

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16707 of 2022

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Tartila Khatoon, wife of Late Md. Bahauddin, resident of Village- Nayagaon,
Ward No. 10, P.S.- Sheyampur Bhathan, District- Sheohar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Govt. of Bihar, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Magistrate, Sheohar.
4. The District Education Officer, Sheohar.
5. The District Programme Officer, Establishment, Sheohar.
6. The Treasury Officer, Sheohar.
7. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Md. Anisur Rahman, Advocate
For the Respondent/s	:	Mr. Kameshwar Kumar, GP-17
		Mr. Amti Bhushan, AC to GP-17
For the Accountant General:		Mr. Ramesh Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 21-12-2023

Heard Md. Anisur Rahman, learned counsel for the petitioner and Mr. Amit Bhushan, learned AC to GP-17, for the State. Mr. Ramesh Gupta, learned counsel for the Accountant General is also present.

2. The petitioner, who is claiming herself to be the second wife of late Md. Bahauddin, has filed the present writ petition seeking a direction upon the respondents to ensure payment of family pension to the petitioner, as her husband died on 17.03.2022.



3. It is submitted on behalf of the petitioner that the husband of the petitioner was working as an Assistant Teacher in Government Middle School, Shyampur, Block/Anchal Dumri Katsari, District Sheohar and after having satisfactory service he superannuated on 31.03.2008.

4. It is the case of the petitioner that her husband Md. Bahauddin had married with one Safina Khatoon and as there was no issue from the wedlock, thus with the consent of the first wife and other family members, he contracted second marriage with the petitioner in the year 1982. From the second marriage, late Md. Bahauddin has two sons and admittedly at present they are major. During the life time of the erstwhile employee, the first wife, namely, Safina Khatoon, died issueless on 23.02.2019.

5. An application was filed by the erstwhile employee before the respondent no.7, the Accountant General, Bihar, Patna with a copy to the respondent no.4 clarifying the entire position and requested to enter the name of the petitioner in the service record so that the petitioner may get family pension after his death. The petitioner also filed representations after the death of her husband, but to no avail. Learned counsel for the petitioner has made reliance upon the judgment of this



Court in the case of **Bina Ansari Vs. The State of Bihar & Ors.**, reported in **2017(2) PLJR 920** and in the case of **Mosmat Usha Kuar Vs. The State of Bihar & Ors.**, reported in **1998(1) PLJR 560**.

6. Per contra, learned counsel for the State submitted across the Board that admittedly the petitioner is the second wife of the erstwhile employee and at no point of time any consent or permission has been taken from the employer before solemnization of second marriage in the life time of his first wife. He further referring to the letter, as contained in Memo No. 10059 dated 06.09.1996, issued by the Finance Department, Government of Bihar, submitted that the law in this regard is well settled that in no circumstances the second wife is entitled for family pension, however the minor children born out from the second marriage are entitled to family pension till they attain the age of majority. He also brought on record the Resolution No. 1549 dated 27.06.2011, issued by the Finance Department, clarifying the similar position. On the basis thereof, he submitted that in any view of the matter once it is admitted that the petitioner is the second wife, she would not be entitled for family pension.

7. Having heard the parties at length and after



perusing the Government circulars, it would be worth noting that in a dispute, where the second wife of the employee claims for family pension, the State Government has resolved by its letter dated 06.09.1996 that the second wife married in the life time of first wife would not be entitled to family pension, though the children from the second marriage would have the right to family pension of the deceased government employee.

8. 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.”

9. Needless to observe that 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 sought permission from the employer, proportionate payment of family pension to the second wife of a deceased Muslim employee shall not be denied.

10. The learned counsel for the petitioner has rightly relied upon the decision of learned Division Bench of this Court in the case of **Bina Ansari** (supra) wherein while considering the notification dated 06.09.1996 of the State Government it has been held that since community's personal law permits second marriage, therefore, family pension is



required to be divided equally between the two wives. Even, otherwise, the second wife cannot be permitted to suffer because her marriage with the erstwhile employee is not illegal or invalid, but is very much permissible under the personal law.

11. 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] while considering the identical matter has been pleased to hold that the consent from the department for his second marriage is not *sine qua non* for the purposes of according family pension to the second wife, in case of Muslim employee. 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”.

12. In view of the aforementioned legal position, this Court finds substance in the submission made on behalf of the petitioner and thus this Court deems it proper to dispose of the writ petition with a direction to the District Education Officer, Sheohar (respondent no.4) to consider the claim of the petitioner for family pension, if otherwise found fit, in the light of the observations made hereinabove and the judgments rendered by



the coordinate Bench of this Court referred hereinabove.

13. The aforesaid exercise must be completed preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

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

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.12.2023
Transmission Date	NA

