

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15277 of 2017

1. Abhijeet Singh, Son of Late Akhilesh Prasad, Resident of Road No.0 Gandhi Murti, East Patel Nagar, Patna.
2. Aditi Singh, Daughter of Late Akhilesh Prasad, resident of Road No.0 Gandhi Murti, East Patel Nagar, Patna.
3. Lalithambal, @ Lalitha, Wife of Late Akhilesh Prasad, resident of Road No.0 Gandhi Murti, East Patel Nagar, Patna.

... .. Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Limited through its Chairman Cum Managing Director, Vidyut Bhawan, Bailey Road, Patna.
2. The Chairman Cum Managing Director, Bihar State Power (Holding) Company Limited Vidyut Bhawan, Bailey Road, Patna
3. The General Manager (HR and Administration), Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The General Manager (Finance), Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. The Accountant General Bihar, Patna.
6. Suchitra Devi, W/o Late Akhilesh Prasad, Resident of Mohalla-Mahesh Nagar, Road No.4, P.S. Patliputra Colony, District Patna.
7. Shruti Kumari (Minor), D/o Late Akhilesh Prasad, Under the guardianship of her natural guardian and Mother namely Suchitra Devi, wife of late Akhilesh Prasad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anjani Kumar Jha, Adv.
For the Respondent Nos. 1 to 4:		Mr. Ranjit Sinha, Adv.
For the Respondent Nos. 6 & 7:		Mr. Saket Tiwary, Adv.
		Mr. Saket Gupta, Adv.
		Mr. Anuraj Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

8 18-02-2021 This writ application has been preferred seeking the following reliefs:-

- I. For payment of Death-cum-retirement Gratuity benefit.
- II. For encashment of accumulated 300 days Earned Leave salary.



III. For payment of GPF in favour of Petitioner no.1, who is the nominee of Provident fund.

IV. For fixation of family pension in favour of Petitioner no.3.

V. For appointment of Petitioner no.1 on compassionate ground.

AND

VI. For any other relief/reliefs for which petitioner is entitled for.”

It is the case of the petitioners that one Akhilesh Prasad who was working as caretaker of the Guest House owned by the Bihar State Power (Holding) Company Limited (hereinafter referred to as ‘the BSPHCL’) died in harness on 21.12.2015. The petitioner no. 1 and 2 claims that they are the son and daughter respectively of the deceased employee. The petitioner no.3 claims that she is the second wife of the deceased employee. They together pray for release of the death-cum-retiral benefits in favour of the petitioners and issuance of family pension in favour of petitioner no.3.

A number of documents have been brought on record including a copy of the inquiry report of the disciplinary proceeding conducted against the employee (since deceased) as contained in Annexure- ‘8’ to the writ application. Submission is that Annexure- ‘8’ is the inquiry report of the departmental proceeding faced by the deceased employee on the charge that the deceased employee had married with the petitioner no.3



during the lifetime of his spouse (respondent no.6). The inquiry report concludes as under:-

“ From perusal of all the documents, evidences (oral & documentary) the charge sheet, written statements of defence and the written arguments given by the prosecution and the defence the following facts having relevance with the charges have been found to be established established during the proceeding:-

(1) The applicability of the “Bihar Govt. Servant Conduct Rules, 1976”- on the workmen of the B.S.E. Board could not be established.

(ii) The fact that the proceedee fathered his son (Abhijit) from another woman (Lilita), other than his wife (Suchitra) by physical relation with her, has been admitted by the proceedee and hence is established. However, the marriage of the proceedee with another woman (Lilita) could not be established in want of any standard proof.

(iii) The charge of torturing against charge No.3 not established.

(iv) The co-habitation of the proceedee with another woman (Lalita) could also not established.

(iv) The fact of giving false information regarding having a daughter could not be established as the father ship of his/her daughter is being disputed by the proceedee.

Under the facts and circumstances mentioned above none of the 4 (four) charges against proceedee could be established by the prosecution although the onus of proving which lied on.”

It is not in dispute that these petitioners on the one hand and respondent nos.6 and 7 together on the other hand are



the rival claimants for the pension and death-cum-retiral benefits. During pendency of the writ application, the 'BSPHCL' came out with office order no.631 dated 07.06.2016 and office order no.632 dated 07.06.2016 whereby the 'BSPHCL' allowed 50% family pension and 50% of the death-cum-retiral benefits in favour of respondent nos.6 and 7. While considering I.A. No.1 of 2021, this Court considered the matter at length which would be evident from the order dated 11.02.2021, the same is being extracted hereinbelow for a ready reference:-

“ Interlocutory Application No. 1 of 2021 has been filed by the petitioner seeking to amend the writ application by adding the following relief :-

“(i) For quashing of the Office order No. 631 dated 07.06.2016 and Office order No. 632 dated 07.06.2016 (Annexure-13 series) whereby the Bihar State Power (Holding) Company Limited have allowed 50% Family Pension and 50% Substance allowance respectively in favour of Respondent No. 6.”

Learned counsel for the respondents power company and the private respondent nos. 6 and 7 are present and they have no objection to taking the prayer made in the Interlocutory Application as part of this writ application subject to their objection, if any.

In the aforesaid view of the matter, let I.A. No. 1 of 2021 be allowed. The statements made therein and the prayer shall form part and parcel of the writ application.



After hearing learned counsel for the parties for sometime, this Court has formed a prima-facie opinion that further continuance of this litigation would only be wastage of judicial time and is not likely to result in benefiting any of the parties.

The facts of the case are not much in dispute. Late Akhilesh Prasad who was an employee of the power company died in harness on 21.12.2015. His death-cum-retiral benefits came to be contested by two rival claimants. Respondent nos. 6 and 7 claimed that they are the legally wedded wife and minor daughter respectively of the deceased employee. Petitioners in the present case claimed that petitioner no. 1 and 2 are the son and daughter respectively who have born out of the marriage between the deceased employee and petitioner no. 3. Respondent nos. 6 and 7 have taken a plea that petitioner no. 3 is not legally wedded wife of the deceased employee, therefore shall not be entitled for any share in the death-cum-retiral benefits.

So far as petitioner no. 1 and 2 are concerned, there is no dispute that they are the son and daughter respectively who have born out of the relationship between the deceased employee and petitioner no. 3. Even the employer admits to the extent that the deceased employee was in live-in relationship with the petitioner no. 3 and the deceased employee had nominated petitioner no. 1 as entitled for getting the GPF amount. In the Form no. 1 submitted with the erstwhile Bihar Electricity Board for purpose of entitlement of the provident fund amount, petitioner no. 1 has been declared as son of the deceased employee. Earlier when respondent nos. 6 and 7



moved this Court for a direction to the respondent power company to release the pensionary benefits in their favour, the learned coordinate Bench of this Court while dealing with CWJC No. 5256 of 2016 filed by respondent nos. 6 and 7 came across the stands of the power company. At the said stage, the power company had directed both the rival claimants to get an appropriate direction from a civil court of competent jurisdiction so that they can settle the post retiral benefits of the deceased employee in accordance with the declaration of the civil court. The present petitioners had also intervened by filing I.A. No. 3852 of 2016.

The learned coordinate Bench agreed with the stand of the power company and refused to issue any direction at the said juncture. The Court has been informed that present respondent nos. 6 and 7 filed a Letters Patent Appeal against the judgment of the learned coordinate Bench but the same was not entertained particularly after noticing the changed stand of the respondent power company that they have paid 50 percent of the retiral benefits to respondent nos. 6 and 7.

The grievance of these petitioners is that on the one hand the respondent power company and its authorities deviated from their stand and even though the learned coordinate Bench of this Court refused to give any direction, the concerned authority on its own took a view that the respondent nos. 6 and 7 are entitled for 50 percent of the retiral benefits and released the same in their favour, the same authority acted arbitrarily in not allowing withdrawal of the rest 50 percent in favour of the petitioner no. 1 and 2 at least. The same



authority did not allow the payment to the nominee (petitioner no. 1) who had been authorised by the deceased employee to receive the provident fund amount.

It is then submitted by learned counsel for the petitioner that this discriminatory approach on the part of the authorities has resulted in huge hardships to these petitioners. In fact argument of the learned counsel for the petitioner is that the authorities have acted for extraneous consideration and in complete disregard to their own stand and then the order passed by the learned coordinate Bench of this Court in CWJC No. 5256 of 2016.

While initially Mr. Saket Kumar Tiwary prayed for time once again to file reply to the Interlocutory Application but after hearing learned counsel for the parties for some time when this Court noticed and observed that there being no concept of illegitimacy of children under the Hindu Law even if it is assumed for a moment that petition no. 3 may not get any share in the pensionary benefits, there is no iota of doubt that petitioner no. 1 and 2 at least would take equal share with respondent nos. 6 and 7 in the death-cum-retiral benefits of the deceased employee, for the simple reason that they are the children of the deceased employee.

Learned counsel for the power company, having appreciated the legal position, submits at this stage that the writ application may be disposed of with such direction. However, Mr. Tiwary, learned counsel representing the respondent nos. 6 and 7 submits that he understands the legal position as emerging under the Hindu Succession Act, 1956, but he may be given an opportunity to discuss the matter with respondent nos. 6 and 7.



This Court expects that on the next date learned counsel for the respondent nos. 6 and 7 would take a fair stand keeping in view the law on the subject which would also help the petitioners in unnecessarily getting harassed by indulging in litigation by way of filing of application before the civil court and indulge in a contest. The legal position being so settled and the facts of the case as stated not being in dispute, this Court is looking for a consented order on the next date.

Let this matter be taken up again on 18th February, 2021.”

Today, Mr. Saket Tiwary, learned counsel representing the respondent nos.6 and 7 submits that keeping in view the various aspects which are discussed in the order dated 11.02.2021 he would not object to release of payment to the extent of 50% of the death-cum-retiral benefits and other dues except the family pension in favour of petitioner no. 1 and 2. Learned counsel submits that admittedly the respondent no.6 is the legally wedded wife of the deceased employee and in the facts and circumstances of the case there is no iota of doubt that the claim of petitioner no.3 has no leg to stand inasmuch as the marriage during the lifetime of the spouse would be a void marriage for violation of the conditions contained in Section 5(i) of the Hindu Marriage Act, 1955 (hereinafter referred to as the ‘Act of 1955’). The marriage is void in terms of Section 11 of



the Act of 1955.

Mr. Tiwary further submits that a civil suit is pending between the parties in the learned court below as regards the various properties and his consent in the present case cannot be construed in any manner so as to prejudice the case of respondent nos.6 and 7.

Learned counsel for the petitioners also agrees at the bar that the petitioner nos. 1 and 2 would be satisfied, so far as the present writ application is concerned, if they are allowed to receive 50% of the entire death-cum-retiral benefits of late Akhilesh Prasad. Since both petitioner nos.1 and 2 have attained majority, they would not stake any claim to the family pension.

Mr. Ranjit Sinha, learned counsel representing the 'BSPHCL' submits that the petitioner nos.1 and 2 having become major and attained the age of 18 years and 21 years respectively would not be entitled to claim any benefit in the family pension. Learned counsel has placed before this Court Rule 186 of the Bihar Pension Rules, 1950 to support his contention.

In the given facts and circumstances of the case, this writ application is being disposed of with consent of the parties in the following terms:-



(1) The respondents 1 to 5 are directed to take immediate steps to calculate the entire death-cum-retiral benefits of the deceased employee and apportion the same in the ratio of 50:50. The petitioner nos.1 and 2 shall jointly receive 50% whereas the respondent nos.6 and 7 shall receive the rest 50% of the benefits. The payment in the ratio of 50:50 shall be made available to the respective parties within a period of two months from the date of receipt/production of a copy of this order.

(2) Since the respondent nos.6 and 7 have already received 50% of the death-cum-retiral benefits, the statutory interest accruing on the balance amount will go to the petitioner nos.1 and 2.

(3) So far as the family pension is concerned, the respondent no.6 shall receive 100% of the family pension current as well as arrears. The arrears payment be made to the respondent no.6 within a period of two months from the date of receipt/production of a copy of this order.

(4) So far as the GPF amount is concerned, it has been stated that the petitioner no.1 has received Rs.90,000/-, the same shall be adjusted from the payable amount to petitioner no.1.

Learned counsel for the petitioner has submitted at this stage that the age of petitioner no.2 on the date of death of the



deceased employee was 18 years so in terms of Rule 185 of the Bihar Pension Rules she would have been entitled to get at least 1/3rd share in the family pension amount, had it been paid at the relevant time. Therefore to that extent she may be allowed the benefit to the extent of 1/3rd of the family pension payable for the period till she attained the age of 21 years.

In that view of the matter, this Court directs that let 1/3rd of the family pension amount for the period in which the petitioner no.2 was entitled to receive the same be made available to her with statutory interest. Rest of the amount will go in favour of the respondent no.6 with statutory interest.

Learned counsel for the parties agree that so far as the issues with regard to apportionment of death-cum-retiral benefits and family pension are concerned, this order will put at rest the entire issues.

This Court would observe that this order which is based on the consent of the parties shall not prejudice either of the parties in the pending civil suit as regards other properties.

This writ application stands disposed off accordingly.

(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'.

