

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14569 of 2014

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1. Motijhari Devi W/o Late Durgesh Ram Resident of Village Keshath, P.S. nawanagar, District Buxar (Bihar) and Posted as Auxiliary Nursing & Midwife (A.N.M.) at Udwant Nagar Primary Health Centre, P.S. Udwant Nagar, District Bhojpur at Arrah (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Home, Government of Bihar, Old Secretariat, Patna.
2. The Director General of Police, Government of Bihar, Old Secretariat, Patna.
3. The Director General of Vigilance, Government of Bihar, Vigilance Investigation Bureau, Bihar, Patna near Raj Bhawan, Patna.
4. The Inspector General of Police, Patna Region, Near South Gandhi Maidan, Patna.
5. The Deputy Inspector General of Police, Magadh Range at Gaya, P.S. Gaya Kotwali (Town), District Gaya (Bihar).
6. The Senior Superintendent of Police, Gaya, P.S. Gaya Kotwali (Town), District Gaya (Bihar).
7. The Deputy Superintendent of Police (Headquarters) Gaya, P.S. Gaya Kotwali (Town), District Gaya (Bihar).
8. The Incharge, Pension Section in the Office of Senior Superintendent of Police, Gaya, P.S. Gaya Kotwali (Town), District Gaya (Bihar).
9. The Director, Provident Fund, Bihar, Pant Bhawan Near Bailey Road, Patna (Bihar).
10. The District Provident Fund Officer, Gaya, P.S. Gaya Kotwali (Town), District Gaya (Bihar).
11. The Accountant General, Bihar, Mahalekhakar Bhawan, 'R' Block, Patna (Bihar).
12. The District Treasury Officer, Gaya, P.S. Gaya Kotwali (Town), District Gaya (Bihar).
13. Shobha Devi Wife of late Shaukhi lal Ram at C/o Manoj Paswan, Village-Naugharia PS Buniadganj Distt- Gaya(Claiming herself 2nd wife of late Durgesh Ram).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. R.K. Sinha-2, Adv.
Mr. Gajendra Nath Ojha, Adv.
For the State : Mr. Jitendra Kumar, A.C. to AAG-14
For the Accountant General : Mrs. Namrata Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-08-2017

Heard learned counsel for the petitioner and learned
counsel for the State.



2. Though a counter affidavit has been filed on behalf of the respondent no.13, the counsel appearing for the respondent no.3 has not turned up on repeated calls.

3. The prayer of the petitioner in the present writ petition is for issuance of a direction to the respondents to pay the petitioner arrears of family pension and current family pension, Gratuity, Earned Leave, General Provident Fund, Group Insurance amount and due salary of late Durgesh Ram, if any.

4. The petitioner is the widow of late Durgesh Ram, who died in harness while serving as Sub-Inspector of Police being posted at Civil Lines Police Station, Gaya. As per service book of late Durgesh Ram, it is the petitioner, who is shown as his wife. She is being denied pensionary benefits on the ground that the respondent no.13, namely, Shobha Devi has put a claim that she is the second wife of late Durgesh Ram. In view of the conflicting claims, the Senior Superintendent of Police, Gaya has directed the petitioner to get Succession Certificate from civil court in order to receive family pension and other death-cum-retiral dues.

5. It has been submitted by the learned counsel for the petitioner that the stand of the respondents in keeping the matter of payment of death-cum-retiral dues in abeyance till production of Succession Certificate is erroneous in law. He has submitted that there is no dispute to the fact that the petitioner is the legally wedded



wife of late Durgesh Ram and her name is mentioned in the service book of the deceased employee as his wife. He has contended that the respondent no.13 was never ever married to the deceased employee. According to the petitioner, the respondent no.13 was married to one Shaukhi Lal Ram, who is still alive and thus the contention of the respondent no.13 that she is legally wedded second wife of late Durgesh Ram is far from the truth. Learned counsel for the petitioner has contended that it is a pre-condition for Hindu marriage that neither party should have a spouse living at the time of marriage. The so called second marriage of the respondent no.13, apart from being nullity in the eye of law, would not vest her any right to receive family pension or any other dues of late Durgesh Ram. He has submitted that the respondents have deliberately flouted the order of this Court passed on 17.09.2016 whereby they were directed to pay fifty percent of the admissible retrial dues to the petitioner during the pendency of the writ petition.

6. He has submitted that the so called second marriage being in contravention of clause (i) of Section 5 of the Hindu Marriage Act would be void.

7. Learned counsel for the State does not dispute the fact that the petitioner's name has been given in the service book as nominee. He also concedes that in case of marriage solemnized during the life time of the first wife, family pension would not be



admissible to the second wife as per circular of the Finance Department dated 06.09.1996. However, he has contended that after the death of late Durgesh Ram, Respondent no.13 filed writ petition before this Court vide C.W.J.C. No. 9764 of 2014 claiming payment of family pension, appointment on compassionate ground and other reliefs for herself, but this Court while refusing to grant any relief directed her to obtain Succession Certificate from a civil court of competent jurisdiction. He has submitted that considering the nature of dispute being raised by the respondent no.13 Shobha Devi and the order passed by the High Court in C.W.J.C. No. 9764 of 2014, the claim of the petitioner has been kept in abeyance till the matter is decided by the civil court. He has submitted that if a person has a spouse living at the time of marriage, such marriage would be nullity only if decree of nullity is granted in respect of voidable marriage under Section 12 of the Hindu Marriage Act. He has submitted that any child begotten out of the void or voidable marriage is considered to be legitimate.

8. In the counter affidavit filed on behalf of the respondent no.13, apart from claiming herself to be the second wife of late Durgesh Ram with whom she married in 1998, three adolescent children (two daughters and a son) were born out of the wedlock and after the death of Durgesh Ram, they are living in penury. It has been stated that the children of the respondent no.13 are entitled to family



pension till their attaining the age of majority under the Bihar Pension Rules.

9. Learned counsel appearing for the Accountant General has submitted that the application form for family pension and other retrial benefits along with the necessary enclosures has not been forwarded through the Head of the Office to the Accountant General Office for issue of Authorization of Payment Orders. Hence, no action is required at the end of the office of the Accountant General.

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

11. It would be manifest from the order dated 17.09.2016 passed by this Court that the respondent authorities were directed to pay fifty percent of the retrial dues to the petitioner during pendency of the writ petition. However, it has been submitted by the learned counsel for the petitioner that despite the order dated 17.09.2016, the respondents have not paid any amount to the petitioner till date. The stand of the petitioner has not been controverted by the State.

12. In my opinion, the action of the respondents in not complying with the order dated 17.09.2016 is not only illegal but contemptuous too. However, instead of initiating a contempt proceeding, I would like to dispose of the writ petition itself.

13. Section 5 of the Hindu Marriage Act puts certain 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.

14. Clause (i) of Section 5 of the Hindu Marriage Act makes it clear that for a valid Hindu marriage neither party should have spouse living at the time of marriage.

15. Section 11 of the Hindu Marriage 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.”

16. Section 16 of the Hindu Marriage Act, 1955 provides as under :-

“16. Legitimacy of children of void and voidable



marriages.-

(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such a child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of the marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case, where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.”

17. Thus, it would be evident that the object of Section 16 of the aforesaid Act is to confer the status of legitimacy on children born in void or voidable marriages. Section 16 by legal fiction lays down that even if a child born of void or voidable marriage is conferred with the status of legitimacy but it is debarred from inheriting to property of any person other than its parents.

18. Further, Rule 23 of the Bihar Government Servant



Conduct Rules, 1976 puts restriction upon marriage by the Government servant having spouse living during life time without prior permission of the Government. It reads as under :-

“23. **Restrictions regarding marriages.**- (1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and (2) No Government servant, having a spouse living shall enter into, or contract a marriage with any person : Provided that Government may permit a Government servant to enter into or contract, any such marriage as is referred to in clause (1) or clause (2) if it is satisfied that :-

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A Government servant who has married or marries a person other than of Indian Nationality shall forthwith intimate the fact to the Government.”

19. The marriage of respondent no.13 with the deceased employee itself being in dispute coupled with the fact that she herself claims to be the second wife marrying late Durgesh Ram while having a spouse living, she could not be entitled to receive family pension or other death-cum-retiral benefits and gratuity.

20. However, so far as the claim of children born illegitimately by the woman is no more res integra. In ***Rameshwari Devi Vs. State of Bihar & Ors. [AIR 2000 SC 735]***, the Supreme Court dealt with a case wherein after the death of a Government employee, children born illegitimately by the woman, who had been living with the said employee, claimed the share in pension, gratuity



and other death-cum-retiral benefits. The Supreme Court held that under Section 16 of the Act, children of void marriage were entitled to share in family pension, death-cum-retiral benefits and gratuity.

21. However, the issue in the present case is complicated one. The contention of the petitioner is that the respondent no.13 was never ever married to the deceased employee and no children were born out of the so called wedlock. His contention is that the respondent no.13 was married with one Shauki Lal Ram of Chapra district and all the children were begotten by her out of the said marriage. It has been contended that the respondent no.13 has not taken divorce from her husband Shauki Lal Ram till today. Till Date no civil court has pronounced that the three children of the respondent no.13 were begotten out of the void or voidable marriage with late Durgesh Ram. In the service book also neither the name of the respondent no.13 nor the name of her children has been mentioned as dependents of the deceased employee. Under such circumstance, it would not be justified to keep the payment of death-cum-retiral dues, family pension and gratuity in abeyance. Moreover, in C.W.J.C. No. 9764 of 2014, this Court vide order dated 25.10.2016, has directed the respondent no.13 to obtain appropriate declaration from a civil court of competent jurisdiction while declining her claim for such benefits. So far as the petitioner is concerned, there is no dispute to the fact that she is the legally wedded wife of the deceased employee and her



name is nominated as such in the service book. Thus, denying payment of family pension and other benefits to her by the respondents is grossly illegal, arbitrary, unjust and unsustainable.

22. Accordingly, I direct the respondent Senior Superintendent of Police, Gaya to make payment of the family pension, gratuity and other death-cum-retiral dues to the petitioner within two months from the date of receipt/production of a copy of the order after obtaining a declaration from her that in case the minor children of the respondent no.13 are declared to be the legal heir of late Durgesh Ram, the petitioner would pay their rightful claim from the amount received by her.

23. The writ petition stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16-08-2017
Transmission Date	

