IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16901 of 2022

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Jivan Joti Devi @ Smt. Jivan Jyoti Devi W/O- Late Jagdish Narayan Singh resident of Village- Chandauli, P.O.- Hardauli, Plice Station- Katara, District- Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Bihar Horticulture and Agriculture Department, Government of Bihar, Patna.
2. The Special Secretary, Bihar Horticulture and Agriculture Department, Government of Bihar, Patna.
3. The District Agriculture Officer, Sub-Divisional Agriculture Office, Sitamarhi.
4. The Sub-Divisional Agriculture Officer, District Agriculture Office, Sitamarhi West, Sitamarhi.
5. The District Treasury Officer-cum-Pension Officer, Muzaffarpur.
6. The Account Officer, Office of Accountant General, Patna, Bihar.
7. The Accountant General, Office of the Accountant General (A and E), Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Choudhary

For the Respondent/s : Mr. Dhurjati Kr. Prasad (GP14)

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 11-12-2023

Heard Mr. Anil Kumar Choudhary, learned counsel appearing on behalf of the petitioner and Mr. Dhurjati Kumar Prasad, learned G.P-14 for the State.

2. The petitioner claiming herself to be second wife of erstwhile employee, late Jagdish Narayan Singh, has filed the

present writ petition seeking a direction upon the respondent authorities to declare the petitioner as nominee in place of first wife of Jagdish Narayan Singh and to nominate the name of the petitioner in the Pension Payment Order book of the husband, who superannuated from the post of Agriculture Inspector, Sub Divisional Agriculture Office, General Sitamarhi West, Sitamarhi. She further sought a direction to ensure her family pension w.e.f. 30.06.2021, i.e., from the death of her husband.

3. It is submitted on behalf of the petitioner that her late husband Jagdish Narayan Singh was superannuated from the post of Agriculture Inspector way back in the year 1985 and consequently his pension was fixed vide PPO No. 163505 and he had been withdrawing his pension from the Punjab National Bank.

4. It is next submitted that though the erstwhile employee had solemnised his first marriage in the year 1947 with Smt. Radha Devi whose name was entered in the service book. However, as the first wife was issueless and as such after obtaining consent from the family members and the first wife, the erstwhile employee had solemnised second marriage with the petitioner in the year 1972. From the said wedlock, the petitioner had blessed with 3 sons and 2 daughters. It is further

submitted that the first wife of the erstwhile employee died on 20.02.1992. Subsequent thereto, the husband of the petitioner submitted his affidavit with death certificate of the first wife along with representation to the Block Development Officer, Katara, Muzaffarpur with a request to the higher authorities to include the name of the second wife (the present petitioner) in his pension book. Despite repeated efforts and the representation filed, the same could not be done and finally the husband of the petitioner died on 03.06.2021.

5. Learned counsel for the petitioner while referring to the documents placed on record submits across the Board that the documents clearly suggest that the petitioner is the wife of the erstwhile employee and even in the Bank record her name has been mentioned as nominee and this is not the case that the first wife has ever made any complaint against the petitioner. It was a consented marriage and as such there would not be any impediment in granting family pension in favour of the petitioner. He also submits that the Department had also recommended the case of the petitioner to the Accountant General, Bihar but the same has not been acceded to.

6. On the other hand, learned counsel for the State submitted that admittedly it is a case where the petitioner is the

second wife. Thus, apart from the marriage being void, the petitioner is also not entitled for family pension in view of the Government Circulars issued by the Finance Department, Government of Bihar dated 06.09.1996. He relied upon the judgment of the Apex Court in the case of ***Rameshwari Devi vs. The State of Bihar*** since reported in ***(2000)2 SCC 431***. Further reliance has been made on a Bench decision of this Court in the case of ***Mehrun Nisha vs. the State of Biahr*** since reported in ***2013(1) PLJR 222.*** By referring to the aforesaid judgments, he vehemently submitted that by no stretch of imagination, the petitioner being the second wife shall be entitled to get the family pension save and except in a situation where employee has obtained prior permission from the employer. Moreover, it is the stand of the Department that the husband of the petitioner has never filed any application in this regard.

7. This Court has heard the parties and also perused the materials available on record. It cannot be disputed that the marriage solemnized in contravention of Clause (i) of Section 5 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955') is held to be a void marriage. However, the children of void marriage are legitimate under Section 16 of the Act 1955. The issue with regard to the entitlement of second wife in

connection with the family pension-cum-retiral benefits was duly considered by the Apex Court in the case of ***Rameshwari Devi*** (*supra*) and has been pleased to hold that second wife is not entitled to family pension and other benefits. However, the children born from the second marriage, till they attain the majority are entitled to have their shares in the family pension/death-cum-retiral benefits.

8. The question posed before this Court is the marriage of the petitioner with the erstwhile employee was solemnized in the year 1972 and as such the letter of the Finance Department dated 06.09.1996 taking way the right of the second wife to get share in the family pension cannot be made applicable in the present case.

9. In answer to the aforesaid question, this Court carefully perused the aforenoted letter and find that Note 1 to para 7 (iii) of the notification dated 03.10.1964 of the State Government has been deleted under which in case of two marriages, the family pension was to be paid in equal shares to both the wives. It has now provided by notification dated 06.09.1996 that the second wife is not entitled to any family pension.

10. Clause 3 of the said notification makes it clear

that the amendment shall be effective with effect from the date of issuance of the letter and any pending matter shall be decided on the basis of the amended notification (letter) dated 06.09.1996. Clause (iii) only clarified that no action of review or recovery is to be taken where the benefits of family pension has already been provided in terms of the earlier letter dated 03.10.1964.

11. In the case in hand, admittedly the petitioner has had never been accorded the benefit of family pension nor it is the case of the erstwhile employee and the petitioner herein that any prior permission has been sought from the employer. This Court is also conscious of the fact that the erstwhile employee had already superannuated in the year 1985 itself and subsequently the first wife of the erstwhile employee died on 20.02.1992. The husband of the petitioner later on died on 03.06.2021 and now the petitioner being second wife is claiming for her family pension.

12. Having considered the settled legal position and after perusing the letter issued by the finance department dated 06.09.1996, which governs the case of the petitioner, this Court finds that no relief can be granted in favour of the petitioner, who is admittedly the second wife and all the children of both

the marriage are major.

13. Accordingly, the present writ petition stands dismissed, sans any merit.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.12.2023
Transmission Date	