

(2014) 11 JH CK 0035

Jharkhand High Court

Case No: W.P.(S) No. 1638 of 2014

Saraswati Devi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Nov. 11, 2014

Acts Referred:

- Succession Act, 1925 - Section 372

Citation: (2015) 4 AJR 419 : (2015) 1 JLJR 86

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Binod Singh, Advocate for the Appellant; Faizur Rahman, CGC, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.

Heard counsel for the parties.

2. Petitioner claiming herself to be the widow of one late Samir Oraon has prayed for a direction upon the respondents - C.R.P.F authorities to pay death cum retiral benefits of the deceased-husband, who is said to have died in harness on 29.6.2010 in an ambush during naxal operation in Chattisgarh. She has also prayed for consideration of her case for appointment on compassionate grounds and for payment of family pension as well. Petitioner has obtained the succession certificate issued by the court of Principal District Judge, Gumla in Succession Case No. 30 of 2010 by the judgment dated 23.1.2013. The relevant paragraph of the judgment and the operative portion are being quoted herein below:--

"Para 9:- On behalf of O.P. Two witnesses have been examined, O.P.W.1 is Fulmania Devi who is O.P. No. 2 in this case has stated that Sameer Oraon was her son. He worked in C.R.P.F. He died on 29.6.2010 in an ambush incident of extremist. Petitioner was married with her son on 21.6.2009 at Jagarnathpur Mandir Nyas Samittee, Ranchi. She has stated that after the death of her son if Rs. 25,00,000/- is

given to her daughter-in-law she has no objection as she lives with the petitioner. In the cross-examination this witness has deposed that her son had not taken any loan from Government and if the amount earned by her son is given to the petitioner she has no any objection. Likewise O.P.W. No. 2 Punia Oraon has also supported the case of the petitioner saying that if the amount earned by Sameer Oraon is given to the petitioner he and villagers have no any objection.

Para 10:- On the basis of evidences on record it is therefore proved that the petitioner Saraswati Devi is the wife of Late Sameer Oraon and O.P. No. 2 Smt. Fulmania Devi W/o. Durku Oraon is the mother of the deceased. On the basis of evidences it is also proved that Durku Oraon father of the deceased is still alive but despite public notice dated 9.8.2012 issued in this regard he neither appeared nor made any objection. The service report of the Public notice is attached. The witnesses have deposed that marriage of the petitioner Saraswati Devi performed with Sameer Oraon in Jagarnathpur Mandir, Jagarnathpur Ranchi Nyas Samitte on 21.6.2009. Photo copy of the certificate is attached as Annexure-3 to this petition. The marriage has been performed according to Vedic Sashtra. It is therefore, proved that petitioner and Sameer Oraon followed Hindu religion.

Para 11:- According to Hindu Succession Act mother and widow of the deceased are Class-I heir and in presence of Class -I heir Class-II heirs are excluded from inheritance. In view of the above facts I find that except petitioner and the O.P. No. 2 there is no any other Class-I heir of the deceased. Therefore, they are entitled to received 1/2 and 1/2 share in the state of the deceased Sameer Oraon.

ORDER

Let a Joint Succession certificate be issued in the name of Petitioner Saraswati Devi W/o. Late Sameer Oraon and O.P. No. 2 Smt. Fulmania Devi W/o. Durku Oraon U/s. 372 of the Indian Succession Act, 1925 in respect of the amount of Rs. 25,00,000/- (Rupees twenty five lacs) as shown in Schedule of the plaint. Both the heirs/L.R.S of the deceased are entitled to received Rs. 12.5 Lac each".

3. It is contended by learned counsel for the petitioner that despite issuance of the succession certificate declaring that petitioner and the mother of the deceased employee are entitled to half share of the amount of Rs. 25,00,000/-, as shown in the schedule of the plaint, the respondents have not yet disbursed the amount on wholly unsustainable ground. They have also taken a plea on the issue that succession certificate does not clarify as to whether the family pension is payable to the petitioner or not. It is submitted that the question relating to genuiness of the marriage of the petitioner with the deceased has also been raised which is wholly impermissible in law after a clear finding recorded by the learned Court below in the Succession case. Therefore, respondents may be directed to release the admissible amount and also consider the case for compassionate appointment apart from making payments of family pension to her. Reliance has been placed upon Rule 54

of the C.C.S. Pension Rule, 1972, as per which family pension is payable to the family of the deceased.

4. Learned counsel for the respondent-Union of India has relied upon the contents of the counter affidavit and has submitted that there was some inquiry in relation to the marital status of the petitioner with the deceased employee, conducted through local Superintendent of Police, Gumla. Guidelines were also sought from Directorate General, C.R.P.F, New Delhi by the D.I.G, C.R.P.F. Petitioner as well as her Advocate have been requested to seek clarification in respect of the Succession Certificate issued from the concerned Court.

5. Having heard counsel for the parties and after going through the relevant materials on record, it appears that the claim of the petitioner after issuance of the Succession certificate by the competent Court should not have been questioned by the respondents. The relevant extracts of the judgment passed in the Succession case shows that the mother of the deceased, who was a witness had also accepted that the petitioner is married to her son. Learned Court after considering the rival submissions of the parties has come to a definite conclusion that the petitioner and mother of the deceased, i.e, Smt. Fulmania Devi being Class-I heirs were entitled to half share of amount of the death benefit of the deceased, Samir Oraon.

6. The respondents should therefore release the amount in respect of admissible death cum retirement benefits to the petitioner in accordance with law and the Succession certificate. The respondents should also take a decision on the claim of the petitioner for appointment on compassionate ground within a period of 12 weeks from the date of receipt of copy of this order after due verification of the relevant service records of the deceased employee and also whether the petitioner fulfills the eligibility criteria of age, educational qualification etc. The respondents are also obliged to release the family pension as are admissible under Rule 54 of the CCS Pension Rule, 1972 where under on the death of an employee, the same is payable to the family of the deceased. Let the admissible family pension be disbursed along with arrears within the same period of 12 weeks to the petitioner and any other person, who comes within the definition of family.

7. The writ petition is disposed of in the aforesaid manner.