

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.72 of 2018

In

Civil Writ Jurisdiction Case No.13972 of 2017

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Sumitra Kunwar @ Sunaina Devi @ Sumitra Devi, Wife of Late Surbanshi Ram @ Sarbansh Ram, Resident of Village- Babhangawan (Katara), P.S.- Chenari, District- Rohtas.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Jehanabad.
4. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Banwari Sharma, Advocate
		Mr. Jay Prakash Singh, Advocate
For the Respondent/s	:	Mr. Saroj Kumar Sharma, A.C. to A.A.G.-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-04-2019

Heard the learned counsel for the appellant and the learned counsel for the State of Bihar.

2. The appellant is a widow of Late Surbanshi Ram @ Surbansh Ram, who was a Class IV employee and who died on 12th of June, 2012. The dispute relates to the award of family pension to the widow of the deceased employee.

3. The learned single Judge has denied the relief on the ground that the appellant being the second wife of the deceased



employee was not entitled to the family pension keeping in view the relevant rules. Hence this appeal.

4. It is urged on behalf of the appellant that the learned single Judge has overlooked the true impact of the rules on the peculiar facts of this case where the first wife Lalmuni Devi had already died during the lifetime of the deceased employee on 18th of May, 2012 itself. Thus, on the date when the employee died, there was only one widow and surviving wife, namely, the appellant herein.

5. In order to understand the controversy, we may point out that the Family Pension Scheme as was promulgated and revised by the State Government from time to time earlier contained a provision that where an employee survived by more than one widow, the pension will be paid to them in equal share. This is evident from the extract of the revised provisions contained in the Finance Department's Resolution dated 19th of April, 1990 in respect of the Family Pension Scheme promulgated with effect from 1964.

6. The aforesaid provision, however, came to be revised by the Resolution of the Finance Department dated 06th of September, 1996. The same is reproduced herein under:

“बिहार सरकार वित्त विभाग ज्ञाप संख्या-पी० सी०-१
मिस-४१/९२/१०,०५९/वि०, दिनांक ६-९-१९९६



विषय :- सरकारी सेवकों की दूसरी पत्नी को पारिवारिक पेंशन के आदेयता के संबंध में।

निदेशानुसार उपर्युक्त विषय के प्रसंग में कहना है कि वित्त विभाग के परिपत्र संख्या पेन-103/64-9505/वि0 दिनांक 3-10-1964 की कंडिका 7 (iii) की टिप्पणी (i) के अनुसार किसी मृत सरकारी सेवक के एक से अधिक विधवाएँ जीवित हो तो भारत सरकार के एतद् संबंधी नियमानुसार पारिवारिक पेंशन उनके बीच बराबर-बराबर देय है तथा एक विधवा की मृत्यु के उपरान्त पारिवारिक पेंशन का उक्त भाग उसके नाबालिग संतान को अनुमान्य है। भारत सरकार के पत्रांक - सी0 एण्ड0 ए0 जी0 211/औडिट-1/13-86 दिनांक 4-3-1987 के द्वारा अब निर्णय लिया गया है कि दूसरी पत्नी को पारिवारिक पेंशन अनुमान्य नहीं है।

2. भारत सरकार के उपर्युक्त निर्णय के आलोक में राज्य सरकार द्वारा सम्यक विचारोपरान्त वित्त विभाग के ज्ञाप संख्या -9505/वि0, दिनांक 3-10-1964 की कंडिका 7 (iii) की टिप्पणी (i) को विलोपित करते हुए निर्णय लिया गया है कि एक पत्नी के जीवनकाल में दूसरा विवाह करने पर दूसरी पत्नी को पारिवारिक पेंशन देय नहीं होगा, परन्तु दूसरी पत्नी से उत्पन्न नाबालिग संतान के पूर्व नियमानुसार पारिवारिक पेंशन की सुविधा देय होगी।

3. उपर्युक्त संशोधन आदेश निर्गम की तिथि से प्रभावी होगा परन्तु जिन मामलों में पारिवारिक पेंशन की सुविधा पहले प्रदान की जा चुकी है, उनकी पुनः समीक्षा कर भुगतान रोकने अथवा पूर्व में भुगतान की गई राशि की वसूली की कार्रवाई नहीं की जायेगी। पूर्व के अनिर्णीत मामलों पर इस संशोधन के अनुसार ही निर्णय लिया जायेगा।”

7. A perusal of the same would indicate that the earlier resolution was taken notice of and an amendment was made that even if an employee consummates a second marriage during the subsistence of the first marriage and the first wife is surviving, then in that event the second wife will not get family pension but her illegitimate children would be entitled to the same.

8. In the instant case, the peculiar fact is that even though there appears to have been a second marriage, but the first wife had already died before the death of the employee himself. Thus, the second wife was the only widow surviving as on the date of the death of the employee and there was nobody else to claim the family pension as the first wife had no children. In the given circumstances therefore, this peculiar case required a different



treatment and interpretation in the light of the Resolution dated 6th of September, 1996, quoted herein above, and since the appellant was only surviving widow and wife as on the date of the death of the employee, there is no other prejudice being caused to the Government nor there being a violation of the Resolution dated 06th of September, 1996, the appellant ought to have been extended the said benefit. We do not find any such consideration having been made by the learned single Judge in the impugned judgment dated 06th December, 2017.

9. Accordingly, we allow this appeal and set aside the impugned judgment dated 06.12.2017 and issue a mandamus to the 3rd respondent for revisiting the matter in the light of the facts stated above and the Letter No.44 dated 30th March, 2015 is quashed.

10. The appeal and the writ petition both stand disposed of accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM

AFR/NAFR	
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