

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16476 of 2018

=====

Jagdamba Devi @ Jagtaran Devi, W/o late Bechan Mandal, Resident of
Village- Kothiya, P.S.- Bhairav Sthan, Jhanjharpur, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education, Bihar, Patna
2. The Principal Secretary, Education, Bihar, Patna.
3. The Director, Secondary Education, Bihar, Patna.
4. The District Magistrate, Madhubani.
5. The District Education Officer, Madhubani.
6. The District Programme Officer, Establishment, Madhubani.
7. The Headmaster, Gopal Narayan +2 High School, Kothiya Block
Jhanjharpur, District Madhubani.
8. The Accountant General, Bihar, Patna.
9. Triveni Devi, Wife of late Bechan Mandal, Resident of Village- Kothiya,
P.S.- Bhairavsthan, District- Madhepura.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sanat Kumar Mishra, Advocate
For the Respondent/s : Mr. Arvind Kumar, AC to GP-23
For the Accountant General : Mr. Ram Kinker Choubey, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 13-12-2022

Heard Mr. Sanat Kumar Mishra, learned counsel
appearing on behalf of the petitioner, Mr. Arvind Kumar, learned
AC to GP-23, for the State, Mr. Ram Kinkar Choubey, learned
counsel for the Accountant General, Bihar and Mr. Kameshwar
Prasad, learned counsel for respondent no.9.

2. The present writ petition has been filed seeking a
direction upon the respondent authorities to ensure family pension
and arrears thereof, gratuity, leave encashment, general provident



fund, group insurance and arrears of salary for the month March and April 2017, which was due to be paid to the deceased husband of the petitioner, as her husband died in harness in service, with up to date interest on all due amount for delayed payment.

3. The controversy involved in the present case is that there are two claimants, who are claiming themselves to be the wives of late Bechan Mandal, who died on 02.04.2017 while working as 'Peon' in the Gopal Narayan +2 High School, Kothiya, Block Jhanjharpur, District Madhubani seeking family pension and other retiral benefits.

4. The writ petitioner in support of her claim has submitted that her late husband, Bechan Mandal, himself endorsed petitioner's name in the service book, as his wife, as is evident from Annexure- P/21. It is the case of the petitioner that in the ration card issued in the year 1984, in the electoral rolls of 1989, in different census records of village Kothiya, the petitioner's name appear, as wife of Bechan Mandal. Even late husband of the petitioner, during his life time had obtained family list issued by the Mukhiya of the Panchayat and concerned Circle Officer, in which the petitioner is admitted as his wife.

5. Learned counsel for the petitioner also vehemently submitted that so far respondent no.9, Triveni Devi, is concerned,



she is a imposter lady and no marriage of her has ever been solemnized with late Bechan Mandal nor there is any substantive evidence in support of her claim. He further submits that in the year 2013, respondent no.9 had filed M.R. Case No. 264 of 2013 in the Court of learned Principal Judge, Madhubani claiming maintenance on the pretext that she is the first wife of Bechan Mandal in which a detailed written statement was filed on behalf of the husband of the petitioner denying the claim of the marriage of Triveni Devi (respondent no.9) with him and he also claimed for DNA test of Ram Nandan Mandal, who is alleged to be born out of the wedlock of Triveni Devi and Bechan Mandal. During the aforesaid case, a petition for interim maintenance was also filed by respondent no.9, which has been replied by Bechan Mandal and refuted all the allegations and while denying the marriage and paternity of Ram Nandan Mandal, he emphasized for DNA test, but the respondent no.9 did not respond to the written statement / rejoinder and left Pairvi, which ultimately resulted into dismissal for non-prosecution vide order dated 21.03.2017.

6. It is next submitted that thereafter respondent no.9 filed Succession Case No. 13 of 2017 before the learned District Judge, Madhubani under Section 276 of the Indian Succession Act for issuance of Succession Certificate in estates of late Bechan



Mandal, but subsequently she also withdrew the said Succession case, as is evident from Annexure- P/19. In order to controvert the claim of respondent no.9, learned counsel for the petitioner also submits that in the SECC list/ ration card, family members list of Gram Panchayat Mahrail, where Triveni Devi (respondent-9) lives, name of father of Ram Nandan Mandal (son of Triveni Devi) recorded as Ramu Mandal and not Bechan Mandal and, as such, the same indicates that the husband of the Triveni Devi was/is Ramu Mandal and not Bechan Mandal.

7. Mr. Mishra further submits that after the death of the husband of the petitioner, the petitioner approached the respondent no.7 and submitted requisite forms and application for death-cum-retiral benefits and outstanding dues and also submitted all the documents, which were asked for. However, vide order dated 03.10.2018, the District Programme Officer, Madhubani rejected the claim of the petitioner and surprisingly allowed the claim of respondent no.9 Triveni Devi based her claim on a family list dated 04.11.2017. However, considering the legality, the Hon'ble Court vide order dated 30.10.2018 set aside the order dated 03.10.2018 and further directed the District Programme Officer, Madhubani to conduct a thorough enquiry giving opportunity to the petitioner, respondent no.9 or any other claimant, who may be



before him and then pass a reasoned order with a clear stipulation that till then no payment of any retiral benefits of late Bechan Mandal was to be paid to any one.

8. The District Programme Officer (Establishment), Madhubani vide letter dated 13.12.2018 asked the Circle Officer, Jhanjharpur to verify and report as to which of the original family list of late Bechan Mandal is valid and original. Surprisingly, on the same date vide letter dated 13.12.2018, the Circle Officer, Jhanjharpur reported that in the light of the letter of respondent no.6, he enquired the matter and obtained a report from the Revenue Clerk that the family list dated 04.11.2017 was issued after the intensive enquiry and the same is a correct one. He further reported that the earlier family list dated 23.05.2017 and 28.04.2017 were issued on the basis of affidavit filed by the applicant and, as such, the same were defective and not proper. With regard to the aforesaid report, learned counsel for the petitioner vehemently submitted that the Circle Officer completely over-looked the various facts and in fact he in connivance with respondent no.9 had submitted his report by ignoring the family list dated 01.10.2013 earlier issued to Bechan Mandal himself in his life time, which clearly suggests the petitioner as wife. The said report dated 13.12.2018 is also under challenge in I.A. No. 02 of



2019 filed on behalf of the petitioner. It is needless to say that before issuing this report neither any enquiry has been conducted nor any opportunity has been provided to the petitioner and the same has been prepared on the same day, which makes the report suspicious and unreliable.

9. It would be relevant to observe that this Court having considered this aspect of the matter vide order dated 13.01.2021, once again directed the District Programme Officer (Establishment), Madhubani to consider the case of the petitioner vis-a-vis that of respondent no.9 and then pass order. It is the case of the petitioner that the date of hearing was fixed on 08.02.2021 and the petitioner appeared before the respondent no.6 and submitted her representation along with all the documents in support of her claim, but he without looking into any document vide order dated 08.02.2021 upheld the earlier dated 15.12.2018 in a most arbitrary manner by ignoring all the documents, which have been produced before him either for the purpose of rebutting the claim of respondent no.9 or in favour of her own claim. The District Programme Officer (Establishment), Madhubani held Triveni Devi, as first wife, but did not assign reason nor disclosed as to on which basis he came to that conclusion.



10. Per contra, learned counsel appearing on behalf of respondent no.9 submits that respondent no.9 married with Bechan Mandal, much before 1971 and was living along with him and his father Jiya Lal Mandal. He further submits that the voter-list of 1992 also discloses the fact that Triveni Devi, is the first wife of Bechan Mandal, which has also been brought on record by way of Annexure-R/2 to the counter affidavit filed by respondent no.9. He further submits that when she came to know about the death of her husband, she also filed application along with family list and both the applicants, respondent no.9 vis-a-vis petitioner came up before the District Programme Officer (Establishment), Madhubani and in order to verify the family list, a report was called for and the Circle Officer, Jhanjharpur submitted his report that Bechan Mandal had two wives and it is Triveni Devi, who is said to be the first wife of Bechan Mandal and Jagdamba Devi is said to be the second wife. He further submits that respondent no.9 participated in enquiry, but the petitioner did not participate in enquiry knowing very well that her claim is based on falsehood. The District Programme Officer (Establishment), Madhubani also having taken into consideration every documents has passed the order as contained in Memo No. 2754 dated 15.12.2018 showing respondent no.9 as the first wife of late Bechan Mandal. He further submits that



according to Hindu Marriage Act, second marriage solemnized during the life time of the first wife is void and the second wife does not acquire status of wife, therefore, nomination of Jagdamba Devi by Bechan Mandal as his wife is illegal and void. A wife could be nominee, but by nomination, a woman cannot acquire status of wife. He further relied upon one of the order of this Court passed in the case of **Kamla Devi and others Vs. The State of Bihar & Ors**, reported in **2017 (2) PLJR 33** herein the Court held that Bihar Pension Rules do not provide any provision for nomination with regard to family pension. The Bihar Pension Rules designate the persons, who are entitled to receive family pension. Thus, no other person except these designated under the Rules are entitled to receive pension.

11. A counter affidavit has been filed on behalf of respondent no.6, the District Programme Officer (Establishment), Madhubani and submits that pursuant to the order of this Court, the petitioner and respondent no.9 appeared before the answering respondent along with their respective written statements and relevant documents, however, the petitioner did not produce any supporting documents. It is the further stand of the State respondent that the family list produced by both the claimants were verified and it has been found that late Bechan Mandal had



two wives, namely, Triveni Devi, is the first wife and Jagdamba Devi is the second wife. The contention of the petitioner is totally denied that she is the only wife of late Bechan Mandal. Learned counsel for the State further submits that the order dated 09.02.2021 passed by the District Programme Officer (Establishment), Madhubani is in conformity with the principles of natural justice and the same has been passed after providing reasonable opportunity to all the parties and there is no infirmity in it.

12. Having heard the learned counsel for the parties in detail, though this Court while exercising the extraordinary jurisdiction under Article 226 of the Constitution of India may refused to entertain the claim of the parties wherein disputed question of facts have been raised, which require evidence, however, legality of the impugned order can always be tested.

13. There is no iota of doubt that any marriage solemnized by either of the spouse during the life time of the other spouse, the same would be void in terms of Section 16 of the Hindu Marriage Act, 1955, as it contravenes Section 5 (ii) of the Act. However, the children born out of the second marriage would be entitled to claim share in pension and death-cum-retirement/gratuity till they attain the majority. This Court



carefully considered the submissions made on behalf of the parties and found that at no point of time, the claim of the petitioner has been considered in its entirety that the husband of the petitioner has all along denied any relationship with respondent no.9. Once the respondent no.9 claims herself to be wife of Bechan Mandal and the same has been denied by the person, who is said to be the husband, then onus lies upon her to prove her case, as she is the wife of the said person. The entire case of the respondent no.9 is based upon a family list issued by the Circle Officer, Jhangharpur, as contained in letter dated 04.11.2017, but the respondent no.9 had the opportunity to prove her case before the Court when she filed maintenance case and subsequently when she filed Succession Case No. 13 of 2017 before the District Judge, Madhubani. Further the official respondent also ignored the documents, such as SEEC list / ration card, family members list of Gram Panchayat, Mahrail and many other documents, which indicate that the father of Ramanand Mandal was recorded as Ramu Mandal and not Bechan Mandal. The report of the Circle Officer, Jhanjharpur dated 13.12.2018 also does not find confidence for the simple reason that such a complicated enquiry has been conducted within few hours and he came to the conclusion that respondent no.9 is the first wife and the petitioner



is the second wife. The impugned order of the District Programme Officer (Establishment), Madhubani dated 08.02.2021 manifestly appears to be without application of mind, as there is no consideration of the documents produced by the petitioner in support of her claim as also the documents produced for negating the claim of respondent no.9.

14. It would also be relevant to state here that the judgment/order ruled upon by the learned counsel for the respondent no.9 would not be applicable to the facts of this case, as in the present case the impugned order dated 08.02.2021 holding respondent no.9 is the first wife is manifestly erroneous, without consideration of the relevant materials and furthermore in the said case, the Hon'ble Court finally directed the parties to approach before the competent court for succession certificate.

15. In view of the aforesaid facts, this Court deems it apt and proper to set aside the impugned order, as contained in Memo no. 379 dated 08.02.2021, issued by the District Programme Officer (Establishment), Madhubani and accordingly the same is set aside, and further directed the District Magistrate, Madhubani to consider the claim of the petitioner vis-a-vis respondent no.9 on the basis of the documents available on record and pass a reasoned



and speaking order after giving proper opportunity of hearing to both the parties.

16. It is needless to say that the entire exercise must be completed within a period of twelve weeks form the date of receipt/production of a copy of this order.

17. On receipt of the order of this Court, the District Magistrate, Madhubani would issue notice to both the claimants and they would be at liberty to file their respective written statements along with necessary documents in support of their claim and a report would be also called for from an independent Circle Officer and thereafter pass an order directing for payment of retiral benefits in accordance with law.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.12.2022
Transmission Date	NA

