

(2000) 12 PAT CK 0033
In the Patna High Court
Case No : L.P.A. No. 470 of 2000

Shyam Sunderi Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-12-2000

Acts Referred:

Citation : (2001) 1 BLJR 369 : (2001) 1 PLJR 272

Hon'ble Judges : Nagendra Rai, J; Ashok Kumar Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is directed against the part of the judgment dated 25.1.2000, passed by a learned Single Judge in C.W.J.C. No. 5468 of 1997, whereby he has set aside the direction given in the order of the Lokayukta dated 12.12.1991 (Annexure-7 to the writ application) regarding deduction of 1/3rd of the salary of Ram Ganesh Rai (respondent No. 8 herein) and payment of the same to Shyam Sunderi Devi, his step-mother (appellant herein).

2. The facts necessary for the disposal of the present appeal are that Rajendra Rai was an employee of the State Government and he died in harness in the year 1985 leaving behind his two widows, namely, Shyam Sunderi Devi (appellant) and Mukhiya Devi. Ram Ganesh Rai is the son from Mukhiya Devi, whereas, Smt. Bibha Kumari is the daughter from Shyam Sunderi Devi. Respondent No. 8 Ram Ganesh Rai was appointed on compassionate ground on 22.6.1990.

3. The dispute arose between the two widows as to the payment of retiral dues and according to the agreement between the parties the entire retiral dues were to be paid to Shyam Sunderi Devi and respondent No. 8 Ram Ganesh Rai was to be appointed on compassionate ground. The said agreement was not acted upon by the parties and appellant Shyam Sunderi Devi filed a petition before the Lokayukta making a grievance about the same and also prayed for cancellation of appointment of Ram Ganesh Rai on compassionate ground.

4. Taking into consideration the matter, the Lokayukta by order dated 12.12.1991 directed as follows:

(a) 1/3rd of salary of Shri Ram Ganesh Rai, who was appointed on compassionate ground on being deducted every month be paid to his step mother Shyam Sunderi Devi.

(b) Both the widows will be entitled to the pension to the extent of half and half each.

(c) With regard to other dues payable to the deceased employees, two widows will get 1/6th each and the son and the daughter will get 1/3rd each.

5. Respondent No. 8 Ram Ganesh Rai challenged the aforesaid order of the Lokayukta before the learned Single Judge and the learned Single Judge upheld the other directions given by him, but set aside the direction with regard to payment of 1/3rd of salary of respondent No. 8 to the appellant on the ground that there is no provision under which a direction can be made for payment of 1/3rd salary of respondent No. 8 to the step-mother.

6. Earned Counsel appearing for the appellant submitted that the appointment on compassionate ground, according to the Government circular, is made with the sole object to maintain the family members dependent on the deceased employee. It is not an appointment simpliciter without any obligation on the appointed person to maintain the family. The step-mother, i.e., the appellant was to be maintained out of the salary of respondent No. 8, but when she was not maintained, she complained that respondent No. 8 should be dismissed from service as he has not acted according to the obligation, which is imposed in law on the person appointed on compassionate ground and as such the Lokayukta was justified in directing for payment of 1/3rd salary of respondent No. 8 Ram Ganesh Rai to the appellant.

7. Earned Counsel appearing on behalf of respondent No. 8, on the other hand, submitted that in the application filed before the Lokayukta, no complaint was made that she was not being looked after by respondent No. 8 and the only prayer was made that according to the agreement, the entire retiral dues were to be paid to her but the same were not paid and as such the very direction by the Lokayukta for payment of 1/3rd salary to the appellant was not permissible in law apart from the fact that there is no such provision in law.

8. According to the assertion of the appellant, there was a settlement earlier, according to which, the entire retiral dues were to be paid to her and respondent No. 8 representing the other widow was to be provided appointment on compassionate ground. Respondent No. 8 and her mother did not adhere to the aforesaid agreement, on the other hand, withdrew also some retiral dues. Thus, the agreement was not acted upon and as such prayer was made to cancel the appointment of respondent No. 8.

9. The sole object of appointment on compassionate ground is to mitigate the

hardship caused to the family due to the untimely death of the bread-earner and it is not an appointment so as to provide job to a particular individual. Out of the two widows of the deceased employee, one widow (appellant) complained before the Lokayukta about the fact that the entire retiral dues were not paid to her and she is facing difficulty in maintaining her and respondent No. 8 was not looking after her and as such his appointment having been made on compassionate ground should be cancelled. In such a situation, the Lokayukta was justified in coming to the conclusion and passing an order as aforementioned so that the appellant stepmother of respondent No. 8 also gets some amount from the salary of respondent No. 8 for maintaining her.

10. No doubt, there is no any such provision, but the apex Court in a similar circumstance in the case of U.P. State Electricity Board v. U.P. Bizali Karamchari Sangh, (1997) 11 SCC 372 , has passed an order that a part of the salary should be paid to the widow for her maintenance in case of appointment on compassionate ground. Thus, in view of the law laid down by the Supreme Court, there is no difficulty in coming to the conclusion that when an appointment on compassionate ground is made then a direction may be issued to the appointed person to part with some of his salary to other members of the family depending upon the facts and circumstances of a particular case.

11. Coming to the facts of the present case, it appears that the appellant has received some retiral dues and is getting pension also to the extent as indicated in the order of the Lokayukta and as such it cannot be said that she has no source of income at all. However, taking into consideration the facts of the case and the strained relationship between the parties and indifferent attitude of respondent No. 8 towards his step-mother, we are of the view that a direction should be issued for deduction of 20% of the salary of respondent No. 8 and payment of the said amount to the appellant from today.

12. As it appears, 1/3rd salary of respondent No. 8 has been deducted and paid to the appellant since 1991 till the date of filing of the writ application, i.e., 21.6.1997 and direction has been issued by the learned Single Judge for non-refund of the said amount, which has attained finality. Thus, after 21.6.1997, the appellant is entitled to 20% of the salary. Accordingly, 20% of the salary of respondent No. 8 is to be deducted per month and paid to the appellant till her life time.

13. In the result, this appeal is allowed with the aforesaid direction.