

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 1559 of 2016

Along with

Interlocutory Application No. 8860 of 2016

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Husna Ara Khatoon @ Husn Ara Khatun Wife of Late Abdul Hafij Khan @ Abdul Hamij Khan, resident of Village- Salempur, P.O.- Itwan, P.S.- Haspura, District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Officer cum District Magistrate (D.M.), Aurangabad (Bihar).
3. The District Education Officer (D.E.O.), Establishment, Aurangabad (Bihar).
4. The District Program Officer (D.P.O.), Establishment, Aurangabad (Bihar).
5. The Accountant General, Bihar, Patna.
6. Shamima Khatoon, Wife of Late Abdul Hafiz Khan,
Resident of Village- Salempur, P.S. Haspura, District- Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.S. Dwivedi, Sr. Advocate
For the State	:	Mr. Dinesh Maharaj, Advocate
For the Accountant General	:	Mr. Ajit Kumar, Advocate
For the Respondent No. 6	:	Mr. Manoj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 28-11-2017

Re.: Interlocutory Application No. 8860 of 2016

2. The Interlocutory Application has been filed by Shamima Khatoon, for being added as party respondent.

3. Learned counsel for the proposed intervenor submitted that the intervenor applicant is the second wife of the deceased of the petitioner and the marriage was performed after dissolution of the marriage with the petitioner and she was getting family pension on the basis of entries made in the records.

4. Having considered the aforesaid, the Court deems it



appropriate to implead the intervenor applicant as respondent no. 6 in the present writ application. Let necessary correction be made in the cause title of the writ petition by learned counsel for the intervenor applicant during the course of the day.

5. Interlocutory Application No. 8860 of 2016 stands disposed off.

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6. Heard learned counsel for the petitioner; State; Accountant General and respondent no. 6.

7. The petitioner has moved the Court for a direction to the authorities to pay family pension.

8. Learned counsel for the petitioner submitted that she is the wife of the deceased employee and after 20 years of marriage, her husband had developed illicit relationship with the respondent no. 6. It was submitted that the two were never married. Learned counsel submitted that in view of the law requiring payment of family pension to the wife, the petitioner being the legally wedded wife is entitled to such payment.

9. Learned counsel for the respondent no. 6 submitted that after dissolution of the marriage with the petitioner, she was married to the late husband of the petitioner and, thus, in law, she is the only wife and is rightly entitled to receive family pension, which



was also being paid to her.

10. The Court, in view of the controversy had directed the authorities to conduct an enquiry with regard to the factual aspect based on the claim of the petitioner and the respondent no. 6. Pursuant to the same, the enquiry was conducted and a report has been submitted, which has been brought on record, by way of Annexure-C to the supplementary counter affidavit filed on behalf of respondent no. 4.

11. Learned counsel for the State submitted that in the enquiry held on 23.11.2017 by the Anchal Adhikari, Haspura; Block Education Officer, Haspura; Mukhiya and Ward Member, both the petitioner and respondent no. 6 were examined and statement recorded and their signature/LTI taken. It was submitted that both the parties agreed that the petitioner was the first wife and the respondent no. 6 was married thereafter. It was submitted that in view of such finding, the authorities would take a decision with regard to making payment to the lawful claimant.

12. Having considered the matter, the writ petition stands disposed off with a direction to the authorities to take action in accordance with the findings in the enquiry report, for the law is clear, that it is only the legally wedded wife, who is entitled to family pension and in the event there is a living spouse, the employee



cannot marry a second time without due permission from the authorities, which admittedly in the present case, has not been done. Moreover, when both the parties themselves have given statement before the officers and Mukhiya and have also appended their signature/LTI, there is no reason to disbelieve the fact that the petitioner was the first wife and the respondent no. 6 is the second wife, without going into the controversy, as to whether there was divorce from the first wife i.e., the petitioner or the second wife i.e., respondent no. 6, was in illicit relationship with the deceased employee.

13. However, it shall not preclude the parties aggrieved to move before the Civil Court of competent jurisdiction for obtaining a declaration in their favour, with regard to their rival claims, which shall be decided in accordance with law on merits, without being prejudiced by the present order.

(Ahsanuddin Amanullah, J.)

P. Kumar

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