

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7488 of 2021

=====

Shamima Khatoon, wife of Late Md. Kalam Khan, resident of Village-Saurbazar, Bhada, Police Station- Saurbazar, Post Office- Barsam, District-Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Executive Engineer, Irrigation Division, Araria, District- Araria.
3. The General Provident Officer, Araria.
4. The Accountant General, Government of Bihar, Patna.
5. Bibi Kubra Khatoon, wife of Late Md. Kalam Khan, resident of Village-Shivam Chowk, Ward No. 10, Forbesganj, Post Office- Dholbajja, District-Araria.
6. Bibi Rehana Khatoon, wife of Late Md. Kalam Khan, resident of Village-Shivam Chowk, Ward No. 10, Forbesganj, Post Office- Dholbajja, District-Araria.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Syed Masleh Uddin Ashraf, Sr. Advocate
For the State	:	Mr. Rajan Prakash, AC to GA-2

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 20-03-2025

Heard the parties.

2. The petitioner is admittedly second wife of the erstwhile employee late Kalam Khan, who died in harness on 29.08.2018 while working as Peon in the office of the Executive Engineer, Irrigation Division, Araria. On being aggrieved by the inaction of the respondents in not according the proportionate retiral benefits/family pension, she approached this Court by invoking the prerogative writ jurisdiction under Article 226 of



the Constitution of India seeking a direction upon the respondents to pay the admissible proportionate retiral benefits and the family pension.

3. Mr. Syed Masleh Uddin Ashraf, learned Senior Advocate for the petitioner contended that there is no dispute that the petitioner is the second wife of the erstwhile employee, but as per the Muslim Law and in view of the notification issued by the Government of Bihar dated 27.06.2011, the petitioner is entitled to get the proportionate retiral benefits/family pension. On the strength of the aforesaid notification, the petitioner approached before the Executive Engineer, Irrigation Division, Araria raising her claim for proportionate retiral benefits/family pension. In response to the claim of the petitioner, the Executive Engineer, Irrigation Division, Araria sought an opinion from the Government Pleader, Araria, who in his legal opinion informed the Executive Engineer that all the three wives of late Kalam Khan are entitled to receive post retiral dues/family pension proportionately. Having obtained the legal opinion, the Executive Engineer informed the petitioner as well as respondent nos. 5 and 6 to submit their consent letter in terms of the legal opinion and accordingly, the petitioner submitted her representation along with her consent letter. However, the same



has not been done; thus the present writ petition.

4. Heavy reliance has been placed on a decision rendered by this Court in the case of ***Tartila Khatoon vs. The State of Bihar & Ors. [CWJC No. 16707 of 2022]***. Having taken this Court through the decision of this Court, learned Senior Advocate further contended that this Court reiterating the decision in the case of ***Bina Ansari vs. The State of Bihar & Ors [2017(2) PLJR 920*** and further in ***Mosmat Usha Kuar vs. The State of Bihar & Ors. [1998(1) PLJR 560]*** has observed that since the community's personal law permits second marriage, therefore, family pension is required to be divided equally between the two wives. The case of ***Tartila Khatoon*** (supra) was disposed of on 21.12.2023 with a direction to the District Education Officer, Sheohar to consider the claim of the petitioner for family pension, if otherwise found fit, in the light of the observations made therein. The petitioner seeks similar treatment as has been done in the case of ***Tartila Khatoon*** (supra).

5. Counter affidavit as well as the supplementary counter affidavit have been filed on behalf of respondent no.2. Referring to the averments made therein, learned Advocate for the State urged before this Court that after the demise of Md.



Kalam Khan, his first wife (respondent no.5) submitted application before the Executive Engineer, Irrigation Division, Araria for payment of death-cum-retiral benefits. The second wife, who is petitioner herein, also submitted application for payment of death-cum-retiral benefits of her husband and it was also informed that third wife of Md. Kalam Khan was also alive. In the aforesaid premise, the claim of the petitioner was considered in the light of the Finance Department Resolution No. 1549 dated 27.06.2011 specifically providing therein that in case second marriage is solemnized by an employee with prior permission of the Government under Rule 23(2) of the Bihar Government Servants Conduct Rules, 1976, in such cases where there are more than one widow, the amount of family pension shall be payable to all such widows in equal proportion.

6. Learned Advocate for the State, thus contended that the deceased employee Md. Kalam Khan never sought prior permission of the Government before solemnization of second or third marriage, therefore, in terms of the aforesaid Resolution, the petitioner and respondent no.6 were not found entitled to get share in the family pension. Since the name of respondent no. 5 has been mentioned in the GPF nomination form of the deceased employee, the death-cum-retiral benefits



have been accorded to her.

7. The respondent nos. 5 and 6 are represented through Mr. Balkrishna Mishra, learned Advocate. On instruction, Mr. Mishra submitted that soon after the marriage, the petitioner has left the deceased husband after leaving her six months old child and started residing at different places. There are certain litigations, which were also said to have been pending between the parties and so far the respondent nos. 5 and 6 are concerned, they have been living in penury.

8. This Court has given anxious consideration to the submissions advanced on behalf of the learned Advocates for the respective parties and also perused the materials available on record. So far the issue with regard to the entitlement of family pension in favour of the second wife, whose marriage was solemnised during the life time of the first wife, the State Government has duly resolved that in such circumstances the second wife would not be entitled to family pension, though the children from the second wife would have the right to family pension of the deceased government employee.

9. Rule 23 of the Bihar Government Servants Conduct Rules, 1976 framed by the State under Article 309 of the Constitution clearly casts a restriction upon the Government



servant to enter into a contract or marriage with a person having a spouse living and/or no government servant having spouse living shall enter into a contract or marriage with any person, provided such marriage is permissible under the Personal Law applicable to such Government servants and the other party to the marriage; and there are other grounds for so doing, subject to permission of the Government. Needless to observe that 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.

10. The Government of Bihar in the Department of Finance came out with notification No. 1549 dated 26.06.2011 with a view to clarifying the position keeping in mind that the notification dated 06.09.1996 will not come in 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 the deceased Muslim employee shall not be denied. The issue involved herein has also come up for consideration in the case of *Mosmat Usha Kuar vs. The State of Bihar & Ors. [1998(1) PLJR 560* and further in *Bina Ansari vs. The State of Bihar & Ors. [2017(2) PLJR 920*, wherein while considering the notification of the State



Government, the Court has 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 while considering the identical issue in ***Tartial Khatoon*** (supra) taking note of the afore noted decisions as also the decision rendered in the case of ***Md. Nishar Ahmad Khan vs. The State of Bihar & Ors. [CWJC No. 7946 of 2007]***, where the Court held that the consent from the Department for his second marriage is not *sine qua non* for the purpose of according family pension to the second wife, in case of Muslim employee, has directed the respondents to consider the claim of the petitioner for family pension, if otherwise found fit. In the case of ***Md. Nishar Ahmad Khan*** (supra), the learned Bench of this Court has further held that the resolution 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. Hence, this Court accepting the aforesaid proposition found that the case of the petitioner for proportionate pension was also



required to be considered by the competent authority, if she was otherwise found fit, especially in the fact where marriage is not disputed by any of the parties.

12. However, the facts of the case in hand further demonstrates that the death-cum-retiral benefits of the deceased employee was duly sanctioned by the then Executive Engineer on being found the respondent no. 5 being the first wife and the nominee in the GPF nomination form. True, it is that the very purpose of the nomination is to enable the State to meet its obligation and get a valid discharge in respect thereof. In case of *Ati Razia Devi Vs. The State of Bihar and Ors., 2016 SCC Online Pat 339*, the Division Bench of this Court had considered the stand of the State that in terms of the nomination as made by the employee, State was bound to pay the nominee, if no one disputes the right, title and interest of the nominee for payment. If someone dispute the right, title and interest of the nominee, it was for him/her to move appropriate court for appropriate directions, but, so long as the nominee stood as such, State was bound to pay the nominee.

13. The learned Division Bench while dismissing the Letters Patent Appeal preferred by the appellant, who was unsuccessful writ petitioner claiming her to be the first wife of an erstwhile employee has held that “*the nominee, in matters*



where the status and the right is disputed, is merely a trustee for the rightful owner thereof, but, of course, subject to the right of nominee to receive and give a valid discharge. Nomination by itself, it is well settled, does not make the person the owner or the rightful recipient of the property, but holds it in trust for rightful and lawful recipient or person entitled therein.” In such circumstances, the learned Division Bench has directed that it is open for the appellant to go before a court of competent jurisdiction and establish her right, contrary to the nomination, and get judgment and order, in accordance thereof.

14. In order to determine the real claimant of family pension and terminal dues, the guidelines issued by the Finance Department vide Resolution No. 1918 dated 04.06.1986 stipulates as follows:

“(iii) Determination of real claimant of family pension.

It is the full responsibility of the petitioner to satisfy the Head of Department/Office that she/he is the widow/widower or eligible child of the concerned Govt. Servant and prove his identity by producing relevant records, i.e. P.P.O. of the deceased Govt. servant or any other available records. Where no records are available the claimant should be asked to produce any one of the following documents:

(i) Succession certificate of the court;

or

(ii) Declaration with affidavit filed before a

(iii) Magistrate or/Affidavit on plain paper by the claimant along with two documents



which would be acceptable to the pension sanctioning Authority.”

15. In view of the afore noted settled legal position, this Court hereby observes that it is open for the petitioner to go before a civil court of competent jurisdiction for recovery of the proportionate retiral benefits which had been duly received by the private respondent no. 5; and if she has only concern with the proportionate on going family pension, she may approach before the competent authority along with the order of this Court, who shall consider the claim of the petitioner and pass an appropriate order in accordance with the observations made hereinabove, if she otherwise found fit.

16. The writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.03.2025
Transmission Date	NA

