**IN THE HIGH COURT OF JHARKHAND AT RANCHI**
**W.P.(S) No. 6198 of 2019**

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Nanki Devi --- --- Petitioner

Versus

1. The General Manager, East Central Railway, Hazipur, Bihar.
2. The Divisional Railway Manager, Dhanbad.
3. Urmila Devi. -- --- Respondents

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**CORAM: The Hon'ble Mr. Justice Aparesh Kumar Singh**
**The Hon'ble Mrs. Justice Anubha Rawat Choudhary**

Through Video Conferencing

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For the Petitioner : Mr. Rajendra Prasad, Adv.
For the Respondents : Mr. Vijay Kr. Sinha, Adv.

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**06/11.11.2020** Heard learned counsel for the petitioner Mr. Rajendra Prasad and Mr. Vijay Kumar Sinha for the railways.

Petitioner claiming herself to be the second wife of the deceased employee namely Late Bhola Saw, approached the learned Central Administrative Tribunal, Circuit Bench, Ranchi in O.A. No.051/00769/2019 with a prayer for grant of 50% family pension under the Family Pension Scheme 1964. By the impugned order dated 22nd August 2019 (Annexure-6) learned C.A.T. has rejected the claim.

The relevant facts for deciding the issue herein are not in dispute. The employee, who was appointed on the post of Khalasi (Helper) in the year 1987, in his declaration in the pension form in 2007 pursuant to his retirement on 31st July 2007 given the names of both the ladies namely Urmila Devi respondent no.3 as the first wife and Nanki Devi (petitioner) as the second wife (Annexure-1). The employee continued to receive pension till he died on 12th April 2019 leaving behind these two ladies. As per the details of these two ladies given in the pension form, Urmila Devi was born on 16th October 1949 while Nanki Devi petitioner was born on 20th June 1954. Petitioner relying upon Rule 7(i)(a) of the Family Pension Scheme for Railway Servants, 1964 as engrafted under Rule 75 of the Railway Service (Pension) Rules, 1993 insists that family pension is payable to more widows than one which shall be paid in equal share to the widows.

Respondents in their counter affidavit have strongly contested the plea. According to the respondents also, the definition of family under the pension rules includes widow or widower but a Hindu cannot legally solemnize marriage with another lady during the lifetime of a legally married first wife. The second marriage would be null and void and have no legal effect. However, the right of children born from illegal wife has been protected in law and rules vide RBE No.30/1997 and RBE No.150/2013 who are eligible for family pension. Respondents have also placed reliance upon the provisions of the Railway Service (Pension) Rules, 1993 in support of their contention that the petitioner, not being a legally married wife, cannot be treated as a widow of the deceased employee for granting her 50% of the family pension along with the first wife Urmila Devi. Learned C.A.T. has, therefore, rightly rejected the plea.

We have considered the submissions of learned counsel for the parties and taken note of the relevant material pleadings on record and the provisions of the Railway Service (Pension) Rules on which reliance has been placed by both the parties.

The issue in controversy is in a narrow compass. The petitioner, though despite being declared as a second wife in the pension form by the employee, could not be treated as a legally wedded wife because the marriage, if any, was solemnized during the subsistence of the first marriage and the lifetime of his spouse Urmila Devi respondent no.3. It appears from the details of the petitioner filled up in the pension form that she was born in 1954 and therefore the marriage could not have taken place before the coming into force of the Hindu Marriage Act, 1955. That being the position as to the legal status of the petitioner as a wife/widow, the relevant Rule 7(i)(a) relied upon by the petitioner cannot come to her aid. She could not be treated as a widow if the marriage itself was not legal. As such, we do not find any error in the impugned order. Writ petition being devoid of merit, is dismissed.

Prayer for exemption from payment of cost of Rs.3000/- on failure to file counter affidavit within the time prescribed under order dated 2nd March 2020 is allowed since respondents have taken a valid plea on account of the lockdown prevailing during the pandemic. As such, respondents are exempted from paying the cost. I.A. No.4149/2020 stands disposed of.

***(Aparesh Kumar Singh, J.)***

***(Anubha Rawat Choudhary, J.)***

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