

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9127 of 2023

Mostt. Domani Devi W/O- Late Balram Thakur, R/o- Vill- Dubaili, P.O.- Tolikala, P.S.- Dagarua, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Education Officer, Purnea.
4. The District Programme Officer(estt.), Purnea.
5. The Block Education Officer, Block- Dagarua, District- Purnea.
6. The Accountant General, Bihar, Patna.
7. Rukmini Devi w/o- Sri Mahendra Thakur, R/O Vill- Dubaili, P.O.- Badaidga, P.S.- Dagarua, District- Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajeev Kumar Singh, Advocate
	:	Mr. Prabhat Singh, Advocate
	:	Mr. Gyanendra Kr. Diwakar, Advocate
	:	Mr. Uday Kumar, Advocate
For the Respondent/s	:	Mr. Kameshwar Kumar, GP- 17
	:	Mr. S. K. Ranjan, AC to GP-17

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 05-10-2023

Heard Mr. Rajeev Kumar Singh, learned counsel appearing on behalf of the petitioner and Mr. Kameshwar Kumar, learned GP- 17 appearing on behalf of the State.

2. This order is being passed in continuation of the order dated 22.08.2023. Learned counsel appearing on behalf of the petitioner submits that the petitioner is aggrieved by the action of the respondent no.5 i.e. the Block Education Officer, Block-

Dagarua, Purnea. He submits that petitioner is the first wife and she is the only legally wedded wife and any second marriage is void. He further submits that to quantify the claim of respondent no.7 to be the legally wedded wife of the deceased employee in that case the concerned must have brought the prior permission granted to the deceased employee by the Controlling Officer permitting him to remarry, during his service period in accordance with the circular of the Finance Department of the State Government bearing No. P.C.-1-Misc.-41/92/10059/Vi., dated 06.09.1996, which specifies that it is only the first wife who is entitled to family pension and thereafter the dependent minor children of both the wives can have a right on family pension, but the second wife has been excluded from getting any family pension. In this regard, Rule 21 of the Central Civil Service (Conduct) Rules, as well as, Rule 23 of the Bihar Government Servants' Conduct Rules, 1976, are reproduced hereinunder:

CCS Rules

“21. Restriction regarding marriage.—(1) No government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No government servant having a spouse living, shall enter into, or contract, a marriage with any person:

Provided that the Central Government may permit a

government servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that—

(a) such marriage is permissible under the personal law applicable to such government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A government servant who has married or marries a person other than of Indian nationality shall forthwith intimate the fact to the Government.”

Bihar Government Servants' Conduct Rules, 1976

“23. Restrictions regarding marriages.—(1) No government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No government servant, having a spouse living shall enter into, or contract, a marriage with any person:

Provided that the Government may permit a government servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that—

(a) such marriage is permissible under the personal law applicable to such government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

The Apex Court in case of **Rameshwari Devi vs. State of Bihar and Ors.** reported in **(2000)2 SCC 431** has already laid the law with respect to entitlement of family pension.

3. Learned counsel appearing on behalf of the petitioner further submits that respondent no.7 has remedy before the

competent Civil Court for declaration of legality of her marriage with the deceased employee. The respondent no.5 forwarded the pension papers of the deceased employee for fixation of family pension, wherein name of respondent no.7 was mentioned as wife of deceased employee, as a result of which family pension was fixed in favour of respondent no.7.

4. Per contra, learned counsel appearing on behalf of the respondent State submits that the action taken by the respondent nos.4 and 5 can not be considered to be without authority of law. He submits that the deceased employee had nominated respondent no.7 as his nominee and she is entitled to receive family pension in accordance with law.

5. Considering the above submission made by the parties, the petitioner has claimed that she, being the first and legally wedded wife of the deceased employee, is entitled for family pension and the authority appears to have acted without having examined the said fact, proceeded to fix family pension in favour of the respondent no.7 without giving any notice to the petitioner, who has claimed in the present writ petition to be the legally wedded wife.

6. Considering the claim of respondent no.7, that she is the nominee of the deceased employee, it appears that the

District Program Officer Establishment has illegally proceeded to sanction the family pension and communicated to the Accountant General, Bihar for issuance of authority slip. The law is well settled that a nominee would not hold a better title than the legal heir. The Apex Court in the case of **Sarbati Devi and Another v. Smt. Usha Devi**, reported in (1984)1 SCC 424, has held as follows –

“12. ...The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.”

7. This Court finds that the petitioner, as well as, the respondent no.7 has remedy before the competent Civil Court to get deceleration of the marriage with the deceased employee, in accordance with law. The order of concerned authority issuing family pension in favour of respondent no.7 is made inoperative, till either of the parties get valid decree from the competent Civil Court.

8. However, in the light of circulars of the Finance Department of the State Government and Rule 21 of the Central Civil Service (Conduct) Rules as well as Rule 23 of the Bihar Government Servants' Conduct Rules, 1976 (*supra*) and laws laid down by the Apex Court in the case of **Rameshwari Devi**

(*supra*), the biological sons and daughters of the deceased employee, who have taken birth from cohabitation with the petitioner, as well as, with respondent no.7, will not be deprived from receiving the benefits, which was required to be paid to the deceased employee by the authority, which has not been paid to them.

9. The District Program Officer is directed to ensure that the biological sons and daughters of the petitioner must be granted pensionary benefits and equal shares, within a period of 4 weeks from the date of communication of this order.

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

(Purnendu Singh, J.)

Ashishsingh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.10.2023
Transmission Date	NA