

SC-9  
13.1.14

IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C.W.J.C. No. \_\_\_\_\_ 2014

Veena Devi ..... Petitioner

Versus

The State of Bihar and Others ..... Respondents

Subject: Others Miscellaneous

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**IN THE HIGH COURT OF JUDICATURE AT PATNA  
(CIVIL WRIT JURISDICTION)**

**C.W.J.C. No. \_\_\_\_\_ 2014**

**Veena Devi       .....       Petitioner**

**Versus**

**The State of Bihar and Others       .....       Respondents**

**SYNOPSIS**

- 1) This writ application is being filed by the Petitioner for the payment of Provident Fund, pension, LIC and other financial ancillary benefits which had been illegally and in an arbitrary manner encashed by Respondent No.7 after the death of Petitioner's husband Late Bhim Paswan.
- 2) **14.10.2000**-Order issued by the Senior Superintendent of Police, Patna to give Rs. 2000/- to the Respondent No. 7 as alimony.
- 3) **4.9.2007**- The Superintendent of Police, Bhagalpur had issued the letter stating the Petitioner's husband died during SLC Training in Bhagalpur.

- 4) **27.9.2007-** A letter was written by the Petitioner to the Superintendent of Police, Madhepura after the death of the Petitioner's husband.
- 5) **21.1.2008-** The Superintendent of Police, sent a fax to Superintendent of Police, Sitamarhi in regard to deduction of monthly subscription in General Provident Fund bearing Account No. दी. पी.54890 /म.दी.पी.पोल-760/ forthcoming certificates.
- 6) **25.4.2008-** A letter was sent to DIG (Administration) in regard to the payment of pension and other financial benefits amongst both the wives of the deceased.
- 7) **13.8.2008-** Order issued by the Superintendent of Police, Madhepura in regard to the grant of benefits due to the Petitioner and Respondent No.7.
- 8) **23.2.2012-** Order passed in C.W.J.C. No. 1758/2012 passed by this Hon'ble Court.
- 9) The Petitioner is entitled to receive all pension and other benefits after the death of her husband Late Bhim Paswan

which she was supposed to get and which has been illegally  
granted to Respondent No. 7.

**Hence this writ.**

**IN THE HIGH COURT OF JUDICATURE AT PATNA****(CIVIL WRIT JURISDICTION)****C.W.J.C. No. \_\_\_\_\_ 2014**

In the matter of an application under  
Article 226 and 227 of the  
Constitution of India.

**AND**

In the matter of:

Veena Devi, W/o Late Bhim Paswan, resident of village Purvi  
Hardaschak, P.S. Khagaria, District Khagaria. Presently residing at  
New Mithla Colony, Near Ganga Nursery, P.O. Bataganj, P.S.  
Danapur, District Patna .....Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat,  
Government of Bihar, Patna

2. The Director General of Police, Bihar, Patna
3. The Additional Director General of Police(Personnel), Bihar,  
Patna
4. The Superintendent of Police, Madhepura
5. The Superintendent of Police, Bhagalpur
6. Most. Kunti Devi, W/o Late Bhim Paswan, resident of Village  
Hardaschak, P.O. Sansarpur, P.S. Murffasil, District Khagaria

.....Respondents

To,

The Hon'ble Ms. Justice Rekha M. Doshit, the Chief Justice of  
the High Court of Judicature at Patna and her companion Justices of  
the said Hon'ble Court

The humble writ application on behalf of the

Petitioner above named

**MOST RESPECTFULLY SHEWETH:**

1. That the Petitioner seeks the following reliefs in this writ  
application.

- I) Issuance of direction, order or writ in the nature of mandamus directing the respondents to forthwith allow/arrange payment of Provident Fund, pension, LIC and other financial ancillary benefits which had been illegally and in an arbitrary manner granted to Respondent No.7 (Annexure-5).
  - II) Issuance of direction, order or writ in the nature of certiorari directing the Respondents to bring on record as to what were the payments due to the deceased husband of the Petitioner and what amount have been illegally and arbitrarily paid to Respondent No. 7.
  - III) Any other relief or reliefs for which the Petitioners may be deemed entitled to.
2. That the grounds on which this Writ Application is sought to be maintained has been given in paragraph no. 16 of his Writ Application.

3. That the Petitioner is the citizen of India and second wife of Late Bhim Paswan who died in service as Hawaldar at Madhepura Police Station.
4. That the Petitioner's husband Late Bhim Paswan had gone to Bhagalpur Jila for SLC training on 6.1.2007 and he took his last breath and died lastly on 2.9.2007. That the Superintendent of Poilce, Bhagalpur vide Bhagalpur District Order No. 1577/2007 notified that the Petitioner's husband died during SLC Training on 2.9.2007.

A Photostat copy of the order bearing Order No. 1577/2007 issued by the Superintendent of Poilce, Bhagalpur is annexed herewith and marked as Annexure - 1 to this writ application.

5. That the Superintendent of Police had written a letter to DIG (Administration) bearing Letter No. 1563/ सा. प्र. on dated 25.4.2008 recommending that since the deceased had two wives and as per the affidavit sworn by both the wives, the first wife



should be given the family pension and the petitioner's son shall be entitled to compassionate appointment. Further it was recommended that all other financial benefits should be distributed amongst the two wives in equal shares. It is relevant to submit for consideration that Respondent No. 7 in collusion with other respondents managed to get the family pension along with the other financial benefits in toto without giving the Petitioner her part. Moreover, the Petitioner's son had also applied for the compassionate appointment but the same was rejected by the Respondents. Aggrieved by this behavior of the Respondents, the Petitioner's son filed a writ application bearing C.W.J.C. No. 1758/2012 which has been referred before the Division Bench of this Hon'ble Court. It is pertinent for consideration that this letter shows that the petitioner as well as the second wife of the deceased husband of the Petitioner found figure in the service book of the petitioner's husband late Bhim Paswan.

A Photostat copy of the letter written by the Superintendent of Police, Madhepura to the DIG (Administration) bearing Letter No. 1563/ सा. प्र dated 25.04.2008 is annexed herewith and marked as Annexure - 2 to this writ application.

AND

A Photostat copy of the order passed in C.W.J.C. No. 1758/2012 dated 23.2.2012 is annexed herewith and marked as Annexure - 3 of this writ application.

6. That it is relevant to submit for consideration that the DIG (Administration) had written a letter to the Superintendent of Police, Madhepura vide letter No. 3411/Pension/92-1-17-2005 on dated 27.5.2008 in regard to letter No. 1563/ सा. प्र instructing the Superintendent of Police, Madhepura to take decision in accordance with rules recognized by law.

A Photostat copy of a letter bearing Letter No. 3411/Pension/92-1-17-2005 written by the DIG (Administration) to the Superintendent of Police, Madhepura on dated 27.5.2005 is annexed herewith and marked as Annexure - 4 to this writ application.

7. That it is relevant to submit for consideration that the Superintendent of Police, Madhepura had sent fax message bearing No. 254/ सा. प्र. to the Superintendent of Police, Sitamarhi, Superintendent of Police, Betiya and Senior Superintendent of Police, Patna on dated 21.1.2008 in regard to deduction of monthly subscription in General Provident Fund bearing Account No. दी. पी.54890 /म.दी.पी.पोल-760/ forthcoming certificates.

A Photostat copy of the fax message bearing

No. 254/ सा. प्र. sent by the Superintendent

of Police, Madhepura to the Superintendent of Police, Sitamarhi, Superintendent of Police, Betiya and Senior Superintendent of Police, Patna is annexed herewith and marked as Annexure - 5 to this writ application.

8. That the Superintendent of Police had issued a District Order No. 872/2008 stating that in Letter No. pension/103/64-9505/ बी on dated 3.10.1964 it was stated that the family pension is to be distributed amongst both the wives of the deceased husband and after the death of one of the widows, the pension shall be given to her children. But the Central Government vides Letter No. सी.एंड.ए.जी.211/ ऑफिस-1/13-86 on dated 4.3.1987 had altered the above decision and stated that the second wife of the deceased shall not be entitled for any family pension and the same was agreed by the State Government vide letter No. पि.सी.1, 41/92/10059 on dated 6.9.1996. Further, it is relevant

to submit that the Superintendent of Police also fixed the pension allowance which was to be paid to the Respondent No.7.

A Photostat copy of the District Order No.

872/2008 is annexed herewith and marked

as Annexure - 6 to this writ application.

9. That the Petitioner was married to late Bhim Paswan on 5.2.1979 and much before that he was also married to Most. Kunti Devi Respondent No.7. That the Petitioner's husband Late Bhim Paswan therefore had married twice before his initial joining as constable in the Bihar Police.
10. That it is relevant to submit for consideration that the first wife of the deceased husband Most. Kunti Devi had been living separately for the last 21 years and it is only in the year 2000, she applied for alimony and after consideration, Senior Superintendent of Police vide order District Order No. 8150/2000 had ordered that the first wife be given Rs.2000/- as monthly payment.

A Photostat copy of the District Order No. 8150/2000 is annexed herewith and marked as Annexure - 7 to this writ application.

11. That after the death of the Petitioner's husband, the Petitioner had written a letter on dated 27.9.2007 to the Superintendent of Police, Madhepura in regard to grant of pension and other financial benefits for which the Petitioner is entitled to after the death of the deceased.

A Photostat copy of the letter on dated 27.9.2007 written by the Petitioner to the Superintendent of Police, Madhepura is annexed herewith and marked as Annexure - 8 to this writ application.

12. That the petitioner has five daughters and one son and all her daughters are unmarried and at the time of the death of Petitioner's husband, four of the daughters were minor and presently two of the daughters are still 18years of age. The son

of the petitioner is also unemployed and there is no means of any livelihood.

13. That the first wife Kunti Devi Respondent No. 7 had been utilizing all the benefits that accrued after the death of Petitioner's husband. The Respondent No. 7 has also taken the entire Provident Fund, Pension, LIC and other financial benefits which were lying due on the name of the Petitioner's husband who died in harness.
14. That the entire police missionary has played fraud upon the petitioner by getting in collusion with Respondent No.7 and had paid all the monetary benefits to Respondent No.7 which was to be paid to the petitioner. Moreover the monthly pension is also being encashed by Respondent No.7.
15. That it is required for the ends of justice that the second wife who has five daughters who would be married sooner or later is in a deep mental stress and financial crisis as to how things would take place and it is very much required that petitioner be given the share on the entire income which had been illegally,

arbitrarily and in a collusive manner snatched by Respondent No.7.

16. That this Writ Application is sought to be maintained on amongst others the following:

### GROUNDS

- I) For that the illegal and arbitrary act of the Respondents in collusion with the first wife of the Petitioner's husband clearly abridges the right of the Petitioner who has equal share in all the benefits accrued after the death of Petitioner's husband.
- II) For that there is a gross violation of Article 14 and 21 of the Constitution of India if the Petitioner is not treated at par with and equal to the first wife Respondent No. 7.
- III) For that the Petitioner has 5 unmarried daughters and an unemployed son. The petitioner has no source of income for livelihood and so depriving the petitioner from her share for which she is entitled to being the wife of the deceased shall amount to depriving a person to live with



dignity and thus violating the Petitioner's fundamental right as enshrined in Article 21 of the Constitution of India.

17. That the petitioner has not moved earlier before this Hon'ble Court in the instant matter.

It is therefore prayed that your lordship may be graciously be pleased to admit this writ application, issue RULE NISI upon respondents to show cause as to why not the relief sought for in Paragraph No. 1 of the writ application be granted to the petitioner or after hearing the party of parties or after return of the rule make the rule absolute or pass such other order or orders which your lordship may deem fit in proper.

And for this the petitioner shall ever pray.

**AFFIDAVIT**

I, Veena Devi, W/o Late Bhim Paswan, resident of village Purvi Hardaschak, P.S. Khagaria, District Khagaria. Presently residing at New Mithila Colony near Ganga Nursery, P.O. Bataganj, P.S. Danapur, District Patna do here by solemnly affirm and declare on oath as follows:

1. That I am the petitioner in the aforesaid case and hence I am well acquainted with the facts and circumstance of the case.
2. The entire content of this writ application have been read over and explained to me in Hindi me which I have fully understood.
3. That Paragraph nos. 1, 2, 16 I to III are by way of legal submission, paragraph nos. 3 to 15 and 17 are by way of knowledge and paragraph nos. ———— are by way of information.
4. That annexure are true copies/ photo state copies/ typed copies of their respective originals.

*वेना देवी*  
DEPONENT

# Annexure - 1

15

भागलपुर जिलाईश सं०:- 2212/2007

मधेपुरा जिलाईश के सिपाही/117 मीर पासवान जो एच० एच० सी० प्रशिक्षण प्राप्त करने हेतु दिनांक-06-01-07 को भागलपुर जिलाईश में योगदान देकर प्रशिक्षणार्थ हैं। दिनांक-02-09-07 को उनकी हृदयगति रुक जाने के कारण मृत्यु हो गई। अन्त्य परीक्षा के उपरान्त एच० पासवान का शव हाह संस्कार हेतु उनके परिवारीक निवास पटना भेज दिया गया।

रज०नि० प्रथम जिलाईश अंकित कर एक प्रति संबंधित पुलिस अधीक्षक को भेजी। उनके पत्रक द्वारा मधेपुरा में घटना की कार्रवाई का जासगी। मृत्यु का तिथि से प्रशिक्षणार्थी के नाम विलोपित करने का आदेश दिया जाता है।

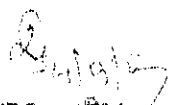
पुलिस अधीक्षक,  
भागलपुर।

आपीक:- 2212/रज०नि०

पुलिस अधीक्षक, का कार्यालय भागलपुर

दिनांक- 4-9-07

- प्रमाणिका :-
1. पुलिस अधीक्षक, मधेपुरा को सूचनाएं एवं आवश्यक क्रियाएं।
  2. रज०नि० प्रथम को जिलाईश भेजना करने हेतु।
  3. प्रभारी, पदाधिकारी, एच० एच० सी० प्रशिक्षण, केन्द्र भागलपुर को सूचनाएं।

  
पुलिस अधीक्षक,  
भागलपुर।

पुनर्विचार आदेश संख्या 15/2008/आ/10

दिनांक 25-04-2008

पुनर्विचार उप-महानिरीक्षण मकसद  
बिहार, पटना

स्वतंत्र सिपाही-117 भीम पासनाम के दो पत्नीयों  
प्रत्युत्पादन/पारिवारिक धर्म-धर्म व्यवस्था  
विना-निर्देश देने के संबंध में।

*[Handwritten signature and notes]*

निकेतन पूर्वक सूचित करना कि स्वतंत्र सिपाही-117 भीम पासनाम  
नेपुरा जिले कैसेवा सुस्तिका के प्रथम नाम वीर कुंठ के बड़े तरफ वीणा देवी पत्नी को  
विवाह किया है तथा स्वतंत्र सिपाही के प्रथम खण्ड के कुंठ संख्या-19 पर पटना जिला क्षेत्र  
8150/2000, अर्थात्-17880/रक 10, दिनांक-14.10.2000 के अनुसार उपरोक्त पत्नी  
द्वारा पहली पत्नी के रहते हुए दूसरी शादी करने तथा प्रथम पत्नी को  
स्वतंत्र सिपाही प्रजा से काम नहीं चलने के कारण प्रथम पत्नी के द्वारा प्रथम पत्नी को  
के आलाप में वरीय प्रतिपत्नी अधिक, पटना द्वारा दो हजार रुपये सजाया अन्तर्गत रूप है  
प्रतिपत्नी को तथा पहली पत्नी भी प्रतिपत्नी देनी को देने का  
सिपाही-117 भीम पासनाम के मुख्यव्यवस्थापकों पत्नीयों में सादर नोटिस देकर नेपुरा के  
समक्ष उनमें स्वेच्छा से शपथ पत्र दी है कि पहली पत्नी को पारिवारिक धर्म तथा धर्म  
पत्नी के लक्ष्य को अनुकूलित जाधार पर नौकरी एवं अन्य प्रकाश के अंतर्गत में दो  
पत्नीयों को जाधार-आर्थिक विस्था संबंधी कायदात समर्पित की है।

अतः अंतर्गत है कि स्वतंत्र सिपाही-117 भीम पासनाम को दो पत्नीयों  
रहते हुए दूसरी पत्नी से शादी करने के कारण प्रत्युत्पादन/पारिवारिक धर्म-धर्म व्यवस्था  
अनुकूलित के अन्तर्गत पर नौकरी एवं सभी प्रकार के अन्य मुद्दों में आलाप  
कारणों हेतु विना-निर्देश देने की कृपा की जाय।

*[Handwritten signature]*  
25/4/08

83-2210  
25/4/08

पुनर्विचार आदेश संख्या 15/2008/आ/10

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.1758 of 2012**

1. Suman Saurav S/O Late Bhim Paswan R/O Village- Purvi Hardashak,  
P.S.- Khagaria, District- Khagaria, Presently Residing At 6b/11, Tilak  
Marg, North Sri Krishnapuri, P.O.- Patliputra, P.S.- Sri Krishna Nagar,  
District-Patna

..... Petitioner/s

Versus

1. The State Of Bihar  
2. The State Of Bihar Through The Chief Secretary Government Of Bihar,  
Old Secretariat Building, Patna  
3. The Director General Of Police, Bihar, Patna  
4. The Additional Director General Of Police (Personnel), Bihar, Patna  
5. The Superintendent Of Police, Madhepura  
6. The Superintendent Of Police, Bhagalpur  
7. The District Collector Cum Chairman Compassionate Appointment  
Committee, Madhepura

..... Respondent/s

**Appearance:**

For the Petitioner/s : Mr. Jai Vardhan Narayan, Adv.

For the Respondent/s : Mr. Rajesh Singh GP-16

**CORAM: HONOURABLE MR. JUSTICE NAVIN SINHA**  
**ORAL ORDER**

2. 23-02-2012 Heard learned counsel for the petitioner and the  
State.

The father of the petitioner died in harness on  
2.9.2007. The Superintendent of Police, Madhepura,  
recommended his case for compassionate appointment on  
12.4.2008. The appointment having remained elusive, the  
petitioner has preferred the writ application.

Learned counsel for the petitioner submits that he is  
the offspring from the second marriage solemnized by the  
father while the first wife was still alive. There is no bar for  
consideration of his claim on that ground specially when there

is no other claimant for compassionate appointment. The entire purpose of compassionate appointment is to save the family from destitute and penury. The first wife Most. Kunti Devi has also sworn an affidavit that she had no objection to the petitioner being considered. Virendra Paswan and Satyandra Paswan who are the elder to the petitioner born from the first marriage have also filed an affidavit of no objection to the petitioner being considered. Reliance is placed on a judgment of the Supreme Court in A.I.R. 2008 SC 1420 (Vidyadhari & Ors. Vs. Sukhrana Bai & Ors.) that the petitioner, even as the offspring of the second marriage is entitled to succession to the estate of the deceased. Reliance is further placed on a Bench decision reported in (2005)2 PLJR 467 (Abshar Ahmad @ Aabshar Ahmad Vs. Bihar State Electricity Board & Ors.) interpreting Rule 23 of the Bihar Government Servant Conduct Rules, 1976 that the second marriage cannot be an absolute bar to consideration and the principle of deemed approval can be applied to fulfill the purpose of a compassionate appointment.

In Abshar Ahmad (supra) interpreting Rule 23 of the Bihar Government Servant Conduct Rules, 1976 (hereinafter referred to as the 'Rules') it was held that the concept of compassionate appointment is ingrained in the concept of family. A beneficial interpretation was provided to Rule 23 that in absence of any objection having been raised there shall

be deemed approval for the second marriage. The respondents were well aware of the fact as far back as 14.10.2000 when they issued an order No. 17880 apportioning the financial benefits between the two wives. If a benefit arising out of the service rendered by the deceased was available, there is no reason why the second benefit should not be made available also. Though this document is not on record, the Court permitted the counsel for the petitioner to rely upon the same.

It was lastly submitted that despite all issues, it is not in dispute that the petitioner is the offspring of the deceased. If the deceased committed any error in not seeking permission under Rule 23 before remarriage, the petitioner should not be visited with such a serious consequence of debarring him from consideration. A sympathetic view on equity may be taken keeping in mind that the claim is one for compassionate appointment.

Counsel for the State opposing the application submits that if the deceased committed an act contrary to Rule 23, any claim arising out of that violation cannot be a cause of action.

In *Abshar Ahmad (supra)* a Bench decision holds that compassionate appointment was ingrained in the concept of family if the personal law permitted a second marriage. It encompasses a larger family including the children of the second wife. Once it is decisive that the second wife and the

offspring were dependent upon the deceased, there shall be an invocation of a deemed doctrine for approval under Rule 23 giving directions to consider for compassionate appointment.

Rule 23 read as follows:-

**"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 contact, 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."

The obligation clearly is of the Government servant remarrying during the life time of the first spouse to seek approval. The statutory provision begins with a complete interdict prohibiting him from solemnizing a second marriage. The fact that the proviso visualizes grant of a permission to do so cannot be construed as a deemed approval without any specific application for approval having been made. The proviso cannot control the Section. It was the obligation of the Government servant to first make an application. The manner in which such an application was to be considered is provided for in Sub Clause-2. It may be under the personal law or there may be other grounds for the same. Whether it be a



person professing the Hindu faith, the Muslim faith or the Christian faith, it was the obligation of the Government Servant to seek approval even if his personal law so provided. There was no right under Rule 23 to marry without permission merely because it was permissible under the personal law.

The issue of the personal law of the deceased with regard to matrimonial relationship, succession to his estate etc. are a completely different matter pertaining to the private law field. The issue of the personal law has no application in his relationship with the Government under a master servant relationship. The master is empowered in law to lay down the conditions of the relationship. No claim can be founded on equity or sympathy in violation of the conditions imposed by law for this relationship.

If Rule 23 permits grant of approval for a second marriage on specified conditions, the power is of the authority and not of the Court. The Court cannot usurp the statutory power of the authority under the Rule and discharge the duties of the authorities. The most that the Court can do is to remand the matter to the authorities for taking an appropriate decision. There can be no deemed application of a statutory provision unless the authority has first exercised its statutory powers.

The limits of the writ jurisdiction in this regard has been noticed in (2009) 16 SCC 601 (Union of India V. Bilash

Chand Jain) as follows:-

“5. It may be mentioned that there is a distinction between “judicial review” and “appellate jurisdiction”. The High Court in a writ petition when examining an administrative order is not exercising the appellate power but exercising the power of judicial review which is much narrower than the appellate power. Such judicial review can only be exercised on Wednesbury principles.

6. It is well settled by a series of decisions of this Court that the High Court cannot itself perform the functions of a statutory authority. Thus in *G. Veerappa Pillai v. Raman and Raman Ltd.* it was held that the High Court under Article 226 of the Constitution of India cannot direct the Regional Transport Authority to grant bus permits as the grant of the permit is entirely within the discretion of the Regional Transport Authority. Of course, if the Regional Transport Authority rejects the application for grant of permits arbitrarily or illegally, the High Court can set aside the order of the Regional Transport Authority and direct the Regional Transport Authority to pass a fresh order in accordance with law, but the High Court cannot itself order grant of permits, in that case it will be taking over the function of the Regional Transport Authority.”

If the contention on behalf of the petitioner is taken to its logical conclusion, what emerges is that the deceased violated the conditions of his service when he remarried during the life time of the first spouse without requisite approval under Rule 23. The fact that he committed a misconduct shall become a wholly irrelevant issue today and a claim for compassionate appointment must be upheld though its root are to be found in a misconduct violating Rule 23.

Compassionate appointment is a weak right in teeth of Article 14 of the Constitution. To found a cause of action for such a weak right in illegality is an interpretation which the Court finds difficult to give. The reliance on the office order dated 14.10.2000 apportioning the financial benefits between the two wives relates to the private law field and has no relevance or application presently.

There is no dispute of the fact that the deceased solemnized a second marriage without permission under Rule 23 of the Conduct Rules and that it was therefore a misconduct. That departmental proceedings may not have been held shall not erase the misconduct. A claim for compassionate appointment was thus not available to the heirs of a Government servant who misconducted himself in service was held in (2008) 8 SCC 475 (General Manager, State Bank of India v. Anju Jain) as follows:-

“33. Compassionate appointment is really a *concession* in favour of dependants of a deceased employee. If during his career, he had committed illegalities and the misconduct is proved and he is punished, obviously his dependants cannot claim *right* to the employment. With respect, the learned Single Judge was wholly wrong in observing that such an action would be violative of the principles of natural justice.

34. To us, the observation of the learned Single Judge that “no past acts of misconduct of the employee who dies in harness can be taken into account while considering the case of a family member for employment on compassionate ground” is not in consonance with law. Past conduct of an employee is undoubtedly an important consideration. We are also of the view that State Bank was right

in rejecting the prayer of the wife of the deceased employee vide its letter dated 29-1-2001 observing therein that "unblemished service record is implicit".

In A.I.R. 1996 SC 1496 (State of Bihar Vs. K.M. Zuberi & Ors.) claims were made under the personal law to units in a Land Ceiling Proceeding. The conclusion was that the personal law had no application and the claims had to be considered in accordance with the statutory provisions irrespective of whether the person claiming professed the Hindu faith, Muslim or Christian faith.

Judicial discipline requires the judgment in *Abshar Ahmed* (supra) to be followed or else the matter has to be referred to the Division Bench. The Court considers it proper in light of the present discussion to refer the matter to a Division Bench so that the issue attains finality both with regard to the litigant and the respondents and the position in law is enunciated clearly.

Let the petitioner file one more set of the writ application within a period of one week failing which this application shall stand dismissed without further reference to a Bench.

The records may be placed before the Hon'ble the Chief Justice for appropriate orders.

P. Kumar/-

(Navin Sinha, J)

झापांक 3411 / पं०

92-1-17-2005

पुलिस महानिदेशक का कार्यालय, बिहार, पटना ।

पटना, दिनांक 27 मई, 08

सेवा में,

पुलिस अधीक्षक,  
मधेपुरा ।

प्रसंग :- आपका फ़ैक्स संवाद झापांक 1563 दिनांक 25-4-08

विषय :- स्व० सिपाही -117 भीम पासवान के दो पत्नियों रहने के कारण मृत्यु उपादान, पारिवारिक पेंशन तथा अन्य राशि मुगतान हेतु दिशा निर्देश देने के सम्बंध में ।

निदेशानुसार उपर्युक्त विषयक प्रसांगिक फ़ैक्स संवाद के सम्बंध में पुलिस मुख्यालय का अभिमत है कि वे स्वयं नियम के आलोक में निर्णय ले एवं भविष्य में भी नियमानुसार निर्णय लेना सियें । नियमों की जानकारी पुलिस अधीक्षक को भी होनी चाहिए ।

कृत कार्रवाई से पुलिस मुख्यालय को भी अवगत कराया जाय ।

पुलिस उप-महानिरीक्षक प्रशासन, बिहार, पटना ।

जगदीश/26/5/08

संख्या संख्या संख्या 254 ...

दस्तावेज संख्या ...

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भूखरा विभागा सं. 3014/2000

भूखरा विभागा का है सिपाही-117 बीम वातवाम की मृत्यु दिनांक-02.07.07 को हो गई है। इसकी दो पत्नीयाँ हैं। एक सरकारी ठेका को एक से अधिक विधवाओं के प्रीमियम रहने पर पूर्व में वित्त विभाग के परिपत्र संख्या-बैम 103/64-9505/वि०, दिनांक-03.10.1964 की संख्या 7/111/की दिखानी। के अनुसार पारिवारिक वेतन तथा विधवाओं के बीच बराबर देन है, तथा एक विधवा की मृत्यु के उपरान्त पारिवारिक वेतन का उक्त भाग उक्त मायाधिक संतान को अंशित अनुमान्य है। उक्त अधिका को भारत सरकार के फॉर्म-जी०एच० संख्या-211/अ००००-1/13-86, दिनांक-06.3.87 द्वारा परिवर्तित करते हुए किया गया है कि दूसरी पत्नी को पारिवारिक वेतन अनुमान्य नहीं है।

भारत सरकार के उपर्युक्त निर्णय के अंतर्गत में राज्य सरकार द्वारा लम्बे विचारोपरान्त वित्त विभाग के द्वारा संख्या-9505/वि०, दिनांक-03.10.64 की संख्या 7/111/ की दिखानी 11/ को विनियमित करते हुए भारत सरकार, वित्त विभाग द्वारा संख्या-जी०एच०-1, भि०-41/92/10059/वि०, दिनांक-06.9.1996 द्वारा किया गया है कि एक पत्नी के जीवन काल में भूखरा विभागा करने पर दूसरी पत्नी को पारिवारिक वेतन देन नहीं होगा।

इसका पारिवारिक वेतन/मृत्यु ~~अनुमान्य~~ उपवादान की यथासा एक स्वीकृति अधिका वित्त विभागीय परिपत्र संख्या-3014/वि०/दिनांक-31.9.80 तथा 11556/वि०/दिनांक-22.12.99 के संबंधित निम्न प्रकार है की जाती है :-

1. सरकारी ठेका का नाम :- लखो बीम वातवाम
2. पथ/भाग :- सिपाही-117
3. सम्पत्ति :- 08.12.1959
4. सेवा आरम्भ की तिथि :- 01.07.1979
5. मृत्यु की तिथि :- 02.9.2007
6. कुल सेवा अवधि :- 28वर्ष 2 माह 1 दिन [56 हप्ताही]
7. अंतिम वेतन :- 6200+3100=9300
8. जीता वेतन :- 9090
9. अनुमान्य मृत्यु तब सेवा उपवादान :-

1. कुल वेतन :-	6200/=
2. वेतनमाई वेतन :-	3100/=
3. वेतनमाई अर्थात :-	3613/=

412

कुल = 13,113/=

वेतनमाई वेतनमाई अर्थात  $\frac{25}{100} = 13113 \times \frac{25}{100} = 3,278.25$

अधिकतम राशि = 3,50,000=-

वित्त विभाग का परिपत्र संख्या-3014 के अनुसार 1000 की दर से माप की राशि = 1-1000 = 5,40,000=-

[509030]

10. वारिधायिक वेतन/मुक्तु त्वा उपादान की- महासिंहाकार, सिंहा, पटना से वीपीओ स्वीकृति अधि :- उपा/वीपीओओ प्राप्ति क ।

11. वारिधायिक वेतन की गणना :-

- 1. अंतिम वेतन का 30% = 2790/-
- 2. अंतिम वेतन की आधी राशि = 4650/-

अतः सिंहाकार त्वा लियाही-117 कीम वासधान के प्रथम वत्नी वीसति मुक्ती देवी प्राम-वीओ-संसारपुर, आना-मुक्तीन, चिता-अधिया को वारिधायिक वेतन रूपया 4650/-के दर से दिनांक-002.9.2014 तक प्रथम गत वर्षों के सिद्धांत वि० 03.9.2014 से रूपया 2790-00 के दर से प्रस्ताव किया जायेगा । अ वारिधायिक वेतन का 90% राशि उपरोक्त रूप से प्रस्ताव किया जायेगा ।

उपरोक्त वारिधायिक वेतन पर कस-कस पर सरकार द्वारा स्वीकृति मंजूर राहत अनुमान्य होयत ।

64/-  
**पुनित अधीक, मधेपुरा ।**  
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आपां-...../नाकड

पुनित अधीक का कार्यालय, मधेपुरा ।  
 मधेपुरा, दिनांक- 13-8-2008

प्रतिनिध :-

1. रजिस्ट्रार प्रथम, मधेपुरा को जिम्मेदार अंकित करने हेतु ।
2. मेधापाल, पुनित कार्यालय मधेपुरा को प्रत्येक सिद्धांत ।
3. कोषागार पर्याकारी, मधेपुरा को सूचना देयिका ।
4. वेतन प्रकारी, मधेपुरा को सूचना देयिका ।
5. संवेष्टि को सूचना ।

13/8  
**पुनित अधीक, मधेपुरा ।**  
 =====  
 10/18/08



परना जिलादेरा के आरक्षी 2829 भीम पासवान पहली पत्नी के रहने दुसरी शादी कर लिए हैं। पहली पत्नी को भरन पोषण हेतु प्रतिमाह पांच सौ रूपये आरक्षी भीम पासवान द्वारा दिया जाता है। पांच सौ से गुजारा नही होने के कारण पहली पत्नी के द्वारा गुजारा भत्ता की राशि दो हजार रूपये करने का अनुरोध किया गया था। उनके द्वारा सम्बंधित आवेदन पत्र पर बरनाहिसानि की जांच कराई गई और जांच के प्रस में पाया गया की पांच सौ रूपये महवारी दिया जाता है और दो हजार रूप को मांग की गई है। जांच पदाधिकारी एवं पारिचारी प्रव (प्रब्रम) आरक्ष केन्द्र के समक्ष आरक्षी भीम पासवान ने दो हजार रूपये महवारी गुजारा भत्ता देने के लिए स्वीकार किया है और इस आराज का निहित प्रतिकेदन भी दिया है।

अतः आरक्षी 2829 भीम पासवान के द्वारा दिए गए आवेदन प्रतिकेदन के आधार पर उनके वेतन से प्रतिमाह कटौती कर पहली पत्नी श्री मति कुन्नी देवी को दो हजार रूपये भुगतान करने का आदेश दिया जाता है।

वरीस आरक्षी अधीक्षक  
परना

जापांठ 17880 / 2000 वरीस आरक्षी अधीक्षक का कार्यालय  
परना. दिनांक 14/10/00

प्रतिनिधि/अवरकापाल आरक्षी कार्यालय परना के सूचनाएं एवं  
आवश्यक सिगना।

2. श्री मति कुन्नी देवी पत्नी आरक्षी 2829 भीम पासवान

गांव - हरदाचक, थाना - गुफ्फमील जिला - खजडिया को  
सूचनायि।

वरीस आरक्षी अधीक्षक  
परना।

दिनांक 27.09.2007

सेवा में,

श्रीमान् आरक्षी अधीक्षक महोदय,

मधेपुरा।

विषय :- पेंशनादि एवं अन्य राशि भुगतान करने के संबंध में।

महाशय,

उपर्युक्त संदर्भ में कहना है कि मैं एक निसहाय असस्क्त विधवा महिला हूँ। मेरे पति स्व० भीम पासवान (हवलदार) सं०-117 की मैं (दूसरी) पत्नी हूँ। मेरे छोटे-छोटे बाल बच्चे हैं जिनमें मेरा एक पुत्र है जिसका नाम क्रमशः सुमन सौरभ, तथा पुत्रियाँ क्रमशः प्रीति कुमारी, पद्मा कुमारी, ऋचा कुमारी, निधि कुमारी, मुस्कान कुमारी हैं। ज्ञातव्य है कि मेरा नाम मेरे पति के (सर्विस बुक) में अंकित है। मेरे पति ही मेरे परिवार के लिए एकमात्र सहारा थे जो उनके मरणोपरान्त मेरा सहारा भी अब छीन गया है। मेरा पुत्र भी बेरोजगार है तथा नौकरी की तलाश कर आवेदन कर ही रहा था कि इनके पिता की मृत्यु हृदय गति रूक जाने के कारण एस० एल० सी० प्रशिक्षण के दौरान हो गयी। अब हमारे लिए बहुत बड़ी समस्या है कि परिवार का भरण पोषण कैसे किया जाय। हम साधारण किराये के मकान में रहकर गुजारा कर रहे हैं।

अतः श्रीमान् से करबद्ध प्रार्थना है कि मेरी बातों को ध्यान में रखकर 'दया' करुणा का पात्र समझते हुए हमें अपने स्तर से ठोस निर्णय कर पेंशनादि एवं अन्य राशि का भुगतान कर यश के भागी बनें, जिससे कि हमें हमारा वाजिब हक मिल सकें। इसके लिए मैं सदा जीवन भर श्रीमान् का आभारी रहूँगी।

विश्वासभाजन

वीणा देवी

27-09-2007

(वीणा देवी)

अनुलग्नक :- भागलपुर जिलादेश सं० की छाया प्रति इसके साथ

मैं संलग्न कर रही हूँ।