

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20115 of 2016

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Kaushalya Devi @ Malti Devi W/o Late Tapeswar Singh Constable No. 460
Resident of Village - Jamunapur, Post Alawalpur, P.S. Gaurichak, District
Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Home Commissioner, Bihar, Patna having his office at Old Secretariat PS Sachivalaya, Dist-Patna
2. The Superintendent of Police, Munger.
3. The Accountant General, Bihar, Patna having his office at Bir Chand Patel, P.S. Kotwali, District Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vikas Mohan
For the Respondent/s	:	Mr. Md. Nashrul Hoda Khan-Sc1
For A.G.	:	Mr. Uday Kumar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 25-09-2019

1. The present writ petition has been filed for directing the respondents to issue sanction order and make payment of family pension to the petitioner herein w.e.f. 17.06.1999 as well as the arrears of family pension with interest.

2. The brief facts of the case is that the husband of the petitioner retired on 01.07.1992 while working as constable and thereafter, he died on 16.06.1999. It is the case of the petitioner that her husband had received all the retiral benefits along with pension and the first wife of the deceased husband of the petitioner, namely Jageshwari Devi died on 24.12.2000, hence the petitioner should now be granted family pension since she is



the second wife. It is further stated that the minor son of the deceased employee had received family pension w.e.f. 2002 to 2006 till he obtained the age of majority.

3. The respondents have filed detailed counter affidavit as also have filed a supplementary counter affidavit, wherein it has been stated that the petitioner herein, is admittedly the second wife of the deceased employee and has come before this Court after a lapse of about 17 years, inasmuch as the death of the deceased employee had taken place on 16.06.1999 but the petitioner herein had raised no grievance, thereafter, thus her claim is barred by the principles of waiver, estoppel and acquiescence, as also the writ petition is liable to be dismissed on the ground of delay and laches, on the part of the petitioner, in approaching this Court. The learned counsel for the respondents has further referred to the provision contained in ***Rule 23 of the Bihar Government Servants' Conduct Rules, 1976***, which is reproduced hereinbelow :-

*“(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. ”*

It is thus submitted that first of all, in the Hindu Personal Law, there is no provision of second marriage while



the first marriage is subsisting and moreover, the service book of the deceased employee shows that the deceased employee had neither taken any permission from the Government for solemnizing second marriage with the petitioner herein nor any permission was granted by the Government to the deceased employee to solemnize second marriage with the petitioner herein, hence the case of the petitioner for grant of family pension does not deserve consideration and the present writ petition is required to be dismissed.

4. *Per contra*, the learned counsel for the petitioner, when asked about the aforesaid aspect of the matter, has not been able to show anything from the materials available on record that either the petitioner's husband had taken permission from the Government for solemnizing second marriage or he was ever granted permission for solemnizing the second marriage with the petitioner herein.

5. I have heard the learned counsel for the parties and gone through the materials on record and I find that ***Rule 23 of the Bihar Government Servants' Conduct Rules, 1976*** clearly provides that no government servant shall enter into, or contract, a marriage with a person having a spouse living and no government servant having a spouse living, shall enter into or



contract a marriage with any person unless and until the Government shall permit. In the present case, admittedly, neither the deceased employee had obtained any permission for solemnizing marriage with the petitioner herein nor the Government had granted permission to the deceased employee for solemnizing marriage with the petitioner herein. Hence, the petitioner, not having the status of a legally married wife as also no permission having been accorded by the Government to the deceased employee to perform any second marriage, the claim of the petitioner for grant of family pension cannot be entertained, being *de hors* the provisions of law, hence the writ petition stands dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.10.2019
Transmission Date	NA

