

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10537 of 2006

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Md. Mustaqueem Khan son of Late Sultan Khan, resident of village- Nanaura, P.O. & P.S. Nawadah, District- Nawadah, at present posted as A.S.I. in the District of Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar
 2. Director General of Police, Bihar, Old Secretariat, Patna.
 3. Superintendent of Police, Rohtas.
 4. Superintendent of Police, Darbhanga.
 5. Fahmida Khatoon d/o Late Amir Hasan Kha.
 6. Md. Shahab Khan.
 7. Md. Wahab Kha, both sons of Md. Mustaqueem Khan.
- All residents of Village Sanaiya, P.S. Ariari, District Sheikhpura.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Md. Anis Akhtar Mr. Arifdaula Siddique
For the Respondent No.1 to 4:		Mr. Anjani Kumar, AAG-VI Mr. Sanjay Kumar, AC to AAG-6
For the Respondent No. 5 to 7:		Mr. Gajanan Arun Mr. Pankaj Kumar

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 27-01-2015

Heard the parties.

2. The petitioner, who has now superannuated from police service on 31.12.2014, has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order contained in D.O. No. 645 dated 26.03.1985 (Annexure-1) passed by the respondent Superintendent of Police, Rohtas whereby on the basis of findings recorded in a departmental proceeding initiated and concluded against the petitioner, he has been visited with a punishment and has been directed to pay 50% of his salary as also from his pension and other retiral dues to his 1st wife (respondent no. 5) and two children (respondent no. 6 & 7) born out of the wedlock of the petitioner and the respondent no. 5.

3. Learned counsel appearing on behalf of the petitioner



submits that the petitioner was subjected to a departmental proceeding on the charge of bigamy as during the life time of his 1st wife, he is alleged to have solemnized another marriage with another lady. According to him, the petitioner is governed by the Mohammedans Law and under the personal law he was entitled to enter into the 2nd marriage. Therefore, according to him, charge against the petitioner was untenable. It is further contended that even if the petitioner was held guilty for his misconduct for the charge of bigamy, then also he could have been awarded only a punishment contemplated under Rule 824 of The Bihar Police Manual, 1978, but he could not have been directed to pay 50% of his salary and 50% from his retiral dues to the respondent no. 5 to 7. It is next contended that at the relevant time, respondent no. 6 and 7 were minors, therefore, they were entitled for maintenance under the relevant law, but with the passage of time both of them have become major and, now they cannot claim maintenance from the petitioner. It is lastly submitted that in compliance of the impugned order, 50% of salary of the petitioner was deducted from July 1985 and was paid to the respondent no. 5 to 7, but now the petitioner is not pressing for recovery of the aforesaid amount already paid to them. However, since the petitioner has now superannuated from service on 31.12.2014, therefore, the respondent no. 5 to 7, in view of changed circumstances, cannot be permitted to receive 50% of his retiral dues and his pension, as according to him, in his old age retiral dues and pension is the only source of sustenance for the petitioner, and furthermore, the petitioner is obliged to discharge his duty towards his 2nd wife as also the children born out of his wedlock with the 2nd wife.

4. Learned Additional Advocate General-VI appearing on behalf of the respondent no. 1 to 4 as also learned counsel appearing



on behalf of the respondent no. 5 to 7 have strongly opposed the prayer made on behalf of the petitioner. Learned Additional Advocate General-VI, by referring to Rule 707A of The Bihar Police Manual as also Rule 23 of the Bihar Government Servant Conduct Rules, 1976, has submitted that the petitioner is guilty of bigamy since he solemnized another marriage during the life time of his 1st wife. According to him, findings recorded in the departmental proceeding to that effect cannot be legally faulted. However, so far penalty aspect is concerned, he fairly conceded that punishment imposed upon the petitioner is not contemplated under Rule 824 of The Bihar Police Manual.

5. Learned counsel appearing on behalf of the respondent no. 5 to 7 has submitted that the petitioner has approached this Court against the impugned order dated 26.03.1985 in the year 2006, i.e. after delay of 21 years. According to him, on the ground of delay itself, the writ petition is liable to be dismissed. However, so far punishment part is concerned, he has also fairly conceded that the punishment imposed upon the petitioner is beyond the ambit of Rule 824 of The Bihar Police Manual, but according to him, the respondent no. 5, being his legally wedded 1st wife, is entitled to receive maintenance from the petitioner under the relevant law, as she has not been divorced till date.

6. In view of the factual and legal matrix noted above, there are three options open for this Court; firstly the Court may set aside the impugned order dated 26.03.1985 on the ground that it is contrary to the mandate of Rule 824 of The Bihar Police Manual and, therefore, it is a nullity. Secondly, the writ petition can be dismissed as a whole on the ground of delay and laches on the part of the petitioner since he has approached this Court after a long delay of 21



years and indisputably 50% deduction from the salary of the petitioner has already been made from July, 1985 till the date of his retirement and aforesaid amounts have been paid to the respondent no. 5 to 7. Thirdly, this Court can take a via-media by issuing a direction that whatever amount has already been paid to the respondent no. 5 to 7 pursuant to the impugned order, that shall not be recovered from them even if the impugned order is set aside, but so far retiral benefits including pension are concerned, the respondents are not entitled to receive 50% of them at this stage under the changed circumstances as also on the ground that the respondent no. 6 and 7 have now become major and they cannot claim maintenance under the Mohammedans Law or other relevant law applicable to them, but liberty may be granted to the respondent no.5 to file a fresh application before the appropriate Forum/ Court for grant of maintenance to her by the petitioner and if such a petition is filed on behalf of the respondent no.5, then the same shall be considered and decided strictly in accordance with law without being prejudiced by observation made in the present order.

7. In order to do complete justice between the parties, this Court is inclined to follow the third option. Accordingly, the impugned order dated 26.03.1985 (Annexure-1) is hereby set aside and quashed with effect from 01.01.2015 from which date the petitioner is no longer in service and from which date the respondent no. 5 to 7 shall not be granted any amount from retiral dues and pension etc. either already paid or payable to the petitioner. The petitioner shall be entitled to receive entire retiral dues and pension etc. However, the respondent no. 5 shall be at liberty to file a fresh petition under the appropriate law for grant of maintenance to her. If such a petition is filed before the competent authority/ Court, the same

shall be considered and decided in accordance with law without being prejudiced by any observations made in the present order.

8. The writ petition stands allowed to the extent indicated above, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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