

**(2008) 09 JH CK 0084**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 7532 of 2006**

Carefull Kandeyang

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 23-09-2008

**Acts Referred:**

**Citation :** (2009) 57 BLJR 307 : (2008) 4 JCR 494

**Hon'ble Judges :** Rakesh Ranjan Prasad, J

**Bench :** Single Bench

**Advocate :** Ananda Sen, for the Appellant; Patra, for State M.M. Sarma, for the Respondent No. 5, for the Respondent

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## **Judgement**

R.R. Prasad, J.—This writ application has been filed for a direction to the respondent to pay death-cum retiral benefit to the petitioner, being widow of late Bijay Kumar Kandeyang, who died in harness on 12.2.2004 and also for a direction to the respondent to consider the case of the petitioner for her appointment on compassionate ground.

2. Leaned Counsel appearing for the petitioner submits that late Bijay Kumar Kandeyang while was working as Head Clerk in the office of Circle Officer, Kumardungi died on 12.2.2004. Thereupon, the petitioner, being first wife, filed an application before the Circle Officer (respondent No. 3) for payment of death-cum-retiral benefit to her and also asked for her appointment on compassionate ground. Upon which, certain amount in part due to be paid on account of gratuity, leave encashment, group Insurance and even arrears of pension was paid. But rest of the amount due to be paid on account of arrears of provisional pension, group insurance and the provident fund was not paid on account of the fact that one Malin Kandeyang, second wife of the deceased put objection on the matter of payment of the rest of retrial dues to this petitioner and on that objection the respondent withheld the payment which is quite illegal as second wife is not entitled to have pensionary benefit on account of death of the husband as the Government servant in terms of notification issued by the

Department of Personnel and Administrative Reforms, Government of Bihar issued on 23.6.2005 (Annexure 2 of the rejoinder to the counter affidavit) is not supposed to have second marriage without permission of the departmental head and as such petitioner being first wife is entitled to get death-cum-retiral benefit on account of death of her husband.

3. Counter affidavit has been filed on behalf of the respondent stating therein that on the death of Bijay Kumar Kandeyang, certain payment on account of group insurance, gratuity, unspent earned leave and arrears of provisional pension were paid but subsequently when the objection was raised by Malin Kandeyang claiming to be the second wife, a sum of Rs. 44,660/- accrued as arrears of provisional pension and further a sum of Rs. 34,476/- due to be paid on account of group insurance could not be disbursed because of the reason of the dispute in between the first wife and second wife. Further a sum of Rs. 2,21,910/- payable to the heirs of the deceased could not be paid for want of authority from G.P.F. Directorate.

4. Stand of respondent No. 5 as has been disclosed in the counter affidavit is that husband of respondent No. 5 was member of Scheduled Tribe and as per customary law, second marriage is permissible and as such, status of the second wife is equal to the status of the first wife and hence, respondent No. 5 is entitled to have half share over the entire death-cum-retiral dues of her husband and that the petitioner has already received more than half of the share in the death-cum-retiral benefit and the remaining amount is to be paid to the respondent No. 5 and her children shown in the succession certificate granted by Additional Deputy Collector (Annexure 5A).

Having heard learned Counsel appearing for the parties and on perusal of the record, it does appear that Bijay Kumar Kandeyang while was working as Head Clerk in the office of Circle Officer, Kumardungi died in harness leaving behind the petitioner as first wife, respondent No. 5 as second wife, four children from the petitioner and two children from the respondent No. 5. On account of death of Bijay Kumar Kandeyang, when petitioner filed an application before the Circle Officer, certain amount on account of retiral benefit as has been disclosed in the counter affidavit was paid but certain amounts were withheld by the respondent as respondent No. 5 being second wife put objection in making payment to the petitioner and that has led to filing of this writ application.

5. Now the question arises as to who are entitled to get death-cum-retiral benefit on account of death of Bijay Kumar Kandeyang?

6. In order to find out answer, I need not go far away but to refer notification issued by the then State of Bihar under memo No. PC-1 Miss-41/02/10,059/Bi dated 6.9.1996 stipulating therein that Government servant, during subsistence of first marriage, if takes another marriage, the second wife will not be entitled to family pension but children begotten from her would be entitled for family pension. In view of the stipulation made under notification, as referred to above,

respondent No. 5 is not entitled to family pension but two children be gotten from her are certainly entitled to have share in the family pension and other retiral dues and at the same time, petitioner as well as her four children would be entitled to have share in the family pension and other retiral dues.

7. Accordingly, retiral dues be distributed among the petitioner and four children on the one hand and two children of respondent No. 5 on the other hand.

8. So far the matter relating to compassionate appointment is concerned, the petitioner is directed to file a representation in prescribed form before the Deputy Commissioner, Singhbhum West, respondent No. 2 for appointment on compassionate ground, who will be taking the decision in the matter at the earliest, preferably within a period of four months from the date of receipt/production of a copy of this order.

With the aforesaid direction/observation, this writ application is disposed of.