
(2013) 01 PAT CK 0015
In the Patna High Court
Case No : CWJC No. 23859 of 2012

Pinki Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2013) 2 PLJR 147

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Vishal Saurabh and Raj Kamal, for the Appellant; K.K. Jha and Sanjay Kumar -I, for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard the learned Counsel for the petitioner, State and the Bihar Legislative Council. The petitioner is stated to be the handicapped unmarked daughter of late Ramdeo Sahu, a former MLC, who was deceased on 25.4.2005 claiming family pension and aggrieved by grant of the same to Respondent No. 5 who had been living with the deceased after the death of his wife on 18.9.1993.

2. Learned Counsel for the petitioner submits that Rule 17(3) of the Bihar Legislative Assembly (Salary, Allowance and Pension of Members) Rule, 2006 (hereinafter referred to as "the Rule") confining family pension to the wife of the deceased only is violative of Article 14 of the Constitution. The definition of "Family" in Rule 2(XII) includes, dependant daughter. The petitioner because of her physical handicap of 65% was totally dependant and being lawful descendent of the deceased has a preferential claim over Respondent No. 5 who was not legally wedded wife of the deceased.

3. The petitioner was not aware that Respondent No. 5 had been granted family pension in the year 2006 and was made aware of the same only in 2011. The writ petition has therefore been filed in December 2012 after her request before

the authorities was turned down on 10.8.2011. The last submission is that at least the petitioner is entitled to apportionment of family pension with Respondent No. 5 @ 50%.

4. Counsel for the Council submitted that family pension was granted to Respondent no. 5 in the year 2006. The petitioner in her representation submitted on 24.6.2011 herself acknowledges the relationship of her father with Respondent No. 5 and who obtained certain thumb impressions from the petitioner after death of her father. If the petitioner is today 35 years of age she was approximately 28 years of age when she gave her thumb impression voluntarily. The Rule provides for family pension to be paid only to the wife of the deceased. The petitioner is not a minor dependent daughter under Rule 2(XII). There is no explanation why the petitioner did not raise the issue for long years since 2006 but despite full awareness sought to raise the controversy after nearly six years in 2011 and has filed the writ application about one and a half years after rejection of the claim.

5. Once the petitioner acknowledges the relationship between her father and Respondent No. 5, the question of a valid marriage becomes irrelevant. Reliance is placed on D. Velusamy Vs. D. Patchaiammal, .

6. No family member of a person is entitled to family pension a vested right. It is a statutory right Pension is given to a person under the law in recognition and as reward for the services rendered during the lifetime. The wife is considered an integral part of the person who survived on the income earned by the deceased. She has therefore been recognised as a recipient of family pension as a source of livelihood. Minor children have no source of income and are dependent on the bread-winner. So long as the Statute provides for payment of family pension to the wife and minor children it being matters of legislative policy it is not the jurisdiction of the Court under Article 226 of the Constitution of India to rewrite the legislative enactment by including an adult daughter even if she be dependent by reason of any handicap.

7. The petitioner acknowledges having given thumb impressions at the request of Respondent No. 5 immediately after the death of her father. There is no explanation worth the name that if she was aware that family pension was being collected by Respondent No. 5 since 2006 why was a belated claim raised only in 2011. The petitioner being a major even on the death of death (sic: deceased?) is not entitled to be considered merely because she may have been dependant if she was not a minor on the date of entitlement. Even if the Court has sympathy with the petitioner on the ground that she is handicapped and may be dependant on the deceased for survival and that family pension had been granted to Respondent No. 5 who was not looking after her, in absence of statutory interdict it would not be appropriate jurisdiction to invoke sympathy for grant of relief under Article 226 of the Constitution of India.

8. The facts of the present case leave the Court satisfied that even otherwise it is

not an appropriate case where virus (sic--vires?) to the Rule, if it could be considered, should be done. That question is left open for consideration in an appropriate case.

9. The respondents have rightly relied upon the case of D. Velusamy (supra) in so far as relationship between the deceased and Respondent No. 5 is concerned entitling her for family pension. It has been held in paragraphs 31 & 32 as follows:--

31. In our opinion a "relationship in the nature of marriage" is akin to a common law marriage. Common law marriages require that although not being formally married:--

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

(See "Common Law Marriage" in Wikipedia on Google)

In our opinion a "relationship in the nature of marriage" under the 2005 Act must also fulfil the above requirements, and in addition the parties must have lived together in a "shared household" as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a "domestic relationship".

32. In our opinion not all live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a "keep" whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage.

10. The alternative claim that at least she should be given 50% of the pension shared with Respondent No. 5 is a claim based on sympathy not amenable to jurisdiction under Article 226. Nothing precludes the petitioner from pursuing that claim with Respondent No. 5 and if they arrive at an amicable settlement, they can approach the authorities jointly. The writ application is dismissed with the aforesaid observations.