

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12968 of 2021

Mostt. Gita Devi, W/o Late Sunil Kumar @ Sunil Singh, R/o Rewa, Post - Saray, P.S. - Maner, Distt.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Secretary Education Department, Government of Bihar, Patna.
2. The Director Primary, New Secretariat, Government of Bihar, Patna.
3. The District Education Officer, Saidpur, Rajendra Nagar, Patna.
4. District Programme Officer, Establishment, Patna.
5. The Block Education Officer, Punpun Block, District - Patna.
6. The Headmaster Cum Drawing and Disbursing Officer, Middle School, Jawaharpur, Punpun, Patna, Pin Code - 804453.
7. The Accountant General, Bihar, Patna.
8. Smt. Soni Devi, D/o Late Birju Singh, At present residing in the House of Late Sunil Kumar @ Sunil Singh, North Shastri Nagar, Professor Colony, Near Lal Babu Market, P.S. Shashtrinagar, District - Patna. Pin Code No. 800023.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Verma, Advocate
For the State	:	Mr. Jitendra Kumar Roy (SC-13)
		Mr. U.K. Singh, AC to SC-13
For A.G.	:	Ms. Ritika Rani, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 09-10-2023

Heard Mr. Jai Prakash Verma, learned counsel appearing on behalf of the petitioner; Mr. Jitendra Kumar Roy, learned SC-13 appearing on behalf of the State and Ms. Ritika Rani, learned counsel for the Accountant General, Bihar.

2. Learned counsel appearing on behalf of the



petitioner informs this Court that the family pension to which the petitioner is entitled has been withheld for the alleged reason that respondent no. 8, who also claims to be the legally wedded wife of the deceased employee namely, Late Sunil Kumar @ Sunil Singh, has objected to petitioner's claim. Learned counsel further submitted that a statement has been made in paragraph no. 6 to the writ petition that in absence of any decree of divorce by a competent Court, there cannot be any valid presumption made that the marriage between the petitioner and the deceased employee had dissolved. Moreover, there is no evidence of performance of marriage between the deceased employee and respondent no. 8. He further submitted that law is well settled with respect to the entitlement of share in the property of the husband. The petitioner is the one entitled to receive family pension after her husband's death. The Provision of Article 300 (A) of the Constitution of India mandates that pension is property. In several decision, the Apex Court and this Hon'ble Court has held that the wife of the deceased employee is entitled for family pension.

3. Learned counsel further submitted that, the petitioner was also receiving maintenance from her husband in light of the judgment passed in Maintenance Case No. 7(M) of



1994 order dated 23.09.1995, by the learned Principle Judge, Family Court, Patna , in which vide para-5, it has been held that the petitioner and the deceased employee are legally married wife and husband. (Annexure 2)

4. *Per contra*, learned counsel appearing on behalf of the respondent no. 8, submitted that she had married the deceased employee in the year 1988, and has two children out of the wedlock. He further submits that, although the marriage between the petitioner and the deceased employee had solemnized on 10.03.1992, however, within a week of the marriage, the petitioner deserted her husband, and it was respondent no.8 who lived along with the deceased employee till his death in harness due to Corona virus on 25.04.2021 (Annexure 1 to the writ petition).

5. Learned counsel further submitted that, documents such as the School Certificates of the children, the Voter list and the Death Certificate of the deceased employee (Annexure 1 to the writ petition), are all proof of the fact that respondent no.8 and the deceased employee were indeed husband and wife.

6. A counter affidavit has also been filed on behalf of the State-Respondent nos. 3 and 4, in which it is stated in



para-4 that the controversy with regard to entitlement of pension arose due to the Death Certificate which bears the name of respondent no.8 as wife of the deceased employee. In para no.- 6, it has been stated that the pension papers were forwarded by the Principal of the School along with the Death Certificate and list of dependents(PAriwarik Suchi), in which again, the name of respondent no. 8 finds mention as wife of the deceased employee. Therefore, vide Letter No. 6067 dated 23.07.2022, the petitioner as well as respondent no.8, was asked to submit Succession Certificate along with list of family for the final settlement of the entitlement to the retiral benefits of the deceased employee in accordance with law (Annexure-B). It has further been stated that no information was given by the deceased employee during his lifetime to any of the higher authority with respect to obtaining permission for second marriage nor any evidence to substantiate the statement that the deceased employee was separated from the petitioner and she was living with her son and getting maintenance.

7. Dispute relates to entitlement of the petitioner to receive family pension, which has not been paid due to the objection of respondent no. 8, who has also claimed to be the wife of the deceased employee. However, the respondent no. 3



and 4 have proceeded to issue letter no. 6067 dated 23.07.2022, to the petitioner and respondent no. 8, to submit a succession certificate, in spite of the fact that in a dispute between two wives for declaration of valid marriage, that matter can only be decided by the competent Civil Court.

8. Having considered the rival submissions made on behalf of the parties, as well as, the fact, which has to be deprecated as stated in counter affidavit filed on behalf of the respondents no. 3 and 4, who without authority of law have proceeded to direct the respondent no. 8 and the petitioner, to submit succession certificate along with list of family members for claiming death-cum-retiral benefits, which has delayed the entitlement of the petitioner for receiving family pension. No reference has been made in the counter affidavit filed by respondent no.3 and 4, with respect to the fact that before making such statement in the counter affidavit, the authority concerned have referred to the several government circulars with respect to the entitlement of family pension and entitlement of the biological sons and daughters of the deceased employee, out of void marriage. In the present case, respondent no. 8 appears not to be legally wedded wife of the deceased employee in absence of any legal documents, whereas, the petitioner has



brought on record a decree passed in Maintenance Case No. 7(M) of 1994 vide order dated 23.09.1995, which proves the fact that the petitioner is the legally wedded wife of the deceased employee. The respondent no. 8 in her counter affidavit, has not disputed the fact nor has brought decree of divorce with respect to the fact that the deceased employee had divorced the petitioner during his lifetime.

9. Law in this regard is well settled by the Apex Court so far as the entitlement of family pension is concerned that it can only be claimed by a legally wedded wife and relationship of the deceased employee with respondent no. 8 will not entitle her to receive family pension in absence of valid divorce decree. Several circulars of the State Government from time to time has clarified the position that the second marriage being void, the claim of second wife to receive family pension is not sustainable. It is, however, settled that the biological sons and daughters of the deceased employee either born out of cohabitation with the first wife or with the second wife (in this case, respondent no. 8) are entitled for pensionary benefit in equal shares in accordance with law. Death Certificate, which has been annexed as 'Annexure-1' to the writ petition is only an evidence, whereas, 'Annexure-2' is a decree passed after



adjudication. Therefore, 'Annexure-2', which proves that the petitioner was legally wedded wife, will have legal force.

10. Learned counsel appearing on behalf of the respondent no. 8 submitted that some compassion be shown by the petitioner considering the fact that even though she was not legally married, but she had taken care of the deceased employee with love and affection till his last breath, so that, some amicable settlement with respect to the distribution of pensionary benefit can be arrived at.

11. The law is well settled that in case of dispute between two parties claiming themselves to be entitled for family pension, remedy for such claim is before the competent civil court having jurisdiction or in alternative, they can settle the issue amicably.

12. This Court finds that, with regard to the peculiar facts of the case, the parties may enter into amicable settlement to settle their dispute.

13. So far as retiral benefits which have not been paid to the deceased employee, the biological sons and daughters of the deceased employee are entitled for the same. The concerned respondent is directed to forthwith verify about the biological sons and daughters, who have taken birth out of



cohabitation from two wives of the deceased employee and make payment of retiral benefits, which have not been paid to the deceased employee to be distributed, in equal share, among the biological sons and daughters of the deceased employee, in accordance with the government circulars, within a period of six weeks from the date of communication of this order.

14. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	16.10.2023
Transmission Date	N/A

