

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.768 of 2019
In
Civil Writ Jurisdiction Case No.4412 of 2018

1. The State Of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Executive Engineer, Western Emabnkment Division Nirmali, District Supaul.
3. The Treasury Officer, Jhanjharpur, District- Madhubani.

... .. Appellant/s

Versus

1. Sunita Devi, Wife of Late Ram Sagar Mandal Resident of Village- Ratansara, P.S.- Ghoghardiha, Dist. Madhubani.

... Petitioner / Respondent

2. The Accountant General (A and E), Bihar, Patna.

2nd Set Respondent/s / Respondent

Appearance :

For the Appellant/s	:	M/s Anjani Kumar, AAG 4
		Deepak Kumar Jamuar, AC to AAG-4
For the Respondent/s	:	Mr. Rajendra Kumar Jain, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 11-07-2023

1. Heard learned counsel for the appellant and learned counsel for the respondents.

2. The instant appeal has been preferred against the order dated 4.1.2019 passed in C.W.J.C. No. 4412 of 2018.

3. The relevant facts in brief are that the writ petitioner – respondent no. 1 filed C.W.J.C. No. 4412 of 2018 stating therein that her husband Ram Sagar Mandal had



performed two marriages. While Gujarari Devi was his first wife, the petitioner – respondent no. 1 was his second wife. Ram Sagar Mandal retired from service on 31.12.2004 and the name of his first wife Gujarari Devi was entered in the pension payment order. The first wife, namely, Gujarari Devi died on 20.4.2007 while Ram Sagar Mandal died on 5.1.2015. It was the case of the petitioner – respondent no. 1 that she being the legally wedded wife of Late Ram Sagar Mandal, she was entitled to family pension and on the same being refused due to non entry of her name in the pension papers, she filed C.W.J.C. No. 4412 of 2018 praying for a direction to the respondents to pay family pension to her w.e.f. the date of death of her husband ie 5.1.2015. By order dated 4.1.2019, the writ application was disposed of in light of the order passed in the case of Most. Manorma Devi Vrs. The State of Bihar & Ors, directing the respondent authorities to make payment of family pension to the petitioner – respondent no. 1 within a period of three months from the date of receipt / production of a copy of the order.

4. It is against this order dated 4.1.2019 disposing of the writ application that the appellant State of Bihar and its authorities have preferred the instant appeal.

5. Sri Anjani Kumar, learned Additional Advocate



General 4 (AAG 4) appearing for the appellant submitted that the learned Single Judge, although referred to the executive instruction dated 6.9.1996 of the Finance Department, Govt. of Bihar, but the same has not been considered in the right perspective. Learned senior counsel also placed reliance on the Memo no. Pen- 103/64-9505 F dated 3.10.1964 and more particularly Clause 7 thereof which provides that marriage after retirement will not be recognized for purpose of the scheme as also the resolution dated 27.6.2011 of the Finance Department, Govt. of Bihar.

6. On the other hand, it was submitted by learned counsel appearing for the respondent no. 1 that the deceased employee, namely, Ram Sagar Mandal had two wives and the respondent no. 1 was his second wife, but the marriage had taken place with consent of the first wife. The marriage of respondent no. 1 besides not being in dispute is also supported from various documents like Aadhar Card, Ration Card, nomination in the bank accounts etc.. The respondent no. 1 also has children from the said wedlock and on the death of the first wife, she is entitled for family pension, not having been granted the same, the respondent no. 1 filed a writ application which was allowed by the learned Single Judge by order dated



4.1.2019, impugned herein. There is no illegality in the said order, no merit in the instant appeal and thus the same be dismissed.

7. Having heard learned counsel for the parties and having perused the material on record, it transpires that even as per the case of the respondent no. 1, it was Gujar Devi who was the first wife of the employee Ram Sagar Mandal, who retired from service on 31.12.2004. It was her name which was mentioned in the pension payment order. The said Gujar Devi died on 20.4.2007. The respondent no. 1, neither in the writ application nor in the instant appeal has given the date of her marriage to Ram Sagar Mandal. The only averment made in paragraph no. 7 of the writ application is to the effect that Ram Sagar Mandal performed two marriages and that the respondent no. 1 was the second wife.

8. So far as reliance placed by the learned AAG 4 appearing for the appellant on the family pension scheme 1964 is concerned, on perusal of the same it clearly transpires that the definition of family for the purpose of the scheme includes the wife and Note (ii) thereof further provides that marriage after retirement will not be recognized for the purpose of this scheme. Further the resolution dated 27.6.2011 provides that in



case an employee has entered into a second marriage after obtaining prior permission for the same in accordance with the 1976 Rules, the widows could be entitled for equal share of the family pension. It may be noted here itself that the said resolution clearly spells out that the same was being passed in view of the direction of a Division Bench of this Court as contained in its order dated 4.1.2011 passed in C.W.J.C. No. 9491 of 2010 asking the Government to reconsider its decision in view of the Muslim Personal Law. We have to observe that in the instant case the parties are Hindus and the second marriage while the first was subsisting cannot be said to be valid, as is not the case under Muslim Personal Law.

9. So far as Memo dated 6.9.1996 of the Finance Department, Govt. of Bihar is concerned, which also finds mention in the order of the learned Single Judge, it clearly provides that in case of the employee having entered into second marriage during the life time of the first wife, the second wife would not be entitled for family pension. But in accordance with the Family Pension Rules, the children born out of the second marriage would be entitled for benefit.

10. The learned Single Judge placing reliance on the judgment of this Court in the case of Most. Manorma Devi



Vrs. The State of Bihar & Ors. [2001(4) PLJR 275] disposed of the writ application with the direction to the appellants to make payment of family pension to the respondent no. 1 within a period of three months. In the opinion of this Court, the order in the case of Most. Manorma Devi (supra) is of no assistance to the respondent no. 1 as in the order itself it clearly states that the stand of the State of Bihar therein is not based on any provision of law. Further it is only the *ratio decidendi* of a judgment which is binding and no issue having been decided in the case of Most. Manorma Devi (supra), the learned Single Judge clearly committed an error in placing reliance on the said order and allowing the writ application.

11. In the opinion of this Court, the order of the learned Single Judge has been passed without taking into consideration various resolutions, family pension scheme etc, reliance on which has been placed by the learned senior counsel appearing for the appellant.

12. In view of the facts and circumstances of the case, the Court finds merit in the instant appeal. The order dated 4.1.2019 passed in C.W.J.C. No. 4412 of 2018 is set aside and the prayer made by the respondent no. 1 in the writ application is dismissed.



13. At this stage it is submitted by learned counsel appearing for the respondent no. 1 that the respondent no. 1 has minor children born out of her wedlock with the deceased employee and who would be entitled for share in the retiral benefits even on the basis of the Finance Department resolution with respect to family pension etc. relied on by learned senior counsel appearing for the appellant. It goes without saying that in case a representation is filed by the respondent no. 1 with respect to the above before the respondent authorities, the same will be decided without delay in accordance with law.

14. The appeal stands allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Spd/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.07.2023
Transmission Date	

