

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.931 of 2017

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Smt. Poonam Devi, widow of late Birendra Sharma, resident of Mohalla -
Rajapur, Mainpura, Ganga Gate No. 33, P.S. - Patliputra, District - Patna.

... .. Petitioner

Versus

1. Bihar School Examination Board through its Secretary,
2. Chairman, Bihar School Examination Board, Patna.
3. Smt. Chintamani Devi, widow of late Birendra Sharma, resident of village -
Phulari, P.S. - Sandesh, District - Bhojpur.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Bhupendra Narayan Sinha, Advocate Mr. Shailendra Kumar, Advocate
For the Respondent No.3:		Mr. Ram Naresh Sharma, Advocate
For B.S.E.B., Patna	:	Mr. Syed Arshad Alam, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, A.G.

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**CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL JUDGMENT

Date : 18-03-2021

Heard Sri Bhupendra Narayan Sinha, learned
counsel appearing on behalf of petitioner, Sri Ram Naresh
Sharma, learned counsel appearing on behalf of Respondent
No.3 and Sri Syed Arshad Alam, learned counsel appearing on
behalf of Bihar School Examination Board, Patna.

The petitioner seeks direction to the respondent
No.1 and 2, Secretary and Chairman, Bihar School Examination
Board, Patna (hereinafter referred to as the “Board”) to pay
entire post retirement family pension to the petitioner.

The brief facts leading to this writ application is



that Birendra Sharma was married with respondent No.3 Chintamani Devi in the year 1960, but there was no issue out of their wedlock. Thereafter, Birendra Sharma performed his remarriage with the petitioner, namely, Poonam Devi in the year 1987, with the consent of respondent No.3 Chintamani Devi, and due to wedlock they were blessed with a male issue, namely, Deepak Kumar, who is minor. Birendra Sharma was working as Assistant in the office of Bihar School Examination Board, Patna and he retired from the service on 31.05.2003 and died on 01.01.2015 living behind his first wife respondent No.3 Chintamani Devi, second wife petitioner Poonam Devi and a minor son, namely, Deepak Kumar, who born with the petitioner. After death of Birendra Sharma, the petitioner, being the second widow, filed an application before the Board stating therein that she has been made nominee to get family pension in the deed of Will executed by her husband Birendra Sharma on 31.12.2008. After receiving the said application of the petitioner, the Secretary, Bihar School Examination Board, Patna (Respondent No.1) informed the matter to Chintamani Devi (Respondent No.3) through its letter dated 18.06.2015 stating that after the death of her husband, she has not made any claim regarding family pension, whereas petitioner has



filed an application along with the deed of Will to allow her to get the family pension. On the same day, the Secretary of the Board (Respondent No.1) also wrote a letter to the petitioner informing her that in view of the decision of Hon'ble High Court, Patna, the first wife of the deceased-employee is entitled to get family pension. After receiving the said letter of the Secretary of the Board (Respondent No.1), Chintamani Devi (Respondent No.3) filed a petition on 10.07.2015 along with an affidavit sworn before the Executive Magistrate, Patna making request that though the first wife is entitled to receive family pension, but she relinquish her right with free Will for payment of family pension to second wife Poonam Devi (Petitioner). In spite of filing of aforesaid application supported with affidavit by Chintamani Devi (Respondent No.3) the Board is sitting tight over the matter and no communication was made to the petitioner with regard to the payment of family pension to her. The petitioner along with her minor son Deepak Kumar is living in Patna in a small house constructed by her husband Late Birendra Sharma, but there is no source of income to maintain herself as well as her minor son.

The Respondent No.3 Chintamani Devi has filed



her counter affidavit admitting the facts that she is the first wife and the petitioner is second wife of Late Birendra Sharma, but she has not denied about birth of male issue, namely, Deepak Kumar (minor) due to wedlock of petitioner and Birendra Sharma. She has further stated that she has not given her consent to the Board to pay full family pension to the petitioner. In fact, the petitioner obtained her signature on blank papers and, subsequently, the petitioner converted the same in form of application and affidavit, which is said to be filed before the Board in her name making the claim to receive the family pension. The Respondent No.3 Chintamani Devi, further, stated in her counter affidavit that being the first widow of the deceased-employee Birendra Sharma, she is entitled to get full family pension and according to the amended Family Pension Scheme 1964 amended later on through Notification dated 06.09.1996, the petitioner, being the second wife, is not entitled to get share in the family pension.

Learned counsel appearing on behalf of petitioner submits that since the deceased-employee Late Birendra Sharma performed his remarriage with the petitioner with the consent of respondent No.3 and due to wedlock of petitioner



and deceased Birendra Sharma, there is male issue, namely, Deepak Kumar, who is minor, the petitioner is entitled to receive the family pension after the death of her husband Birendra Sharma, especially, in the circumstances that the respondent No.3, who is the first wife of the deceased-employee Birendra Sharma has filed an application before the Board supported with affidavit relinquishing her claim to receive family pension, but the Respondent Board is sitting tight over the matter in spite of several representations made by the petitioner for releasing the family pension in her favour. The learned counsel for the petitioner relied on the Judgment dated 25.07.2018 passed in C.W.J.C. No. 14577 of 2017 (Shanti Devi versus The Magadh University and others) and also the Judgment of the Apex Court dated 04.03.2020 passed in Civil Appeal No(s). 1835 of 2020 (Tulsa Devi Nirola and others versus Radha Nirola and others) in support of his submission.

Per contra, learned counsel appearing on behalf of Respondent No.3 Chintamani Devi submits that while in Family Pension Scheme for Government employee 1964 as per note (1) of Clause 7 (iii) there was provision to the effect that if an employee dies leaving behind him more than one widow, the pension would be paid to them in equal share, but after



Notification dated 06.09.1996 of the Finance Department Government of Bihar note (1) of paragraph 7 (iii), the Notification dated 03.10.1964 has been deleted. As such, after Notification dated 06.09.1996 of the finance department, Government of Bihar, the petitioner being the second wife of deceased-employee Birendra Sharma is not entitled for family pension.

Mr. Syed Arshad Alam, learned counsel appearing on behalf of Bihar School Examination Board, Patna argued that while in the Family Pension Scheme, 1964 there was provision that if the deceased-employee died living behind him more than one widow, all widows will be entitled to get family pension in equal share, but after Notification dated 06.09.1996 issued by the Finance Department, Government of Bihar that provision has been deleted. As such after the notification dated 06.09.1996 only first widow is entitled to get family pension. In the present case it is not in dispute that there is minor son, namely, Deepak Kumar due to wedlock of deceased employee Birendra Sharma and his second wife petitioner Poonam Devi hence her minor son Deepak Kumar would also be entitled for family pension till attaining the majority.



From the pleadings of the parties and arguments, as advanced on behalf of the parties, it is not in dispute that Late Birendra Sharma, who was working as an Assistant in the office of Bihar School Examination Board, Patna retired from service on 31.05.2003 and later he died on 01.01.2015. Late Birendra Sharma had performed marriage with Respondent No.3 Chintamani Devi in the year 1960, but they were not blessed with any issue. Thereafter, he performed his remarriage with the petitioner Poonam Devi and due to their wedlock, there is one male issue, namely, Deepak Kumar, who is minor. While petitioner has stated in her writ petition that Respondent No.3 Smt. Chintamani Devi by filing an application supported with affidavit (Annexure-3) relinquished her claim to receive the family pension in favour of the petitioner, but Respondent No.3 Smt. Chintamani Devi in her counter affidavit clearly denied the said facts saying that petitioner obtained her signature on plain papers and, maliciously, she converted the same into application and affidavit (Annexure-3) and she is only entitled to receive the family pension.

By Notification dated 06.09.1996 issued by the Finance Department, Government of Bihar note (i) of Clause 7(iii), the Notification No. 9505, dated 03.10.1964 is deleted



under which there was provision that if the deceased-employee has more than one widow, they are entitled to receive equal share in pension. While under Clause 7(iii)(b) of notification dated 03.10.1964 the minor son till attaining the age of 18 years is entitled to receive pension.

In case of ***Most. Kiran Devi vs. The State of Bihar and others, reported in 2014 (3) PLJR 792***, a Bench of this Court held that there will be difficulty for the Court to issue mandamus in favour of the second wife ignoring the right of the claim of private respondent No.5 and, therefore, the Court rejected the writ application with liberty to the petitioner to seek appropriate remedy of obtaining Succession Certificate from Civil Court of competent Court jurisdiction.

In C.W.J.C. No. 3694 of 2012 (Mehrun Nisha versus The State of Bihar and others), a Bench of this Court held that in terms of the Government Notification dated 06.09.1996 only the first wife is entitled for payment of family pension and none of it can be paid to the second wife.

The Judgment dated 25.07.2018 passed in C.W.J.C. No. 14577 of 2017 (Shanti Devi versus The Magadh University and others) will not be applicable in the present case, as in that case, there was family arrangement deed signed by all family



members during the life time of deceased-employee for receiving the family pension by the second wife and her son. In Judgment dated 04.03.2020 passed by the Hon'ble Apex Court in Civil Appeal No(s). 1835 of 2020 (Tulsa Devi Nirola and others versus Radha Nirola and others) also there was family settlement in the life time of the deceased-employee regarding the family property debarring the family pension to the first wife. In the present case, there is no family settlement deed executed by the deceased employee during his life time about receiving the family pension by his second wife. While the petitioner has claimed that an application supported with affidavit (Annexure-3) was filed by the Respondent No.3 after death of the deceased-employee to relinquish her right allowing the petitioner to receive the family pension, but Respondent No.3 Chintamani Devi has denied the same with contention that petitioner had obtained her signature on plain papers and maliciously that papers were used by petitioner for preparing the application supported with affidavit (Annexure-3). As such, in view of Notification dated 06.09.1996 issued by Finance Department, Government of Bihar deleting the note (I) of Clause 7 (iii) of notification dated 03.10.1964 issued by the Finance Department, Government of Bihar in respect to



Family Pension Scheme, the petitioner being the second widow of deceased-employee Birendra Sharma is not entitled to receive family pension. However, it is made clear that Deepak Kumar, minor son of the petitioner, who is second wife of deceased-employee Birendra Sharma is entitled to receive the family pension in equal share with respondent No.3 Chintamani Devi till attaining his majority in view of paragraph 7(2)(c) of Family Pension Scheme for State Government employees 1964.

In view of the above, this writ application is dismissed with aforesaid observation and the petitioner would be at liberty to approach before appropriate Forum for family pension to her minor son.

(Rajendra Kumar Mishra, J)

Manish Kumar

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	23.03.2021
Transmission Date	23.03.2021

