

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12244 of 2019

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Nirmala Devi Wife of Late Shiv Nandan Sah, Resident of Village- Sarkal Tola, Bhawanipur Ward No. 1, P.O. and P.S.- Bhawanipur, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resource Department, Government of Bihar, Patna.
2. The Director Secondary Education Department, Government of Bihar, Patna.
3. The District Magistrate Cum Collector Purnea.
4. The District Education Officer Purnea.
5. The District Programming Officer Purnea.
6. The Block Education Officer Bhawanipur Block, Purnea.
7. The Accountant General Bihar, Patna.
8. The District Treasury Officer Purnea.
9. The Head Master Middle School, Zabe Kushaha, Block- Bhawanipur, District- Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shekhar Kumar Singh, Advocate
For the Respondent/s	:	Ms. Abhanjalli, AC to GA 12
For the AG	:	Mrs.Nivedita Nirvikar, Senior Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

11 02-05-2023 Heard Mr. Shekhar Kumar Singh- learned counsel appearing on behalf of the petitioner, Ms.Abhanjalli – learned AC to GA 12 appearing on behalf of the respondents and Mrs. Nivedita Nirvikar, learned Senior counsel appearing for the Accountant General.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner is entitled for grant of family pension whereas the case of the respondent is that in



terms of Memo No.41 dated 6.9.1996, the second wife of the government servant is not entitled for the family pension.

3. Learned counsel for the petitioner further submits that she has filed a detailed representation before the District Collector, Purnea on 26.03.2019 and the same has been kept pending without passing any order with respect to the claim of the petitioner.

4. Heard the parties.

5. It is well settled that the High Court acts as an authority while exercising its power under Article 226 of the Constitution of India cannot be countenanced. It is also well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts.

6. Similar issue arose before the Hon'ble Apex Court in the case of ***P.R.Murlidharan & Ors. Vs. Swami Dharmananda Theertha Padar & Ors.*** reported in ***(2006) 4 SCC 501***, wherein the question of entitlement of police protection to the appellant of the said case, having regard to the threat perception to his life and liberty or for protection of rights declared by a decree or order passed by a civil court, the Hon'ble Apex Court has held that adjudication of civil right can



not be invoked in terms of decree or order passed by a court with jurisdiction. The Hon'ble Apex Court in paragraph no.12 and 13, after discussing the facts of the case, has observed *inter alia* as under :

“12. It is one thing to say that in a given case a person may be held to be entitled to police protection, having regard to the threat perception, but it is another thing to say that he is entitled thereto for holding an office and discharging certain functions when his right to do so is open to question. A person could not approach the High Court for the purpose of determining such disputed questions of fact which were beyond the scope and purport of the jurisdiction of the High Court while exercising writ jurisdiction as it also involved determination of disputed questions of fact. Respondent 1 who sought to claim a status was required to establish the same in a court of law in an appropriate proceeding. He for one reason or the other, failed to do so. The provisions of Order 9 Rule 9 of the Code of Civil Procedure stare on his face. He, therefore, could not have filed a writ petition for getting the selfsame issues determined in his favour which he could not do even by filing a suit. Indeed the jurisdiction of the writ court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution, but while doing so it could not collaterally go into that question, determination whereof would undoubtedly be beyond its domain. What was necessary for determination of the question arising in the writ petition was not the interpretation of the documents alone, but it required abduction of oral evidence as well. Such evidence was necessary for the purpose of explaining the true nature of the deed of trust, as also the practice followed by this trust. In any event, the impleading applicant herein, as noticed hereinbefore, has raised a contention that he alone was ordained to



hold the said office as per the bye-laws of the trust. The qualification of the first respondent to hold the office was also in question. In this view of the matter, we are of the opinion that such disputed questions could not have been gone into by the High Court in a writ proceeding.

13. Furthermore, the jurisdiction of the civil court is wide and plenary. In a case of this nature, a writ proceeding cannot be a substitute for a civil suit.”

7. Thus, the dispute which arises in the present case is with regard to claim of family pension and retiral dues by two wives of a government servant, only recourse to get the dispute settled between two wives is by the competent civil court. The jurisdiction of this Court is barred to adjudicate such dispute.

8. The record reveals that the first wife of the government servant (Urmila Devi) is receiving family pension. She has retired from the post of 4th grade employee from Professor Magni Lal Girls High School, Bhawanipur, Purnea.

9. Considering the aforesaid fact, the District Magistrate, Purnea is directed to dispose of the representation of the petitioner within a period of three weeks by passing a reasoned order.

10. The parties are at liberty to avail remedy before a competent civil court.

11. With the above observation/direction, the present writ petition is disposed of.



12. In view of the facts and circumstances of the case,
there shall be no order as to costs.

(Purnendu Singh, J)

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