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**(2003) 06 PAT CK 0035**

**Patna High Court**

**Case No:** C.W.J.C. No. 3257 of 2003

Girija Shankar Patel and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** June 23, 2003

**Citation:** (2003) 3 PLJR 592

**Hon'ble Judges:** Radha Mohan Prasad, J

**Bench:** Single Bench

**Advocate:** Ashutosh Ranjasic Pandey, for the Appellant; Satyavrat Verma, for State and Rakesh Kuma, for Accountant General, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Radha Mohan Prasad, J.

As prayed, learned Counsel for Petitioners is permitted to make nece(sic) corrections in the cause title as reg(sic) filing of the writ petition by the pettitioner who are minors, through their mother natural guardian.

2. The Petitioners, who are clai(sic) be minor sons and daughters of (sic) Nathuni Prasad Singh from second are aggrieved by denial of their shers (sic) death-cum-retiral dues and also fa(sic) sion as admissible.

3. The Petitioners have filed (sic)tion through their mother and natural (sic)rdian Most. Bipul Kunwar alias Most. (sic)ul Devi.

4. It appears that earlier a writ petition -bearing C.W.J.C. No. 11211 of 2001, (sic)s filed by one Chandmuni Kuwar claim (sic) to be the first wife of the deceased employee for payment of death-cum-retiral (sic)es her deceased husband Late Nathuni (sic)sad Singh, who died in harness while (sic)sted as Assistant Teacher in Government High School, Shahpur, Bihiya in the district of Bhojpur on 11.7.1999. The said (sic) petition was disposed of vide order dated 13.11.2001, contained in Annexure directing the Respondent-authorities to (sic)ction and pay all the

death-cum-retiral (sic)es to the Petitioner. In the said writ petition the mother of the present Petitioner (sic)st Bipul Kunwar was also made party Respondent No. 8. The Court directed it will be open for Respondent No. 8 to (sic)m a share in the proceeds received by the Petitioner in accordance with law through (sic) appropriate proceeding before the Civil court Said Most. Bipul Kuar filed L.P.A. No. 509 of 2001, which has been dis(sic)sed of by the Division Bench of this Court vide order dated 25.2.2003. con(sic)ed in Annexure 5. The Division Bench (sic)ing upon the decision of the Apex Court the case of Rameshwari Devi v. State of Bihar 2000 (1) Supreme 385 : 2000 (2) PLJR (SC) 15, wherein the Apex Court (sic)ld that second marriage during the life-(sic) of first wife is void under the provisions of the Hindu Marriage Act but the dren of second void marriage are legiti(sic)de and are entitled to share family pension and death-cum-retirement gratuity (sic)ng with wife and children of first marriage and that they would be entitled to family pension only till they attain majority (sic)d further, that the second wife would not (sic) entitled to anything, held that the Appellant most. Bipul Kuar is not entitled to family pension. However, the Division Bench further directed that her three minor children are entitled for family pension in terms of the amended provision contained in Memo No. PC-1-Misc.-41/92/10059 dated 6.9.1996. The Court directed that the said minor children will be entitled to family pension to the extent of 50%.

5. learned Counsel for the Petitioners has submitted that the present Petitioners were not party to the said writ petition and the order has been passed without notice to them. He further submitted that it is true that their mother Most. Bipul Kunwar, who was made party Respondent No. 8, contested the matter but it appears that the interest of minors Petitioners have not been properly defended by her, which compelled them to file the present writ petition.

6. According to the learned Counsel for the Petitioners, as per the decision of the Apex Court in the case of Rameshwari Devi v. State of Bihar (supra) minor Petitioners are legitimate children of the deceased and entitled to pension and death-cum-retirement benefits along with wife and children of first marriage of their deceased father besides family pension till they attain majority. It is further submitted by the learned Counsel that the Respondent-authorities have not made any payment even as per the direction in the L.P.A. so far.

7. According to the learned Counsel for the State, the learned Single Judge in the earlier writ petition directed the mother of the minor Petitioners to claim a share in the proceeds received by the Petitioner in accordance with law through an appropriate proceeding before the Civil Court and the Division Bench has only interfered with the said order to the extent that the minor children (Petitioners herein) have been held entitled to 50% of pension out of family pension to be paid. Thus, the Petitioners can only get appropriate relief, if any, from the Civil Court of competent jurisdiction.

8. In reply, learned Counsel for the Petitioners has submitted that, in fact, the Division Bench has not at all considered about the entitlement of the share of the present Petitioners in other retirement benefits for which, according to the Apex Court in the case of *Rarneshwari Devi v. State of Bihar* (supra), they are entitled. Under such circumstances, this Court can consider about their entitlement of share in other retirement benefits.

9. I find substance in the submission of the learned Counsel for the Petitioners. In so far as the claim regarding family pension is concerned, the Petitioners are entitled for the same in their individual capacity till they attain majority and necessary sanction order is to be issued accordingly. But as regards their entitlement of share in other retirement benefits, in view of the law laid down in the case of *Rarneshwari Devi v. State of Bihar* (supra), they would be entitled for the same along with wife and children of first marriage as per the law of succession. In my opinion, the Respondent-authorities can examine the claim accordingly and dispose it of by a reasoned order and issue necessary sanction order also with respect to their entitlement within two weeks of the receipt/production of a copy of this order.

10. The writ petition is, accordingly, disposed of.

11. As prayed, let a copy of this order be supplied to the learned Government Pleader No. VIII.