

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7872 of 2014

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Lalita Devi wife of Late Awadhesh Kumar Singh resident of mohalla Shashtrinagar, West ward no. 4, Post Madhubani, Police Station K.Hat, District Purnia.

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Secretary, Excise & Prohibition Department, Govt. of Bihar, Patna
3. The Excise Commissioner, Excise & Prohibition Department, Govt. of Bihar, Patna.
4. The Additional Secretary, Excise & Prohibition Department, Govt. of Bihar, Patna.
5. The Deputy Secretary, Excise & Prohibition Department, Govt. of Bihar, Patna.
6. The Under Secretary, Excise & Prohibition Department, Govt. of Bihar, Patna.
7. The Deputy Excise Commissioner, Purnia Division, Excise Department, Purnia.
8. The Superintendent of Excise, Excise Department, Purnia.
9. The Treasury Officer, Treasury Office, Purnia.
10. The Accountant General, Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Singh, Advocate
Mr. Ritesh Kumar Singh, Advocate
For Accountant General : Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-03-2017

Though a counter-affidavit has been filed, nobody has appeared on behalf of the State.

2. The petitioner claiming herself to be the second wife of the deceased employee Awadhesh Kumar Singh has prayed



for issuance of a writ directing the respondent-authorities to sanction and pay her fifty percent amount of family pension including arrears of family pension with effect from 01.04.2010.

3. The facts of the case, in brief, are that late Awadhesh Kumar Singh superannuated as Sub-Inspector of Excise from the office of Superintendent of Excise, Excise Department, Purnia on 31.01.2004. All the admissible retirement benefits were paid to him during his life time. He died on 26.03.2010. In his service book, One Smt. Ahilya Devi has been mentioned as his wife.

4. It is submitted by the learned counsel for the petitioner that Smt. Ahilya Devi is the first wife of late Awadhesh Kumar Singh and pension payment order has been issued in her favour to receive family pension. It is submitted that there had been an agreement between the petitioner, her deceased husband Awadhesh Kumar Singh and his first wife Ahilya Devi to the effect that after death of Awadhesh Kumar Singh, his first wife Ahilya Devi would make payment of fifty percent of the total amount of family pension to the petitioner, but the said agreement has not been honoured. It is further contended that in the service book of the deceased employee Awadhesh Kumar Singh, an entry was made by the Senior Accounts Officer on 10.09.2004 to the effect that out of total family pension of Rs.3100/-, half of the amount i.e.



Rs.1550/- per month will be paid to his first wife Smt. Ahilya Devi and rest half of the amount i.e. Rs.1550/- will be paid to the children of second wife. It is submitted that the petitioner is not getting 50 per cent of family pension rather Smt. Ahilya Devi alone is getting the entire family pension.

5. On the other hand, learned counsel for the Accountant General submitted that the role of the Accountant General is limited to verify the sanction order issued by the department concerned and if no infirmity is found, the Accountant General authorizes the payment of pension in favour of the person for whom sanction order is made. He submitted that as there is no sanction order in favour of the petitioner, the Accountant General has not taken any steps in this regard.

6. I have heard learned counsel for the parties and perused the record.

7. It is admitted by the petitioner herself that her marriage with the deceased employee was the second marriage, which took place after enactment of Hindu Marriage Act, 1955 (for short 'the Act'). The Act came into force on 18.05.1955.

8. At this stage, I think it apt to extract Section 5 of the Act which provides the conditions for a Hindu marriage. It reads as under:-

“5. Condition for a Hindu Marriage.- A marriage



may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) **neither party has a spouse living at the time of the marriage;**

(ii) at the time of the marriage, neither party-

(a) is incapable of giving a valid consent of it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity;

(iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.”

(emphasis mine)

9. Section 11 of the Act provides for void marriages. It reads as under :-

“11. Void marriages.- Any marriage solemnized after the commencement of this Act shall be null



and void and may, on a petition presented by either party thereto, against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.”

10. Thus, it would be evident that any marriage solemnized after commencement of the Act shall be null and void if the marriage is solemnized between any two Hindus when either of the parties has spouse living at the time of marriage. In the present matter, the admitted case of the petitioner is that her marriage with the deceased employee took place in the year 1974 i.e. after the enforcement of the Act. Hence, in terms of Sections 5 and 11 of the Act was not a valid marriage.

11. Further, the claim of the writ petitioner for entitlement of family pension is based upon Family Pension Scheme brought under the Bihar Pension Rules, 1950 for the State Government employees, which was introduced by the State Government long back and was liberalized from time to time.

12. In terms of Finance Department Resolution No. PC-1-9-16/87-1853 F dated 19th April, 1990, in clause (ii) of para 7 “Family” for the purpose of Family Pension Scheme would include the following relatives of the officer :

(a) Wife, in case of a male officer;

(b) Husband, in case of a female officer;



(c) Minor sons; and

(d) Unmarried minor daughters.

13. Further, in the case of widow pension could be admissible upto the date of death or remarriage whichever is earlier.

14. The dispute in the present case regarding right to receive family pension of the petitioner is based on the fact that during the life time of the first wife, the deceased employee had married her.

15. In that circumstance, in the considered opinion of this Court, the petitioner would have no claim over the pensionary rights of the deceased employee. Even if the deceased employee had married the petitioner during the lifetime of his first wife, the same would be nothing but a bigamous marriage, which would not confer any right upon the petitioner to receive family pension.

16. Referring to the provisions of the Bihar Pension Rules, 1950 in *Rameshwari Devi Vs. State of Bihar & Ors. [(2000) 2 SCC 431]*, the Hon'ble Supreme Court has already held that second wife, who marries an employee having a spouse living at the time of marriage would not be entitled to receive family pension.

17. In view of the ratio laid down by the Hon'ble



Supreme Court and the discussions made, hereinabove, I am of the view that no relief can be granted to the petitioner.

18. Accordingly, the writ application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.03.2017
Transmission Date	NA

