

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.358 of 2018**

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Indu Devi, Wife of Late Raja Ram Singh, resident of Village + Post-Alawalpur, P.S.- Fatuha, District- Patna and Preset address- Resident of Mohalla- Naya Tola, Gauri Chack, P.S.- Gauri Chack, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Nalanda.
4. The Accountant General, Bihar Patna.
5. Sarda Devi, W/o late Bishan Deo, R/v Rampur, P.O. Jaipur, P.S. Sasaram, Distt. Rohtas
6. Janki Devi, D/o late Raja Ram Singh, R/o Vill- Naya Tola, Gauri Chak, P.S. Gauri Chak, Distt. Patna

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Jay Prakash Singh, Advocate  
For the Respondent/s : Mr. H. S. Roy, AC to AG  
For the Accountant General : Mr. Arun Kumar Arun, Advocate

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**

**Date : 07-12-2022**

Heard Mr. Jay Prakash Singh, learned counsel for the petitioner, Mr. H.S. Roy, learned AC to AG for the State and Mr. Arun Kumar Arun, learned counsel for the Accountant General, Bihar.

2. The present writ application has been filed seeking a direction upon the respondents to ensure family pension to the petitioner, who is admittedly second wife of the deceased employee, late Raja Ram Singh and from their wedlock a son was born.



3. The short facts, which are relevant for consideration of the issue involved in the present writ petition is that the husband of the petitioner retired from the post of constable on 02.12.1986 at Islampur under Nalanda District Police, thereafter he was getting pension and finally died on 15.02.2000.

4. Learned counsel for the petitioner contended that the marriage of the petitioner was solemnized with late Raja Ram Singh on 05.05.1986 in a temple and thereafter he started living with her and a son was also born out of the said wedlock. He also submits that various plots of lands have also been purchased in the name of the petitioner showing her as the wife of late Raja Ram Singh. He further submits that the late husband of the petitioner had also written application to the Superintendent of Police, Nalanda to add the name of the petitioner, as nominee in the service book, but no action has been taken. He lastly submits that it is the admitted fact that the first wife of the erstwhile employee had already died on 15.05.2018 itself.

5. A counter affidavit has been filed on behalf of respondent no.3 stating therein that the petitioner being the 2<sup>nd</sup> wife of the erstwhile employee, who solemnized marriage during the life time of the 1<sup>st</sup> wife and as such the petitioner is not entitled



to get the family pension, apart from the fact that her name has never been entered in the service book, as nominee.

6. It is needless to say that a Hindu, contracting second marriage during subsistence of the first marriage, though the second marriage is void in view of Section 11 of the Hindu Marriage Act, as it contravene Section 5(i) thereof, but the children born out of the second marriage are legitimate as per Section 16 of the Hindu Marriage Act, 1956 and they are also entitled to the benefits at par with the wife/son of the first marriage.

7. This Court would also feels apt and proper to quote the relevant part of the observations made by the Hon'ble Supreme Court in the case of **Rameshwari Devi Vs. The State of Bihar and others**, reported in **(2000) 2 SCC 431** wherein the Hon'ble Supreme Court dealing with the similar situation has been pleased to observe as follows:

“9. Now, when first order was cancelled by the State Government and second passed depriving Yogmaya Devi and her children of any right in the pensionary benefits of Narain Lal, she filed writ petition in the High Court, which, as noted above, was allowed by the learned single Judge and later appeal filed by Rameshwari Devi against that was dismissed by the Division Bench of the High Court which is impugned. Learned single Judge referred to Section 16 of the Hindu Marriage Act, 1955 holding that even though the marriage of Narain Lal with Yogmaya Devi was void



their children would be legitimate and thus would be entitled to claim share in the family pension and death-cum-retirement gratuity of Narain Lal but only till they attained majority. Learned single Judge accordingly issued direction to the State Government to issue fresh sanction order for payment of arrears of family pension and death-cum-retirement gratuity to the minor children born from the wedlock between Yogmaya Devi and Narain Lal till they attained majority but nothing would be payable to Yogmaya Devi.

13. But then it is not necessary for us to consider if Narain Lal could have been charged of misconduct having contracted a second marriage when his first wife was living as no disciplinary proceedings were held against him during his lifetime. In the present case, we are concerned only with the question as to who is entitled to the family pension and death-cum-retirement gratuity on the death of Narain Lal. When there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required the State Government has to hold an inquiry as to the rightful claimant. Disbursement of pension cannot wait till a civil court pronounces upon the respective rights of the parties. That would certainly be a long drawn affair. The doors of civil courts are always open to any party after and even before a decision is reached by the State Government as to who is entitled to pensionary benefits. Of course, inquiry conducted by the State Government cannot be a sham affair and it could also not be arbitrary. The decision has to be taken in a bona fide, reasonable and rational manner. In the present case an inquiry was held which cannot be termed as sham. The



result of the inquiry was that Yogmaya Devi and Narain Lal lived as husband and wife since 1963. A presumption does arise, therefore, that the marriage of Yogmaya Devi with Narain Lal was in accordance with Hindu rites and all ceremonies connected with a valid Hindu marriage were performed. This presumption Rameshwari Devi has been unable to rebut. Nevertheless, that, however, does not make the marriage between Yogmaya Devi and Narain Lal as legal. Of course, when there is a charge of bigamy under Section 494 IPC strict proof of solemnisation of the second marriage with due observance of rituals and ceremonies has been insisted upon.

14. It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of a void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void. The sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, legal position when a Hindu male dies intestate. Here, however, we are concerned with the



family pension and death-cum-retirement gratuity payments which are governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment.

15. Rameshwari Devi has raised two principal objections: (1) marriage between Yogmaya Devi and Narain Lal has not been proved, meaning thereby that there is no witness to the actual performance of the marriage in accordance with the religious ceremonies required for a valid Hindu marriage, and (2) without a civil court having pronounced upon the marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights, it cannot be held that the children of Yogmaya Devi through her marriage with Narain Lal would be legitimate under Section 16 of the Hindu Marriage Act. The first objection we have discussed above and there is nothing said by Rameshwari Devi to rebut the presumption in favour of marriage duly performed between Yogmaya Devi and Narain Lal. On the second objection, it is correct that no civil court has pronounced if there was a marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of Yogmaya Devi. On this aspect we have already adverted to above. After the death of Narain Lal, inquiry was made by the State Government as to which of the wives of Narain Lal was



his legal wife. This was on the basis of claims filed by Rameshwari Devi. The inquiry was quite a detailed one and there are in fact two witnesses, examined during the course of inquiry being (1) Sant Prasad Sharma, Teacher, DAV High School, Danapur and (2) Shri Basukinath Sharma, Shahpur Maner who testified to the marriage between Yogmaya Devi and Narain Lal having witnessed the same. That both Narain Lal and Yogmaya Devi were living as husband and wife and four sons were born to Yogmaya Devi from this wedlock has also been testified during the course of inquiry by Chandra Shekhar Singh, retired District Judge, Bhagalpur, Smt. (Dr.) Arun Prasad, Sheohar, Smt. S.N. Sinha, w/o Sri S.N. Sinha, ADM and others. Other documentary evidence were also collected which showed that Yogmaya Devi and Narain Lal were living as husband and wife. Further, the sons of the marriage between Yogmaya Devi and Narain Lal were shown in the records as the sons of Narain Lal.”

8. Learned counsel for the petitioner also relied upon a judgment rendered by the Division Bench of this Court in LPA No. 72 of 2018 (Sumitra Kunwar @ Sunaina Devi @ Sumitra Devi Vs. the State of Bihar and others) wherein identical issue was dealt with by the learned Division Bench of this Court and the learned Division Bench of this Court having taken note of the Resolution of the Finance Department, Government of Bihar dated 06<sup>th</sup> September, 1996 has been pleased to allow the appeal and directed to ensure the family pension to the surviving widow.



9. In view of the aforesaid settled legal position, this Court directs the respondent authorities to consider the family pension of the petitioner in the light of the order passed by the Division Bench of this Court in L.P.A. No. 72 of 2018, expeditiously, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

10. Accordingly, the present writ application stands allowed.

11. It is needless to say that all the arrears of family pension shall also be paid to the petitioner within the aforesaid period.

**(Harish Kumar, J)**

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AFR/NAFR	
CAV DATE	NA
Uploading Date	19.12.2022
Transmission Date	NA

