

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.154 of 2018

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Ganga Ram Paswan Son of Baldeo Paswan, Resident of Village- Pokaria,
Ward No.-17, Police Station- Town, District- Begusarai.

... .. Petitioner/s

Versus

1. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Patna.
2. The Deputy Director, Personnel, General Administrative Department, Bihar State Electricity Board, Patna.
3. The General Manager-cum-Chief Engineer, Bihar State Electricity Board, Mithila Area, Darbhanga.
4. The Deputy General Manager-cum-Chief Engineer, Bihar State Electricity Board, Mithila Area, Darbhanga
5. The Electric Executive Engineer, Electric Supply Division, Samastipur.
6. The Electric Executive Engineer, Electric Supply Division, Begusarai.
7. The Financial Controller, Bihar Electricity Board, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nirbhay Prashant, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate
		Mr. Vijay Kumar Verma, Advocate
		Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

C.A.V. JUDGMENT

Date : 18-04-2023

Heard Mr. Nirbhay Prashant, learned counsel
appearing on behalf of the petitioner and Mr. Vinay Kirti Singh,
learned senior counsel appearing on behalf of the respondent -
Bihar State Electricity Board.

2. In the present writ petition, petitioner has prayed
for the following relief(s):-

***“i. that to issue an appropriate writs,
order/s, order/s or direction/s in the nature of
certiorari to quash the order dated 28.08.2005***



and order dated 15.02.2016 whereby and whereunder the claim of the pension was negated by the Bihar State Electricity Board (here-in-after referred as the Board).

ii. that to issue an appropriate writ/s, orders/s or direction/s in the nature of mandamus to the respondents to pay family pension to the petitioner as early as possible and to pay the same to petitioner on month to month basis.

iii. that any other releif or reliefs for which the petitioner be found entitled in law be granted to him.”

3. Brief facts of the case are that one Mrs. Prema Devi (deceased) was earlier married to Ram Prakash Chaudhary, an employee of the respondent Board and he died on 30.04.1993 in harness and therefore, his widow, Mrs. Prema Devi was appointed as Class-IV employee on compassionate ground on 16.11.1994. The petitioner claims that he married with Mrs. Prema Devi on 27.09.1993 and obtained marriage certificate from marriage Registrar, thereafter, they lived as husband and wife. Subsequently, Prema Devi died on 07.01.1995 leaving behind the petitioner and her minor son, Mr. Alok Kumar Paswan @ Gandhi as their legal heir and representatives. After the death of Late Prema Devi, the petitioner filed CWJC No. 6243 of 2003 for a direction to the authorities of the respondent Board to make payment of entire dues amount of death cum retiral benefits payable to Late Prema Devi. During the



pendency, almost all the dues were paid to the petitioner on the basis of succession certificate. However, certain due and the claim of family pension was not considered. This Court vide order dated 09.09.2003 disposed of the writ petition inter alia by making following observation and directions:-

“From the materials on record it appears that in a title suit the claim of Mantun Kumar Singh of being the adopted son of the late wife of the petitioner has been rejected by a Court of competent jurisdiction. As far as Alok Kumar is concerned, he is the son of the petitioner which is not disputed and further he has not raised any objection. It further appears that the respondent Company itself accepts that the petitioner was the husband of the deceased employee and that the deceased employee herself was appointed on compassionate ground on the death of her first husband. Thus, there is no controversy about the petitioner being the second husband who was married during lifetime of the first spouse.

Faced with the situation, learned counsel for the Company is not in a position to defend the act of the Company in not paying the remaining dues to the petitioner. The matter being very old, the Court proposed to take judicial notice of the delay and pass strict orders. However, in view of the assurance given to the Court by the learned counsel for the Company, the matter is being disposed off with a direction to the respondent Company to clear the remaining dues admissible to the petitioner, on account of the death of his wife, latest by 15th January, 2015. In the event, the Company fails to live up to its commitment before the Court the petitioner shall be at liberty to file an application in the present proceeding itself bringing such fact to the notice of the Court for passing appropriate orders.

In view of the admitted position that cost of Rs. 1,000/- has not been paid to the petitioner in



terms of order dated 09.09.2003 passed in C.W.J.C. No. 6243 of 2003, the petitioner shall also be entitled to cost of Rs. 2,000/- to be paid together with the other dues.

The application stands disposed off in the aforementioned terms.”

4. The petitioner filed representation before the respondent-Board which was disposed of rejecting the claim of the petitioner for pension vide order dated 20.08.2005 and 15.02.2016.

5. Learned counsel submitted that vide Letter No. 365 dated 31.03.1995, the respondent no. 6 directed the petitioner to obtain succession certificate from the Court of learned District Judge, Begusarai as non was made nominee. Abiding same, the petitioner applied before the learned Sub-Judge 1st, Begusarai by filing Succession Case No. 43 of 1998 and vide order dated 20.01.2000, the prayer of the petitioner was allowed and accordingly, a certificate was issued in favour of the petitioner on 25.03.2000 which is annexed as ‘Annexure-3 and 3/1’ to the writ petition. He further submitted that after grant of succession certificate, the petitioner furnished a security bond of Rs. 50,000/- on 10.07.2000 before the Board and prayed to release the dues amount of Late Mrs. Prema Devi. He further submitted that the petitioner also sent legal notice to the



respondents and lastly on 01.02.2003, filed representation drawing their attention towards the deplorable condition of the petitioner and his minor child but no attention was paid towards his case by the respondents.

6. He further submitted that the petitioner filed CWJC No. 6243 of 2003 before this Hon'ble Court and the Board had filed its counter affidavit on 09.09.2003. According to the statement made in the counter affidavit, the Board admitted the dues payable towards G.P.F., Leave Encashment and Group Insurance Scheme and also admitted about marriage certificate, succession certificate and appointment of guardian of his minor son, namely, Mr. Alok Kumar Gandhi and made a payment of Rs. 24032/- towards G.P.R., and Rs. 35,000/- towards G.S.S land and amount of Rs. 3786/- on 06.09.2003 and 07.09.2003 through cheques before this Hon'ble Court but other benefits like family pension, gratuity etc. were not sanctioned/paid to the petitioner. He further submitted that no details about the admissible dues was furnished by the Board. The petitioner filed CWJC No. 6243 of 2003, which was disposed of vide order dated 09.09.2003 with a direction to the respondent no. 6 (The Electric Executive Engineer, Electric Supply Division, Begusarai) to calculate the entire admissible



dues and hand over a copy of the same to the petitioner's counsel by 12.09.2003 and for remaining amount, cheque was required to be handed over to the learned counsel for the petitioner by 12.09.2003.

7. He further submitted that on the representations of the petitioner, after disposal of CWJC No. 6243 of 2003, the respondent Board by order contained in Letter No. 2788, dated 20.08.2005 and Memo No. 2994, dated 25.09.2005 rejected the claim of the petitioner without affording opportunity of hearing to the petitioner. After the grievance of the petitioner was rejected vide Letter dated 20.08.2005 and Memo dated 25.09.2005, the petitioner filed CWJC No. 16878 of 2007 before this Hon'ble Court, which was disposed of vide order dated 16.12.2014 with a direction to the respondent Board to clear the remaining dues admissible to the petitioner on account of death of his wife latest by 15th January, 2015.

8. He further submitted that the Board failed to live up to its commitment in terms of the order passed in CWJC No. 16878 of 2007. Subsequently, the petitioner filed contempt petition bearing MJC No. 2871 of 2015 before this Hon'ble Court. During the pendency of the MJC No. 2871 of 2015, the respondent Board had passed an order rejecting the claim of the



petitioner regarding family pension without specifying any reason vide Memo No. 142 dated 15.02.2016. He further submitted that after considering the above mentioned letter, the Hon'ble Court had disposed of the MJC No. 2871 of 2015 vide order dated 15.11.2017 with liberty to challenge the order passed by the authorities before the appropriate forum in accordance with law.

9. *Per contra*, learned counsel appearing on behalf of the respondent submitted that Mrs. Prema Devi died on 07.01.1995 and prior to her death, she had neither submitted any application to her controlling officer to get permission for remarriage nor any remission had been granted to her to that effect. He further submitted that sum of Rs. 24082/- on account of G.P.F. was paid to the petitioner vide cheque no. 754468 dated 06.09.2003 and, thereafter, the amount of Leave Encashment as well as Group Saving Scheme was also paid to the petitioner amounting to Rs. 3786/- and Rs. 35000/- vide cheque no. 895764 dated 07.09.2003 by Electric Supply Division, Begusarai.

10. Learned counsel further submitted that the petitioner filed an application on behalf of Mr. Alok Kumar Paswan @ Gandhi as his natural guardian for grant of pension



on 18.09.2004 in which it was mentioned that the marriage between the petitioner and Late Prema Devi was solemnized on 27.09.1993 whereas the date of birth of Mr. Alok Kumar Paswan @ Gandhi was mentioned as 05.05.1993, which is prior to the purported marriage. He further submitted that the claim of the petitioner for grant of pension to Mr. Alok Kumar Paswan @ Gandhi was rejected by the Board vide letter no. 2788 dated 20.08.2005. Against the order, the petitioner had filed another writ application bearing CWJC No. 2839 of 2006 for consideration of appointment of Mr. Alok Kumar Paswan @ Gandhi on compassionate ground. The Board on the basis of its standing order no. 780 dated 28.01.1997 as the application for grant of compassionate appointment was required to be submitted within five years of the death of the employee. He further submitted that the petitioner again filed a writ application bearing CWJC No. 16878 of 2007, which was disposed of by this Hon'ble Court on 16.12.2014 with a direction to the respondents to clear remaining dues admissible to the petitioner on account of death of his wife latest on 15.01.2015 failing which the petitioner was given a liberty to file an application in the present proceeding itself bringing such facts to notice of this Court for passing appropriate order and



directed to pay cost of Rs. 2,000/-, which was paid to the petitioner by the Electrical Executive Engineer, Begusarai by Cheque No. 764098 dated 25.02.2015.

11. Learned counsel further submitted that the claim of the petitioner seeking quashing of the order dated 20.08.2005 contained in 'Annexure-6' is not maintainable on the ground of delay and laches and the order dated 15.02.2016 cannot be challenged solely on the ground that all post retiral benefits of Late Mrs. Prema Devi as a guardian of Mr. Alok Kumar Paswan @ Gandhi on the basis of Succession Case No. 43 of 1998 and Guardian Case No. 29 of 1997 has been paid. He further submitted that Late Mrs. Prema Devi failed to seek permission from her employer and till her death she had not disclosed about her marriage with the petitioner. Learned counsel further submitted that no intimation whatsoever was made by the deceased employee to the Board regarding her marriage with the petitioner nor she had made the petitioner her nominee. Thus, the petitioner is not liable to get family pension of Late Mrs. Prema Devi.

12. Heard the parties.

13. Having heard the rival submission of the parties, it is admitted that Mrs. Prema Devi was appointed on



compassionate ground on 16.11.1984 upon the death of her then husband namely, Ram Prakash Choudhary, in harness. The present petitioner is claiming family pension on the basis of a marriage certificate that he had married with Prema Devi on 27.09.1993 and a son namely, Alok Kumar Paswan @ Gandhi was born on 05.05.1993 out of their cohabitation though marriage certificate was obtained after the birth of the child. The marriage certificate contains signature of Late Prema Devi.

14. The respondent Board has vehemently disputed the factum of marriage between the petitioner and Mrs. Prema Devi and have stated that no intimation whatsoever was made by the deceased employee to the Board regarding her marriage with the petitioner nor she had made the petitioner her nominee.

15. Be that as it may, this Court in writ jurisdiction cannot delve into the disputed question of fact as to whether marriage was solemnized between the petitioner and with Prema Devi.

16. The petitioner has annexed xerox copies of the marriage certificate and the succession certificate whose veracity cannot be ascertained by this Court in the extraordinary writ jurisdiction. In this regard, the Apex Court in the case of **Rourkela Shramik Sangh v. Steel Authority of India**



Ltd., reported in (2003) 4 SCC 317 has held as under:

“22. There cannot, thus, be any doubt whatsoever that the appellants were fully aware of the fact that they were required to approach the Industrial Tribunal in terms of the provisions of the Industrial Disputes Act for ventilating their grievances. The submission of Mr Shanti Bhushan to the effect that the High Court acts as an authority while exercising its power under Article 226 of the Constitution of India cannot be countenanced. The order of this Court dated 16-10-1995, as quoted supra, is absolutely clear and unambiguous. The term “authority” used in this Court's order dated 16-10-1995 must be read in the context in which it was used. The appellant in terms thereof could seek a reference which would mean a reference in terms of Section 10 of the Industrial Disputes Act. It could also approach “the authority in accordance with law” which would mean authority under a statute. The High Court, by no stretch of imagination, can be an authority under a statute.

23. Furthermore, even otherwise, a disputed question of fact normally would not be entertained in a writ proceeding. This aspect of the matter has also been considered by a Constitution Bench of this Court in *Steel Authority of India Ltd. v. National Union Waterfront Workers* [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121]. In any event, the orders of the Chief Labour Commissioner dated 4-1-1995 also show that other documents which were placed on record by the workmen had also been scrutinized and they had not been found reliable.”

17. And recently, in the case of **Shubhas Jain Vs. Rajeshwari Shivam and Others** reported in (2021) SCC OnLine SC 562, in Paragraph No.26, the Apex Court has held hereunder:

“26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”



18. In the present case, the petitioner admits that he has already received admissible retiral dues on the basis of conditional succession certificate which was issued with a condition to furnish security bond of Rs. 50,000/- with one surety and claims that he is also entitled for family pension. With regard to the status of succession certificate, the Division Bench of this Court in **LPA No. 409 of 2021 (Atul Kumar Srivastava Vs. the State of Bihar)** after relying on the law laid down by the Apex Court has held as under:-

“23. The Supreme Court, while dealing with similar circumstances, in the case of State of Chhattisgarh v. Dhirjo Kumar Sengar, (2009) 13 SCC 600 : (2010) 1 SCC (L&S) 281 : 2009 SCC OnLine SC 1001 at page 607 has held as under:

22. A succession certificate can be granted in favour of any person. It may be granted to an heir or a nominee. By reason of grant of such certificate, a person in whose favour succession certificate is granted becomes a trustee to distribute the amount payable by the deceased to his heirs and legal representatives. He does not derive any right thereunder. The succession certificate merely enabled him to collect the dues of the deceased. No status was conferred on him thereby. It did not prove any relationship between the deceased and the applicant. Even otherwise, the respondent and his father were entitled to the said dues being his heirs and legal representative....”

19. The proceeding under section 372 of the Indian Succession Act, 1925 (hereinafter referred to as “the Act”) being Summary in nature, the standard of proof required in such inquiry is adhered or not is to be looked into by a competent civil court. The High Court has no jurisdiction to interfere with the Succession Certificate on which basis the retiral dues has



been paid to the petitioner. Section 372 of the Act is reproduced as under:

“372. Application for certificate.—(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely—

- (a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- (c) the family or other near relatives of the deceased and their respective residences;
- (d) the right in which the petitioner claims;
- (e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).

3[(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.]

20. In *Dhirjo Kumar Sengar* (Supra) the Apex Court has limited the scope of Succession certificate. The preamble of succession certificate (Act VII of 1889) gives an idea about the object of such certificate. The Preamble states,"whereas it is expedient to facilitate the collection of debt on succession and afford protection to parties paying debts to



representatives of the deceased person."

21. The object in reenacting Part X of the Act, is to facilitate collection of debts and not to enable the parties to litigate question of disputed title. The grant of succession certificate does not determine question of title or what privilege does or does not belong to estate of deceased; it merely enables the party to whom a certificate is granted to collect any debts or securities belonging to deceased. (See PARUCK Indian Succession Act, 8th Edition page 782). The Succession Certificate under Part X can only be granted in following cases:-

- (a) When grant of probate or letters of administration is not compulsory under Sections 212 and 213.
- (b) When deceased is an Indian Christian.
- (c) When deceased is a Mohommadan.
- (d) When deceased is a Hindu and has left a will and probate of such will is not compulsory. In case of joint Family property under Hindu Law etc.

22. Thus, family pension payable to the legal representative of the deceased does not need a Succession Certificate, even if it were a debt belonging to the deceased. However, Section 214 of the Act provides that no Court shall ;

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the estate of the deceased person or to any part



thereof, or (b) proceed upon an application by a person claiming to , be entitled to execute such debtor a decree or order for payment of his debt except on production by the person so claiming, or (c) a succession certificate granted under part-X and having the debts specified therein. Sub-section (2) of Section 214 says that the word 'debt' in Sub-section (1) includes any debt except rent, revenue or profits, payable in respect of the land used for agricultural purpose.

23. Thus, family pension is an independent claim and cannot be claimed through a deceased employee. Pension is not a debt, rather now it has been held to be property.

24. The question is whether petitioner is entitled to get the benefit of Family Pension on account of death of deceased employee. In this case the factum of marriage of petitioner is disputed. From the fact of the present case, I find that the Board never recognized the petitioner as husband of deceased employee and there is no evidence for such recognition beside marriage certificate on which the sign of deceased employee is also present.

25. The respondents have disputed validity of marriage certificate. The paternity of the child will not prove that there was a marriage as the cohabitation between Husband



and Wife is the main objection raised by the respondents.

26. The marriage certificate submitted under Sub-Section 1 of Section 24 of the Special Marriage Act can be declared null and void by the Special Court constituted under the said Act only on a petition presented by either party to the marriage. Section 18 of the Special Marriage Act, 1954 stipulates that where a certificate of marriage has been finally entered in the Marriage Certificate Book under Chapter III of Special Marriage Act, the marriage shall, as from the date of such entry, be deemed to be a marriage solemnized under the Act. The registration of the marriage is under Section 16 and accordingly it has to be entered into the marriage certificate book under Chapter III of the Act and from the date of entry in the marriage certificate book, the marriage is deemed to be a marriage solemnized under the Act and then only the certificate will be proof of the fact that a marriage under the Act between the petitioner and late Prema Devi has been solemnized as is also clear from Sub-Section '2' of Section 13 of the Act. The marriage certificate as contained in Annexure-1 to the writ petition in want of a clear provision as to whether certificate has been issued under Section 13 of Chapter II of the Act, the same can only be taken as evidence and not proof of the



marriage in accordance with the Act.

27. From the discussion made hereinabove, the petitioner having not been able to adduce satisfactory evidence before the Court to show that the marriage of the petitioner was solemnized on 27.09.1993 under Special Marriage Act and just after a period of less than two years, the deceased employee died on 07.01.1995. The date of birth of the child (Alok Kumar Paswan @ Gandhi) has been mentioned as 05.05.1993. The succession certificate was granted on 25.03.2000. The claim of the petitioner on the basis of natural guardian of Alok Kumar Paswan @ Gandhi was already rejected by the Board vide Letter No. 2788 dated 20.08.2005 and order passed by the Board has not been interfered by this Court in CWJC No. 16878 of 2007 which was disposed of vide order dated 16.12.2014. On the basis of above admitted facts also, the relief as prayed for by the petitioner in the present writ application to claim family pension is not sustainable.

28. The petitioner's claim of having solemnized marriage with his wife (deceased employee) under Special Marriage Act, 1954 on the basis of the copy of the marriage certificate annexed, and the conflicted issue of legitimacy of the child who was born even before the solemnization of the alleged



marriage, are disputed question of facts and can only be dealt by a competent civil court.

29. This Court don't find any infirmity in the impugned order contained in Memo No. 142 dated 15.02.2016. Accordingly, the present writ petition is dismissed.

30. However, liberty is reserved to the petitioner to approach competent Court for declaration regarding his marriage with late Prema Devi and upon being successful he may approach the Board for payment of family pension.

31. The Board is, hereby, directed to consider the claim of the petitioner, in case the petitioner obtains declaration of the competent Court with respect to his marriage with the deceased employee of the Board namely Prema Devi in accordance with law.

32. It is made clear, if the marriage is found to be fictitious, the Board may proceed to recover the amount already paid on account of death cum retiral dues to the petitioner, in accordance with law.

33. It is further made clear that in case any suit is filed before a competent court by the petitioner, then any observation made in this order shall not affect the conduct of the trial and passing of judgment and decree by the competent court



having civil jurisdiction.

34. There shall be no order as to costs.

(Purnendu Singh, J)

nilmani/-

AFR/NAFR	AFR
CAV DATE	28.03.2023
Uploading Date	18.04.2023
Transmission Date	N.A.

