

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.32 of 2026

Most. Kusum Devi @ Kusum Devi W/o Late Jay Lal Sah, Resident of Village
Dostiya Tola, Police Station Sonbarsa, District Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resources Department, Government of Bihar,
Patna.
3. The District Magistrate, Sitamarhi.
4. The Chief Engineer, Flood Control and Water Resource Department,
Muzaffarpur.
5. The Superintendent Engineer, Shirsh Work Circle, Bagmati Nagar,
Sitamarhi.
6. The Treasury Officer, Sitamarhi.
7. The Accountant General, Bihar, Patna.
8. The Executive Engineer, Bagmati Division, Sheohar (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh, Advocate
Mr. Karu Kumar, Advocate
For the State : Mr. Kumar Alok, SC(07)
For the A.G. : Mrs. Ritika Rani, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 25-08-2026

Heard learned counsel appearing on behalf of the
petitioner; learned counsel for the State and learned counsel for
the Accountant General, Bihar.

2. The petitioner in paragraph no. 1 of the present writ



petition has sought, *inter alia*, the following relief(s), which is reproduced hereinafter:-

"(i) For issuance of a writ in the nature of certiorari for quashing the Memo No, MU-2, Estb. 14-110/18-327 dated 05.02.2019 (Annexure-3) issued by the Chief Engineer Flood Control and Water Resource Department, Muzaffarpur whereby the claim of the petitioner for family pension arising out of the demise of her husband Jay Lal Sah who was working as a third grade employee of Water Resources Department, the then working as Clerk in Shirsh Work Circle, Bagmati Nagar, Sitamarhi Office was denied by overlooking the recommendation of the then Superintending Engineer Flood Control Circle, Sitamarhi vide his Memo No. 39 dated 17.01.2017 and without any cogent evidence, it was observed that the deceased employee namely Jay Lal Sah neither sought permission for the second marriage nor he informed the office in this regard, which is quite illegal and arbitrary.

(ii) For commanding and directing the Respondents authority to allow the claim of the petitioner for family pension on account of the sad demise of her husband with arrears from the date of death of her husband i.e 17.04.2009.

(iii) For issuance of any other writ or writs, order or orders, direction or directions in the light of the facts and circumstances of this case for the ends of justice, equity and fair play."

ARGUMENT ON BEHALF OF PETITIONER

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner claims to be the second wife of the deceased employee, who died in harness on 17.04.2009 while serving as a Clerk (Grade-III) in the Flood Control and Water Resources Department. It is submitted that the petitioner is aggrieved by the order contained in Memo No. 327 dated 05.02.2019, issued by the Chief Engineer, Flood Control and Water Resources Department, Muzaffarpur,



whereby her claim for grant of family pension consequent upon the death of her husband has been rejected.

4. Learned counsel further submitted that, from the facts recorded in the impugned order, it is evident that the respondents have not disputed that the deceased employee, husband of the petitioner, had married Kusum Devi-I (first wife), who died subsequently after the death of her husband, on 17.12.2009, and thereafter family pension was released in favour of Kusum Devi-II (second wife). This material fact, however, has not been taken into consideration by the Chief Engineer. The sole ground for rejection of the petitioner's claim is that the deceased employee had not obtained permission from his controlling officer before solemnizing the second marriage with the petitioner, Kusum Devi-II. It is submitted that the petitioner, in paragraph no. 12 of the writ petition, has specifically asserted that the deceased employee had applied for such permission, and the said application has been brought on record as Annexure-P/5 to the writ petition. The petitioner has specifically stated, in paragraph no. 7 of the writ petition, that out of the said wedlock, she has two sons and four daughters and, as such, her case is covered by Rule 23(2) of the Bihar Government Service Conduct Rules, 1976, which has



subsequently been clarified by Resolution No. 1549 dated 27.06.2011.

5. Learned counsel, in background of above facts and information submitted that the claim of the petitioner is covered by the judgment passed by the Apex Court in the case of ***Radha Devi v. Chief General Manager, SLP (C) No. (@ Diary No. 2365 of 2022)***, wherein, having regard to the peculiar facts and circumstances of the said case, which to the extent similar to the petitioner, in order to secure the ends of justice, the Apex Court granted the benefit of family pension to the second wife of the deceased employee.

ARGUMENT ON BEHALF OF THE STATE

6. Learned counsel appearing on behalf of the State submitted that the judgment rendered by the Apex Court in case of Radha Devi (Supra) is in respect of the peculiar facts of the said case in exercise of power under Article 142 of Constitution of India and, as such, it cannot be considered as ratio dicendi as under Article 141 of the Constitution of India.

7. Learned counsel further submitted that in the peculiar facts of the present case, the husband of the petitioner had not obtained the sanction from the competent authority. Therefore, the order contained in Memo No. 327 dated



05.02.2019 don't requires interference of this Court. The claim of the petitioner must be based in accordance with prevailing rules and circulars of the State Government and also in view of the fact that a Hindu man cannot solemnize second marriage during the lifetime of his first wife, therefore, on this ground also the claim of the petitioner is fit to be rejected by this Court.

ANALYSIS AND CONCLUSION

8. Heard the parties.

9. The provision of Rule 23(2) of the Bihar Government Service Conduct Rules, 1976 entitles a widow to claim family pension and makes it obligatory upon the employee to seek permission from the controlling authority having jurisdiction before he enters into second marriage during the lifetime of the first wife. In the present case, the petitioner claims herself to be the second wife, who has given birth to two sons and four daughters out of the wedlock. The record reveals that the deceased employee had applied on 28.02.1982 for grant of permission for solemnizing second marriage and in support of the same, the application has been brought on record by way of 'Annexure-P/5' to the writ petition.

10. Governing Rule 23 of the Bihar Government Service Conduct Rules, 1976 which *inter alia* is reproduced



hereinafter:

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 marries a person other than of Indian Nationality shall forthwith intimate the fact to the Government. (emphasis supplied)

11. It is well settled that personal laws have historically occupied a distinct position from ordinary statutory enactments. It has been noticed by the Apex Court in the case of ***Rameshwari Devi vs State of Bihar & Ors.*** reported in ***AIR 2000 SC 735***, which case arose from the judgment passed by this Court, the Apex Court observed in paragraph no. 12 that the law says that no government employee who has a wife/husband living shall contract another marriage without previously obtaining the dissolution of the first marriage in accordance with law for the time being in force, notwithstanding such second marriage is permissible in the personal law of the community to which he or she



belongs. The paragraph no. 12 of the ***Rameshwari Devi (Supra)***,
is reproduced hereinafter:

"12. In State of W.B. v. Prasenjit Dutta [(1994) 2 SCC 37 : 1994 SCC (L&S) 638 : (1994) 26 ATC 902] departmental proceedings were initiated against the respondent, who was a member of the Police Service of the State of West Bengal under Rule 5(4) of the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980 for having contracted a second marriage. That rule says that no government employee who has a wife/husband living shall contract another marriage without previously obtaining the dissolution of the first marriage in accordance with law for the time being in force, notwithstanding such second marriage is permissible in the personal law of the community to which he or she belongs. On an inquiry made by an officer, appointed for the purpose, and on his report that the respondent was guilty of misconduct alleged, an order of dismissal was passed by the disciplinary authority. The respondent approached the High Court and the order of his dismissal was stayed. Nevertheless the High Court was of the view that the second marriage was a serious matter, which could not be left to be decided by the departmental authorities, in proceedings such as these, and a civil or matrimonial court needs to pronounce thereon properly and finally. On appeal filed by the State Government this Court said:

"5. The view of the High Court may be correct that a matter such as the present one concerning the existence or not of a relationship of husband and wife is normally to be dealt with in a matrimonial or a civil court. It cannot at the same time be said that the departmental authorities cannot go into such question for the limited purposes of sub-rule (4) of Rule 5 of the aforesaid rules. When contracting another marriage, in the presence of the previous one, has been termed to be misconduct visiting departmental punishment it is difficult to keep suspended action under the rule till after a proper adjudication is made by the civil or matrimonial court. It would, thus, have to be viewed that the departmental proceeding could not be shut in the manner in which the High Court has done and it would have to go on to some finality at a departmental end, on the culmination



of which, it may then give rise to the delinquent approaching the civil court for determining his matrimonial status.”

(emphasis supplied)

12. The petitioner has relied upon the judgment of the Apex Court in case of ***Radha Devi (supra)***, decided in exercise of its jurisdiction under Article 142 of the Constitution of India, having regard to the peculiar facts and circumstances of that case being similar to the petitioner's case for grant of family pension being second wife of deceased employee.

The question arises, whether, to do substantial justice, similar view as that taken by the Apex Court in Radha Devi (supra), can be taken to grant relief to the petitioner?

13. It is well settled that the power exercised by the Apex Court under Article 142 is distinct from the declaration of law under Article 141. The directions issued in exercise of the plenary jurisdiction under Article 142, particularly where the relief is moulded to meet the peculiar facts and circumstances of a case and to do complete justice, do not constitute a binding precedent and cannot be treated as laying down the *ratio decidendi* of the judgment. The Courts have consistently drawn a distinction between the declaration of law under Article 141 and directions issued under Article 142 for doing complete justice in a particular case. Such directions, which may mould or



tailor the relief or even relax the rigour of the applicable law in the facts of a particular case, are essentially fact-specific, which this Court in exercise of inherent jurisdiction is not bound to follow as a binding proposition of law under Article 141 of the Constitution of India.

14. The Apex Court in case of ***Indian Bank v. ABS Marine Products (P) Ltd.***, reported in ***(2006) 5 SCC 72***, wherein the Apex Court considered the distinction between the law declared under Article 141 of the Constitution and the directions issued in exercise of the power under Article 142 to do complete justice. The Hon'ble Supreme Court observed that directions issued under Article 142 in the peculiar facts of a case, particularly, those granting relaxation or exemption from the rigour of the declared law, cannot be treated as the *ratio decidendi* of the judgment. The Apex Court cautioned that Courts should carefully ascertain and follow the *ratio decidendi* rather than the relief granted on the special facts of a particular case in exercise of Article 142. The relevant observations made in paragraph 26 of the judgment are reproduced hereinafter:

“26. One word before parting. Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such



direction/order is in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The courts should therefore be careful to ascertain and follow the ratio decidendi, and not the relief given on the special facts, exercising power under Article 142. One solution to avoid such a situation is for this Court to clarify that a particular direction or portion of the order is in exercise of power under Article 142. Be that as it may.” (emphasis supplied)

15. Therefore, the exercise of power under Article 142 in ***Radha Devi (supra)*** in the peculiar facts of the said case, cannot, by itself, be construed as laying down a general rule of law entitling a second wife to family pension contrary to the applicable statutory provisions of the Hindu Marriage Act, 1955. The relevant para of the aforesaid judgment is *inter alia* reproduced hereinafter:

“Position of Radha Devi as a ‘spouse’ is not really disputed as such by the respondent, SECL, except on the ground that her marriage was solemnized with Jay Narayan Maharaj during the subsistence of his first marriage.

We would, in these circumstances, having regard to the peculiar facts of the case and in order to do complete justice, observe that Jay Narayan Maharaj and Radha Devi had lived and cared for each other, post the death of Ram Sawari Devi @ Sawari Devi on 20.04.1984. Radha Devi at the old age should not be denied the ‘status of spouse’, which entitles her to receive family pension. This would help her



live with dignity and help her financially. In view of the aforesaid position, we exercise our power under Article 142 of the Constitution of India and direct that Radha Devi shall be paid family pension with effect from 01.01.2010 till today on or before 31.12.2024. She will receive family pension till her death.

Radha Devi will furnish all details and particulars to the Manager, SECL, and complete formalities within a period of eight weeks from today.

In case the payment of arrears is not made within the said period, the respondent, SECL, will be liable to pay interest at the rate of 8% per annum from the date of this order till the date of actual payment.”

16. I find that Rule 23(2), read with the proviso of Bihar Government Service Conduct Rules, 1976 does not impose an absolute prohibition on a Government servant contracting a second marriage during the lifetime of the first spouse, but enables the Government to permit such marriage upon being satisfied that the marriage is permissible under the personal law applicable to the parties and that there exist other grounds justifying such permission.

17. The Finance Department, Government of Bihar, vide Resolution contained in Memo No. 10059 dated 06.09.1996, clarified that the second wife of a deceased Government employee, who had contracted the marriage during the lifetime of his first wife, would not be entitled to family pension. However, the minor children born out of the second



marriage would be entitled to family pension in accordance with the applicable rules, until they attain the age of majority. Thus, in cases where a claim for family pension is raised by the second wife, the aforesaid resolution makes it clear that while the second wife herself is not entitled to family pension, the children born out of the second marriage would be entitled to the family pension payable in respect of the deceased Government employee.

18. In the facts of the present case, the deceased employee was having two wives. The petitioner claims to be his second wife. The first wife to whom petitioner claims, was issueless, had raised no objection in respect of petitioner's marriage with the deceased employee and both of them lived together as husband and wife till her husband (the deceased) left this world leaving behind his six children born from the petitioner (the second wife). The rejection of the petitioner's claim solely on the ground that prior permission for the second marriage had not been obtained, is without considering the aforesaid fact and circumstances and, particularly, the application submitted by the deceased employee seeking such permission for second marriage while he was in service. The non consideration of this vital information by the respondent no.



4 renders the impugned order contained in Memo No. 327 dated 05.02.2019, being contrary to the provisions of Rule 23(2) of the Bihar Government Service Conduct Rules, 1976, unsustainable, therefore, is fit to be quashed and set aside.

19. The admitted position being that the petitioner had continued to live as a spouse with Late Jay lal Shah, after the death of his first wife, Kusum Devi No. I who had died in the year 10.12.2009 and the position of the petitioner as a 'spouse' after her death is not really disputed, as such, by the respondent except on the ground that her marriage was solemnized with Late Jay lal Shah during the subsistence of his first marriage. Having regard to the facts of the present case and in order to do complete justice, I am of the view that the deceased employee and the petitioner had lived and cared for each other, post the death of Kusum Devi No. I (first wife) and at the old age the petitioner should not be denied the 'status of spouse', which entitles her to receive family pension. As observed by the Apex Court in the case of ***Radha Devi (supra)*** "*This would help her live with dignity and help her financially who also have to look after the children born out of the said wedlock.*" In view of the aforesaid position, I find that the petitioner is entitled to be paid family pension with effect from the death of her husband i.e. on



17.04.2009 till her death.

20. The Chief Engineer, Flood Control and Water Resources Department, Muzaffarpur is directed to pass order afresh based on the correct facts and taking into consideration the fact that the deceased employee during his lifetime had applied for second marriage and petitioner, who claims to be the second wife of the deceased employee, is claiming her entitlement for family pension after the death of first wife of deceased employee.

21. It is expected that the authorities must pass a reasoned order and ensure to make payment of family pension to the petitioner, in accordance with law.

22. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29.08.2026
Transmission Date	N/A

