

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.20916 of 2021**

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Akhtari Khatoon, Wife of Late Masihur Rahman, Resident of Village-  
Paschim Tola, Alampur, P.S.- Azamnagar, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Panchayat Raj Department, Government of Bihar, Patna.
2. The Principal Secretary Panchayat Raj Department, Bihar, Patna.
3. The Accountant General Bihar, Patna.
4. The District Magistrate Katihar.
5. The District Development Commissioner Katihar.
6. Dil Ara Khatoon Wife of Late Masihur Rahman, Resident of Village-  
Paschim Tola, Alampur, P.S.- Azamnagar, District- Katihar.

... .. Respondent/s

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**Appearance :**

|                      |   |                              |
|----------------------|---|------------------------------|
| For the Petitioner/s | : | Md. Fahimuddin, Adv.         |
| For the Resp-State   | : | Md. Anwar Karim, AC to GP-10 |
| For the AG, Bihar    | : | Mr. Binod Kumar Labh, Adv.   |

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**  
**Date : 24-11-2023**

Heard Md. Fahimuddin, learned counsel for the petitioner, Md. Anwar Karim, learned AC to GP-10 and Mr. Binod Kumar Labh, learned counsel for the Accountant General, Bihar.

2. The petitioner, who is claiming herself to be second wife of late Masihur Rahman, filed the present writ petition seeking a direction upon the respondents to share the family pension between the first wife and the second wife with minor daughter.

3. Learned counsel for the petitioner submitted that



the husband of the petitioner was a Panchayat Secretary, who retired on 31.05.2016 from Barsoi Block, District-Katihar and died on 22.05.2021, leaving behind his two wives and three married daughter and three married sons from the first wife and one married daughter and one minor daughter from the second wife. The petitioner's husband even after his retirement was looking after both wives from his pension but after his death, the first wife is not allowing the legitimate share of the petitioner from the family pension, on account of which, the petitioner is facing difficulty to take care of her day to day affairs, causing severe hardships in her survival. He further submitted that despite the representation filed before the Block Development Officer, Barsoi as well as other concerned, till date she has not been allowed her legitimate claim. Reliance has also been made on the judgments passed by this Court in the case of **Md. Nishar Ahmad Khan vs. The State of Bihar and Others** [C.W.J.C. No. 7946 of 2007] and in **Najda Khatoon vs. The State of Bihar and Others** [C.W.J.C. No. 5420 of 2013].

4. A counter affidavit has been filed on behalf of the respondents no. 1, 2, 4 and 5.

5. Learned counsel for the State by referring to the statements made in the counter affidavit, submits that the



pension of Masihur Rahman, the husband of the petitioner, had been fixed in his life time. From the records and the pension papers, it appears that the name of one “Dilara” has been shown as the wife of the erstwhile employee. It is submitted with force that Masihur Rahman, himself admitted by mentioning the names of family members showing only one wife, namely, Dilara. Had the case of the petitioner admitted by her husband, he ought to have mentioned this fact in the pension paper but the same has not been done. Further submission has been made that so far the reliance has been made on the judgments passed by the learned co-ordinate Benches of this Court, the same has been passed on the premise of the admitted fact that the petitioners of those cases were admittedly the second wife but in the present case, no document and any proof has been shown, showing the petitioner to be the second wife. However, he does not refute the fact that in the family list issued by the Circle Officer, Azamnagar, the name of the petitioner is shown as second wife of Late Masihur Rahman.

6. It would be worth noting that in a dispute, where the second wife of erstwhile employee claims for pension or retired benefits, the State Government has resolved by its circular dated 06.09.1996 that the second wife married in the



life time of first wife would not be recognized for the purpose of family pension, though the children from the second marriage would have the right to family pension of the deceased government employee.

7. Rule 23 of the Bihar Government Service Conduct Rules, 1976 framed by the State under Article 309 of the Constitution reads as follows:-

**“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 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.”

8. Undoubtedly a Mohammedan employee, who is



governed by his own personal law is allowed to have four wives, even during the life time of first wife as there is no prohibition as such. Furthermore the Government of Bihar in the Department of Finance, came out with a Notification No. 1549 dated 27.06.2011, clarifying the position keeping in mind the Mohammedan Personal Law as well as some orders of the Hon'ble Court, that the notification dated 06.01.1996 will not come in the way of a claim of an employee; if he happens to be a Muslim and proportionate payment of family pension to the second wife of a deceased Muslim employee shall not be denied.

9. This Court though does not find any document(s), showing that the husband of the petitioner has ever taken any consent from the department for his second marriage but there is a family list brought on record by the deponent of the counter affidavit itself, suggesting the petitioner to be second wife of erstwhile employee, thus the reliance of the petitioner on the judgment of this Court in the case of **Md. Nishar Ahmad Khan (Supra)** finds worth to be taken note of, wherein the learned Bench of this Court has held that “the resolution/circular of the Government which restricts the right of the second wife may be applicable to other but certainly is not applicable to Muslims,



whose personal law permits second marriage during life time of first wife”.

10. In view of the aforesaid facts, this Court deems it proper to dispose of the writ petition granting liberty to the petitioner to file a proper representation before respondent no.4, the District Magistrate, Katihar along with all the orders/ documents in support of her claim.

11. If such a representation is filed within a period of four weeks from today, respondent no.4 shall consider the same in the light of the observations and discussions made hereinabove as also in terms of the Government Circular(s) issued by the General Administration Department in this connection and pass a reasoned and speaking order after giving an opportunity of hearing to the first wife or her legal heir/representative, preferably within a period of further eight weeks thereafter.

**(Harish Kumar, J)**

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