

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6268 of 2022

=====

Gajala Praveen W/o Late Md. Abdul Hasnat R/o-Millat Colony, Sector-1,
P.S.-Phulwari, Dist-Patna. Petitioner/s

Versus

1. The State of Bihar through Principal Sec. Education Department, Bihar, Patna.
2. The Dist. Magistrate Bhojpur at Ara.
3. The D.E.O. Bhojpur at Ara.
4. The Dist. Program Officer (Establishment), Bhojpur at Ara.
5. The Accountant General (A and E) Bihar, Patna.
6. The Treasury Officer, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Manoj Kumar, Adv.
For the Respondent/s : Mr.Madhaw Prasad Yadaw (GP 23)
For the Accountant General : Mrs. Ritika Rani, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR
ORAL ORDER

5 13-02-2026 Heard the parties concerned.

2. The present writ petition has been filed for the following relief(s):-

“That the present writ petition is being filed for issuance of appropriate writ/writs, order/orders, direction/directions to the Respondent to pass appropriate order according with law because the Petitioner is 2nd wife of her husband who have died on 10.04.2021 and the first wife had also died on 15.11.2016 so the petitioner is entitle for family pension her husband died living behind two kids namely, i. Rehana Alam ii. Ayasa and she legally 2nd wife of Late Md. Abdul Hasnat and after death of her husband the family pension has not been



paid to the petitioner so your lordship may pass appropriate order according to law.

3. Learned counsel for the petitioner submits that the deceased-employee, namely, Late Md. Abdul Hasnat had contracted marriage with this petitioner only after the death of the first wife, late Roohi Farzana, who is said to have died on 15.11.2016, and out of the said marriage, the petitioner has got two children and late husband of this petitioner, is said to have died on 10.04.2021. The marriage certificate was also obtained from the office of the Muslim Marriage Registrar & Quazi, Patna under Registration No. 15/2016-844/2017, during his life time, which is appended as Annexure-3 of the petition and on the basis of such marriage, the petitioner is claiming family pension, which is said to have been denied by the authorities.

4. It has next been submitted that the Personal Law which governs the issue does not prohibit such marriages and, therefore, the issue, which has already been put at rest by the Co-ordinate Bench of this Court in the case of ***Md. Nishar Ahmad Khan v. The State of Bihar and Ors*** passed on 16.01.2013 in ***CWJC No. 7946 of 2007***, has not been taken note of by the authorities, who have filed counter affidavit opposing the relief being sought for by the petitioner. The said proposition



as set by the Co-ordinate Bench in the aforesaid case is quoted hereinbelow:-

“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.

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.

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.

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."

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.

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.

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

5. On the other hand, learned counsel for the State submits that in view of the Government Circular appended as



‘Annexure-A’ to the counter affidavit issued in this regard prohibits the grant of family pension to second wife. Therefore, the claim of this petitioner is not maintainable.

6. This Court has given an anxious consideration to the submission and finds that the stand which is taken by the State-Respondents in their counter, does not dispute the status of this petitioner being a second wife and the only hindrance in allowing the family pension to this petitioner is the Government Circular, which is said to have been issued prohibiting grant of the family pension to the second wife, may not be applicable in the case of this petitioner, whose cases are governed by the Personal Law and such issues have already been given a quietus by the Co-ordinate Bench of this Court in the case of ***Md. Nishar Ahmad Khan (supra)***, wherein the effect of Circular prohibiting family pension to the second wife has already been explained in the aforesaid case by holding that the Circular dated 06.09.1996 may be applicable in the case of others but not to the Muslim, whose Personal Law permits second marriage and the second marriage cannot be said to void much less voidable.

7. Considering the fact that the petitioner had contracted marriage after the death of the first wife namely, late



Roohi Farzana, which she could have otherwise also validly contracted the same and since the law which governs their matrimonial status does not prohibit second marriage and the issues with regard to prohibition of family pension to second wife in cases of marriages taking place in the circumstances having already been explained in the aforesaid case, therefore, the authorities may not have any hindrance in granting the family pension to this petitioner, who is having two children out of the said wedlock.

8. It is made clear that entire exercise for verifying the *bone fide* of this petitioner for the purpose of granting family pension shall be concluded within a period of six weeks from the date of production/receipt of a copy of this order, and if there is no other legal hindrance, then necessary order shall be passed granting the family pension to this petitioner within the same time as indicated.

9. The writ petition, in the above terms, stands disposed of.

(Ajit Kumar, J)

perwez

U			
---	--	--	--

