

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 19677 of 2016

=====

Kaneez Fatima, Wife of Late Dr. Md. Afzal, resident of Kahkasa Rahmat Compound, In front of women I.T.I., Police Station-Digha, District-Patna at Present residing at house of Jamotri Kumar, Kurzi Family Hospital, Police Station-Digha District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. Civil Surgeon-cum-Chief Medical Officer Patna.
3. District Magistrate, Patna.
4. Accountant General, Bihar, Patna.
5. Md. Imran Ali, Son of Late Dr. Md. Afzal.
6. Ruhina Ali
7. Rubina Ali Both daughters of Late Dr. Md. Afzal
All Resident of Kahkasa Rahmat Compound, In front of Women I.T.I. , Police Station- Digha, District Patna.
8. Incharge Medical Officer E.S.I.E.C. Hospital Nasariganj, Danapur, Patna.
9. The Senior Superintendent of Police, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Raj Shekhar, Advocate
For the Private Respondent	:	Mr. Najmul Hodda, Advocate
For the State	:	Mr. Ramadhar Singh, G.P.25
For the Accountant General	:	Dr. Anand Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 12-12-2017

Heard learned counsel for the petitioner; State and
respondent no. 5.

2. The petitioner has moved the Court seeking the
following reliefs:

*“i) For issuance of an appropriate writ/s,
direction/s order/s, in the nature of mandamus
commanding the respondent/s to pay entire death
cum-retiral benefit/s of her deceased husband, to the
petitioner.*

ii) For issuance of an appropriate writ/s,



direction/s, order/s, in the nature of mandamus commanding the respondent/s to pay the entire amount of family pension, general provident fund, gratuity, leave encashment group insurance etc. with interest to the petitioner.

iii) For any other relief/s for which the petitioner may found entitle.”

3. During the proceeding, the Court had directed the Senior Superintendent of Police, Patna to submit a report with regard to the claim of the petitioner as to whether she was the wife of the deceased employee. The Court had noted in its order dated 11.12.2017, and the same is not being repeated in this order, with regard to the report submitted which may indicate that the petitioner may be the second wife of the deceased employee.

4. A second supplementary counter affidavit has been filed on behalf of respondent no. 1, in which the stand is that neither the Department under which the late employee was working nor the G.P.F. Directorate of the State Government nor the Accountant General has any record in which there is any mentioning or entry relating to nomination.

5. From the above, it is clear that the undisputed position is that the respondents no. 5 to 7 are the children from the first wife, which the petitioner also admits. However, with regard to there being marriage with the petitioner only two witnesses have stated the same that too during an enquiry by the police. Once such position emerges,



the petitioner has to prove, in accordance with law, that she is the legally wedded second wife where the contesting parties have a right to adduce evidence and then the Court would be required to consider such evidence and materials and then record a finding. In the present proceeding under Article 226 of the Constitution of India, the Court does not feel any occasion to go into such aspect and record a finding in favour of either of the parties. Thus, for the limited purpose of the present writ petition, unless the petitioner is held to be the legal second wife of the deceased employee, no relief can be granted to her.

6. Accordingly, the writ petition stands disposed off with liberty to the petitioner to move before the Civil Court of competent jurisdiction to get a declaration in her favour that she is the legally wedded wife of the deceased employee and further for getting her share in the estate of the deceased employee, which includes death-cum-retiral benefits.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	
U	

