

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15986 of 2016

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Most. Tara Devi, widow of Late Braj Nandan Prasad, Resident of
Village/Mohalla- Fatehpur, P.S.- Parwalpur, District-Nalanda

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Personnel and Administrative Reforms, Department Govt. of Bihar, Patna
 2. The Commissioner-Cum-Secretary, Finance Department, Govt. of Bihar, Patna
 3. The Secretary, Water Resources Department, Govt. of Bihar, Patna
 4. Deputy Secretary, Water Resources Department, Govt. of Bihar, Patna null null
 5. The Accountant General, Bihar, Birchand Patel Marg, Patna
 6. Executive Engineer, Irrigation Division, Durkha Camp, Pakri Barawan, District-Nawada
 7. The District Magistrate-cum-Collector, Nawada Respondents
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Appearance :

For the Petitioner : Mr. Pramod Kumar, Adv.

For the State-Respondents :

For the AG : Mr. P.K. Rajgarhia, Adv.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

2 04-01-2018 Heard learned counsel for the petitioner, State and Accountant General.

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

“That this writ application is being filed for quashing of the order under Memo no. 742 dated 23.07.2010 passed by the Deputy Secretary, Water Resources Department so far as it relates to the stoppage of family pension which was being paid to the petitioner vide P.P.O. No. 41799 and for payment of arrears and current family pension to the petitioner regularly and for an ad interim relief staying the operation of the order dated 23.07.2010 stopping payment of pension to the petitioner and for directing the respondents to pay family pension together with arrear to the petitioner during the pendency of this writ application and for



grant of such other relief's which the petitioner be found entitled to."

3. The admitted factual position is that the petitioner is the second wife of deceased, Braj Nandan Prasad, who was kidnapped and killed on 03.02.1992 while being in service. He had nominated the petitioner in various schemes. At the time of his death, he had left behind Chourasi Devi as his first wife and the petitioner as his second wife. Chourasi Devi died on 26.10.1998. Chourasi Devi had one daughter, who is married and living with her husband, whereas from the petitioner there are two sons and four daughters. Initially, the authorities being unaware of the fact that the petitioner was the second wife, paid her family pension, but upon realizing their mistake, the same was stopped and there was also order for recovery/adjustment.

4. The petitioner being aggrieved moved before the Court in C.W.J.C. No. 13476 of 2009, which was disposed off by order dated 08.02.2010 giving liberty to the petitioner to file a representation before the authority and the same was directed to be disposed off preferably within a period of four months and till then the Court had directed that no coercive step shall be taken for recovery of the amount.

5. In terms thereof, the petitioner represented and an order has been passed under Memo No. 742 dated 23.07.2010 by the respondent no. 4 by which the stoppage of family pension to the petitioner has been maintained but recovery has not been ordered of the amount which she had already received. The same is impugned in the present writ application.

6. Learned counsel for the petitioner submitted that she had married the late employee when the first wife became paralyzed after an accident and she was taking care-of the entire house-hold and further that there was no objection from any quarter with regard to her receiving family pension. It was submitted that after the death



of his first wife on 26.10.1998 she is the sole surviving wife of the deceased employee and in that view of the matter also she is entitled for family pension. He relied upon a resolution of the State Government, contained in Memo No. 1549 dated 27.06.2011, specially clause 3 thereof to contend that even the Government has approved division of family pension between two wives.

7. Learned counsel for the State raised a preliminary objection and submitted that the impugned order has been passed on 23.07.2010, whereas the writ petition has been filed in September, 2016, after more than six years, for which there is no explanation and on this ground alone the writ petition deserves to be dismissed. It was further contended that as per the Pension Rules, only the first wife and children of the second wife, to the extent of their eligibility based on age and marriage, are entitled to family pension but the second wife is not entitled. With regard to the resolution of the State Government, contained in Memo No. 1549 dated 27.06.2011, it was submitted that reliance on clause 3 of the same by the petitioner is totally erroneous. It was submitted that the said provision is only for the second wife whose marriage was performed after taking permission of the Government. It was submitted that in the present case there is no such permission accorded by the Government for the employee to marry the petitioner.

8. Learned counsel for the petitioner, by way of reply, submitted that the reason for the petitioner filing the writ application after six years of the cause of action arising is due to the fact that she is a rustic village lady.

9. Having considered the facts and circumstances of the case and the submissions of the learned counsel for the parties, the Court does not find any merit in the writ application. The grant of family pension is governed by statutory provisions, in the present case the same being the Bihar Pension Rules, 1950. The same does not provide for family pension to the second wife except where the



second marriage has taken place after obtaining permission of the Government. In the present case, it is not in dispute that no such permission was either sought or accorded by the Government for such marriage. Thus, the petitioner, right from beginning, was never entitled to any family pension and she had wrongly received the same without there being any entitlement. However, as she had got the amount and utilized it, the authorities have taken an equitable and fair stand by not making any recovery/adjustment. The issue with regard to there being no objection from any quarter would not be of much use to the petitioner for the reason that such objection from any quarter is immaterial to the grant of family pension. The same, at the cost of the repetition, is admissible only upon the criteria for grant of such family pension being fulfilled as per the statutory requirements. In the facts and circumstances of the present case, the petitioner being the second wife and the marriage having taken place without approval/permission of the Government in the life time of the first spouse, would disentitle the petitioner from grant of any family pension. The further contention of learned counsel for the petitioner that she was the nominee in various papers of the deceased employee, the same is also of no use to the petitioner for the reason that where the statute provides for a person to nominate somebody to receive payment in his absence, only in those matters the question of there being payment to the nominee would arise but in the case of family pension, there is no question or occasion for any nomination and the same is to be given strictly based on relationship of the deceased and the claimants of family pension. In the present case, the Court has found the petitioner not entitled to grant of family pension on the basis of admitted facts.

10. The explanation for moving the Court after six years of the cause of action is also not worthy acceptance for the reason that the petitioner was required to move the Court earlier within a few months of the family pension being stopped to her.



Further, earlier there being an order of recovery in the year 2009 itself, when she had moved the Court after the order passed in the year 2010 on her representation in terms of the order of the Court, there cannot be any ground or excuse for not moving the Court for six long years.

11. Accordingly, both, on the ground of delay and laches and on merits, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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