

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11290 of 2018

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Musmat Nila Devi, Widow of Late Pradeep Mistri, R/o Vishnupuri
(Chitkohra), Near Shiv Mandir, P.O.- Anishabad, P.S.- Gardanibagh, District-
Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Minor Water Resources
Department, Bihar, Patna
2. The Deputy Secretary, Minor Water Resources Department, Bihar, Patna
3. The Chief Engineer, Minor Water Resources Department, Bihar, Patna
4. The Superintendent Engineer, Minor Irrigation Circle, Patna
5. The Executive Engineer, Minor Irrigation Division, Patna
6. The Accountant General of Bihar, Birchand Patel Path, Patna
7. The Treasury Officer, Patna (Collectorate).
8. The District Officer, Pension-Cell, Patna.
9. Sona Devi @ Sunaina Devi, W/o Sri Sapan Kumar Chatterjee R/o
Mogalpura, Purani Chauki, Patna City.
10. The Treasury Officer, Patna City.
11. The Branch Manager, State Bank of India, Hajiganj, Patna City.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar, Advocate
For the Respondent/s	:	Mr. Sita Ram Yadav, GP-16
For the Respondent No.9:		Mr. Kishore Kumar Thakur, with Mr. Kumar Chandrashekhar, Advocates
For the Accountant General:		Mrs. Ritika Rani, Advocate
For Respondent No.11	:	Mr. Satyendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 22-02-2023

Heard Mr. Ajay Kumar, learned counsel appearing on
behalf of the petitioner, Mr. Kishore Kumar Thakur, learned
counsel, duly assisted by Mr. Kumar Chandra Shekhar, learned
counsel for respondent no.9, Mr. Sita Ram Yadav, learned counsel



for the State and also perused the materials available on record meticulously.

2. The petitioner is claiming herself to be wife of deceased Pradeep Mistri, who superannuated on 28.02.2010 while working as Helper in the Minor Irrigation Division, Patna and died on 02.05.2013, filed the present writ application seeking direction to the respondents to grant her full family pension and also assailed the letter dated 28.03.2016, issued by the Treasury Officer, Patna (Collectorate) by which it has been informed that since the name of Sona Devi mentioned as wife of Pradeep Mistri in the pension paper of the deceased employee, the family pension is being paid to her after making deduction of Rs.4,000/- from the payment of Sona Devi. She further prayed, *inter alia*, for a direction upon the respondents to sanction the due 3rd ACP to her husband w.e.f. 01.01.2009 with all consequential benefits, apart from due GPF for the period the deceased employee had worked under the Work Charge Establishment. It is also prayed that petitioner being first wife of the employee is entitled to receive 100% family pension in view of ratio laid down by this Court in **Most. Tara Devi Vs. The State of Bihar and Others (C.W.J.C. No. 15986 of 2016)**.



3. It is vehemently contended that the marriage of the petitioner was solemnized with late Pradeep Mistri on 27.06.1986, as per the Hindu rituals and from their wedlock five children were born. Both the husband and the wife remained together for a pretty long time. However, subsequently, petitioner's husband became habitual drunkard due to which he came in contact with a married woman, namely, Sona Devi @ Sunaina Devi, the respondent no.9 herein. After some time, the petitioner's husband left taking care of the petitioner and the children, which resulted into filing of Maintenance Case No. 211(M) of 2008 against the deceased employee before the learned Family Court, Patna, which was allowed by the learned Additional Principal Judge, Family Court, Patna and after considering the income of the husband of the petitioner, a sum of Rs.4,000/- per month was allowed for maintenance of the petitioner and her children from the date of order, the copy of which has been brought on record by way of Annexure-4 to the writ application.

4. In support of the contention of the petitioner being legally married wife to the deceased Pradeep Mistri, the copies of certificates issued by School in favour of her children were brought on record. It has also been submitted that respondent no.9 is wife of Sri Sapan Kumar Chatterjee, which fact would be



evident from the Municipal Tax receipts, wherein the name of the husband of respondent no. 9 was entered in Municipal record as Sapan Kumar Chatterjee. He also submits that even during the life time the deceased employee had written a letter to the respondent Executive Engineer on 28.07.1999 admitting the fact that he has been living with his wife and children and Sunaina Devi is the wife of Sapan Kumar Chatterjee, the copy of which has also been annexed to the writ application. It is also contended that after the retirement of the deceased employee, retiral benefits, including the pension, gratuity and other dues were paid to him, though after delay of two years. However, the respondent no.9 in connivance with respondent Executive Engineer, Minor Irrigation Department got her name approved as wife of deceased Pradeep Mistri and the family pension was sanctioned in her favour on the basis of the pension paper, which fraudulently shows the name of respondent no.9, as his wife. Similar fraud has also been committed in GPF book wherein the name of respondent no.9 has mentioned as wife of the deceased employee. Various documents and papers have been placed before this Court in order to impress upon the Court showing the *bona fide* of the petitioner being wife of the deceased employee.



5. A notice was issued to the respondent no.9. She entered her appearance and filed counter affidavit disputing all the averments and the submissions made on behalf of the petitioner. It is submitted that the respondent no.9 does not have any alias name, rather she is known as Sona Devi and she is the legally married first wife of late Pradeep Mistri, the marriage of whom were solemnized in the year 1978 itself. Submission has been made at the bar that so far the Maintenance case is concerned, it is an ex-parte order and the deceased employee was made the sole respondent in the said Maintenance case, however, he could not appear, hence no reliance can be placed upon the order dated 06.06.2012, passed by the learned Additional Principal Judge, Family Court, Patna in Maintenance Case No. 211 (M) of 2008. Further submission has been made that pension paper forwarded by the Department of the deceased employee Pradeep Mistri, duly signed by the competent authority of the Department, which has also been annexed as Annexure-G to the counter affidavit filed on behalf of respondent nos. 1 and 5 clearly suggests the relationship of the respondent no.9 with the deceased employee. The other document, such as the declaration of the lists of names of the family members of late Pradeep Mistri, duly signed by the deceased employee himself and verified by the competent



authority of the department makes it conclusively established that the deceased Pradeep Mistri has recognized the respondent no.9, as his legally married wife and the sons born out from the said wedlock.

6. The aforesaid documents have been verified by the department and recognizing the respondent no.9, as the legally wedded wife of deceased Pradeep Mistri, issued authority letter for payment of family pension to her. However, in spite of completion of such formalities, the petitioner had submitted one application before the respondent District Magistrate, Patna raising objection regarding payment of family pension to respondent no.9 on the ground of she being not the legally married wife of the deceased employee, the family pension of respondent no.9 was withheld. On being aggrieved, the respondent no.9 moved before this Court in C.W.J.C. No. 8127 of 2014. The respondent State authorities responding to the objection made by the petitioner apprise the fact that respondent no.9 being nominee in the service book of the deceased employee is only entitled to receive family pension after the death of her husband and subsequently vide letter no. 1473 dated 14.11.2013, the Executive Engineer, Minor Irrigation Department further indicated that at no point of time the petitioner had raised any objection regarding nomination with respect to



payment of retiral benefits, including pension during the life time of erstwhile employee and also at the time of payment of death-cum-retiral benefits to the respondent no.9, which was payable to her husband. In view of the aforesaid facts, during the pendency of the said writ application, the payment of family pension to the respondent no.9 has been restored and considering the fact that the grievance of respondent no.9 has been redressed, the writ application was disposed of having become infructuous. He also submits that there is no alias name of respondent no.9, which finds place, anywhere, and the petitioner has tried to mislead this Court by furnishing an imaginary alias name of respondent no.9 only to frustrate the legal right of respondent no.9. However, all the payment was being made after due verification and ascertainment of her identity and status.

7. The genuineness of the certificates/documents brought on record by the petitioner has been disputed by respondent no.9 and submission has been made that the same can be verified and adjudicated upon only by a Civil Court of competent jurisdiction after adducing the evidence in that regard.

8. The State was represented by Mr. Sita Ram Yadav, learned GP-16, has also filed a counter affidavit and supplementary counter affidavit and submitted on the basis of the



materials available on record that after retirement of the deceased employee Pradeep Mistri, the office of the Accountant General, Bihar, Patna issued pension payment order in favour of the retired employee. The said pension payment order bearing PPO No. 201011082246 clearly mentioned that in the event of death of the erstwhile employee, the family pension be paid to his nominee Smt. Sona Devi, the legally married wife of Pradeep Mistri. The aforesaid pension payment order was issued on the basis of the entry made in the service book disclosing the respondent no.9 as his nominee to receive family pension and other retiral-cum-death benefits in the capacity of the legally married wife of the deceased employee. Similar is the position in the G.P.F. nomination form.

9. He submits that in terms of the pension payment order dated 12.10.2010, the respondent no.9 started getting family pension issued under the signature of Treasury Officer.

10. Pursuant to the order of this Court, the original service book has been placed before this Court, which also suggests the respondent no.9 shown as the wife and as such nominee declared by the deceased employee, late Pradeep Mistri.

11. Having heard the parties at length, this Court finds substance in the submissions made on behalf of the learned counsel appearing on behalf of respondent no.9 and the State. The



very purpose of nomination is to enable the State to meet its obligation and get a valid discharge in respect thereof. The Hon'ble Supreme Court in the case of **Smt. Violet Issac and Ors. Vs. Union of India and Ors. [(1991) 1 SCC 725]** held that no other person except those designated under the Rules are entitled to receive family pension. It further held that the employee has no title nor any control over the family pension as he is not required to make any contribution. The Family Pension Scheme is in the nature of a welfare scheme. Therefore, it does not form part of the estate of the deceased employee enabling him to dispose of the same by testamentary disposition.

12. Undisputedly the family pension is admissible to a widow in her capacity as widow and would never be subject matter of testamentary disposition. The family pension is admissible on account of status and the status is acquired on the happening of certain event, namely, on becoming widow on the death of the husband. There is no iota of doubt that the grant of family pension is governed by statutory provision and the same does not provide for family pension to the second wife.

13. The reliance made by the petitioner on a judgment rendered by this Court in C.W.J.C. No. 15986 of 2016, as also the judgment of the Apex Court in the case of **G.L. Bhatia Vs. Union**



of India and Another [(1999) 5 SCC 237] have been passed on the premise of the admitted factual position that ignoring the claim of 1st wife nomination was made in favour of second wife, contrary to the provision of law. However, the case in hand, the petitioner has failed to establish her claim of she being 1st wife of deceased employee.

14. The learned Division Bench of this Court while considering the identical matter in the case of **Ati Razia Devi Vs. The State of Bihar and Others**, reported in **2016 (1) PLJR 835** has been pleased to hold as follows:

“The very purpose of the nomination is to enable the State to meet its obligations and get a valid discharge in respect thereof. Once, the employee had nominated the other lady to receive the family pension, the State discharges its obligation lawfully by paying that lady i.e. the nominee. Now, if the appellant disputes this fact and claims to be the first lawfully wedded wife, and thus, in civil law, entitled to the family pension, then, it is for her to establish her right, title and interest in this regard in a court of competent jurisdiction and get an order to override the nomination made by the person/employee concerned. The nominee, in matters where the status and the right is disputed, is merely a trustee for the rightful owner thereof, but, of course, subject to the right of nominee to receive and give a valid



discharge. Nomination by itself, it is well settled, does not make the person the owner or the rightful recipient of the property, but holds it in trust for rightful and lawful recipient or person entitled therein. Thus, it is open for the appellant to go before a court of competent jurisdiction and establish her right, contrary to the nomination, and get judgment and order, in accordance thereof. It is only then that the State would be in a position to change and depart from the nomination.”

15. Admittedly the facts of the present case demonstrate that the name of respondent no.9 was duly mentioned and nominated in the service book and pension papers/forms as wife of Pradeep Mistri and the respondent authorities after making verification of the same issued pension payment order and other retiral benefits. On the contrary the petitioner, *prima facie*, failed to establish her claim as she being first wife, hence in any view of the matter, the petitioner may file an application before the competent Court for Succession Certificate impleading respondent no.9, as party respondent, if so desire. Thus, the competent court would be able to decide the application after considering the evidences led before it expeditiously.

16. Further, it is needless to observe that normally, where there is disputed question of facts, which require evidences to be adduced by the parties, the High Court should desist from



entertaining a writ petition under Article 226 of the Constitution of India and the proper remedy available under the law is to approach before the competent Civil Court.

17. In view of the aforementioned discussions, this Court does not find any merit in the writ petition, accordingly, it is dismissed, with the liberty aforesaid.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	15.12.2022
Uploading Date	24.02.2023
Transmission Date	

