IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13088 of 2010

Kumar Nilotpal (Minor) S/O Lae Ayodhya Thakur Through His Mother And Natural Gaurdian,Smt Krishna Thakur R/O Professors Coloy, Purnea,P.S. & Dist.-Purnea.

.... Petitioner/s

Versus

1. The State Of Bihar Through Special Secretary, Education Department, Govt. Of Bihar, Patna.
2. Principal Secretary, Secondary, Primary And Adult Education Department, Govt. Of Bihar, Patna.
3. Secretary, Finance Department, Govt. Of Bihar, Patna.
4. Director (Admin)-Cum-Joint Secretary, Primary And Adult Education, Govt. Of Bihar, Patna.
5. Accountant General (A&E),Bihar, Patna.
6. Sr. Accounts Officer, Officer Of Accountant General, Bihar, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. B. P. Pandey, Sr. Advocate
For the State	:	Mr. Kameshwar Prasad Gupta, GP 10
For the Accountant General	:	Mr. Raj Nandan Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 10-05-2018

Heard Mr. Bibhuti Prasad Pandey, learned senior counsel along with Mr. Akash, learned counsel for the petitioner; learned G. P. 10 for the State and Mr. Raj Nandan Prasad, learned counsel for the Accountant General.

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

"*That this writ application is for issuance of appropriate writ, rule or direction quashing the letter no. 529 dated 19.03.2010 (Contained in*

Annexure-5 series) issued by Director (Administration)-cum-Joint Secretary, Human Resources and Development Department, Government of Bihar, Patna and for commanding upon the respondent authorities to pay full family pension to the petitioner after the death of first wife of the service holder.

AND

Grant such any other relief or reliefs as may deem fit and proper in the interest of justice."

3. The matter has been heard at length on a number of occasions and the Court had repeatedly sought a clear-cut stand from the State authorities with regard to the latest circulars issued with regard to the relief claimed in the present writ application. In terms thereof, counter affidavit has been filed on behalf of respondents no. 1, 2 and 4; further counter affidavit has been filed on behalf of respondent no. 3 and supplementary counter affidavit has also been filed on behalf of respondent no. 3. The stand is that except for Letter No. 9505 dated 03.09.1964, no other circular has been issued in this regard. Surprisingly a copy of the said letter has also been brought on record, especially Clause 7 thereof which incorporates an amendment dated 29.01.1991. The Court is constrained to observe that the authorities have not only miserably failed to give correct and proper assistant to the Court, but have rather suppressed material facts,

inasmuch as, on the issue involved in the present writ application, there is a circular which has direct bearing i.e., Memo No. P.C.-1-Misc.-41/92/10059/Vi. dated 06.09.1996.

4. The petitioner is minor son of late Ayodhya Thakur born from the second wife. Upon the death of the employee, the first wife was being paid 50% of family pension and rest 50% was paid to the petitioner. Though the circular of the State Government contained in Memo No. Pen.-103/64-9505 F dated 03.09.1964, especially Note (i) of Clause 7 (iii) thereof, stipulates that in the event the employee leaves behind more than one widow, the pension would be paid to them in equal share and on the death of a widow her eligible minor child would be entitled to her share of the pension, but on the death of a widow who does not leave any eligible minor child, the payment of her share of pension will cease, however, in the present case, right from the beginning, on the death of the employee on 29.11.2001, the petitioner was getting 50% of family pension being the minor son from the second wife namely, Krishna Thakur and the rest 50% was being paid to the first wife Madhumati Devi. The original circular dated 03.10.1964, by amendment dated 27.07.1967, provided for the family pension to be shared among two widows and upon her death by her eligible minor child. However, in the present case, even when the mother of the petitioner was alive, still, instead of her, he got such

family pension. The Court, thus, had called upon learned counsel for the State to bring on record the up-to-date circulars governing the field, but the stand was that no further circular has been issued in this regard. The Court would only indicate and record its strong displeasure at the assistance provided on the part of the State where they have failed to bring to the notice of the Court the aforesaid circular dated 06.09.1996, which has repealed the Note (i) to Clause 7 (iii) of the circular dated 03.10.1964, which has been replaced by the provision that if during the lifetime of the wife the person performs second marriage, the second wife shall not be entitled to family pension but the minor children from the second wife shall be entitled to family pension. This provision, in specific terms, has not retained the stipulation that if at the time the death of a widow she does not leave any legible minor children, the payment of her share of pension will cease. Further, as per the provision of Rule 54 (7) (a) (ii) of the Central Civil Services (Pension) Rules, 1972, on the death of the widow, her share of the family pension shall become payable to her eligible child, with the proviso that if the widow is not survived by any children, her share of family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her. In the supplementary counter affidavit filed on behalf of respondent no. 3, it has been stated that keeping in view the aforesaid Central provision, the Finance Department and also the opinion of the learned Advocate General, the Finance Department is going to amend the earlier provision and accordingly a circular shall be issued shortly.

5. Be that as it may, as the issue requires immediate consideration.

6. The relevant provisions are quoted hereinunder:

(I) Memo No. Pen-103/64-9505 F dated 03.10.1964.

" *x x x x x*

7. The Scheme will be administered as below:-

(i) The family pension will be admissible in case of death while in service, or, after retirement on or after the 1st April, 1964, if at the time of death, the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension. In case of death while in service, the Government Servant should have completed a minimum period of one year of service.

(ii) Family for purpose of the Scheme will include the following relatives of the officer :-

(a) wife, in the case of male officer;

(b) husband, in the case of a female officer;

(c) minor sons; and (5);

(d) Unmarried minor daughters(5).

Note 1. – (c) and (d) will include children adopted legally before retirement.

Note 2.- Marriage after retirement will not be recognized for *purpose of this Scheme.*

(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 the case of unmarried daughter until she attains the age of 21 years or married whichever is earlier.

[Note (i)- Where an officer is survived by more than one widow, the pension will be paid to them in equal share. On the death of a widow her share of the pension will become payable to her eligible minor child. If at the time of her death, a widow leaves no eligible minor child, the payment of her share of the pension will cease.

[Note (ii)- Where an officer is survived by a widow but has left behind an eligible minor child from another wife, the eligible minor child will be paid the share of pension which the mother would have received, if she had been alive at the time of the death of the officer.]

(iv) [Except as provided in the Note below sub-para(iii) of this para pension awarded under this scheme will not be payable to more than one member of an officers' family at the same time. It will first be admissible to the widow/widower and thereafter to the eligible minor children.

Cases which have already been settled will not be re-opened, cases outstanding of the date of issue of orders will be dealt with in terms of these orders.

In so far as persons serving in Patna High Court and in the Bihar Legislative Assembly Secretariat and Bihar Legislative Council Secretariat are concerned, this order has been issued with the concurrence of the Chief Justice of the Patna High Court and after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council.

(v) In the event of re-marriage of death of widow/widower the pension will be granted to the minor children through their natural guardian till the youngest child attains the age of majority. In disputed cases, however, payments will be made through a legal guardian.

(vi) The temporary increase will not be admissible on the family pension granted under this scheme.

x x x x x "

(II) "***[बिहार सरकार वित्त विभाग ज्ञाप संख्या पी0सी0 –1–मिस–41/92/10059/वि0, दिनांक 6–9–1996 की प्रतिलिपि।]***

विषय : सरकारी सेवकों की दूसरी पत्नी को पारिवारिक पें"ान की आदेयता के संबंध में।

निदे"ाानुसार उपर्युक्त विषय के प्रसंग में कहना है कि वित्त विभाग के परिपत्र संख्या–पेन–103/64–9505/वि0, दिनांक 3–10–1964 की कंडिका 7 (iii) की टिप्पणी (i) के अनुसार किसी मृत सरकारी सेवक की एक से अधिक विधवाएँ जीवित हो तो भारत सरकार के एतद् संबंधी नियमानुसार पारिवारिक पें"ान उनके बीच

बराबर–बराबर देय है तथा एक विधवा की मृत्यु के उपरान्त पारिवारिक पें"ान का उक्त भाग उसके नाबालिग संतान को अनुमान्य है। भारत सरकार के पत्रांक–सी0 एण्ड ए0 जी0 –211/ ऑडिट–1/13–86, दिनांक 4–3–1987 के द्वारा अब निर्णय लिया गया है कि दूसरी पत्नी को पारिवारिक पें"ान अनुमान्य नहीं है।

2. भारत सरकार के उपर्युक्त निर्णय के आलोक में राज्य सरकार द्वारा सम्यक् विचारोपरान्त वित्त विभाग के ज्ञाप संख्या–9505/वि0, दिनांक 3–10–1964 की कंडिका 7(iii) की टिप्पणी (i) को विलोपित करते हुए निर्णय लिया गया है कि एक पत्नी के जीवनकाल में दूसरा विवाह करने पर दूसरी पत्नी को पारिवारिक पें"ान देय नही होगा, परन्तु दूसरी पत्नी से उत्पन्न नाबालिग संतान को पूर्व नियमानुसार पारिवारिक पें"ान की सुविधा देय होगी।

3. उपर्युक्त स"ाोधन आदे"ा के निर्गम की तिथि से प्रभावी होगा परन्तु जिन मामलों में पारिवारिक पें"ान की सुविधा पहले प्रदान की जा चुकी है, उनकी पुनः समीक्षा कर भुगतान रोकने अथवा पूर्व में भुगतान की गई राि"ा की वसूली की कार्रवाई नही की जायेगी। पूर्व के अनिर्णीत मामलों पर इस स"ाोधन के अनुसार ही निर्णय लिया जायेगा।"

(III) The Central Civil Services (Pension) Rules, 1972.

" x x x x x

54 (7) (a) (i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(ii) On the death of a widow, her share of the family pension shall become payable to her

eligible child:

[Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.]"

(b) Where the deceased Government servant or pensioner is servived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the government servant or pensioner.

[Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse, but shall be payable to the other widow or widows and/or to the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.]

(c) Where the deceased government servant or pensioner is survived by a widow but has left behind eligible child or children from a divorced wife or wives, the eligible child or children shall be entitled to the share of family pension which the mother would have received at the time of the death of the government servant or pensioner had

she not been so divorced.

[Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse, but shall be payable to the other widow or widows and/or to the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.]

(d) Where the family pension is payable to twin children, it shall be paid to such children in equal share:

Provided that when one such child ceases to be eligible, his/her share shall revert to the other child and when both of them cease to be eligible the family pension shall be payable to the next eligible single child/twin children.]

x x x x x "

7. From the above, it is clear that as of now, the pension policy of the State does not provide for forfeiture of the share of the deceased widow who does not leave any eligible minor child. Once the Government is committed to grant of pension to an employee, the only stipulation is that only one such pension shall be paid. When there are more than one claimants, the policy of the State Government that the whole amount be distributed among the claimants of branches

which were the result of the employee having more than one wife at the time of his death, even though, except for first wife, the other wives have not been made entitled to family pension, but any eligible minor child by them was eligible for equal distribution of family pension. Further, once a widow getting family pension dies, her share cannot cease. In the present case, the petitioner being the only claimant, in law, for receiving family pension, being the minor son of the deceased employee, and the Government being committed to pay one pension, the entire family pension i.e., 100% of it, is required to be paid to the eligible claimant, who, in the present case, is the petitioner. This is also in conformity with the position which exists, as of now, even without there being any specific clarification or provision made to this effect, being the obvious interpretation and import of the existing policy of the State Government, which has only been clarified by the Court without changing, substituting or supplanting such policy of the State Government. Even if appropriate changes are contemplated in the statutory provisions itself, the same, at best, would only be clarificatory in nature and would not amount to coming out with a fresh or different policy on the issue.

8. In view of the discussions made hereinabove, the writ petition stands allowed. The petitioner is held entitled to 100% family pension with effect from the date the first wife of his father died,

which shall be payable to him for the period in terms of the relevant provisions of the Statute relating to attainment of majority. Upon production of a copy of this order before the respondent no. 4, he shall ensure that necessary sanction is sent to the Accountant General within two weeks. The Accountant General, upon receipt of such sanction order, shall make sure that the authority in favour of the petitioner is issued within two weeks thereafter. Upon the same being done, actual payment, along with arrears, shall be made to the petitioner within the next four weeks. Let a copy of the order be also served on the respondent no. 5.

(Ahsanuddin Amanullah, J)

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