respondent No. 6 who seeks to deprive the relationship of the legal origin to prove otherwise, he contends. He has submitted that the Court may, instead, direct for an inquiry to determine the paternity of petitioners no. 2 and 3, in the facts and circumstances of the case.

7. To bolster his contention he has also referred to the



Supreme Court's decision in case of *Union of India and another vs. V.R. Tripathi* reported in (2019)14 SCC 646 wherein the Court has affirmed the view that there exists legal presumption of legitimacy under Section 16(1) of the Hindu Marriage Act for the purpose of inheritance of property of the deceased. He has accordingly argued that the petitioners no. 2 and 3 are entitled to their shares in the General Provident Fund amount.

8. Mr. Siddhartha Prasad, learned counsel appearing on behalf of Respondent No. 6, on the other hand, has submitted that Respondent No. 6 strongly disputes the status of petitioner no. 1 as the second wife of the deceased employee. He has submitted that the claim of the petitioners is dependent on various factual aspects which are in dispute and incapable of adjudication in a proceeding under Article 226 of the Constitution of India. According to him this writ application is not maintainable as it involves various disputed questions of fact.

9. I have carefully perused the pleadings and other documents on record. Petitioner no. 1 claims her name to be Sunita Devi @ Ankush Kumari. In support of her identity, she has annexed a copy of her Aadhar Card, wherein her name has been mentioned as Ankush Kumari with the date of birth as 05.10.1996. A copy of Aadhar Card has also been placed on



record for the purpose of identification of petitioner No. 1 (deponent) along with supplementary affidavit filed on behalf of the petitioners on 30.07.2021. 716131750598 is the Aadhar Card number as appearing in the said two documents. For reasons, for which this Court has no clue, it is noticed that there is substantial difference between rear sides of the copies of the Aadhar Card as placed with the writ petition and that with the supplementary affidavit. It is a different matter that for the said difference alone, the Court cannot draw any definite inference regarding genuineness of the petitioner's claim. The possibility of incorporating entries in the Aadhar Card at later stage cannot be ruled out.

10. As has been noted above, the petitioners have relied on an order passed by the learned Principal Judge, Family Court in a proceeding under Section 125 of the Cr.P.C. to the effect that the deceased employee had illicit relationship with one Sunita Devi. The name of petitioner no. 1 in the Aadhar Card, on the other hand, has been mentioned as Ankush Kumari. Whether she is the same person whose name was mentioned in the order or not, is also a question of fact which, in the Court's opinion, would require evidence.

11. It is to be noted, at this juncture, that in case of



Rameshwari Devi (supra), the Supreme Court upheld the finding of the High Court to the effect that children born out of second marriage were legitimate despite the marriage being itself void, referring to Section 16 of the Hindu Marriage Act, and accordingly the minor children of the second marriage were entitled to family pension. In the facts and circumstances of that case, the Supreme Court further held that disbursement of family pension could not be deferred till a civil court pronounced upon rights of respective parties when the Government itself had held a proper and bonafide inquiry for determination of entitlement of rival claimants to family pension. In the said case, an inquiry was got conducted by the State authorities and the resultant enquiry report which contained a finding that the deceased employee had married second time during the subsistence of the first marriage was not found to be sham. The Supreme Court after referring to the provisions of the Hindu Marriage Act, Hindu Succession Act, the Supreme Court's decisions in case of ***State of Karnataka vs. T. Venkataramanappa*** reported in (1996) 6 SCC 455 and in case of ***State of W.B vs. Prasenjit Dutta*** reported in (1994) 2 SCC 37 held in paragraphs 14 and 15 as under :-

“14. It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage.



Under Section 16 of this Act, children of a void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolves firstly on heirs in clause (1) which include the widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void. The sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, the legal position when a Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement gratuity payments which are governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned Single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment.

15. Rameshwari Devi has raised two principal objections : (1) marriage between Yogmaya Devi and Narain Lal has not been proved, meaning thereby that there is no witness to the actual performance of the marriage in accordance with the religious ceremonies required for a valid Hindu marriage, and (2) without a civil court having pronounced upon the marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights, it cannot be held that the children of Yogmaya



Devi through her marriage with Narain Lal would be legitimate under Section 16 of the Hindu Marriage Act. The first objection we have discussed above and there is nothing said by Rameshwari Devi to rebut the presumption in favour of the marriage duly performed between Yogmaya Devi and Narain Lal. On the second objection, it is correct that no civil court has pronounced if there was a marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of Yogmaya Devi. On this aspect we have already adverted to above. After the death of Narain Lal, inquiry was made by the State Government as to which of the wives of Narain Lal was his legal wife. This was on the basis of claims filed by Rameshwari Devi. The inquiry was quite a detailed one and there are in fact two witnesses, examined during the course of inquiry, being (1) Sant Prasad Sharma, Teacher, DAV High School, Danapur and (2) Shri Basukinath Sharma, Shahpur Maner who testified to the marriage between Yogmaya Devi and Narain Lal having witnessed the same. That both Narain Lal and Yogmaya Devi were living as husband and wife and four sons were born to Yogmaya Devi from this wedlock has also been testified during the course of inquiry by Chandra Shekhar Singh, retired District Judge, Bhagalpur, Smt (Dr) Arun Prasad, Sheohar, Smt S.N. Sinha, w/o Shri S.N. Sinha, ADM and others. Other documentary evidence were also collected which showed that Yogmaya Devi and Narain



Lal were living as husband and wife. Further, the sons of the marriage between Yogmaya Devi and Narain Lal were shown in the records as the sons of Narain Lal.”

12. The Supreme Court’s decision in case of ***V.R. Tripathi*** (supra) relates to claim of compassionate appointment of children born out of the second marriage of a deceased employee. The Supreme Court, noticing the provision under Section 16 of the Hindu Marriage Act held in paragraph 19 as under :-

“19. We may note at this stage, that a Division Bench of the Calcutta High Court in *Namita Goldar* [*Namita Goldar v. Union of India*, 2010 SCC OnLine Cal 266 : (2010) 1 Cal LJ 464] quashed the circular of the Railway Board dated 2-1-1992 to the extent that it prevented the children of the second wife from being considered for appointment on compassionate grounds. Subsequently, another Division Bench of the High Court in its decision in *Eastern Coalfields Ltd. v. Dilip Singh* [*Eastern Coalfields Ltd. v. Dilip Singh*, 2013 SCC OnLine Cal 4285 : (2013) 3 Cal LT 379] took a contrary view, without noticing the earlier decision. We may advert to the subsequent decision in *Eastern Coalfields Ltd.* [*Eastern Coalfields Ltd. v. Dilip Singh*, 2013 SCC OnLine Cal 4285 : (2013) 3 Cal LT 379] for the reason that it proceeds on a construction of Section 16 which, in our view, is inconsistent with the language of that provision. The Division Bench held thus: (*Eastern Coalfields Ltd. case* [*Eastern*



Coalfields Ltd. v. Dilip Singh, 2013 SCC OnLine Cal 4285 : (2013) 3 Cal LT 379] , SCC OnLine Cal)

“Section 16(1) of the aforesaid Act creates a legal fiction whereby a child born out of void marriage shall be held to be legitimate. Section 16(3) of the said act restricts such legal presumption to the rights of such a child only to the property of his parents and none else.

It is, therefore, clear that Section 16 of the Hindu Marriage Act, 1955 presumes a child born out of a void marriage as legitimate only for the purpose of entitling him to claim rights in or to the property of his parents but not to any other thing.

It is settled law that public post is not a heritable property. In SBI v. Jaspal Kaur [SBI v. Jaspal Kaur, (2007) 9 SCC 571 : (2007) 2 SCC (L&S) 578] the Supreme Court held that it is clear that public post is not heritable, therefore, the right to compassionate appointment is not a heritable property.

In fact it is an exception to the rule of regular appointment by open competition. Such exception to the rule of regular appointment is therefore a privilege extended by the employer in terms of the scheme for compassionate appointment itself. It is not a property of the deceased nor is it a heritable right.

In State of Chhattisgarh v. Dhirjo Kumar Sengar [State of Chhattisgarh v. Dhirjo Kumar Sengar, (2009) 13 SCC 600 : (2010) 1 SCC (L&S) 281] the Supreme Court held as follows: (SCC p. 604, para 10)

‘10. Appointment on compassionate ground is



an exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India.’

For the aforesaid reasons, we are of the opinion that the provisions of Section 16 of the Hindu Marriage Act, 1955 cannot come to the aid of the petitioner. *Legal presumption of legitimacy in such provision is restricted only to the property of the deceased and not to other things.* Hence, such provision of law cannot be pressed into service to expand the privilege of compassionate appointment extended by an employee under the scheme as the same can by no stretch of imagination be held to be the property of the deceased employee.” (emphasis supplied)

13. Having noticed the extant provisions under the Hindu Marriage Act, Hindu Succession Act and the judicial pronouncements referred to above, there cannot be any quarrel over the legal principle that the children of void marriage are legitimate for the purpose of inheritance of the property of their ancestors. Further, in appropriate cases, it can be determined by the authorities on proper inquiry whether the children are in fact born out of the second marriage of a deceased employee, for the purpose of determination of pensionary benefits and property rights.

14. In case of **Rameshwrai Devi** (supra), considering a detailed inquiry conducted in that case, the Supreme Court ruled



that the inquiry could not be said to be sham and, therefore, based on the report arising out of the said inquiry, the children could be held to be entitled to pensionary benefits.

15. It is noteworthy, at this juncture, that in case of ***Rameshwari Devi*** (supra), the employee had solemnized second marriage in 1963 whereafter, four sons were born in 1964, 1971, 1972 and 1976. In the present case, the date of birth of petitioner no. 1 has been disclosed as 05.10.1996 in Aadhar Card and her age has been described as 23 years as on the date of filing of the writ petition in 2019. Petitioner no. 1 has not disclosed in the writ petition as to when she and the deceased employee entered into the marriage nor there is any averment as to when the children were born.

16. From the order of learned Principal Judge, Family Court, Nalanda dated 30.06.2013 in the Maintenance Case it appears that the first marriage of the deceased employee was solemnized in 1975 and a girl child was born out of the said wedlock in 1980 and a male child in 1983. If the date of birth of petitioner no. 1, as mentioned in Aadhar Card, is taken to be correct, she was 16 years younger than the first child of the deceased from his first wife.

17. In the facts and circumstances of this case, in the



Court's opinion, the Supreme Court's decision in case of ***Rameshwari Devi*** (supra) cannot be applied by directing for an inquiry for examining as to whether petitioners no. 2 and 3 are children of the deceased employee or not and whether 'Ankush Kumari' and 'Sunita Devi' are the names of one and the same person.

18. It is well-known legal principle that a case is only authority for what it actually decides and not what logically follows from it. [see ***Dinubhai Boghabhai Solanki vs. State of Gujarat (2014) 4 SCC 626***]. In case of ***Arasmata Captive Power Company Private Limited and another vs. Lafarge India Private Limited*** reported in ***(2013) 15 SCC 414*** it has been reiterated that the *ratio decidendi* of a judgment has to be culled out from entire judgment upon reading as a whole. A line from the judgment or one observation from here and there does not acquire status of *ratio decidendi* of the judgment.

19. In case of ***Delhi Administration (Now NCT of Delhi) vs. Manohar Lal*** reported in ***(2002) 7 SCC 222*** the Supreme Court observed in clear terms that though the High Courts and all other courts in the country are no doubt ordained to follow and apply the law declared by the Supreme Court but that does not absolve them of the obligation and responsibility to



find out the ratio of the decision and ascertain the law, if any, so declared on careful reading of the decision concerned and only thereafter proceed to apply appropriately, to the cases before them.

20. The Supreme Court in case of *Rameshwari Devi* (supra) does not lay down a law that disputes in relation to children born out of the relationship between a government employee and a female not married in accordance with law shall essentially determined by an administrative inquiry, though in appropriate cases, such procedure can be resorted. The same, however, cannot be treated as a general rule.

21. On consideration of the entire conspectus of the matter and the nature of disputed facts, which have emerged in the present case, I do not consider it to be a fit case to interfere.

22. This writ application is dismissed on the sole ground that the Court does not find it to be a fit case to be entertained under Article 226 of the Constitution of India, as it involves such disputed questions of facts which would require adduction of evidence and cannot be conclusively adjudicated upon in the present proceeding.

23. It goes without saying that the petitioners be at liberty to approach the competent authority or a court of civil



jurisdiction, if so advised for establishing their claim. It is, however, made clear that no observation made in the present order shall be treated to be an opinion, in any manner, in respect of the claim of the petitioners as set up in the writ application.

24. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.09.2021
Transmission Date	NA

