

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17268 of 2022

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Vijay Nath Tiwari Son of Late Indradeo Tiwari, Resident of Village- Kandi,
P.O.- Bithosharif, P.S.- Chandauti, District- Gaya.

... .. Petitioner/s

Versus

1. The Chairman-cum- Managing Director, Bihar State Power Holding Company Ltd. Patna.
2. The Managing Director, South Bihar Power Holding Company Ltd., Patna.
3. The Secretary, South Bihar Power Holding Company Ltd., Patna.
4. That Chief Engineer, Magadh Range, Gaya, South Bihar Power Holding Corporation, Patna.
5. The Superintending Engineer (Electrical) Vidyut Anchal, District- Gaya (Eastern Circle).
6. The Electrical Executive Engineer, Chandauti, District- Gaya.
7. The Superintending Engineer, Electrical Supply Board, Belaganj, Gaya.
8. The Assistant Engineer, Electricity, Belaganj, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Kashyap, Advocate Mr. Pawan Kumar Singh, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 09-01-2024

At the outset, learned counsel for the petitioner seeks permission to make necessary correction in paragraph nos. 1 and 2, as also in the nomenclatures of the respondents, in course of the day.

2. The permission is accorded.

3. Heard Mr. Prashant Kashyap, learned counsel appearing on behalf of the petitioner and Mr. Vinay Kirti Singh, learned senior counsel along with Mr. Akhileshwar Singh,



learned counsel representing the South Bihar Power Distribution Company Ltd.

4. The petitioner, claiming himself to be adopted son of Late Indradeo Tiwary, filed the present writ petition seeking a direction upon the respondents South Bihar Power Distribution Company Ltd., hereinafter referred to as “Company”, to ensure the amount of provident fund, group insurance, leave encashment and arrears of salary with increment, along with statutory interest and cost of prolonged litigation.

5. It is submitted on behalf of the petitioner that Late Indradeo Tiwary, was the uncle of the petitioner and, as he was issueless, he adopted the petitioner on 01.01.1989, after following all the rituals. Subsequently, the erstwhile employee also entered the name of the petitioner in the record of GPF No. CAB/4862, and also filed application before the Branch Manager, Punjab National Bank, Belaganj, to add the name of the petitioner, as his nominee. While he was working as lineman, he died on 29.12.2000. After demise of the erstwhile employee, the petitioner obtained succession certificate by filing Succession Case No. 12 of 2001, for withdrawal of the standing amount kept with Punjab National Bank and, on the basis thereof, he also obtained the due salary of the erstwhile



employee. Thereafter, the petitioner filed representation for grant of all the terminal dues and when the same has not been accorded, he preferred CWJC No. 6383 of 2001, wherein, the petitioner was directed to approach before the competent Court of Civil jurisdiction for declaration that he is the legally adopted son and sole heir of Late Indradeo Tiwary.

6. In pursuant to the order of the Hon'ble Court, the petitioner preferred Title Suit No. 390 of 2008, for a declaration of he being legally adopted son and sole heir of Late Indradeo Tiwary, which suit, finally decreed in favour of the petitioner declaring him to be adopted son of Late Indradeo Tiwary.

7. On the strength of the aforesaid decree passed by a Civil Court of competent jurisdiction, the petitioner again approached before the respondent Company, however, the request of the petitioner has not been acceded, leading to filing of CWJC No. 5455 of 2010. However, during the course of hearing, the Hon'ble Court taking note of the fact that the petitioner does not appear to be sole claimant of the dues of Late Indradeo Tiwary and accordingly, the writ petition was disposed of, with a liberty to the petitioner to agitate the matter before the appropriate forum, in accordance with law.

8. It is the case of the petitioner that on the



representation filed by the petitioner, the Electrical Executive Engineer, Gaya, recommended the case of the petitioner for payment of arrears of retiral dues of late erstwhile employee.

9. The petitioner, in the meantime, having realized that the judgment and decree passed by the Court of learned Sub-Judge – 1, Gaya, did not declare the petitioner to be sole legal heir, has filed Misc. Case No. 14 of 2019, however, the learned Court declined to make any modification, holding it to be time barred, vide order dated 07.09.2019.

10. Aggrieved, the petitioner filed Civil Misc. Case No. 143 of 2020, which has ultimately been withdrawn by the petitioner, with a liberty to avail his remedy for grant of retirement benefits before the competent authority, the copy of which has been brought on record by way of Annexure – 9 to the writ petition. Despite his representation, when request of the petitioner has not been acceded, he again approached this Court by filing the present writ petition.

11. It is submitted on behalf of the petitioner that despite, having obtained an unimpeachable document by way of judgment and decree, passed by a competent Court of Civil jurisdiction, declaring the petitioner to be the legal heir of the deceased employee, he has not been accorded the retiral benefit



and on the ground of technicalities, he has been deprived from his entitlement to get the retiral benefits/other dues of Late Indradeo Tiwary, who is non else, but the adoptive father of the petitioner.

12. Per contra, Mr. Singh, learned senior counsel by referring to the statements made in the counter affidavit has submitted that during the lifetime, the erstwhile employee had filed an application and the affidavit, showing the wrong intention of the petitioner. It is also submitted that from the service record, it appears that the erstwhile employee had also taken advances from his GPF for medical treatment of his wife and marriage of his two daughters, who have not been made party in any proceeding. Moreover, this is the 4th round of litigation and even pursuant to the order of this Court, the petitioner has failed to bring on record the judgment or any valid documents, showing the petitioner to be the sole legal heir.

13. Learned senior counsel next submitted that irrespective of the fact that the petitioner got declaration of Sub-Judge – 1, Gaya, with regard to him, being legally adopted son of Late Indradeo Tiwary, but he has failed to bring on record that he is the sole heir and thus, in view of the discrepancies, which reflect from the record and his declaration, that's why, he



could not be treated as sole heir, especially, in view of the order dated 20.09.2005, passed by this Court in CWJC No. 6385 of 2001. It is lastly submitted that unless the petitioner gets such declaration that he is the sole heir of Late Indradeo Tiwary, the petitioner is not entitled for any relief and the present successive writ application is not of any help.

14. This Court has anxiously heard the learned counsel for the respective parties. From the records, it is manifest and not in dispute that the petitioner is nephew of the erstwhile employee, and there is a legal declaration in his favour with regard to his being adopted son. It is also the fact that, till date, no other claimant has come to claim for the retiral benefits/other dues of Late Indradeo Tiwary, who died in harness, way back in the year 2000, itself.

15. This Court has also seen that, time without number, the petitioner has approached before this Court and he was directed to prove his case of he being the sole heir and adopted son. In order to put the quietus to the litigation, this Court deems it proper to dispose of the writ petition, with a direction to the Managing Director, South Bihar Power Distribution Company Ltd., to consider the claim of the petitioner, in the light of the judgment/decreed passed by the



learned Sub-Judge 1, Gaya in Title Suit No. 390 of 2008. It is also expected that before passing any final order, the respondent no. 2, shall be at liberty to make a discrete enquiry with regard to presence of any other legal heirs of erstwhile deceased employee and in case of there being any other claimant, after giving him/her proper opportunity of hearing, shall pass reasoned and speaking order and, in case, the claim of the petitioner finds favour, all the consequential benefits must be paid to him. The entire exercise must be completed within a period of 12 weeks, from the date of receipt/production of a copy of this order.

16. This disposes the writ petition.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.01.2024.
Transmission Date	NA

