

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1076 of 2024

In
Civil Writ Jurisdiction Case No.15084 of 2023

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1. Zainab Akhtar @ Shaista Begham, Daughter of Md. Firoz Akhtar.
 2. Adeeba Fatima Daughter of Late Md. Parwez Akhtar
Both are resident of village and post office- Fathepur, PS-Zero Mile, Block-Sabour, District-Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Human Resources Department, Government of Bihar, Patna.
2. The Tilkamanghi University, through its Registrar, Bhagalpur.
3. The Vice-chancellor, Tilkamanghi University, Bhagalpur.
4. The Registrar, Tilkamanghi University, Bhagalpur.
5. The Principal, Sundarwati Mahila College, Bhagalpur.
6. The Branch manager, Punjab National Bank Sundarwati Mahila College Campus Branch, Bhagalpur.
7. The Accountant General, Accountant General Office, Virchand Patel Marg, Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Murlidhar Mishra, Advocate
For the AG	:	Mr.Binod Kumar Labh, Advocate
For the PNB	:	Mr.Mritunjay Kumar, Advocate
		Mr.Vibhuti Kumar, Advocate
		Ms.Shilpi Singh, Advocate
For the Opposite Party/s :		Government Pleader 20

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 04-10-2024 Heard Mr. Mulidhar Mishra, learned counsel

 appearing on behalf of the petitioners; Mr. Binod Kumar Labh,

 learned counsel for the Accountant General (Bihar); Mr.

 Mritunjay Kumar along with Mr. Vibhuti Kumar & Ms. Shilp

 Singh, learned counsels for the Punjab National Bank and the

 leaned GP no.20 for the State.



2. Learned counsel appearing on behalf of the petitioners seeks modification of order dated 06.11.2023 passed in CWJC No.15084 of 2023. Order dated 06.11.2023 is re-produced hereinafter as follows :-

“Heard Mr. Murlidhar Mishra, learned counsel appearing on behalf of the petitioners; Mr. Madan Jeet Kumar, learned GP 20 along with Mr. Rakesh Ranjan, AC to GP 20, for the State; Mr. Binod Kumar Labh, learned counsel for the Accountant General and Mr. Mritunjay Kumar, learned counsel for the Punjab National Bank.

2. The present writ petition has been filed by the petitioners, who have claimed themselves to be the nominees, nominated by the deceased employee, namely, Md. Qamrul Haque, who had died issue-less in harness on 05.12.2017, while posted as Assistant in Sundarwati Mahila College, Bhagalpur. The prayer is that they are entitled to receive retiral benefits under different heads, which the deceased employee was entitled for.

3. Learned counsel appearing on behalf of the respondents submits that the law relating to the right of a nominee is well settled by the Apex Court in the case of **Sarbati Devi and Anr. v. Smt. Usha Devi, reported in (1984)1 SCC 424**. He next submits that the adoption appears to have not taken in accordance with the Hindu Adoption Act, as no evidence with respect to the give and take by original parents of the petitioners has been refereed in any manner, nor such adoption has been confirmed by the competent civil court in accordance with law.

4. The relief, as prayed for in the present writ petition, with respect to the payment of retiral benefits can only be claimed by legal representative of the deceased employee in accordance with law governing the heir in accordance with the Hindu Succession Act. The petitioners, being nominee, can only be treated to be custodian of the retiral benefits in view of the law laid down by the Apex Court in **Sarbati Devi** (supra). The pensionary benefit is



required to be distributed in equal share among all the legal representatives of the deceased employee in accordance with Hindu Succession Act.

5. This Court will not go into the question of entitlement of the petitioners whether the adoption is in accordance with law for which they have remedy before the competent civil court for seeking declaration to be the adopted children of the deceased employee.

6. With the aforesaid observations, the writ petition stands disposed of.”

3. Learned counsel for the petitioners submitted that the petitioners no. 1 and 2 are ‘nominee’ and not the ‘adopted child’ of the deceased employee, as such the following sentence typed in paragraph no.3 of order dated 06.11.2023 has no relevance and is required to be deleted.

4. Accordingly, the following sentence as under typed in paragraph no.3 of order dated 06.11.2023 is deleted.

“He next submits that the adoption appears to have not taken in accordance with the Hindu Adoption Act, as no evidence with respect to the give and take by original parents of the petitioners has been refereed in any manner, nor such adoption has been confirmed by the competent civil court in accordance with law.”

5. Learned counsel further submitted that in paragraph no.4 of order dated 06.11.2023, the words ‘governing the heir in accordance with the Hindu Succession Act’ is also required to be deleted.

6. I find that paragraph no.4 does not require any



consideration, as the same is not a typographical/inadvertent mistake requiring for deletion of “*governing the heir in accordance with the Hindu Succession Act*” .

7. The learned counsel further submitted that in paragraph no.5, the word ‘*adoption*’ has incorrectly been typed and the same also requires to be deleted.

8. Accordingly, the word ‘*adoption*’ is substituted by ‘*nominee*’.

9. Thus, the order dated 06.11.2023 is rectified and modified by making correction in Paragraph nos.3 and 5 and accordingly, paragraph nos.3 and 5 will read as follows : -

“3. Learned counsel appearing on behalf of the respondents submits that the law relating to the right of a nominee is well settled by the Apex Court in the case of **Sarbati Devi and Anr. v. Smt. Usha Devi, reported in (1984)1 SCC 424.**”

“5. This Court will not go into the question of entitlement of the petitioners whether the nominee is in accordance with law for which they have remedy before the competent civil court for seeking declaration to be the nominee of the deceased employee.”

10. Order dated 06.11.2023 passed in CWJC No.15084 of 2023 is modified to the above extent and the other parts of the order shall remain intact.

11. The present modification application is



accordingly disposed of.

(Purnendu Singh, J)

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