

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9736 of 2012

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Tarannum Jahan, Wife of Late Shakil Akhtar, Resident of C/o Gauri Mukhiya,
Village + P.O. Dumrama, P.S. - Amarpur, District - Banka

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary-Cum-Commissioner, Department of Health Govt. of Bihar, Patna
3. The Director, Department of Health, Govt. of Bihar, Patna
4. The Civil Surgeon-Cum-Chief Medical Officer, Banka, At Banka, District - Banka
5. The In-Charge Medical Officer, Primary Health Centre, Chandan, District Banka
6. The Addl. Collector Establishment, Collectorate, Banka, District Banka
7. Smt. Raushan Aara Resident of Village Amraha, P.O. Bara, P.S. Chandauli, District Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Jha, Advocate. Mr. Amit Kumar Jha, Advocate.
For the State	:	Mr. Arbind Kumar, AC to GA-9.
For the Respondent No.7:		Mr. Sanjeet Kumar, Advocate. Mr. Sanjeev Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 12-09-2023

Heard Mr. Ranjan Kumar Jha, learned counsel
along with Mr. Amit Kumar Jha, learned counsel appearing on
behalf of the petitioner; Mr. Arbind Kumar, learned AC to GA-9
for the State and Mr. Sanjeet Kumar, learned counsel along with
Mr. Sanjeev Kumar, learned counsel for the respondent no.7.



2. The order dated 12.03.2012 contained in Memo No. 187/Stha is without authority of law by which the concerned authority has *suo motu* distributed the pensionary benefit including pension in equal share among the legally wedded first wife and second wife of the deceased employee. Allegedly the deceased employee had divorced first wife after obtaining a decree of divorce in accordance with law.

3. So far as other relief claimed by the petitioner that she being the second wife of the deceased employee or being his nominee. The Apex Court in the case of **Smt. Sarbati Devi and Anr. Vs. Smt. Usha Devi** reported in (1984) 1 SCC 424 has already decided the entitlement of nominee and has clarified that the nominee cannot be considered to be legal heir on the basis of Talaknama dated 25.12.1988. The claim of the petitioner for her entitlement of family pension fails on that ground. Remedy lies before the competent Civil Court. Therefore, the order dated 12.03.2012 contained in Memo No. 187 is set aside and quashed.

4. The respondent no.7 has denied that her husband had never divorced her by giving Talaknama in accordance with Muslim Personal Law. This Court will not enter into the disputed question of fact with respect to genuinity of Talaknama



and refrains from deciding the said issue. The issue of divorce and being legal wife can only be decided by the competent Civil Court.

5. Considering the aforesaid settled proposition of law, the petitioner, if so advised, may file a declaratory suit before the competent Civil Court for declaration that she is the legally wedded wife of the deceased employee namely late Shakil Akhtar.

6. So far as payment of retiral dues are concerned, considering the several circulars of the State Government as well as law laid down by the Apex Court, the biological sons and daughters of the petitioner and respondent no.7 are entitled for same in equal shares.

7. The Civil Surgeon, Banka – respondent no.4 is directed to make payment of the retiral dues under different heads relating to the deceased employee Shakil Akhtar who died in harness on 13.10.2011 while working on the post of Block Health Worker, Primary Health Centre, Chandan, Banka. The Civil Surgeon, Banka must forthwith call for the records relating to the deceased employee and make payment in equal share to all the legal heirs / representatives of the deceased employee within a period of four weeks from the date of communication



of this order.

8. The writ petition, accordingly, disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	14.09.2023
Transmission Date	N.A.

