

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7107 of 2022

=====

Smt. Bimla Devi W/o Late Sheo Shankar Prasad, Resident of Mohalla- Raja Bajar, Hanuman Nagar, Ward No. 3, P.O. and P.S.- Jahanabad, District- Jahanabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. Chief Engineer, Sinchai Srijan Water Resources Department, Nalanda, Biharsarif, District- Nalanda.
4. Executive Engineer, Irrigation Division, Jahanabad.
5. Accountant General (A and E), Bihar, Birchand Patel Path, Patna.
6. Treasury Officer, District Treasury, Jahanabad.
7. Smt. Maha Sundari Devi, W/o Late Sheo Shankar Prasad, Village- Kurthol, ChandaChak, P.O.- Kurthol, P.S.- Parsa Bazar, District- Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Shanti Pratap, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11
		Mr. Akash Chaturvedi, Advocate, AC to SC -11
For the A.G.	:	Mr. Arun Kumar Arun, Advocate
For Resp. No. 7	:	Mr. Vinayak Harshvardhan, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

9 22-07-2024 Heard Mr. Shanti Pratap, learned Advocate for the petitioner and Mr. Akash Chaturvedi, learned Advocate for the State. The Accountant General is represented through Mr. Arun Kumar Arun, learned Advocate. Mr. Vinayak Harshvardhan, learned Advocate appears on behalf of private respondent no. 7.

2. The petitioner by filing the present application is seeking a direction upon the respondents to consider the case of the petitioner for payment of family pension due to death of her



husband on 12.02.2016. The husband of the petitioner was an employee of Irrigation Division, Water Ways Department, Government of Bihar and after rendering satisfactory service, he superannuated on 30.08.2003 from the post of Draft man. On being superannuated, the husband of the petitioner has accorded pension and other benefits.

3. Learned Advocate for the petitioner fairly contended before this Court that admittedly the petitioner is the second wife of the erstwhile employee and during his life time, the erstwhile employee had filed an application for change of nominee in Part II of the P.P.O. No. 393660 for family pension in favour of the petitioner. On the strength of the aforesaid application for change of nominee, the learned Advocate submitted that be that as it may, it was the wishes of the erstwhile employee to nominate the petitioner for family pension. Certain documents have also been brought on record in support of the contention that the petitioner had been residing with the erstwhile employee after her marriage.

4. At this juncture, learned Advocate for the State referring to the counter affidavit vigorously contended that admittedly the petitioner is the second wife of the erstwhile employee, whose marriage was solemnized during the life time



of the first wife and, as such, in view of Section 17 of the Hindu Marriage Act, 1956, any marriage between two Hindu solemnized after the commencement of this Act is void, if on the date of the such marriage had a husband or wife.

5. So far the contention of the learned Advocate for the petitioner with regard to nomination is concerned, in fact after the death of erstwhile employee on 12.02.2016, at the time of filing of the pension form, the name of the petitioner appears to be incorporated by making interpolation is the contention of the answering respondents. The petitioner has concealed this material fact, moreover at the time of filing of the pension form, in the nominee section in part II, name of the petitioner was not present.

6. Learned Advocate for the respondent no. 7 also supported the contention of the respondent State and submitted that admittedly the respondent no. 7 is the first wife and she has been getting family pension after issuance of valid authority order in her favour.

7. Considering the rival submissions of the respective parties and taking note of the admitted position that the petitioner is the second wife of the erstwhile employee, this Court has no hesitation to hold that the petitioner being second



wife, whose marriage was solemnized during the life time of the first wife is not entitled for death cum retiral benefits/family pension.

8. In order to resolve the dispute as raised in the present case, the Government of Bihar has also issued memo No. 10059 dated 06.09.1996 stipulating clear prohibition to accord any pensionary benefit/family pension in favour of second wife. However, it is made clear that the minor children of the second wife shall get proportionate benefit of family pension.

9. It is to be noted that mere filing of the application for change of the name of the nominee, who is otherwise not entitled under the law to get family pension, can bestow or acquire a right contrary to the provisions, govern the subject matter.

10. In view thereof, the present writ petition stands dismissed having found no merit.

(Harish Kumar, J)

supratim/-

U			
---	--	--	--

