

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7514 of 2018

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Mobina Khatoon, wife of late Md. Qurtul Ain resident of village - Siswaniya,
P.O. - Siswaniya, P.S. Banjaria, District East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Inspector General of Police, Muzaffarpur Range, Muzaffarpur.
3. The Deputy Inspector General of Police, Saran Zone at Chapra.
4. The Superintendent of Police, Saran.
5. The Superintendent of Police, East Champaran at Motihari.
6. The Station House Officer, Banjaria Police Station, District - East Champaran.
7. Shahnawaz Alam son of late Md. Qurtul Ain resident of village - Siswaniya, P.O. - Siswaniya, P.S. Banjaria, District East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Nandan Prasad, Adv.
For the State	:	Mr. Md. Nadeem Seraj (GP-5) Ms. Shalini (AC to GP-5)
For the Respondent no.7:	:	Mr. Ravi Nandan, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

3 01-04-2024 Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for respondent no.7.

2. The present writ petition has been filed for quashing the order issued *vide* Saran Ziladesh No.345/2018 contained in Memo No.824 dated 13.02.2018 (annexed as Annexure-1) passed by The Superintendent of Police, Saran (respondent no.4) by which the family pension of the petitioner has not been given to the petitioner and it has been only provided to the two minor children. Further prayer has also been



made for quashing the order of illegal distribution of pensionary benefit i.e. $\frac{1}{2}$ of amount to sole son of deceased employee from erstwhile wife namely Subaida Khatoon and $\frac{1}{2}$ to the six children of deceased employee from the petitioner.

3. Learned counsel for the petitioner submits that the petitioner was married with one Md. Qurtul Ain in the year 1988 who was posted as Police Chalak Constable in Saran Police Force bearing number as Sipahi/710 and the petitioner and her husband was blessed with five daughters and one son from their wed lock out of which eldest daughter was married in the life time of her father. Counsel also submits that prior to the marriage of the petitioner, the husband of the petitioner was solemnized with one Bibi Subaida Khatoon and out of the said wed lock, one son was born. Counsel further submits that marriage between the deceased husband and Bibi Subaida Khatoon was dissolved on 09.11.1987 and after dissolution of the said marriage, the deceased husband got married with the petitioner and unfortunately, the husband of the petitioner died in harness on 17.12.2014 during the service period.

4. Learned counsel for the petitioner submits that for death-cum-retiral benefits, the petitioner has moved before this Hon'ble Court earlier in Civil Writ Jurisdiction Case No.8055 of



2016 in which *vide* order dated 30.09.2016, it was directed to the petitioner to file the representation. Upon filing the said representation, no order has been passed and therefore, the petitioner has filed Contempt Petition *vide* Miscellaneous Jurisdiction Case No. 1075/2017. During the pendency of the said M.J.C., order has been passed by the Superintendent of Police, Saran on 13.02.2018.

5. Learned counsel for the State on the other hand submits that the rule has already been available providing family pension to the second wife of the Government servant which is Annexure-A. Counsel further submits that it is the categorical stand of the State that first wife of the deceased solemnized her re-marriage and therefore, she is not entitled to get the benefit of pension and apart from this, it is also relevant to mention here that in case of petitioner, there is a specific provision and direction that only minor children are entitled to get pension till their attaining majority. Counsel also submits that it is also relevant to mention here that while deceased was alive without obtaining permission from the department solemnized the second marriage with the petitioner, and if done so, the fact regarding the second marriage has also not been informed or recorded in the department. Counsel further submits



that in this regard, a detailed description has been made in the order passed by The Superintendent of Police, Saran (respondent no.4) contained in Memo No.824 issued *vide* Saran Ziladesh No.345/2018 dated 13.02.2018 which is impugned order.

6. Learned counsel for the petitioner in response submits that there is no question of second marriage at all as there is only one wife to the deceased husband.

7. In the light of the submissions made by the parties and upon going through the pleadings, it transpires to this Court that the petitioner during his life time was competent enough to insert the name of the petitioner in his service record which he has failed to do so.

8. It also transpires to this Court that in the service record, the name of the other wife is there who has alleged to enter into the marriage. On the other hand, the petitioner submits that there is no question of two wives at a time due to the reason that the alleged wife whose name is present in the service record has already solemnized marriage with another person. And therefore, existence of marriage between the husband and wife has already ended.

9. This Court is of the firm view that these questions



are disputed facts and it cannot be decided in the writ petition.
The only remedy available to the petitioner that whatever she has alleged and whatever the department is denying can be tested by the Court of competent Civil Court.

10. Accordingly, this writ petition is dismissed granting liberty to the petitioner that she may avail her remedy before the competent Civil Court raising all issues on which the controversy exist between the pleading of the petitioner and the department.

(Dr. Anshuman, J.)

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