

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20659 of 2011

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Sunita Bharti Wife Of Late Mahendra Paswan Resident Of Village-Gopalpur, P.O.-
Nadaul, P.S.-Masaurhi, District-Patna.

.... Petitioner/s

Versus

1. The State Of Bihar through The Home Secretary, Government Of Bihar, Patna.
2. The Accountant General (A & E)-II, Bihar, Patna.
3. The Superintendent Of Police, Motihari.
4. The Treasury Officer, Patna.
5. Mr. Ashish Bharti Son Of Late Mahendra Paswan Resident Of Village-Gopalpur,
P.O.-Nadaul, P.S.-Masaurhi, District-Patna, Place Of Posting District-Police Force
as Constable, Motihari, East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 16-12-2015

Heard learned counsel for the parties.

The petitioner prays for payment of full family pension
to her on the ground that though there were two marriages by the late
employee and the minors from the first wife were getting 50% family

pension but after having attained majority the same has been stopped and thus full 100% pension should be paid to her.

Learned counsel for the petitioner submits that pension now being held to be a property, the 50% share of the other branch, that is, the minor children of the first wife upon there being no claimant has to revert back to the side of the petitioner, who is admittedly the second wife but married after the death of the first wife on the basis of which she has been drawing 50% of the family pension.

Learned counsel for the State submits that as per the existing provisions of law, especially the scheme for family pension notified by the Finance Department, Government of Bihar under Memo No. Pen-103/64-9505-F dated 03.09.1964, Note (i) of Clause 7 clearly indicates that when there were two branches getting family pension, the first entitlement would be of the widow and thereafter upon her death to the minor children and in the event there was no claimant after the death of the widow or the minor having attained majority, the said portion would seize. It is submitted that the same was later modified and now only the first wife and minor children of the second wife are entitled. In the present case, because the petitioner was the sole wife who was married to the deceased employee after the death of the first wife, she was also getting 50% of family pension

which otherwise she would not have got had she been the second wife married in the lifetime of the first wife.

Having considered the matter, the Court is unable to interfere for the reason that there is a statutory provision under which the widow or the minor children get pension and part of the same stipulates that the branch which seizes to be eligible for pension, the portion so to be given to that branch seizes upon either the widow having died or there being no minor children.

In view of the aforesaid, the writ petition stands disposed off.

However, the Court is not expressing its view with regard to the legal validity of such provision which the petitioner shall be free to challenge in an appropriate proceeding.

(Ahsanuddin Amanullah, J)

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