
(2010) 09 PAT CK 0023
In the Patna High Court
Case No : LPA No. 862 of 2006

Smt. Chinta Devi

APPELLANT

Vs

Pramod Pandey, Chand Chaura and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Citation : (2011) 59 BLJR 1615 : (2011) 2 PLJR 61

Hon'ble Judges : Shiva Kirti Singh, J; Hemant Kumar Srivastava, J

Bench : Division Bench

Advocate : Vivek Kumar, for the Appellant; Sunil Kumar Mandal, Bipin Kumar for State, Rajendra Prasad Singh, Rajeev Kumar Singh and Omkar Singh, for the Respondent

Judgement

Shiva Kirti Singh and Hemant Kumar, Srivastava, JJ.—Heard learned Counsel for the Appellant and learned Counsel for the Respondent No. 1.

2. The present dispute is between a mother who is the Appellant and one of her several sons, the Respondent No. 1. It is unfortunate that in spite of our attempt, the dispute could not be settled amicably and we have to perform the unpleasant task of deciding what would be appropriate amount of maintenance to the Appellant from her son, the Respondent No. 1 who is in service due to death of his father in-harness.

3. From the submissions, it appears that father of Respondent No. 1 was a school teacher and died-in-harness in the year, 1994 and on compassionate ground the Respondent No. 1 was appointed as Assistant Teacher in September, 1995. It appears that there was a suit for partition filed by the Appellant in the year, 1999 and about the same time the Appellant approached the District Magistrate, Gaya with a grievance that Respondent No. 1 was not fulfilling his obligation to look after the family of her deceased-husband in spite of getting compassionate appointment. On her complaint, she was paid some amount by Respondent No. 1 as maintenance but ultimately, she faced difficulty in collecting the money and approached the Commissioner, Magadh Division to pass an order which has been

communicated to the District Magistrate, Gaya through letter dated 9th December, 2000 contained in Annexure-1 to the writ petition Vide that order, 50 per cent of the salary of the Respondent No. 1 was to be deducted by the concerned authority and to be given to the Appellant.

4. Against the aforesaid order of the Commissioner, Respondent No. 1 preferred writ petition bearing CWJC No. 6678 of 2011 which was disposed of by the order under appeal dated 4.8.2006.

5. Considering the submission that Appellant had received a sum of Rs. 4 lacs and odd towards retirai dues of her deceased-husband and was getting family pension, the writ court accepted the offer of the Respondent No. 1 to pay a sum of Rs. 1,500/- per month to the Appellant for her maintenance and on that basis, the order of the Commissioner was set aside and writ petition was allowed.

6. Without going into unnecessary details, we may indicate here that on our direction, the Appellant has produced relevant papers to show that she is presently getting family pension at the rate of Rs. 4,825/- per month. In spite of our repeated orders and directions, the Respondent No. 1 has avoided to give details of his current salary. On 26.8.2010, we had indicated that we shall draw the permissible presumptions on account of non-cooperation of Respondent No. 1 and shall dispose of the matter on the next date even if full details are not made available to the court. On the basis of her knowledge, the Appellant has claimed that presently Respondent No. 1 is getting about Rs. 18,000/- per month. Learned Counsel for the Respondent No. 1 fairly submits that he has no instruction on this issue.

7. Considering our earlier order, we draw the presumption that Respondent No. 1 is avoiding to disclose the full facts because his monthly salary must be more than Rs. 18,000/- per month. However, taking his monthly salary to be Rs. 18,000/- we have to decide as to what would be just and proper amount to be given to the Appellant for her maintenance on the special ground that Respondent No. 1 has been given compassionate appointment by the State of Bihar on his undertaking that he shall maintain the dependants of his late father. The only dependant now requiring maintenance is the Appellant. In our view, since she is having a house to live in and a family pension of Rs. 4,825/-, an amount of Rs. 2,500/- per month would be sufficient by way of maintenance from Respondent No. 1 to take care of daily needs of the Appellant.

8. Accordingly, this appeal is allowed in part without interfering with other parts of the order passed by the writ court. The amount to be made available to the Appellant by Respondent No. 1 is determined at Rs. 2,500/- per month. The concerned authorities of the Education Department, Government of Bihar are directed to deduct this amount from monthly salary of the Respondent No. 1 every month and transmit to the Appellant regularly so that she does not have to depend upon litigation to enforce this order for maintenance. In the facts of the case, the parties shall bear their own costs.

9. Let a copy of this order be given to learned Counsel for the State of Bihar for communication to the concerned authorities for compliance.

10. If the amount fixed by the writ court by way of monthly maintenance has not been paid by the Respondent No. 1 then such arrears shall be realizable from him and for that, the Appellant will be entitled to take necessary steps.