

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6663 of 2020

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Kamar Jahan Wife of Late Abdul Mannan Resident of Tank Lane, Near Chhoti Masjid, Bhikanpur, Gumti No.3, Police Station- Ishakchak, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Law Department, Government of Bihar, Patna.
2. The Principal Secretary, Law Department, Government of Bihar, Patna.
3. The Law Secretary, Law Department, Government of Bihar, Patna.
4. The District Magistrate, Bhagalpur.
5. The Registrar, Bhagalpur Civil Court, Bhagalpur.
6. The Office Superintendent, Bhagalpur Civil Court, Bihar.
7. The Treasury Officer, Bhagalpur.
8. The Accountant General, Bihar, Birchand Patel Marg, Patna.
9. Bibi Shakila Khatoon Wife of Late Abdul Mannan Resident of Mahabalichak, Post Office and Police Station- Habibpur, District- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Md. Najmul Hodda, Advocate
For the State	:	Mr. Sanjay Kumar Ghosarvoy, AC to AAG-3
For the Respondent No9 :		Mr. Nirbhay Prashant, Advocate
		Mr. Pravin Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

6 20-06-2023 Heard Mr. Md. Najmul Hodda, learned counsel appearing on behalf of the petitioner; Mr Sanjay Kumar Ghosarvoy, learned A.C to AAG-3 appearing on behalf of the State and Mr. Nirbhay Prashant, learned counsel appearing on behalf of the Respondent No.9.

2. Learned counsel appearing on behalf of the



petitioner seeks to ventilate the grievance with respect to claim of the petitioner as well as her right for pensionary benefit being second wife of the deceased employee.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is second wife and in view of the Government notification as well as the law laid down by this Court in case of *Najda Khatoon @ Najdar Khatoon v. The State of Bihar through D.M. Begusarai & Ors* reported in *2014 (3) P.L.J.R. 588*, first wife and second wife are equally entitled for family pension and other retiral dues of the deceased employee.

4. Mr. Nirbhay Prashant, learned counsel appearing on behalf of the Respondent No.9 (first wife of the deceased employee) submitted that the judgment which has been referred by the petitioner is not applicable in the case of the petitioner, who is the second wife of the deceased employee. He has distinguished the case on the basis of the fact that in the case relied upon by the petitioner, the petitioner of the said writ petition had married another lady after retirement. It is his specific submission that the relief which has been claimed with



respect to the right of the petitioner cannot be gone into by this Court considering the disputed question of fact that the validity of the marriage of the petitioner has been challenged by the Respondent No. 9. In paragraph no. 9 of the counter affidavit filed on behalf of the Respondent No.9, a statement has been made that no marriage was solemnized rather the petitioner was living in adultery as a concubine.

5. Having considered the rival submissions made by the parties, this Court finds that the petitioner was in relationship with the deceased employee and the factum of marriage has been doubted by the Respondent No.9, who is the first wife of the deceased employee. The records adduced to the writ petition as well as the counter affidavit filed on behalf of the Respondent No.9, reveals that a child took birth from petitioner out of legal relationship or illicit relationship.

6. Considering the said facts, the only conclusion can be drawn by this Court that the child, who is the biological son of the petition is also entitled for pensionary benefits. However, the question, as to whether the petitioner is legally wedded wife of the deceased employee is open



and this Court, in exercise of writ jurisdiction cannot enter into the very factum of the marriage between the deceased employee and the petitioner.

7. The petitioner, if so advised, may avail appropriate legal remedy before competent Civil Court having jurisdiction.

8. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-
Nilmani/-

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