

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2366 of 2015

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Kalawati Devi, wife of late Sheetal Prasad, son of Sarvajeet Prasad, resident of village- Mah Bali Chouk, Post-Haveevpur, P.S.-Muffasil, (retired Office Superintendent P.P.O. No.270 dated 07.03.2005), at present resident of Mohalla-Shyam Chak, P.O. and P.S.- Bhagwan Bazar, District-Saran (Chhapra).

.... Petitioner/s

Versus

1. General Manager, E.C. Railway, Hazipur.
2. D.R.M., Sonapur.
3. Senior Division Personnel Officer, Sonapur.
4. Accountant General, Bihar, Patna.
5. Branch Manager, State Bank of India, Nath Nagar, Bhagalpur, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Pancham Lal Jaiswal, Advocate
For the Respondents-Railways: Mr. Anil Singh, Advocate
For respondent No.5 : Mr. Kaushlendra Kr. Sinha, Advocate
Mr. Anjani Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 27-06-2016

The order dated 10th of July, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No.855 of 2011 is subject matter of challenge in the present writ petition.

2. The petitioner claims family pension on account of death of late Shital Prasad, ex- Office Superintendent, Loco Shed, Sonapur under East Central Railway, who retired from service on 31st of January, 2005 and died in the year 2009.

3. Shital Prasad was married to Arati Devi. She died on 24th of May, 2000. As per the petitioner, she married him on 30th of

October, 2000 after the death of his wife. Admitted fact is that the petitioner was earlier married to Doman Choudhary, but has not got divorce from him at the time of his alleged second marriage with Shital Prasad on 30th of October, 2000.

4. The learned Tribunal declined the claim of the petitioner for family pension on the ground that marriage of the petitioner with her first husband was subsisting at the time when she married the deceased employee, therefore, her marriage with the deceased employee cannot be said to be legal. Consequently, her claim for family pension was declined.

5. Learned counsel for the petitioner has argued that the petitioner belongs to Scheduled Caste, i.e. Pasi and the Hindi Marriage Act, 1955 (hereinafter referred to as 'the Act') is not applicable to her in terms of Section 29 of the said Act as the customs permits the divorce by the community. However, the petitioner could not refer to any custom declared by any judicial pronouncement. Simple writing of an certificate by Pasi Samaj Kalayan, Saran, will not create any custom as the custom has to be long, established and recognized. In the absence of proof of custom, the argument that the petitioner divorced her husband by custom cannot be accepted.

6. Still further, the petitioner had filed a petition for dissolution of marriage against her husband on 29th September, 2000. The said divorce petition was dismissed for default on 27th of April,



2001. Therefore, once the petitioner had filed the divorce petition under the Hindu Marriage Act in respect of dissolution of marriage with Doman Choudhary, she cannot turn around to say that her marriage stood dissolved by the community. The invocation of the jurisdiction of the Matrimonial Court soon before her marriage is indicative of the fact that there is no custom of dissolution of marriage in her community.

7. Once the marriage of the petitioner with the deceased employee is not a valid marriage in terms of Section 5 of the Act, the petitioner cannot be treated to be a wife entitled to claim family pension. In addition thereto, the deceased declared the family members as 'Nil' in Form 6 prescribed for the purpose of family pension in January, 2005, i.e. after the alleged marriage of the petitioner with the deceased. Therefore, even the deceased has not treated the petitioner as his wife entitled for family pension in the documents with the Railway.

8. In view therefore, we do not find any error in the order of the Tribunal which may warrant interference by this Court. The writ petition is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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CAV DATE	N.A.
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