

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.325 of 2019

1. Anita Bai W/o Late Dayaram Bareth Aged About 24 Years
2. Deepika Kumari Bareth D/o Late Dayaram Bareth Aged About 6 Years
Minor Through Natural Guardian Mother Anita Bai, W/o Late Dayaram Bareth
3. Bhupesh Kumar S/o Late Dayaram Bareth, Aged About 1 Year 6 Month,
Minor Through Natural Guardian Mother Anita Bai, W/o Late Dayaram Bareth

(All are r/o Village Jetha, Post Office Lavasara, Police Station Baradwar, Tahsil Sakti, District- Janjgir-Champa, C.G., At Present R/o Village Khondh, Tahsil Akaltara, District- Janjgir-Champa, Chhattisgarh)

---- Petitioners

Versus

1. Managing Director (Manager And Director), C.S.P.D.C.L. Behind Rajkumar College, Daganiya, Raipur, Chhattisgarh
2. Chief Engineer C.S.P.D.C.L. Tifra, Bilaspur, District- Bilaspur, Chhattisgarh
3. Superintendence Engineer (Operation/maintenance) Division, C.S.P.D.C.L. Janjgir, District- Janjgir-Champa, Chhattisgarh
4. Executive Engineer (Operation/maintenance) Division, C.S.P.D.C.L. Sakti District- Janjgir-Champa, Chhattisgarh
5. Assistant Engineer C.S.P.D.C.L. Jaijaipur, District- Janjgir-Champa, Chhattisgarh
6. Chief Electricity Inspector Bairan Bajar Raipur, Fountain Square, District- Raipur, Chhattisgarh
7. Pradeep Sahu S/o Phoolchand Sahu Aged About 22 Years
8. Kishan Bareth S/o Nepal Aged About 23 Years
9. Rathram Bareth S/o Jagdish Prasad Aged About 25 Years
10. Heeralal Bareth S/o Avadh Ram Bareth Aged About 60 Years
11. Smt. Sonmati W/o Heeralal Bareth Aged About 48 Years

(respondents No.7 to 11 are r/o Village Jetha, Post Office Lavasara, Police Station Baradwar, Tahsil Sakti, District- Janjgir-Champa, Chhattisgarh)

---- Respondents

For Petitioners : Mr. Deepak Kumar Singh, Advocate.

For respondents No.1 to 5 : Mr. Raja Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

16/08/2021

1. This petition has been brought being aggrieved by the order dated 17.01.2019 passed by the Court of First Additional District Judge, Sakti, District- Janjgir-Champa, C.G., dismissing the application filed by the petitioner under Section 35 of Court Fees Act, 1870 read with Section 151 of C.P.C.
2. The petitioners have filed Civil Suit for compensation under Fatal Accidents Act claiming a compensation of Rs.51,02,000/-. The petitioner filed application under Section 35 of Court Fees Act, 1870 read with Section 151 of C.P.C. praying for exemption in payment of Court fees, which has been rejected by the impugned order.
3. It is submitted by the learned counsel for petitioners that the impugned order is erroneous, illegal, arbitrary and unsustainable. The petitioner had entitlement for exemption from payment of Court fees, which was proved in the inquiry by the statement of Patwari that the annual income of the petitioner was below Rs.25,000/-, therefore, she had entitlement for exemption vide notification of C.G. State No.5838/D-1666/XX-B/C.G./08.
4. Reliance has been placed on the order of this Court in the case of Smt. Sarojni Nishad & Ors. Vs. Harpal Singh Sibbal & Ors. in W.P.(227) No.226 of 2018, in which the income of the petitioner was certified to be Rs.40,000/- even then the Court had ordered for granting exemption to

the petitioner. The present is a similar case, therefore, this petition may be allowed and relief may be granted to the petitioner.

5. Learned State counsel representing respondents No.1 to 5 opposes the submissions and submits that the learned trial Court has not committed any error in passing the impugned order. The annual income of the petitioner has been certified to be Rs.36,000/-. Therefore, her annual income is more than Rs.25,000/-, which is the limit prescribed in the notification dated 20.06.2008. Thus, the impugned order cannot be interfered with.
6. Considered on the submissions, the petitioner has been provided a certificate by Nayab Tehsildar, which is annexed with the petition, it certifies that the income of the petitioner No.1 from all sources is Rs.36,000/- per annum. In the case of Smt. Sarojni Nishad & Ors. (supra) by the Co-ordinate Bench of this Court, it was held that the certificate given was to certify the income of the plaintiff and family members which included the brothers. Therefore, the evidence requires appreciation and on that basis, it was held that the petitioner was entitled for exemption according to the notification dated 20.06.2008. This is not so in the present case, the certificate issued by Nayab Tehsildar certifies the income of the petitioner No.1 only. The petitioner No.2 and 3 are minor, therefore, there is no question of considering on their income.
7. The original notification was issued on 01.04.1983, in which the benefit of exemption from payment of Court Fees under Section 35 of the Court Fees Act was granted to the persons having income of less than Rs.6,000/- per annum. That income limit has been revised and extended to Rs.25,000/- per annum in the subsequent notification dated 20.06.2008. Therefore, the notification speaks of the policy of the State

Government regarding granting exemption to persons who have annual income of not more than Rs.25,000/- per annum. The notification of the State Government cannot be interpreted otherwise. The certificate given in favour of the petitioner is clearly beyond the slab fixed by the notification dated 20.06.2008. Hence, I am of this view that the judgment in Smt. Sarojni Nishad & Ors. (supra) cannot be followed in the present case. Therefore, it is held that the impugned order does not suffer from any infirmity, hence, this petition is dismissed and disposed off. However, the petitioners have liberty to plead and pray for bringing the suit as an indigent person under Order 33 of Civil Procedure Code.

8. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge