

(2018) 04 PAT CK 0121

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10236 Of 2016, Interlocutory
Application No. 1387 Of 2018

Bandana Sinha

APPELLANT

Vs

Magadh University Through The Registrar And Ors

RESPONDENT

Date of Decision : 23-04-2018

Acts Referred:

Citation : (2019) 1 PLJR 764

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Amaresh Kumar Sinha, Shivendra Kishore, Arabind Nath Pandey,
Anurag Saurav, Sanjay Singh

Final Decision : Allowed

Judgement

Re.: Interlocutory Application No. 1387 of 2018

1. The present Interlocutory Application has been filed on behalf of one Shobha Prasad, who was the ex-wife of the deceased Bishundeo Prasad,

whose payment of pensionary benefits is the issue in the writ petition. The same has been filed seeking intervention.

2. Learned counsel in support of the intervention petition submitted that though in the divorce case, she has lost and even the First Appellate Court in

Miscellaneous Appeal No. 13 of 2003 had also dismissed the application but challenge to the same before this Court in Miscellaneous Appeal No. 66

of 2007, though initially dismissed for default on 23.01.2015, subsequently M.J.C. No. 2380 of 2017 has been filed seeking recall of the order and

notice has been issued.

3. Learned counsel for the petitioner submitted that she is not the wife and, thus, is not even remotely connected with the lis. It was further submitted

that the intervener applicant's daughter is already on record, being respondent no. 7, who has appeared and filed counter affidavit and, thus, if at all required, her interest is already protected through her daughter.

4. Having considered the aforesaid, the Court finds that the intervener applicant having been divorced in the year 2001 and having lost at the appellate stage and even in the High Court it is only on the restoration application that notice has been issued and not on the main appeal, matters cannot be

allowed to wait till the decision in the said application, as even later on, if at all there is any occasion for the intervention applicant to claim any benefit,

there is sufficient scope and provision in law for such recovery.

5. In view thereof, the Court does not find any reason to allow the Interlocutory Application and accordingly the same stands dismissed with the aforesaid observations.

Re.: Civil Writ Jurisdiction Case No. 10236 of 2016

6. Heard learned counsel for the petitioner; Magadh University (hereinafter referred to as the 'University') and respondent no. 7

7. The petitioner has moved the Court for the following reliefs:

i) For the issuance of a writ in the nature of writ on Mandamus or any other appropriate writ or order or direction, commanding the

respondents to pay the arrears of salary including the salary for the period April 2009 to October 2009 with pay revision, with pension and

dearness allowance, Gratuity, Contributory Provident Fund (C.P.F.), Group Insurance, Earned Leave and other consequential and

financial benefits with 18% interest per annum.

ii) For any other relief to which the Petitioner may be found entitled.

8. The undisputed facts in the case are that the mother of the respondent no. 7 was initially married to Bishundeo Prasad but the two were divorced in

Matrimonial Suit No. 111 of 2000 by judgment and decree dated 17.10.2001. The mother of the respondent no. 7 preferred Miscellaneous Appeal No.

13 of 2003 which also was dismissed by order dated 19.01.2007 by the Additional Principal Judge, Family Court, Patna. Challenge to the same before

this Court in Miscellaneous Appeal No. 66 of 2007 resulted in dismissal of the appeal for default on 23.01.2015. Though, subsequently after more than

two years of such dismissal, M.J.C. No. 2380 of 2017 has been filed by the

mother of respondent no. 7, for restoration of Miscellaneous Appeal No.

66 of 2007, but only notice in the restoration application has been issued. Thereafter, on 26.01.2009, Bishundeo Prasad died and the petitioner being

the sole wife applied for death-cum-retiral dues, including some of the dues which were unpaid pertaining to his service period.

9. Upon notice, the respondent no. 7 has appeared and also filed counter affidavit.

10. At the very outset, learned counsel for the petitioner submitted that she is agreeable to the University paying her family pension being the wife, but

with regard to other dues, she is ready for dividing half and half between herself and the other branch, which is respondent no. 7, as of now.

11. Learned counsel submitted that initially, the petitioner was agreeable to forgo the claim for compassionate appointment, to which she had the first

right, in lieu of the entire death-cum-retiral benefits being paid to her, but because of respondent no. 7 has not agreed to it, she is now only praying that

admitted 50% of the dues, which is beyond any controversy, be paid to her, excluding family pension to which she is the sole claimant in law.

12. Learned counsel for the respondent no. 7 submitted that the mother has filed restoration in Miscellaneous Appeal and then if the Court interferes

she may have a claim of the dues of the late Bishundeo Prasad.

13. Considering the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner is

entitled to the relief claimed for to the extent of what learned counsel appearing on her behalf has stated before the Court today. Even on direct query

of the Court to learned counsel for the respondent no. 7 as to whether in law, he could have any opposition to 50% of the dues being paid to the

petitioner, he had nothing to oppose and in fact admitted that she had the right to 50% and only with regard to the rest 50%, either her mother or in her

absence she would be claimant. Even with regard to family pension, he is not in a position to controvert the fact and as of today, it is only the petitioner

who is the wife and, thus, she is the sole claimant on family pension as admittedly even on the date of death of Bishundeo Prasad, the respondent no. 7

was already married. The Court, thus, holds that in any view of the matter, family pension and 50% of all the dues of late Bishundeo Prasad have to

be given to the petitioner.

14. Accordingly, mandamus is issued to the authorities of the University to make payment of family pension, along with arrears, as well as 50% of the remaining dues of late Bishundeo Prasad, either post retiral or which may be due for the period he was in service of the University, expeditiously and latest within three months from the date of production of a copy of this order before the respondent no. 4.

15. As the respondent no. 7 has not taken any categorical stand with regard to accepting the remaining 50%, if she so desires, she may also make an application before the University for grant of payment of the same, failing which the University, for the present, shall hold it as trustee for any claimant, later on the basis of any order of the Court. The Court would make it clear that as the respondent no. 7, who is the sole claimant of the other 50% of the dues, except family pension, having not accepted such payment before the Court today, any payment which the University shall be making later on shall not make them liable to pay any interest on the same.

16. The writ petition stands allowed in the aforementioned terms.