

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1233 of 2024

Nazara Khatoon @ Najra Khatun Wife of Haider Ali, Resident of ward no. 29, Near Railway Station, Village - Bagha Baghi, P.O. - Begusarai, P.S. - Town Begusarai, District- Begusarai (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Begusarai.
2. The District Magistrate, Begusarai.
3. The Sub-Divisional Officer, Begusarai Sadar, Begusarai.
4. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

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| For the Petitioner/s | : | Mr. Mukesh Kumar Sinha, Advocate |
| For the Respondent/s | : | Mr. Anil Kumar, AC to SC-8 |
| For the Accountant General | : | Mr. Ram Kinker Choubey, Advocate |

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 06-08-2024

Heard the parties.

2. The petitioner is the adopted daughter of late Kamrun Khatoon who died in harness on 05.12.2018, has invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking a direction upon the respondents especially respondent no. 2, the District Magistrate, Begusarai to sanction all the death-cum-retiral benefits, including pension, gratuity, leave encashment, provident fund accumulation, group insurance and other dues.

3. Learned Advocate for the petitioner contended that the mother of the petitioner died in harness on 05.12.2018 while



working as Office Peon in the Office of Sub-Divisional Officer, Begusarai and later on posted in the office of Begusarai Block. The deceased mother of the petitioner was appointed on compassionate ground after the death of her husband late Md. Nizamuddin, who was working on the post of Peon in the office of Sub-Divisional Officer, Begusarai. The petitioner being adopted daughter of late Kamrun Khatoon (deceased mother) who died in harness on 05.12.2018 filed an application before the Sub-Divisional Officer, Begusarai on 25.06.2019, requesting for payment of all the terminal benefits of her mother, who died during her service period.

4. The SDO, Begusarai vide its letter no. 1107 dated 15.07.2019 directed the Circle Officer, Begusarai to issue a family list/certificate in order to ensure payment of all the retirement benefits and other dues. Despite the application filed by the petitioner, when she has not been accorded the terminal-cum-retiral benefits of her mother, she again filed another representation along with all the necessary documents, including the family lists certificate, the educational certificate issued by the Madarsa Education Board as well as the documents in relation to oral adoption. On receipt of the aforesaid letter, the SDO, Begusarai vide its letter no. 1821 dated 21.10.2019



directed the Circle Officer, Begusarai to minutely verify all the documents and submit a clear report so that the decision could be taken to accord the admissible death-cum-retirement benefits.

5. Pursuant thereto, the Circle Officer, Begusarai sought an enquiry report from the Revenue Clerk and accordingly, the Revenue Clerk submitted its enquiry report dated 20.11.2019. On verification, the local people/villagers admitted the factum of adoption of petitioner by late Kamrun Khatoon and her husband late Md. Nizamuddin. The Revenue Clerk also placed on record the declaration-cum-will executed before the Notary Public as well as Panchnama of Adoption Deed.

6. Despite all the correspondences, when the authorities did not accede to the prayer of the petitioner, she filed a Succession Case No. 02 of 2021 before the learned Sub Judge 1, Begusarai for grant of succession certificate. The learned Court vide its order dated 18.04.2023 declared the petitioner as successor of late Md. Nizamuddin in order for the Estates of late Md. Nizamuddin. Accordingly, the succession certificate has been issued in favour of the petitioner, the copy of which has been placed on record vide Annexure-P/5.

7. The petitioner having obtained the succession



certificate produced the same before the concerned authorities, but no terminal/retiral benefits and other dues have been paid, compelling her to approach before this Court.

8. Adverting to the aforesaid facts, learned Advocate for the petitioner further contended that undoubtedly, the adopted child is as good as a natural child. The Bihar Pension Rules, 1950 and the notification issued time to time by the Government of Bihar through different departments made it clear that an adopted son or daughter comes within the definition of family under the liberalized pension rules. It is vehemently contended that where no records are available to satisfy the department as to whether the claimant is the widow/widower or eligible child of the concerned government servant, the succession certificate issued by a competent Court is good enough for grant of terminal/retiral dues. While concluding the submission, learned Advocate further urged that the petitioner is ready to give undertaking that in case of any eventuality or adverse order passed by any competent authority or appellate Court, she shall be abide by the order.

9. A counter affidavit has been filed on behalf of the respondent nos. 2 and 3. Mr. Anil Kumar, learned Advocate for the State while countering the submissions of the petitioner



contended before this Court that the claim of the petitioner on the basis of unregistered adoption deed is not admissible. There is no provision in Muslim Personal Law for adoption. It is further submitted that so far the family certificate issued in favour of the petitioner vide Certificate No. 288 dated 04.06.2019 is concerned, the same has already been cancelled because the petitioner has not mentioned in her application that she is adopted daughter of late Kamrun Khatoon. The petitioner though filed affidavit but she did not mention this fact of adoption.

10. In view thereof, the SDO, Begusarai vide Letter No. 3437 dated 19.12.2020 directed to submit cogent evidence that she being the adopted daughter of late Kamrun Khatoon. It is also contended that the erstwhile employee late Kamrun Khatoon in her nomination form under the General Provident Fund Rules nominated the name of her two cousins. In that view of the matter, after considering the aforementioned facts, learned Advocate thus submitted that the petitioner is not entitled to get any terminal/retirement benefits/dues on account of death of late Kamrun Khatoon.

11. This Court has carefully heard the rival contention of the parties and also perused the materials available on record.



From the facts discussed hereinabove, the petitioner *prima facie* claiming herself to be an adopted daughter of late Kamrun Khatoon and late Md. Nizamuddin. In support of her contention, she has produced a declaration-cum-will executed before the Notary Public as well as Panchnama with respect to oral partition. Even for the sake of argument, the contention of the State respondents is accepted for the time being that under the Mohemmadan Law, there is no provisions for adoption; but the respondent authorities are obligated to consider the claim of the petitioner in view of the Rules, Regulation and Guidelines issued by the Government of Bihar through the different departments from time to time, which govern the service condition of the erstwhile employee.

12. In order to determine the real claimant of family pension and terminal dues, the guidelines issued by the Finance Department vide Resolution No. 1918 dated 04.06.1986 stipulates as follows:

“(iii) Determination of real claimant of family pension.

It is the full responsibility of the petitioner to satisfy the Head of Department/Office that she/he is the widow/widower or eligible child of the concerned Govt. Servant and prove his identity by producing relevant records, i.e. P.P.O. of the deceased Govt. servant or any other available records. Where no records are available the claimant should be asked to produce any one of the following documents:



*(i) Succession certificate of the court;
or
(ii) Declaration with affidavit filed
before a
(iii) Magistrate or/Affidavit on plain
paper by the claimant along with two documents
which would be acceptable to the pension
sanctioning Authority.”*

13. There is no dispute that the petitioner approached before the Civil Court of competent jurisdiction for grant of succession certificate under Section 372 of the Indian Succession Act, 1925. The learned Court having considered the documents produced and exhibited, declared the petitioner as successor of late Md. Nizamuddin. The petitioner was also directed to execute security bond of Rs. 15 lakh with two surety and subsequent thereto, a succession certificate under Section 373 of Indian Succession Act, 1925, which is part of the record has been granted in favour of the petitioner.

14. The succession certificate issued by the competent Court is not in dispute nor there is any other claimant, who has made any objection to the entitlement of the petitioner on the basis of either adoption deed or succession certificate. So far the plea of the State that the deceased employee had nominated the name of her two cousins does not find any force.

15. True, it is that the very purpose of the nomination is to enable the State to meet its obligation and get a valid



discharge in respect thereof. In case of *Ati Razia Devi Vs. The State of Bihar and Ors., 2016 SCC Online Pat 339*, the Division Bench of this Court had considered the stand of the State that in terms of the nomination as made by the employee, State was bound to pay the nominee, if no one disputes the right, title and interest of the nominee for payment. If someone dispute the right, title and interest of the nominee, it was for him/her to move appropriate court for appropriate directions, but, so long as the nominee stood as such, State was bound to pay the nominee.

16. The learned Division Bench while dismissing the Letters Patent Appeal preferred by the appellant, who was unsuccessful writ petitioner claiming her to be the first wife of an erstwhile employee has held that *“the nominee, in matters where the status and the right is disputed, is merely a trustee for the rightful owner thereof, but, of course, subject to the right of nominee to receive and give a valid discharge. Nomination by itself, it is well settled, does not make the person the owner or the rightful recipient of the property, but holds it in trust for rightful and lawful recipient or person entitled therein.”* In such circumstances, the learned Division Bench has directed that it is open for the appellant to go before a court of competent



jurisdiction and establish her right, contrary to the nomination, and get judgment and order, in accordance thereof.

17. Now the case in hand, the petitioner, undoubtedly is in possession of succession certificate duly issued by a Civil Court of competent jurisdiction and there is no dispute in this regard. Thus, in view thereof, the respondent authorities are under legal obligation to consider the claim of the petitioner for terminal/retiral benefits and other dues of her deceased mother and accord all the admissible benefits/dues to her, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

18. The writ petition stands allowed. There shall be no order as to cost.

(Harish Kumar, J)

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