

(2013) 08 JH CK 0021

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3330 of 2009

Kauleshwar Prajapati

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Citation : (2013) 4 AJR 321

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : A.K. Sahni, for the Appellant;

Final Decision : Disposed Off

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner had earlier approached this Court in W.P.(S) No. 5808 of 2007 to consider his case for appointment on compassionate ground in view of death of one Dhaneshwar Prajapati, claiming himself to be the son of the deceased employee. He had also sought direction upon the respondents for payment of his share in death-cum-retiral dues and in the arrears of salary, which are legally payable to the deceased employee. In the said writ petition, the matter relating to the existence of two widows of the deceased employee was also brought to the notice of the Court and that the first wife i.e. widow, Parwa Devi had a son, namely, Ganesh Prajapati.

2. After hearing learned counsel for the petitioner as well as learned counsel for the Respondents-State, the matter was disposed of by directing the respondents to dispose of the representation of the petitioner within a period of two months. The operative part of the order is quoted hereunder:

From the facts and circumstances, as explained, the demand by the respondents that the petitioner should submit a "No objection Certificate" in respect of both the claims made by the petitioner does not appear to be unjustified and unreasonable. However, if on the basis of their own policy, the respondents are

satisfied in respect of the eligibility and claim of the petitioner for his compassionate appointment under the terms of the scheme followed by the Government in this regard, the respondents shall consider the same and communicate their decision on the representation of the petitioner to this effect. As regards payment of retrial dues, if a nominee has been named by the deceased employee in his service records, then the respondents shall pay the retiral dues to such nominee who shall receive the same in trust in respect of the shares of all the other legal heirs and successors of the deceased employee.

The respondents shall dispose the representation of the petitioner in the light of the above observations within two months from the date of submission of a representation by the petitioner along with a copy of this order.

With the above observations, this writ petition is disposed of.

3. Thereafter, the impugned order vide Annexure 5 dated 18th September, 2008 has been passed by the Deputy Director, Soil Conservation Research Centre, Hazaribagh under the Respondents-Department of Agriculture, Government of Jharkhand. The petitioner's claim has been rejected as, "No Objection Certificate" could not be produced from the first wife as indicated in the order passed by this Court as referred to above and he had not able to produce any further legal claim on affidavit for seeking such compassionate appointment and proportionate share in death-cum-retiral dues of the deceased employee.

4. This led to filing of the present writ application by the petitioner. During the pendency of the writ application, the son of the first wife, namely, Ganesh Prajapati born out of wedlock with the deceased employee, Late Dhaneshwar Prajapati, was granted compassionate appointment vide order dated 1st January, 2010. Though that was being sought to be challenged by the petitioner by way of interlocutory application being I.A. No. 3634 of 2011, but learned counsel for the petitioner submits that the petitioner is now not inclined to the claim for compassionate appointment or challenge to the compassionate appointment of the son of first wife namely Ganesh Prajapati in view of Clause 2(a) contained in the order of appointment, by which he is supposed to maintain the dependent of the deceased employee. However, it is submitted on behalf of the petitioner that from perusal of Annexure-B to the counter-affidavit filed by respondent Nos. 2, 3 & 4, which is an application made by said Ganesh Prajapati (son of first wife), it is clear that he himself had consented to proportionate division of the earning of the deceased employee (his father) in the matter of pension and other death cum-retiral-dues and arrears of salary. These facts were in the notice of the official respondents as the application was made on 14th October, 2005, but in spite of that petitioner's claim has been refused vide Annexure 5 vide order dated 18th September, 2008, which is impugned herein. In such circumstances, the respondent should be directed to reconsider the matter after hearing both the parties. He also submits that the dependent of the petitioner including those born out of second wife are also entitled to the share in the immovable and movable properties of the deceased employee.

5. Learned counsel for the Respondents-State, on the other hand, submits that the petitioner in view of the order passed in his case earlier being W.P.(S) No. 5808 of 2007 dated 13th August, 2008, was supposed to produce "No Objection Certificate" from the first wife for seeking compassionate appointment and other proportionate share in death-cum-retiral dues of the deceased employee. However, he did not produce the said "No objection Certificate". The entire death-cum-retiral dues of the deceased employee were paid to the first wife and the son of the first wife was also appointed on compassionate ground. In such circumstances, the respondents cannot be faulted for taking such a decision. Now both compassionate appointment have been given and the death-cum-retiral dues have also been disbursed much back. Hence, the cause of action of the petitioner in the writ petition does not survive.

6. I have heard learned counsel for the parties and gone through the materials on record including the impugned order. The petitioner now seeks to confine his claim to the proportionate share in death-cum-retiral dues of the deceased employee including the arrears of salary, which were refused on account of absence of "No Objection Certificate" from the first wife. In view of the observations made by this Court earlier in W.P.(S) No. 5808 of 2007, the petitioner has been able to show that the son of the first wife himself made an application before the respondent on 14th October, 2005, itself Annexure-B to the counter-affidavit that proportionate share in death-cum-retiral dues as also other earning of the petitioner's father be proportionately apportioned to the said person Ganesh Prajapati. It therefore appears that the son of the first wife, Ganesh Prajapati had made such application before respondents even before the claim of the petitioner was being considered. The appointment letter issued on compassionate ground which is Annexure 6 to the interlocutory application also shows that the said Ganesh Prajapati was under an obligation to maintain the dependent of the deceased employee both widows and other children.

7. In such circumstances, therefore, it appears that the matter requires reconsideration at the level of the respondents themselves after taking into account all such attendant facts and circumstances. In such circumstances, the matter is being remanded to the respondent No. 3, Deputy Director, Soil Conservation Research Centre, Hazaribagh, to once again consider the subsisting claim of the petitioner of proportionate share in death-cum-retiral dues and other dues of the deceased employee. After giving due opportunity of hearing to both the petitioner and said Ganesh Prajapati, the respondent No. 3, Deputy Director, Soil Conservation Research Centre, Hazaribagh, shall consider the matter once again and take a decision in accordance with law after taking into account all such attendant facts and circumstances, which are being brought to his notice by the respective persons within a period of 16 weeks from the date of receipt/production of a copy of this order. Accordingly, the writ petition is disposed of in the aforesaid term.