

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1929 of 2022

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Mahendra Narayan Dutt, Son of Late Singheshwar Prasad Dutt, Resident of
Near Referral Hospital, Gram- Acharaj, Police Station- Bounsi, District-
Banka.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration, Bihar, Patna.
3. The District Magistrate, Banka.
4. The Deputy Collector Establishment, District Collectorate, Banka.
5. The Accountant General, Bihar (A and E), Patna.
6. The Treasury Officer, Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajib Ranjan Jha, Advocate
For the Respondent/s	:	Mr. Manish Kumar, GP-4
For the AG	:	Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 19-08-2024

Heard Mr. Rajib Ranjan Jha, learned Advocate for
the petitioner, Mr. Manish Kumar, learned Advocate for the
State and Mr. Bindhyachal Rai, learned Advocate for the
Accountant General, Bihar.

2. The petitioner is a retired Government employee,
superannuated form the office of the District Magistrate, Banka
on 31.12.1994 as Office Superintendent, has invoked the



prerogative writ jurisdiction of this Court under Article 226 of the Constitution of India seeking a direction upon the respondents to include the name of his elder son, namely, Prem Kumar Dutt, as nominee in the pension book, who has been suffering from mental disorder and deaf and dumb, unable to earn a living.

3. Learned Advocate for the petitioner contended that the elder son of the petitioner is congenital deaf and dumb and is mentally retarded unable to earn living after attaining the age of 18 years. In course of treatment, it was diagnosed a small rounded, calcified nodule in right occipital region. Its impression is classified inflammation Granuloma in right occipital lobe. Considering the nature of disability, as has been suffering by the elder son of the petitioner, on the application made by the petitioner, the office of respondent no.3 has granted Social Security Pension of Rs.200/- (Two hundred) per month w.e.f. 23.08.2008.

4. The petitioner on being superannuated on 31.12.1994 has been looking after his son and the wife of the petitioner was nominee, thus he was satisfied that even after his death someone is there to look after his disabled son, but unfortunately, the wife of the petitioner died on 09.05.2021. In



such circumstances, the petitioner filed a representation before the respondent no.5 requesting him to include the name of his elder son, namely, Prem Kumar Dutt in his PPO having number 237107 on account of the disability of his son incapacitating him to earn the living. The claim of the petitioner is based upon the Finance Department's Memo No. Pen-103/64-9505-F, dated 03.09.1964 and Further Memo No. P1-11-1025/75 /1994 dated 19.03.1975 whereby the State government has liberalized the provision of admissibility of family pension to the son or daughter of the deceased Government Servant suffering from any disorder or disability of mind or physically crippled or disabled to earn living.

5. On receipt of the application/representation of the petitioner, the concerned respondent vide Memo No. 07 dated 15.09.2021 has informed him that to insert the name of his son in the pension book, departmental acceptance order is required. However, despite passage of sufficient time when nothing was done, the petitioner approached before this Court.

6. A counter affidavit has been filed on behalf of respondent nos. 3, 4 and 6. It is categorically averred that on a request made by the petitioner, the respondent no.3 vide Memo No. 135 dated 27.02.2023 has constituted a committee under the



Chairmanship of ADM, Banka consisting of Civil Surgeon-cum-Chief Medical Officer, Banka and the Deputy Collector Establishment, District Collectorate, Banka as its member and directed to submit a report after due inquiry whether the son of the petitioner is fit or unfit to earn his living in order to decide the eligibility and entitlement of family pension to the petitioner's son.

7. The Committee examined the son of the petitioner and submitted a report dated 23.12.2023 that in course of examination of the petitioner's son his physical disability and infirmity was not found such that he is unable to earn living as such the petitioner's son was not found fit for grant of family pension. The Chief Medical Officer in his medical report found that the son of the petitioner is 100% deaf and suffers from 55% mental disorder.

8. In view of the report submitted by the Committee, the respondent no.3 vide its Memo No. 245 dated 09.03.2024 has rejected the claim of the petitioner for grant of family pension to his son.

9. Learned Advocate for the petitioner referring to the aforementioned order passed by the District Magistrate, Banka based on the report of the Committee vigorously contended that



despite the fact the Chief Medical Officer in his medical report found that the son of the petitioner is 100% deaf and 55% mental disorder, only on the physical appearance of the son of the petitioner, the committee has rejected the claim of the petitioner's son that he is not unable to earn living.

10. It is further contended that the son of the petitioner, who has been suffering from cognitive impairment, which means problem of person's ability to think, learn, remember, use judgment and make decision; and it also includes memory loss and trouble concentrating completing tasks, understanding, remembering, following instructions and solving problems; apart from the son of the petitioner 100% deaf, thus in such circumstances, merely on the appearance of the son of the petitioner the committee has submitted a report, which is fit to be rejected having no legal sanctity.

11. Learned Advocate for the petitioner also contended that the assessment made by the respondents, based upon the appearance of the petitioner's son is not justified and, as such, an independent expert medical body may be entrusted to inquire into the matter to assess as to whether the physical disability and infirmity of the petitioner's son is such of a nature that he is unable to earn living. It is also the contention of the



learned Advocate that in similar Circumstances, the claim of the son of Shri Shashi Bhushan Jha was allowed vide letter no. 266 dated 16.06.2017, issued by the Establishment Deputy Collector, Sahebganj directing the Senior Accounts Officer, Accountant General Office, Bihar to ensure family pension after the death of the pensioner and his wife. The petitioner also seeks parity.

12. Learned Advocate for the State, at this juncture adverting the submission of the learned counsel for the petitioner submitted that the claim of parity is unfounded and without any basis, inasmuch as, neither the disability/handicapped certificate of the son of Shashi Bhushan Jha is placed on record nor any averment in this regard has been made in the writ petition as to what percentage of disability or handicappedness he has been facing.

13. This Court has anxiously heard the learned Advocate for the respective parties and also perused the materials available on record.

14. The issue as has been arisen before this Court is in two folds: Firstly; As to whether the disability or infirmity/ailment suffered by the son of the petitioner is of the nature that he is unable to earn his living and secondly; can the



respondent authorities deny the family pension to a disabled son and daughter only on the ground of physical appearance that, prima facie, he/she does not find unable to earn his/her living.

15. The Family Pension Scheme issued by the State Government for its employee, the copy of which is also placed on record as Annexure-1 to the writ petition. While liberalizing the provision of admissibility of the family pension to the son or daughter of the deceased Government servant, prescribes in specific term that “if the son and daughter of a deceased Government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 18 years in the case of the son and 21 years in the case of the daughter, the family pension shall be payable to such son or daughter for life”; Of course, subject to certain conditions, inter alia, before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such a nature as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a Medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child.



16. This Scheme formulated by the State Government makes it abundantly clear that a son or a daughter of a Government employee suffering from such disability of mind or body would be entitled to the amount of pension if the disability render him and her unable to earn a living even after attaining the age of 18 and 21 years respectively. The production of certificate to that effect from medical officer not below the rank of a Civil Surgeon or Superintendent of Civil Hospital setting out mental and physical condition is a must, evidencing incapability to earn livelihood.

17. This Court has no doubt to observe that the satisfaction of the sanctioning authority must be based upon the certificate issued by the Civil Surgeon or its higher authority disclosing the exact mental or physical condition of the child/person and its effect. Under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (hereinafter referred to as 'the Act, 1999'), certain categories of disabled persons brought under the main stream for their participation. In order to fulfill the objects, the Act provides for reservation for persons suffering from disabilities like blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental



retardation and mental illness.

18. Section 2(p) of the Act, 1999, defines 'medical authority' means any hospital or institution specified for the purposes of this Act by notification by the appropriate Government. Section 2(q) speaks of 'mental illness' meaning any mental disorder other than mental retardation. Section 2(r) speaks of 'mental retardation' means a condition of arrested or incomplete development of mind of a person which is specially characterized by sub normality of intelligence. Section 2(t) provides that person with disability' means a person suffering from not less than forty percent of any disability as certified by a medical authority.

19. The prescriptions noted hereinabove crystallize that a person having more than 40 per cent disability would be entitled to the reservation of the post, which could be reserved for persons suffering from blindness or low vision. However, all kinds of other mental illnesses or mental retardations are not included for reservation.

20. In the case in hand, though the Civil Surgeon had certified that the disabled son of the petitioner suffers from 100% deafness with 55% of mental retardation, but it has not been clarified as to whether a person having suffered from such



disability of deafness and mental retardation is in a position to earn livelihood. This Court disapprove the exercise of the sanctioning authority or the members of the Committee, who are not expertise in the field to decide as to whether the person is capable of earning livelihood or not, by mere appearance. What all that was required of such an authority is to consider whether the certificate issued in favour of the person from the competent authority is the one prescribed under the statute or not and whether all the provisions prescribed are satisfied or not. Determining his capacity of earning the livelihood and the degree and percentage of his disability is within the exclusive domain of the Medical Officer/Medical Board authorized under the scheme. It was not for the concerned sanctioning officer to subjectively take upon himself this task, and to decide as to whether the person apparently looked capable of earning his livelihood or not, in case of those suffering from certain degree of mental retardation or other mental/physical disablement; which are also described as borderline, mild, moderate and severe and profound.

21. In view of the discussions above, the order dated 09.03.2024, as contained in Memo No. 245, issued by the District Magistrate, Banka rejecting the claim of the petitioner



for grant of family pension to his son is hereby set aside. The respondent no.3 is directed to constitute a Medical Board consisting of Civil Surgeon and other two Senior Doctors, having expertise in the subject of ENT and Neurology preferably within a period of four weeks from the date of receipt/production of a copy of this order.

22. Upon constitution of the Medical Board, the notice shall be served upon the petitioner, who shall ensure the physical presence of his son before the Board along with the Medical report issued in favour of the petitioner's son. The Board thereafter shall examine the mental and physical disability of the petitioner's son and submit a specific report determining the degree and percentage of his disability, qua the capacity of earning the livelihood, within a further period of four weeks to respondent no.3.

23. On receipt of the report of the Committee, the respondent no.3 shall take a final decision with respect to entitlement of the family pension of the petitioner's son forthwith.

24. The entire exercise must be completed within a period of 12 weeks.

25. With the aforesaid direction, the writ petition



stands allowed. However, there shall be no order as to costs.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.08.2024
Transmission Date	NA

