

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10382 of 2021

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Parvati Devi W/o Late Ram Babu Choudhary, resident of Village-
Attaullahpur Jahanabad, P.O. and P.S.-Lalganj Nagar Palika Ward No. -14
Lalganj, District-Vaishali.

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar.
2. The Director General of Police, Bihar.
3. The Superintendent of Police, Vaishali.
4. The Accountant General, Bihar, Patna.
5. Kamal Kumar Chaudhary (S/o Meena Devi), C/o Mahavir Prasad Choudhary Resident of Mohalla- Juran Chhapra, Dera Gaus, Ward No.- 3, P.S.- Brahmpura, District- Muzaffarpur.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Lakmesh Marvind, Adv.
For the Resp-State	:	Mr. Anil Kumar
For the Resp No.5	:	Mr. Sanjay Kr. @ S.K

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 25-01-2024

Heard the parties.

2. The petitioner is claiming herself to be widow of Late Ram Babu Choudhary, who superannuated on 28.02.2014 from the post of Assistant Accountant in the office of the Superintendent of Police, Vaishali at Hajipur and subsequently died on 26.12.2019 has filed the present writ petition, seeking a direction upon the respondent authorities to ensure the family pension and other admissible dues together with the statutory interest over the delayed payment.

3. It is the case of the petitioner that her marriage was



solemnized with the erstwhile employee, Late Ram Babu Choudhary, in the year 1976 and out of the wedlock, there are three daughters and two sons. In support of the claim of the petitioner being legally married wife of the erstwhile employee, various documents, including bank account, ration card and declaration of assets and liability certificate have been brought on record.

4. Learned counsel for the petitioner submitted that even the erstwhile employee also nominated the name of the petitioner as his wife in the GPF account. However, despite the aforesaid fact, while the husband of the petitioner was alive, an application was filed by respondent no.5, before the Superintendent of Police that his mother is the first wife and he claimed himself to be son of the erstwhile employee. On the aforesaid application, the petitioner was put to departmental proceeding, which culminated into exoneration from all the charges. Thereafter, one complaint case has been filed by the mother of respondent no.5 bearing Case No. C-404/2013 before the Court of learned S.D.J.M., Hajipur under Section 498A of the I.P.C. However, during the pendency of the aforesaid complaint, the mother of the respondent no.5 died and accordingly, the complaint case put to an end.



5. Taking note of the aforesaid fact and a further complaint, the husband of the petitioner was put to Departmental Proceeding No. 12/2014, in the meantime, the husband of the petitioner superannuated on 28.02.2014 and finally the order came to be passed on 26.08.2014, inflicting punishment of withholding one increment for one year.

6. On the basis of the aforesaid premise, learned counsel for the petitioner, submitted that the petitioner being the only wife of the erstwhile employee is entitled to get the family pension but because of litigation on the part of respondent no.5 and his mother, till date the petitioner has not been accorded her entitlement.

7. Counter affidavits as well as supplementary counter affidavit have been filed on behalf of respective respondents.

8. While refuting the contention of the petitioner, submission has been made that the petitioner is the second wife of the erstwhile employee and on being found the charges proved in the Departmental Proceeding No. 12/2014, he was awarded punishment of withholding of one increment for one year. Further submission has been made that the erstwhile employee had also committed forgery in his service book by making interpolation in the name of his first wife by inserting



the name of the writ petitioner after pasting a piece of paper over the name of his first wife, which fact has also been fortified by the FSL report. Further, taking reliance of the Government/Notification as contained in Memo No. PEN 103/64-9505 dated 03.09.1964 and the Resolution of the Government dated 06.09.1996, the learned counsel for the respondents, submitted that the petitioner being the second wife, whose marriage was solemnized during the life time of first wife, in any view of the matter, is not entitled to get any family pension.

9. At this juncture, learned counsel for the petitioner, submitted that admittedly, Meena Devi has already died way back in the year 2014 itself much before the death of the husband of the petitioner and the petitioner's husband had filed various applications before the Department to nominate the name of the petitioner in the service book/pension paper. He further submitted that the case of the petitioner is entirely covered by a judgment rendered by this Court in the case of **Indu Devi v. The State of Bihar & Ors. [2023 (1) PLJR 344]**, wherein this Court has held in paragraphs- 5, 6 and 8 as follows:-

“ 5. A counter affidavit has been filed on behalf of respondent no.3 stating therein that the



petitioner being the 2nd wife of the erstwhile employee, who solemnized marriage during the life time of the 1st wife and as such the petitioner is not entitled to get the family pension, apart from the fact that her name has never been entered in the service book, as nominee.

6. It is needless to say that a Hindu, contracting second marriage during subsistence of the first marriage, though the second marriage is void in view of Section 11 of the Hindu Marriage Act, as it contravene Section 5(i) thereof, but the children born out of the second marriage are legitimate as per Section 16 of the Hindu Marriage Act, 1956 and they are also entitled to the benefits at par with the wife/son of the first marriage.

8. Learned counsel for the petitioner also relied upon a judgment rendered by the Division Bench of this Court in LPA No. 72 of 2018 (Sumitra Kunwar @ Sunaina Devi @ Sumitra Devi Vs. the State of Bihar and others) wherein identical issue was dealt with by the learned Division Bench of this Court and the learned Division Bench of this Court having taken note of the Resolution of the Finance Department, Government of Bihar dated 06th September, 1996 has been pleased to allow the appeal and directed to ensure the family pension to the surviving widow.”

10. Considering the nature of the dispute, this Court



deems it appropriate to dispose of the writ petition with a direction to consider the claim of the petitioner in terms of the judgment dated 07.12.2022 passed in C.W.J.C. No. 358 of 2018 as also in the light of the judgment rendered in the case of **Sumitra Kunwar @ Sunaina Devi @ Sumitra Devi V. State of Bihar & Others, [L.P.A. No. 72 of 2018]** as referred and relied by the learned counsel for the petitioner, in accordance with law.

11. Needless to observe that if the claim of the petitioner finds merit in terms of the afore-noted judgment, she must be accorded the consequential benefit(s). However, in case, the respondent(s) comes with any other finding, it must be preceded by reason.

12. 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.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31-01-2024
Transmission Date	

