

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23026 of 2013

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1. Kamla Devi W/O Late Kumar Dinesh Singh @ Dinesh Singh R/O Village - Bindoll, P.O. Bindoll, P.S. Khizersarai, District - Gaya

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Department Of Finance, Govt. of Bihar, Patna
3. The Secretary, Science and Technology Department, Govt. Of Bihar, Patna
4. The Director, Science and Technology Department, Govt. Of Bihar, Patna
5. The Principal, Govt. Polytechnic Darbhanga at Darbhanga
6. The Accountant General, Bihar, Patna.
7. Archana Singh D/O Late Bashishth Narayan Singh R/O Mohalla - Neem Pokhar, P.S. L.N.M. University, District - Darbhanga
8. The Senior Superintendent of Police, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.
Mr. Ashutosh Singh, Adv.
Mr. Birendra Kumar, Adv.
Mr. Vinod Kumar, Adv.

For the State : Mr. Prakash Chandra Jha, A.C. to GA-11

For Respondent No.7 : Mr. Rajeev Ranjan Prasad, Adv.
Mr. Manoj Kumar, Adv.
Mr. Abhimanyu Vatsa, Adv.
Mr. Sudhanshu Trivedi, Adv.

For the Accountant General : Mr. Uday Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-02-2017

This writ application has been filed by the petitioner for a direction to the respondents to grant and pay her family pension and the other retiral dues, if any, and further to restrain the respondents from making payment of family pension to the respondent no.7.

2. Late husband of the petitioner Kumar Dinesh Singh was posted at Government Polytechnic, Darbhanga on 20th April, 1978 as



Instructor. He superannuated on 31st December, 2009 from the abovesaid post and died on 19th April, 2013.

3. The contention of the petitioner is that she was married to Kumar Dinesh Singh in the year 1962. After her husband was appointed and posted at Darbhanga in the year 1978, he started living at his place of posting but the petitioner used to live at her *sasural* situated at village Bindoll, P.S.- Khizersarai, District- Gaya. In the year 2003, she went to Darbhanga where she was assaulted by her husband at the behest of respondent no.7 Archana Singh. Subsequently, she was ousted from the house and thereafter she filed a complaint in the court of Chief Judicial Magistrate, Gaya vide Complaint Case No. 926 of 2003 under Sections 323, 498-A and 494 of the Indian Penal Code against her husband and respondent no.7. Later on, a joint compromise petition was filed in the aforesaid complaint case by the petitioner and her husband on 16th September, 2004. Similarly, a joint compromise petition was filed by the petitioner and respondent no.7 in the said case on 6th October, 2004, whereafter, the learned Judicial Magistrate 1st Class, Gaya vide judgment dated 31st December, 2005 acquitted the accused persons on the basis of compromise.

4. After death of her husband, the petitioner submitted an application on 2nd June, 2013 along with other necessary enclosures before the Principal, Government Polytechnic, Darbhanga and



requested him to take necessary steps for payment of family pension. Later on, she came to know that respondent no.7 had got her name entered in the form of pension. She immediately filed representation before the Director, Science and Technology Department, Patna and the Accountant General, Bihar, Patna in this regard but no action was taken on her representation. The contention of the petitioner is that the respondents have illegally released family pension in favour of respondent no.7.

5. The respondent State has filed its counter affidavit wherein it has been stated that after superannuation the deceased employee submitted an application for payment of pension/ family pension/gratuity in prescribed form. In the column of family members in the pension papers, he had written the name of his wife as Smt. Kumari Archana Singh. No other name of any family member has been mentioned by him in the list of family members, as attached in the pension application form. It is further stated that on the basis of pension application submitted by late husband of the petitioner, pension payment order and gratuity payment order were issued by respondent no.6. The final payment of GPF and the amount equivalent to unutilized earned leave were also paid to the employee during his life time. It is stated that as per entry made in the pension paper, respondent no.7 Smt. Kumari Archana Singh is entitled for family



pension after the death of the employee and any change in the name of family pension order can only be made by the order of the competent civil court.

6. Respondent No.7 has also filed her counter affidavit wherein it has been stated that she is legally wedded wife of Late Kumar Dinesh Singh, who nominated her during his life time for receiving family pension and by virtue of such nomination she is getting family pension after death of her husband. It has been stated that her marriage was solemnized with Late Kumar Dinesh Singh in accordance with Hindu rites and customs at Darbhanga on 27th August, 1986 and later on both of them appeared before the Marriage Officer, Darbhanga on 4th February, 1988 along with witnesses and accordingly marriage was registered on 4th February, 1988 having effect from 27th August, 1986. It is also stated that in the Census held in the year 2012 during the life time of Kumar Dinesh Singh, name of respondent no.7 has been mentioned along with Kumar Dinesh Singh and the relationship has been shown as that of wife. Similarly, in the legislative assembly voter list of Darbhanga Vidhan Sabha revised in the year 1995, the name of respondent no.7 has been recorded as wife of Kumar Dinesh Singh.

7. In the counter affidavit, it has further been contended that the facts stated in the writ application regarding Complaint Case No.



926 of 2003 are not conclusive proof of the fact that the petitioner was legally wedded wife of Kumar Dinesh Singh. The case was lodged by the petitioner on false and baseless allegation claiming herself to be wife of Kumar Dinesh Singh just to squeeze money from him as he was in Government service and Late Kumar Dinesh Singh was pressurized to enter into a settlement in order to save his service which was in danger due to criminal proceeding. On these contentions, respondent no.7 has stated that the petitioner has no legal right to claim herself a legally wedded wife of late Kumar Dinesh Singh as there is no proof of her marriage according to Hindu rites and customs.

8. Mr. Sanjay Kumar, learned counsel for the petitioner submitted that there are unimpeachable documents on record which would suggest that the petitioner is the legally wedded wife of the deceased employee, who subsequently developed relationship with respondent no.7 at his place of posting for which a case was also instituted in the court which ended on the basis of compromise. He submitted that the factum of marriage of the deceased employee with the petitioner is clearly admitted by the respondent no.7 and late Kumar Dinesh Singh in the compromise petitions filed by them before the Court in the criminal case. He submitted that merely because the deceased husband did not include the name of his wife in pension



papers and mentioned the name of respondent no.7 as his wife in the said form, right of the petitioner to receive family pension on death of her husband cannot be taken away.

9. He contended that vide order dated 26th August, 2016 this Court had directed the Senior Superintendent of Police, Gaya to conduct an enquiry with regard to the status of the petitioner and her claim of being wife of Late Kumar Dinesh Singh, whereafter, the Senior Superintendent of Police, Gaya got the matter enquired by the S.H.O., Khizersarai Police Station, who submitted a report after conducting the enquiry, which has been filed along with the counter affidavit filed on behalf of respondent no.8, the Senior Superintendent of Police, Gaya, which would clearly suggest that the petitioner is the legally wedded wife of late Kumar Dinesh Singh and out of the wedlock two sons and one daughter were born, who all are married. He submitted that another lady, who may have developed some sort of illicit relationship with the deceased employee, who was already married, cannot take position of legally wedded wife and become entitled to receive family pension. He submitted that the Bihar Pension Rules do not provide any provision for nomination with regard to family pension and the name of respondent no.7 is not nominated as wife in the service book.

10. Per contra, Mr. Rajeev Ranjan Prasad, learned counsel



for the Respondent no.7 submitted that since the petitioner has not challenged the nomination of respondent no.7 for the purpose of family pension, no relief can be granted to her. He submitted that this Court ought not to interfere with the nomination of respondent no.7 giving her exclusive right to receive family pension. According to him, there is no declaration by a competent court of law in favour of the petitioner declaring her a legally wedded wife and, therefore, the petitioner cannot seek a relief by way of declaration of her rights in the present writ application. He submitted that the facts stated in the writ application regarding complaint case and the documents enclosed in this regard are no proof to the valid marriage of the petitioner with the deceased employee. He submitted that pursuant to the order passed by this Court, the Senior Superintendent of Police, Gaya did not conduct any enquiry on his own rather he entrusted the enquiry to the S.H.O. of the Police Station. According to him, the S.H.O. conducted an ex-parte enquiry. He never met either with the petitioner or respondent no.7 in course of enquiry and hence no inference can be drawn on the basis of such enquiry report, which has been brought on record by way of filing counter affidavit on behalf of respondent no.8.

11. Mr. Prasad has further submitted that once the employee had nominated respondent no.7 to receive family pension during his life time, no person other than respondent no.7 would be entitled to



receive family pension after his death. In this regard, he has placed reliance on the decision of this Court in *Ati Razia Vs. State of Bihar [2016 (1) PLJR 835]*.

12. Mr. Prakash Chandra Jha, learned counsel for the State has supported the contention advanced on behalf of respondent no.7. He submitted that once the family pension payment order has been issued in favour of respondent no.7 on the basis of nomination made by the deceased employee, the same cannot be modified in favour of any other person until a proper decree is issued by a civil court of competent jurisdiction in this regard.

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

14. From perusal of the record of the present case, it would be evident that the official date of birth of the deceased employee is 28th December, 1949 whereas the date of birth of respondent no.7 mentioned in the form of pension is 5th June, 1966, which would mean that she is 17 years younger than the deceased employee. So far as the petitioner is concerned, her date of birth in the Adhar Card, which has been brought on record is recorded as 1st January, 1946. The certificate of family members issued by the Circle Officer, Khizersarai, Gaya, annexed as Annexure-2 would indicate that she is the wife of Late Kumar Dinesh Singh and out of wedlock three



children were born. On the date of issuance of certificate i.e. 4th June, 2013, the age of the three children, namely, Anil Kumar Singh, Usha Devi and Sunil Singh have been shown as 42, 40 and 32 years respectively, which would mean that the eldest son of the petitioner Anil Kumar Singh was only a few years younger to respondent no.7.

15. Further, it is an admitted position that the native village of the deceased employee is Bindoll, P.S. Khizersarai, District- Gaya where respondent no.7 never resided. From the report dated 17th September, 2016 submitted by the Senior Superintendent of Police, Gaya, it would appear that in course of enquiry the S.H.O., Khizersarai Police Station met several villagers of the native village of the deceased employee and his family members. He also met the Sarpanch of Horma Panchayat, the Ward Member and the Mahaal Chaukidar, who all stated that Kumar Dinesh Singh had only wife Kamla Devi, who is alive and there are two sons and one daughter of Kamla Devi, who all are already married. The S.H.O. also visited Darbhanga in course of enquiry and examined official records of Government Polytechnic, Darbhanga. He recorded in his report that he came to know that Late Kumar Dinesh Singh was keeping a lady during his posting in Government Polytechnic, Darbhanga. On examination of record, he found that there is no description of name of any one as wife of Late Kumar Dinesh Singh in the service book,



but in the pension form name of Smt. Archna Singh (Respondent No.7) has been shown as wife. He stated in his enquiry report that in the year 1979 an application was submitted by the late Kumar Dinesh Singh to the Principal of the Government Polytechnic, Darbhanga for extension of leave on the ground of illness of his wife. According to the report, the employees of the Government Polytechnic also disclosed that they knew that Kumar Dinesh Singh was already married and his wife resided at his native village, but at the time of filing pension papers he stated that his first wife is dead and entered the name of Archna Singh as his wife.

16. If the enquiry report submitted by the S.H.O., Khizersarai Police Station is to be believed, it is clear that the deceased employee was already married prior to 1979. Admitted case of the respondent no.7 is that her marriage with Kumar Dinesh Singh was solemnized on 27th August, 1986 and was registered by the Marriage Officer on 4th February, 1988 having effect from 27th August, 1986. Under such circumstances, the presumption would be that the marriage of the deceased employee with the respondent no.7 was the second marriage.

17. Another important thing which would be evident from record is that the facts stated in the writ application regarding Complaint Case No. 926 of 2003 have not been denied by respondent no.7 in the counter affidavit. However, a defence has been taken that



the case was lodged by the petitioner on false and baseless statement claiming herself as legally wedded wife of Kumar Dinesh Singh just to squeeze money from him and as he was in government he entered into compromise just in order to save his service which was in danger due to criminal proceeding.

18. The compromise petitions filed in the Complaint Case No.926 of 2003 have also been brought on record.

19. The joint compromise petition filed on behalf of the petitioner and Late Kumar Dinesh Singh reads as under :-

“1. That the intervention of well-wisher & friends and also at their sweet will petitioners both parties have amicably settled their dispute and as such petitioners have compromised this case out side the court.

2. That admittedly the petitioners both parties are related with each other and in a view of compromise good feeling and harmonious relationship is prevailing between the parties.

*3. That however in terms of compromise petitioners both party have agreed that **complainant petitioner Kamla Devi shall be getting 25% per month out of total salary being drawn by the accused petitioners Kumar Dinesh Singh after deduction of necessary loan etc.***

*4. That as regards modes of payment it has also been agreed that the aforesaid **25% of a total salary shall be paid by the petitioner Kumar Dinesh Singh through Cheque drawn by him payable in the Bank account standing in the name of complainant Kamla Devi.***

*5. That the in order to promote good relation between the parties it has also been agreed that **accused petitioner Kumar Dinesh Singh will visit time to time according to convenience to his***



native village Bindaul since entire management of agricultural properties are in hands of his sons namely Sunil Kumar Singh and Anil Kumar Singh who shall on demand account for the proceeds of the agricultural land.

6. That it also been agreed before the parties that complainant **Kamla Devi** shall be at her liberty to live either at village Bindaul or at Darbhanga with her husband according to her on desire to which the accused petitioner **Kumar Dinesh Singh** will have no objection.

7. That in token of compromise petitioners both the parties and their respective lawyers have put their signature over this compromise petition.

8. That offences U/s 494 I.P.C. is compoundable with the permission of court concern for which a separate petition has been filed.

9. That in view of compromise the complaint petitioner has no grievance or any claim against the accused petitioners and she does not want to proceed with the case any longer.

It is therefore prayed that your honour would be pleased to accept the compromise and acquit the accused petitioners.”

(emphasis mine)

20. Similarly, the joint compromise petition filed by the petitioner and respondent no.7 Archana Devi reads as under :-

“1. That with the intervention of well wisher and friends and also at their sweet will petitioners both parties have amicably settled the dispute and as such petitioners have compromised this case out side the court.

2. That in terms of compromise good feelings have prevailed among both parties.

3. That in view of compromise the complainant has no grievance against the accused persons.



4. That it is agreed by the complainant that according to allegation made out in complaint petition **the offence U/s 494 and 323 only are applicable against the accused Archana Devi which are bailable and compoundable.**

5. That the complainant petitioner has also filed a separate petition for permission to compromise the case.

6. That in token of compromise the petitioners both parties and their respective lawyers have put their signature/L.T.I. over this petition of compromise.

It is therefore prayed that your honour would be pleased to accept the compromise petition and acquit the accused persons.”

(emphasis mine)

21. Pursuant to the filing of the aforesaid two compromise petitions, the trial court acquitted the accused Kumar Dinesh Singh and Archana Devi in the aforesaid complaint case vide its judgment dated 31st December, 2005. The findings of the trial court in the judgment, as contained in Annexure-1 to the writ application, are as under :-

“4. प्रस्तुत वाद का अवलोकन करने से स्पष्ट होता है कि उभय पक्षों में तसवीया हो गया है। तस्वीया आवेदन पत्र अभिलेख में संलग्न है। उक्त आवेदन पर परिवादनी के अंगूठा का निशान एवं गवाहों के हस्ताक्षर हैं। जिन्हें उनके अधिवक्ता द्वारा प्रमाणित किया गया है। इस केस में मात्र दो साक्षियों का साक्ष्य आरोप पश्चात कराया गया है। पहला साक्षी इस केस की परिवादनी कमला सिंह हैं। इन्होंने अपने आरोप पूर्व साक्ष्य में कही है कि यह केस अपने पति तथा अर्चना देवी पर किया हूँ। मैं अपने पति के पास



दरभंगा गई तो मेरे पति गाली गलौज किए तथा अपने डेरा से हमें निकाल दिये तथा खर्चा देना बंद कर दिये। दूसरा साक्षी स्वयं परिवादनी का लड़का सुनील सिंह हैं। ये भी अपने आरोप पूर्व साक्ष्य में घटना का समर्थन करते हुए कहे हैं कि हमें बाद में पता चला कि मेरा पिता दूसरी शादी अर्चना देवी से कर लिए हैं। उक्त साक्ष्यों के अलावे अन्य किसी साक्षी का साक्ष्य आरोप पूर्व नहीं कराया गया है।

5. उपरोक्त दोनों साक्षियों के आरोप पश्चात साक्ष्य का जब हम अवलोकन करते हैं तो पाते हैं कि दोनों साक्षी तस्वीया की बात को अपने साक्ष्य में स्वीकार किए हैं तथा कहे हैं कि (परिवादनी) मैं दोनों मुदालह से राजी खुशी से तस्वीया कर लिया हूँ। तसवीया आवेदन पर मेरा अंगूठा का निशान है। चुकि अभियुक्तों के ऊपर लगाए गए भा० दं० वि० की धारा 323 का आरोप समनीय आरोप है। अतः उक्त तसवीया आवेदन को स्वीकार करते हुए अभियुक्तों के ऊपर लगाए गए भा० दं० वि० की धारा 323 के आरोप से दोषमुक्त किया जाता है।

6. अभियुक्तों के ऊपर जहां भा० दं० वि० की धारा 498(A) एवं 494 का आरोप है इसे हम साक्ष्य के गुण दोष के आधार पर विचार करेंगे।

परिवादनी कमला सिंह जो इस केस की परिवादनी हैं स्वयं अपने आरोप पश्चात साक्ष्य की कंडिका 5 में कही है कि मेरे पति दूसरी शादी नहीं किए हैं, मैं शक के आधार पर दूसरी शादी का आरोप उनके ऊपर लगा दी थी। इसी के आधार पर मैं यह केस कर दी थी, जबकि मेरे पति हमें कभी प्रताड़ित नहीं किए थे। अपने साक्ष्य कि कंडिका 4 में कही है कि मैं केस लड़ना नहीं चाहती न तो गवाही देना चाहती। मैं अपने पति के साथ ही रह रही हूँ। दूसरा साक्षी परिवादनी का लड़का सुनील सिंह हैं। इन्होंने भी अपने साक्ष्य के कंडिका 5 में कहे हैं कि प्रताड़ना कि कोई घटना मेरे सामने नहीं घटी। मेरे पिताजी दूसरी शादी नहीं किए हैं। पूर्व में जो



गवाही में दिया था वह माँ के (अस्पष्ट) दे दिया था। उपरोक्त दोनों साक्ष्य के अलावे अभिलेख पर अन्य कोई साक्ष्य नहीं है और न तो दूसरा साक्ष्य आने की संभावना है क्योंकि स्वयं परिवादनी मुदलहों से राजी खुशी संधि कर लिया है तथा अपने साक्ष्य में कहा है कि हमें अब कोई गवाही नहीं देना है। उपरोक्त साक्ष्य के आलोक में अभियुक्तों के विरुद्ध लगाए गए भा० दं० वि० की धारा 498(A) एवं 494 का आरोप सिद्ध दोष नहीं हो पाता।

अतः अभिलेख पर उपलब्ध सम्पूर्ण साक्ष्य एवं सामग्रियों के अवलोकन के पश्चात मेरे विचार से अभियुक्तों के ऊपर लगाए गए भा० दं० वि० की धारा 498(A) एवं 494 का आरोप को अभियोजन (परिवादनी) उक्तियुक्त संदेहों से परे रह कर साबित करने में असमर्थ रहे हैं।”

(emphasis mine)

22. On perusal of the compromise petition and the judgment of the trial court, prima facie it is difficult to believe the contention advanced by respondent no.7 that the criminal case was launched by the petitioner on false and baseless allegations and was instituted in order to squeeze money from the deceased employee. Had that been the case, the deceased employee as also respondent no.7 would have contested the matter and proved their innocence. The terms of compromise and the judgment of the trial Magistrate would suggest that the deceased Kumar Dinesh Singh did not dispute the fact that the petitioner is his wife and the witness Sunil Singh is his son.

23. If the eldest son of the petitioner was born in 1971, as indicated hereinabove, then in that case there would be no difficulty in coming to the conclusion that the subsequent marriage of the



deceased employee with the respondent no.7 in the year 1986 was the second marriage which took place after enactment of the Hindu Marriage Act (for short 'the Act'). The Act came into force on 18th May, 1955. As noted above, the date of birth of respondent no.7 as mentioned in the pension form is 5th June, 1966 meaning thereby that when the first son of the petitioner was born, respondent no.7 was hardly 7 years old.

24. At this stage, it would be relevant to take note of 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)

25. 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.”

26. Thus, it would be evident that any marriage solemnized after commencement of the Hindu Marriage 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.

27. 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. This Rule is verbatim in the terms as Rule 21 of the CCA (Conduct) Rules. 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."

(emphasis mine)

28. In the present case, 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.

29. 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.

30. Note-1 of the aforesaid clause (ii) of paragraph 7 includes minor children adopted legally before retirement whereas Note-2 stipulates that the marriage after retirement will not be recognized for the purpose of the Scheme.



31. Sub-clause (iii) of Para 7 of the aforesaid Resolution stipulates the details of admissibility of family pension. It reads as under :-

“(iii) The pension will be admissible :-

- (a) In the case of widow/widower upto the date of death or remarriage whichever is earlier;*
- (b) In the case of minor son until he attains the age of 18 years;*
- (c) In case of unmarried daughter until she attains the age of 21 years or married whichever is earlier.”*

32. Thus, the dispute in the present case regarding right to receive family pension is confined between the petitioner and respondent no.7, as the three children of the petitioner have already attained majority and they all are married. Hence, in terms of clause (iii) of para 7 of the aforesaid resolution they would have no claim over the pensionary rights of the deceased employee.

33. One of the contentions of the petitioner is that even if respondent no.7 had married the employee subsequently, the same would be bigamous marriage and would not confer any right upon the respondent no.7 to receive family pension even if her name has been mentioned in the nomination form as wife whereas the contention of the respondent no.7 is that being nominee in the pension forms only she is entitled to receive family pension.

34. In this regard, I would like to refer to the ratio laid down by the Hon’ble Supreme Court in ***Jodh Singh Vs. Union of India &***



Anr [(1980) 4 SCC 306]. In that case, the Hon'ble Supreme Court held that the family pension is admissible to a widow in her capacity as widow and could never be the subject matter of testamentary disposition. It held that the benefit of family pension is admissible on account of status and the status is acquired on the happening of certain event, namely, on becoming widow on the death of the husband. Such pension by no stretch of imagination shall form part of the estate of the deceased. If it did not form part of the estate of the deceased, the same could never be the subject-matter of testamentary disposition.

35. In paragraph 12 of the said judgment, the Supreme Court held as under :-

“12. ... Special family pension is payable to the widow on the death of the officer. It is not payable in his life time. What is not payable during life time of the deceased over which he has no power of disposition cannot form part of his estate. It is the event of his death that provides the eligibility, qualification for claiming special family pension. Such qualifying event which can only occur on the death of the deceased and which event confers some monetary benefit on someone other than the deceased albeit related to the deceased, cannot form part of the estate of the deceased which he can dispose of by testamentary disposition....”

36. Similarly, in **Smt. Violet Issac and Ors Vs. Union Of India and Ors [(1991) 1 SCC 725]**, the Supreme Court held that no other person except those designated under the Rules are entitled to



receive family pension. It further held that the employee has no title nor any control over the family pension as he is not required to make any contribution. The Family Pension Scheme is in the nature of a welfare scheme. Therefore, it does not form part of the estate of the deceased employee enabling him to dispose of the same by testamentary disposition.

37. Paragraph 4 of the said judgment reads as under :-

*“4. ... The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. **The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension.** Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The Family Pension Scheme is in the nature of a welfare scheme framed by the Railway Administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his life time for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.”*

(emphasis mine)

38. It would be relevant to note here that the contention of the petitioner that the Bihar Pension Rules do not provide any



provision for nomination with regard to family pension has not been disputed either by the State or by the respondent no.7. Admitted position in the case is that in the service book neither the name of the petitioner nor the name of respondent no.7 has been mentioned as wife of the deceased employee. The fact of the matter is that the deceased employee has mentioned the name of respondent no.7 in the pension application form showing her as his wife. In this context when I look to the decision of this Court in *Ati Razia* (Supra) on which respondent no.7 has placed reliance in order to put forth her claim that once the employee has nominated the lady to receive family pension the State discharges its obligation by lawfully paying the same to the lady.

39. Apparently, the facts of the said case are quite different from the facts of the present case. In that case the name of one Sahodari Devi, the alleged second wife of late employee was mentioned and nominated in the service book as wife. However, in the present case, as noted above, the deceased employee had not shown respondent no.7 or the petitioner as wife in the service book. Further in that case it was not brought to the notice of the Court that the Bihar Pension Rules do not provide any provision for nomination with regard to Family Pension. The Bihar Pension Rules designate the persons, who are entitled to receive family pension. Thus, no other



person except those designated under the Rules are entitled to receive family pension.

40. In ***G.L. Bhatia Vs. Union of India & Anr. [(1999) 5 SCC 237]***, the Supreme Court held that if a nomination is made contrary to the statutory provisions, it would be inoperative. In that case, there was estranged relationship between the husband and the wife. The wife was a Central Government employee. She did not nominate her husband to receive family pension. When the husband approached the authorities, they declined to pay him the family pension as the nomination was not in favour of the husband and the husband was staying separate from his wife. When the matter came before the Supreme Court, it held that the forums below were not correct in denying family pension to the husband. It held that since there was no divorce between the husband and the wife even though they might be staying separately, the husband would be entitled to family pension in terms of the Central Civil Services (Pension) Rules.

Para-5 of the said order reads as under :-

“5. In the light of the aforesaid provisions and there being no divorce between the husband and wife even though they might be staying separately, the appellant husband would be entitled to the family pension in terms of the rules as noted aforesaid and the authorities, therefore, committed error in not granting family pension to the appellant relying upon the nomination made by the deceased wife of the appellant.”



41. In case of a male officer, the Bihar Pension Rules recognizes wife, minor sons and unmarried daughters as the persons eligible to receive family pension under the Family Pension Scheme. In the present case, admittedly, there is no minor son or unmarried daughter before this Court. Hence, the dispute is between two ladies, who claim themselves to be the legally wedded wife of the deceased employee.

42. In Rameshwari Devi Vs. State of Bihar & Ors. [(2000) 2 SCC 431], there was a case where an employee of the State service had married two times. On the issue of succession to the family pension and death-cum-retirement gratuity by the second wife and the children from the said marriage, the Supreme Court held as under :

“14. It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described a widow of Narain Lal, her marriage with Narain Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, legal position when Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement Gratuity payments which is governed



by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment....”

43. Thus, the Supreme Court upheld the judgment of the single Judge and the Division Bench which had directed that the children born to the respondent from the wedlock with the second wife were entitled to share of family pension and death-cum-retirement gratuity but the second wife would not be entitled to anything.

44. As noted above, the facts of the present case are distinguishable from the facts of the case of *Ati Razia* (Supra). Hence, the ratio laid down in the said case would not be applicable in the present case.

45. Further, in view of the ratio laid down by the Supreme Court in *Jodh Singh* (Supra), *Smt. Violet Issac* (Supra), *G.L. Bhatia* (Supra) and *Rameshwari Devi* (Supra) and the provisions prescribed under *the Bihar Pension Rules, 1950, Bihar Government Servant Conduct Rules, 1976 and the Hindu Marriage Act, 1955*, as discussed hereinabove, in the opinion of this Court, respondent no.7 cannot be held entitled to receive family pension simply because the deceased employee mentioned her name in the pension application form showing to be his wife.



46. In view of the overwhelming evidence in the present case as discussed hereinabove, prima facie, the petitioner has been able to make out a case that she is the legally wedded wife of the deceased employee. However, the aforesaid view of mine is tentative in nature as a proper declaration in this regard can only be made by civil court of competent jurisdiction in a succession case under the Indian Succession Act, 1925.

47. Looking to the facts of the present case, the writ application is disposed of with the following direction :-

- (a) The petitioner may file an application before the competent court for succession certificate impleading respondent no.7 as a party within eight weeks from today. Thereafter, the competent court may decide the application after considering the evidences led before it.
- (b) Till the succession case is decided by the court of competent jurisdiction, the State respondents are directed not to pay the family pension of the deceased employee Kumar Dinesh Singh to any person.
- (c) If the application for succession certificate is filed within eight weeks from today, the competent court shall make all possible efforts to dispose of the same as early as possible, preferably within nine months from the date of



filing of the application.

- (d) In case the petitioner succeeds in the succession case, the respondents shall start paying her family pension without any delay.
- (e) In case the succession case filed by the petitioner fails before the court of competent jurisdiction, the respondents shall immediately start paying family pension to respondent no.7.
- (f) The family pension already received by respondent no.7 so far shall be subject to the outcome of the succession case to be decided by the court of competent jurisdiction.

48. Before concluding, I must record that any observation made in the present order would have no bearing on the outcome of the succession case, which may be filed before the court of competent jurisdiction and the court below shall form its opinion on the basis of merit of the case and the evidences led before it.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	13.02.2017
Transmission Date	

