

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 296 of 2016

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Md. Rafique Khan, Son of Late Havaladar Khan, resident of Village- Dhaka Tola
Islampur, P.O & P.S.:- Dhaka, Dist..- East Champaran, Motihari.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
3. The Chief Accountant General, Bihar, Patna.
4. The Superintendent of Police, East Champaran at Motihari.
5. The District Treasury Officer, East Champaran at Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sangeet Deokuliar, Advocate
For the State	:	Mr. Rishi Raj Sinha, S.C. 19
		Mr. Birendra Prasad Singh, A.C. to S.C. 19
For the A.G. Bihar	:	Mr. Satyendra Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 10-02-2017

Heard learned counsel for the petitioner, the State and
the Accountant General.

The petitioner has moved the Court for a direction to
get the name of his second wife Noorjahan Begum added in the name
of nominee in the Pension Payment Order bearing No. 366916 dated
05.12.2002.

The petitioner was an employee under the State
Government and retired on 31.10.2002. At that time he had only one
wife Saira Khatoon, who was included as the nominee in the
aforesaid Pension Payment Order and thereafter the petitioner
married Noorjahan Begum on 20.02.2012, in consonance with the



provision in the Muslim Personal Law which permitted such marriage. The petitioner thereafter filed a representation before the respondent no. 4 for adding the name of his second wife also as a nominee, in addition to the first wife, but when the said request was not acted upon, he had approached the Court in the present writ application.

Learned counsel for the petitioner submitted that the claim of the petitioner is justified as there is no restriction in the Muslim Personal Law for second marriage even during the lifetime of the first wife and in the present case, it is equally relevant that the petitioner has married for the second time, much after his superannuation i.e., when he was not under the service of the State and, thus, the restriction of not marrying in the lifetime of the first spouse without due permission, will not apply to him.

Learned counsel for the State submitted that as per the resolution of the State Government contained in Memo No. 1549 dated 27.06.2011, in terms of the Service Code, only the second wife who is married in terms of the Rule 23(2) of the Bihar Government Servant's Conduct Rules, 1976, would be entitled to equal distribution of the family pension among them.

Learned counsel for the petitioner, by way of reply submitted that the issue has been settled by a Bench of this Court by



order dated 18.06.2014 in C.W.J.C. No. 5420 of 2013 (**Najda Khatoon @ Najdar Khatoon vs. The State of Bihar & Ors.**).

Learned counsel for the Accountant General, Bihar, Patna submitted that as they have already issued the Pension Payment Order in view of the pendency of the writ application, they had written to the respondent no. 4 for sending the departmental sanction for adding the name of the second wife of the petitioner in the Pension Payment Order.

Considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court finds that the stand taken on behalf of the State is totally misconceived. The said circular in fact makes it clear that if the marriage is not in violation of the service rules, the pension shall be equally divisible. In the present case, there cannot be any question of there being any violation of any conduct rules inasmuch as, the marriage has taken place after the retirement of the petitioner when the servant - master relationship stood severed. Thus, the conduct rules do not apply to the petitioner after his superannuation. In the case of **Najda Khatoon @ Najdar Khatoon** (supra), the fact was that the second marriage was prior to joining service. Thus, in the present case also the situation is the same since the second marriage is of a period when the employee i.e., the petitioner was not in the service of the State Government.



Moreso, the circular dated 27.06.2011, which has also been considered by the co-ordinate Bench, making it very clear that in the case of a Muslim employee, both the wives shall be entitled to equal division of family pension. In the present case, when the petitioner has moved for including the name of his second wife in the Pension Payment Order, the Court finds that she is entitled in law for such relief.

Accordingly, the respondent no. 4 is directed to send the sanction order to the Accountant General, Bihar, Patna for adding the name of the second wife of the petitioner namely, Noorjahan Begum in the Pension Payment Order bearing No. 366916 dated 05.12.2012. The same shall be done within two weeks from the date of production of a copy of this order before him. The Accountant General, Bihar shall thereafter issue the corrected Pension Payment Order showing the name of Noorjahan Begum in addition to the name of Saira Khatoon in the said Pension Payment Order as nominees of the petitioner, within three weeks thereafter.

The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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