

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.463 of 2024

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Bibi Nazia Wife of Late Muslim Mian, Resident of Village- Rajpur, Police
Station- Kishanpur, District- Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resources Department, Government of Bihar,
Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Under Secretary, Water Resources Department, Government of Bihar,
Patna.
5. The Chief Engineer, Flood Control and Drainage, Water Resources
Department, Birpur, District- Supaul.
6. The Superintending Engineer, Eastern Embankment Circle, Saharsa.
7. The Executive Engineer, Eastern Embankment Division, Supaul.
8. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Jha 3, Adv.
For the State	:	Mr. Addl. Advocate General (12)
For the A.G.	:	Mr. Vivekanand Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR
ORAL ORDER

3 04-12-2025 Heard learned counsel for the parties.

2. In the instant writ petition, the petitioner has prayed
for following relief;

*“1(i) To quash the reasoned order
bearing Memo No. 1493, Birpur, dated
01.07.2019 (Annexure P/1) issued under the
signature of the Chief Engineer, Birpur,
Supaul, whereby and where under, the claim of
the petitioner for grant of family pension in
compliance to the order dated 20.06.2018
passed in C.W.J.C. No. 9491 of 2010
(Annexure-P/7) has arbitrarily been rejected*



on the basis of incorrect facts and in violation of order passed by this Hon'ble Court, which is reported in 2017(2) P.L.J.R.-920. Aforesaid order is further bad in law, because, the petitioner who is second wife of Late Muslim Mian and she is only surviving widow of her husband Late Muslim Mian.

(ii) To quash the part of Clause (3) of Resolution bearing Memo No. 1549 dated 27.06.2011 (Annexure-2) so far it relates to the petitioner issued under the signature of Principal Secretary, whereby and where under in compliance to the order dated 04.01.2011 passed by the Division Bench of this Hon'ble Court in C.W.J.C. No. 9491/2010 (Bibi Nazia Vs the State of Bihar and Others), even in case of Muslim Personal Law, he has held that, if the second marriage is solemnized with the permission of Govt., in such case, Family Pension can be divided equally between more than one widow, ignoring the spirit of order passed by the Division Bench in the case of the petitioner, who is second wife of Late Muslim Mian, who died in harness. Aforesaid Resolution Special Clause (3) thereof is further bad in law, because said Clause has been inserted in the Resolution in violation of order dated 04.01.2011 passed in C.W.J.C. No. 9491 of 2010 by the Division Bench of this Hon'ble Court, fully aware of the fact that Muslim



Personal Law permits Four Marriage irrespective of the fact that permission is granted or not.

(iii) To direct the respondents to sanction and grant Family Pension to the petitioner, who is only surviving widow of Late Muslim Mian, who died in harness on 21.09.2008 leaving behind his widow (petitioner) and tame Six Children, most of them was minor at the time of death.

(iv) That the Hon'ble Court may be pleased to grant any other relief or reliefs to the petitioner as this Hon'ble Court may think it proper in the present facts and circumstances of this case.”

3. Learned counsel for the petitioner submits that pursuant to the order passed by the Hon'ble Co-ordinate Bench in the case of the petitioner vide order dated 20.06.2018 in C.W.J.C. No. 9491 of 2010, the impugned order, as contained in Memo No. 1493 dated 01.07.2019 appended with the writ petition (Annexure-P/1), is said to have been passed under the signature of Chief Engineer, Birpur, Supaul, whereby the claim of the petitioner has been rejected, showing the requirement of taking permission from the State Government before contracting the second marriage and other connected material, not being available on record for consideration.



4. Learned counsel for the petitioner submits that the issue has already been given quietus by the Hon'ble Division Bench of this Court in the case of ***Nishar Ahmad Khan v. State of Bihar & Others*** reported in ***(2013) LabIC 3077***, wherein it has categorically been stated that the said requirement is not applicable in the case of the petitioner, whose matrimonial issues are guided by the Personal Laws. For reference, the relevant portion of the judgment, which specifically deals with the issues involved in the case at law, are extracted herein below:-

Strange are the ways. in the State. Strangers are its officers and devoid of any common sense. By this writ petition the petitioner seeks a direction to the State and the Accountant General, Bihar, to insert the name of his second wife in the pension payment order of the petitioner for the purpose of grant of family pension in that eventuality.

2. No one disputes that petitioner is a Muslim who under Muslim Personal Law is entitled not only to two wives but to four wives and no law till date prohibits such a Muslim alliance or alliances.

3. The Accountant General has filed a counter-affidavit stating that State Government has resolved by their circular dated 6.9.1996 that the second wife married in the life time of the first wife would not be recognized for the purpose of family pension though the children from the second wife would have a right to family pension of the deceased Government employee. The Accountant



General states that in view of the aforesaid, petitioner cannot be permitted to get the name of his second wife, namely, Akhtari Bibi inserted in the pension payment order. I have gone through the aforesaid circular of the Government.

4. Learned counsel for the petitioner draws my attention to Rule 23 of the Bihar Government Service Conduct Rules, 1976 framed by the State in terms of the Article 309 of the Constitution which is quoted hereunder.

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 marriages a person other than of Indian Nationality shall forthwith intimate the fact to the Government.

5. A reference to the said Rule shows that the Government has no option but to permit a second marriage if the personal law permits such to the Government servant. Today there cannot be a dispute that the Muslim Personal Law permits second marriage during life time of the first wife. In such circumstance, there is no discretion on the Government in the matter and there cannot be debarment of a Muslim person who does not have to seek permission of the Government for a second



marriage from entering the second wife s name. The second marriage cannot be said to be void much less voidable.

6. In that view of the matter, it must be 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 the first wife. Thus, I have no hesitation in rejecting the stand of the Accountant General, Bihar. I accordingly direct the Accountant General, Bihar, and the State to ensure that name of the second wife of the Muslim employee, the petitioner, be recorded in the pension payment order and henceforth to avoid litigation necessary directives in this regard be issued by the State to the concerned authorities so that there is no confusion in this matter in future. The Accountant General, Bihar, shall take necessary steps in the matter within a period of fortnight from the date of receipt/production of a copy of this order.

7. With the observation and direction aforesaid the writ petition stands disposed of.

5. Since the issue has already been settled and the evidence of such permission from the State Government having not been found on record, had been the sole reason for not considering the claim of the petitioner, which aspect of the matter having already been gone into, by the Hon'ble Division Bench, where such requirements in the case of the petitioner have not been found to be applicable and the said issues have already been adjudicated by the Hon'ble Division Bench,



therefore, now the respondents have no reason to deny the claim of the petitioner, in view of the judgment rendered in **Nishar Ahmad** (*supra*).

6. Accordingly, the order passed by the authorities which is contained in Memo No. 1493 dated 01.07.2019 is unsustainable and is accordingly set aside with a direction to the respondent no.5 to address the claim of the petitioner afresh on submission of the appropriate representation by this petitioner with supportive materials to get the claim of pension and pensionary benefit adjudicated, which, representation with all requisites shall be made within a period of four weeks from today and, on submission of such representation, the claim of the petitioner is required to be adjudicated within a further period of six weeks, and finding favour upon adjudication of the case of the petitioner, the necessary orders so passed, shall be forwarded to the office of the Accountant General for carrying out other formalities.

7. With the aforesaid observation and direction, the writ petition stands disposed of.

(Ajit Kumar, J)

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