

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Civil Writ Jurisdiction Case No.12930 of 2019**

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Kailash Devi (female), aged about 66 years, wife of late Vishwanath Mahto, resident of Khabra Road, Gannipur, Post- Head Post Office, P.S. - Kazi Mohammadpur, District – Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Engineer-in-Chief – cum – Additional Secretary – cum – Special Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Superintending Engineer, Road Construction Department, Road Circle, Darbhanga.
4. The Executive Engineer, Road Construction Department, Road Division, Samastipur.
5. The Treasury Officer, Muzaffarpur, District – Muzaffarpur.
6. The Accountant General, Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.Sushil Kumar (GP22)

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

7 25-08-2020 On the last date itself this Court was not in favour of granting time to the petitioner but on much insistence of learned counsel for the petitioner the matter was adjourned for two weeks to be listed on 21st July, 2020. Learned counsel for the petitioner had submitted that on the next date he would inform this Court as to whether the deceased employee had contracted second marriage during lifetime of his wife after seeking permission of the employer.



Today learned counsel has not joined the proceeding, though this Court has been informed by the Bench Officer that he has been duly sent the link. No prayer for time has been made.

Learned counsel for the State is present.

In such circumstance, the matter is being considered on the basis of materials available on the record.

Petitioner in the present case is seeking a direction to the respondent authorities for payment of the retiral dues of the husband of the petitioner. It is stated in the writ application that the husband of the petitioner was appointed as Road Mate (Path Shramik) in the Road Construction Department in the year 1971. He had solemnized marriage with one Kala Devi but according to the petitioner there was no issue out of the said wedlock, therefore, under compulsion of the first wife the petitioner's husband had performed his second marriage with the petitioner and out of the wedlock one male issue was born.

Husband of the petitioner retired from service on 31.01.2014 and thereafter the petitioner submitted her papers at the instance of Executive Engineer Road Construction Department (respondent no. 2) for payment of pension but at the stage of final processing of the application the opinion of



learned Government Pleader was obtained. It is also her case that the first wife Kala Devi died on 18.03.2019. Under these circumstances, the petitioner has prayed for payment of entire retiral dues and family pension to the petitioner.

A counter affidavit has been filed on behalf of the respondents. In the counter affidavit it is stated that the second wife is not eligible for the family pension in terms of Memo No. 10059 dated 06.09.1996.

It is the stand of the respondents that the entire post retiral dues as well as arrears of pension had been paid to the husband of the petitioner during his lifetime. In paragraph '23' of the counter affidavit it is stated that as per the provision of Memo No. 1549 dated 27.06.2011 read with Rule 23(2) of Bihar Service Conduct Rules, 1976 the family pension will be payable to the second wife only if the employee had taken consent/permission from the Government for the second marriage and the second marriage will be permissible only if the personal law permits. In the instant case, the husband of the petitioner was a Hindu and hence his personal law i.e. Hindu Law does not permit the second marriage if any party has a spouse living at the time of marriage. It is a categorical stand that in such circumstance the petitioner is not eligible for family



pension as she is the second wife.

In the writ application there is no averment that the husband of the petitioner had solemnized second marriage during lifetime of his spouse Kala Devi after seeking prior permission of his employer. The petitioner has relied upon a judgment of the Hon'ble Division Bench of this Court in the case of **Bina Ansari Vs. State of Bihar & Ors.** reported in **2017(2) PLJR 920** to submit that the family pension would be payable to the second wife.

On perusal of the averments made in the writ application and that of the counter affidavit the facts of the case are crystal clear. It is the admitted case of the petitioner that during the lifetime of the spouse Kala Devi the employee had entered into the second marriage with this petitioner. There is neither any averment in the writ application that prior permission of the employer was obtained nor the stand of the respondents are denied. Thus, admittedly, prior to entering into the second marriage no permission was taken from the employer. The averments made in this regard in the counter affidavit have not been denied by the petitioner.

So far as the judgment of the Hon'ble Division Bench in the case of **Bina Ansari (supra)** is concerned, a perusal



thereof would show that the said judgment was rendered in case of a deceased employee who was Muslim and his personal law permitted more than one marriage. The judgment is, thus, clearly distinguishable on the facts of the present case.

This Court, therefore finds that this petitioner has failed to make out any legal right in her favour so as to persuade this Court to issue a writ of mandamus.

This writ application has, thus, no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

Arvind/Sushma

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

