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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Letters Patent Appellate Jurisdiction)

L.P.A.No. of 2012

(Arising out of C.W.J.C.No.5273of 2012 disposed of on 16.10.2012)

Fulo Devi@Smt.Fulo Devi .....Appellant

Versus

The State of Bihar & others .....Respondents

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Synosis

Prayer- LPA is directed against the order dated 16.10.2012 passed by Hon'ble Mr.Justice Ramesh Kumar Datta in C.W.J.C.No 5273/12 by which order the Hon'ble single Judge has been pleased to allow for payment family pension of the decease emplyee including the son of the petitioner but no specific direction for payment of the faimily pension to appellant, when first wife( Dahavi Devi) of her husband has already died on 4.08.08 without getting faimily pension thus appellant is being wife husband entitled. Husband of petitioner was working in the office of District Superintendent of Education, Madhepura and he is superannuated from service on 31.01.1994, 31.01.1994 Husband of petitioner died on 11.07.2004, left behind first wife Smt. Dohravi Devi, her son Narayan Arya and Sri Bachhu Arya and 2nd wife Fulo Devi (petitioner) and her minor son Anant Kumar. 11.07.2004 C.W.J.C.No 10790 of 06 on 01.08.06 filed by petitioner, regarding payment of family pension, the aforesaid writ application was heard on 11.08.2009 and disposed of with direction to the D.S.E. Madhepura, and respondent 11.08.2009 Petitioner filed detail application on 25.08.2009, before the respondents but 25.08.2009 respondents authority did not consideredas directed by this Hon'ble court, 20.12.2011 M.J.C. No. 4452 of 2011, which was heard and finally disposed . Accountant General of Bihar, Patna issued a letter to the D.S.E. Madhepura 06.09.1996 by which directed that if the Government servent having 2 wives, by which born minor child ,he is entitled for the family pension in view of the Finance Department, memo dt. 06.09.1996 and directed to consider District Programme Officer, Madhepura issued a memo no. 666 dt. 23.11.11 23.11.11 , by which hold that the 1st wife of Late Kapileshwar Arya has already been died on 04.08.2008 but did not submit the death certificate and rejected the claim of the petitioner as being 2nd wife and stated that regarding death of 1st wife of Kapileshwar Arya namely Late Dohari Devi, the death certificate was called for from his family but did not submit till today, for this reason pension has not been sanctioned minor son of 2nd wife, soon after receiv ing death certificate of 1st wife, action shall be taken. 25.01.12 . Petitioner filed application on 25.01.12 alongwith affidavit dt.25.01.2012 inter-allia stated that 1 st wife of her husband namely Dahoravi Devi died on 04.08.08 but her death could not open till today,moreover daughter of 1 st wife ofher husband ,namely Vidya Devi @ Bina Kumari has already informed that her mother namely Dahoravi Devi died on 04.08.08 and further peti tioner submitted all relevant papers including paper Judgement dt. 07.08.09 and decree dated dt24.08.1992 passed by Subordinate Judge-1, Saharsa in Titled Suit no.25/88 by which learned judge hold that Petitioner ( Plaintiff) is the legally wedded wife of the Kapleshwar Arya (defendent No.1), which has also affirmed by the Judgement dt 7.03.1994 passed by 3rd Additional District Judge Saharsa in Titled Appeal No. 11/1992.

Hence this writ application

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Letters Patent Appellate Jurisdiction)

L.P.A.No. of 2012

(Arising out of C.W.J.C.No.5273 of 2012 disposed of on 16.10.2012)

In the matter of memo of appeal under  
Clause 10 of the letters patent of Patna  
High Court Rule;

A N D

In the matter of

Fulo Devi@Smt.Fulo Devi,wife of Late Kapileshwar Arya, residing at Guljarbagh,ward no.  
20, Madhepura,P.S+District Madhepura. ....Petitioner/Appellant

Vrs.

1. The State of Bihar,
2. The Director, Primary Education, Governemnt of Bihar, Patna.
3. The District Education Officer, Madhepura, District - Madhepura
4. The District Programme Officer (Establishment), Madhepura, District - Madhepura.
5. The Accountant General, Governemnt of Bihar, Patna.....Respondents/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 application on behalf of  
petitioner/appellant above named.

Most Respectfully Sheweth:-

1. That this appeal is directed against the order dated 16.10.2012 passed by Hon'ble Mr. Justice Ramesh Kumar Datta in C.W.J.C.No 5273/12 by which order the Hon'ble single Judge has been pleased to allow for payment family pension of the deceased employee including the son of the petitioner but no specific direction for payment of the family pension to appellant, when first wife( Dahavi Devi) of her husband has already died on 4.08.08 without getting family pension thus appellant is being wife husband entitled.
2. That petitioner -appellant crave indulgence of this Hon'ble Court to place some relevant facts for proper adjudication of the case.
3. That connected writ application is being filed for issuance of writ in the nature of certiorari for quashing letter memo 666 dt.23.11.11 issued by respondent no.4 by which rejected the claim of petitioner/Appellant as she is being 2nd wife of her husband ,when ever 1st wife has already been died on 04.08.08 thus since she is entitled for family pension and further issued direction to the respondents to grant family pension to the her Minor son,since date of death of her husband i.e.on11.07.04,in the light of the government circular and further issued direction to the respondent to pay the arrear of family pension to the petitioner/Appellant alongwith 18% interest per annum to till date of the full and final payment and further give other&others legal consequential benefit attached to the post .
4. That the husband of petitioner/Appellant was working in the office of District Superintendent of Education, Madhepura and he is superannuated from service on 31.01.94, on the post of Head Clerk, soon after superannuation, retiral benefit as well as other benefit has been granted and pension of her husband was sanctioned w.e.f. 01.02.94
5. That the husband of appellant was working in the office of District Superintendent

of Education, Madhepura and he is superannuated from service on 31.01.1994, on the post of Head Clerk, soon after superannuation, retiral benefit as well as other benefit has been granted and pension of her husband was sanctioned w.e.f. 01.02.1994 bearing P.P. O. No.227478 and he was getting pension till his death on 11.07.2004, left behind first wife Smt. Dohravi Devi, her son Narayan Arya and Sri Bachhu Arya and 2nd wife Fulo Devi (Appellant) and her minor son Anant Kumar.

6. That soon after death of her husband, Appellant filed an application before the respondent regarding payment of family pension but did not considered and have compelled to file C.W.J.C. No.10790/06 on 01.08.2006, regarding payment of family pension, the aforesaid writ application was heard on 11.08.2009 and disposed of with direction to the petitioner to file an application before the D.S.E. Madhepura, and respondent D.S.E. directed to consider the case of petitioner within a period of 4 months without any delay .

7. That in the light of the order of this Hon'ble court the Appellant filed detail application on 25.08.2009, before the respondents but respondents authority did not consider as directed by this Hon'ble court, hence Appellant compelled to file M.J.C.No.4452/11, which was heard and finally disposed of on 20.12.2011 with a direction to the respondent to take all prompt action, so that family pension could be sanctioned in favour of minor son of 2nd wife namely Fulo Devi.

8. That respondent Accountant General of Bihar, Patna issued a letter to the D.S.E. Madhepura by which directed that if the Government servant having 2 wives, by which born minor child, he is entitled for the family pension in view of the Finance Department, memo no. 10059 dt. 06.09.1996 and directed to consider and inform to the respondents

9. That respondent District Programme Officer, Madhepura issued a memo no. 666

dt. 22.11.2011, by which hold that the 1st wife of Late Kapileshwar Arya has already been Appellant as being 2nd wife and stated that regarding death of 1st wife of Kapileshwar Arya namely Late Dohari Devi, the death certificate was called for from his family but did not submit till today, for this reason pension has not been sanctioned minor son of 2nd wife, soon after receiving death certificate of 1st wife, action shall be taken.

10. That it is needful to stated here that it is settled principle is that soon after death of 1st wife, 2nd wife of her husband is entitled for family pension, respondents having information of the fact that 1st wife of Late Kapileshwar Arya has already been died on 04.08.2008 ,hence by her name, family pension should be pay, since alleged date of death, since very date, meaning thereby respondents have full aware the fact regarding death of ist wife of her husband, in this circumstances 2nd wife is being legal heir is entitled for the family pension instead of 1st wife, hence the order which was passed by the District Programme Officer, Madhepura dt. 23.11.2011 is illegal and bad in law, same is fit to be set aside.

10. That so far concern the minor son of the appellant,namely Anant Kumar is entiled for family pension since date of death of his father i.e. on 11.07.2004, but since he has not been paid, whenever his mother already filed application before the respondent and writ application as well a contempt application, thus he is entitled for the family pension from the date of death of his father.

11. That it is needful to stated here that appellant filed M.J.C.No.4452 /11,which has been disposed on 20.11.2011 in the light of the order memo no. 666 dt.20.12.11 (Annex ure-5),whenever appellant filed list of documents on 10.02.12 before D.E.O..

12. That appellant filed application on 25.01.12 alongwith affidavit dt.25.01.12 inter-

allia stated that 1 st wife of her husband namely Dahoravi Devi died on 04.08.08 but her death could not open till today, moreover daughter of 1 st wife of her husband ,namely Vidya Devi @ Bina Kumari has already informed that her mother namely Dahoravi Devi died on 04.08.08 and further petitioner submitted all relevant papers including paper Judge ment dt. 07.08.09 and decree dated dt 24.08.1992 passed by Subordinate Judge-1, Saharsa in Titled Suit no.25/88 by which learned judge hold that Petitioner ( Plaintiff) is the legally wedded wife of the Kapleshwar Arya (defendent No.1), which has also affirmed by the Judgement dt 7.03.1994 passed by 3rd Additional District Judge Saharsa in Titled Appeal No. 11/1992.

14 That above fact and circustance of this lordship will find that appellat in legal wife of late Kapleshwar Arya even ,she is 2 nd wife of her husband thus she is entitled for faimily pension, since date of death of her husband on 11.07.2004 and full faimily pension since death of 1 st wife on 04.08.08 but respondent did not consider till today ,in the result petitioner is suffering very tied position, because his one minor son is taking studies but she did not provided money in due time and hence he has suffered non payment of faimily pension.

15 That respondent authorities having no jurisdiction to hold the faimily pension of the appellat rather respondents have to pay all the faimily pension, on the date of retirement of its emplyee or death, but he did not paid ,whenever morethan 7 years have already been lapsed , in the result appellat is sufferring for maintaining minor son, who was completely dependents upon her husband, result he is suffering from starvation.

16 That further needful to stated here that the respondent have to consider the case of appellat regarding payment of faimily pension but did not considered as yet, thus she

is entitled for interest 18% per annum to till date of full and final payment shall be made ,alongwith litigation cost of the payment of family pension till date full and final payment has not been made.

~~17~~ That appellants have not moved before this Hon'ble Court any time earlier against the impugned order.

Being aggrieved and dissatisfied with order order dated 16.10.2012 passed by Hon'ble Mr.Justice Ramesh Kumar Datta in C.W.J.C.No 5273/12 appellant beg to prefer this memo of appeal on among other the following.

**G R O U N D S:-**

- I. For that the learned single Judge failed to appreciate the the case of the appellants and passed order impuged, which is bad in law as well as on fact.
- II. For that learned single Judge failed to appreciate that action of the respondent, which are malafide, illegal, arbitrary and colourable exercise of power.
- III. For that impuged order has been passed without considering case of the appellant as she is legally married wife of the employee of the government servant
- IV. For husband of the petitioner performed two marriage, 1st wife was Dahoravi Devi and 2nd wife is petitioner, date of marriage of petitioner with her husband namely Late Kapileshwar Arya on 10.05.1983, by the wedlock 1 son born namely Anant Kumar.
- V For that petitioner/appellant filed a Title Suit No. 25/1988 for declaring that she is the legally wedded wife of defendant Sri Kapileshwar Arya, said very case finally ordered dt.07.08.1992 passed by Sub-ordinate Judge-1, Saharsa as follows:-



" that the suit be and the same is decreed on context with cost because plaintiff is legally wedded wife of defendant no.1 Kapileshwar Arya and she is not a bad character and she is entitled to get maintenance from her husband, defendant no.1 (Kapileshwar Arya ) and the deed of agreement dt. 19.07.1985 executed by the party is valid and genuine and binding on the parties. No decree is passed against the defendant no.2."

- VI For that filed maintenance case bearing Misc. Case No. 63/1985 thereafter her husband matter was compromise between the petitioner/appellant and her husband Kapileshwar Arya and both of them got executed a register deed of agreement dt. 19.07.1985 as live as wife and husband and thereafter petitioner was withdraw the maintenance case.
- VII. For that husband of the appellant namely Kapileshwar Arya filed Title Appeal no. 11/1992 against the judgment dt.09.08.1992 and decree dt.24.08.1992, passed by learned Sub-ordinate Judge, Saharsa in Title Suit No.25/1988, whereby and where under, learned Sub-ordinate Judge-1 have decree the suit on the context with cost holding inter alia that plaintiff (Petitioner) is legally wedded wife of defendant no. 1 (her husband Kapileshwar Arya) and as such she is entitled to get maintenance from her husband, the said very appeal upheld the judgment and order passed in Title Suit No. 25/1988 by the Judgement dt. 07.03.1994 ( Annexure-10) of the writ application..
- VIII. For that life time of husband of the petitioner filed the list of the family members alongwith the pair photo including the son of the petitioner before the authority for
- That on the above facts and circumstances of the case petitioner deserves relief by

-5

sake of evidence, petitioner annexing the document which was submitted before the respondent authority concern.

- IX. For that Hon'ble Single Judge failed that husband of the petitioner died on 11.07.04 left behind two widow one 1st wife Dahoravi Devi filed an application for family pension but till her life time she did not get family pension, ultimately she died on 04.08.2008.
- X. For that appellant also filed an application for family pension soon after death of her husband, but the respondent authority did not consider her case and have compel to file C.W.J.C. No. 10790 of 2006 by making party the 1st wife of Kapileshwar Arya namely Dahoravi Devi, said writ application disposed of on 11.08.2009 with direction to the respondent consider the case of petitioner.
- XI. For that Hon'ble Single Judge failed that date of birth of Anant Kumar is 29.09.1993, son of Late Kapileshwar Arya by the counter affidavit contained in Annexure-A dt.27.02.2012 by which stated that the 1st wife of Kapileshwar Arya namely Dahoravi Devi, P.P.O. No. 227498 (P.P.O. No. which was issued in name of Kapileshwar Arya) issued and authorized but till life time of Dahoravi Devi no family pension paid till her death on 05.08.2008 and directed to pay the family pension to Anant Kumar up to 25 years or till service/marriage which ever is earlier.
- XII. For that Hon'ble Single Judge failed that in view of the judgment passed in Title Suit No. 25/1988 dated 07.08.1992 by which hold that petitioner is legally wife of Late Kapileshwar Arya hence she is entitled for benefit of family pension under

1964 scheme, a family is entitled for pension as per the benefit provide therein, even employee having more than one widow, they all have been given equal shares and on the death of the widow her eligible minor children have also been given protection by grant of pension of the share of her mother, in this circumstances the petitioner /appellant being widow of Late employee of the government servant is entitled for full family pension according with the law.

- XIII For that other grounds will be placed at the time of hearing.
- XIV. For that the order impugned is bad in law and fit to be set aside.
- XV. For that on the facts and circumstances of the case petitioner-Appellant deserve relief by this Hon'ble Court.

It is, therefore, prayed that your lordships may graciously be pleased to Admit this application, Issue notice and after hearing the parties set aside the order dated 16.10.2012 passed by Hon'ble Mr.Justice Ramesh Kumar Datta in C.W.J.C.No 5273/12 and allow the writ application and/or pass such other/ orders as your lordships may deem fit and proper in the facts and circumstances of the case;

And for this the appellant shall ever pray.

AFFIDAVIT

I, Fulo Devi@Smt.Fulo Devi,aged about 64 years, wife of Late Kapileshwar Arya, residing at Guljarbagh,ward no.20, Madhepura,P.S+District Madhepura,do hereby solemnly affirm and state as follows:-

1. That I am appellant in this case and as such am well acquainted with the facts and circumstances of the case.
2. That I have gone through the contents of this writ application and have fully understood the same. The statements made in paragraphno.4,10.11 and 14 to19 are true to my knowledge and and those made in paragraphs no.5 to 9 and 13 to 13 are based on information derived from the records of the case and rest are by way off submission before this hon'ble Court.
3. That the annexures are true/photo copies of the originals.

कृतीद्वारा

C E R T I F I C A T E

It is certified that grounds set forth in this memo of appeal is good ground for the letter petent appeal.

It is further certified that the appellants have not moved before this Hon'ble Court any time before against the impugned order.

It is further certified that no notice either to the Attorney General of India or to the Advocate General of Bihar need to be required under section 27A Rule-1 of the Civil Procedure Code.

( SHARDA NAND MISHRA)

Advocate for the appellant.

DEPARTMENT OF POST BIHAR  
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Patna High Court CWJC No.

AUTH NO. 318/5 DT. 16/12/2008

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**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5273 of 2012.**

1. Fulo Devi @ Smt. Fulo Devi W/O Late Kapileshwar Arya Residing At  
Guljarbagh, Ward No. 20, Madhepura, P.S.+District- Madhepura

..... Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Primary Education, Government Bihar, Patna
3. The District Education Officer, Madhepura, District- Madhepura
4. The District Programme Officer (Establishment), Madhepura, District- Madhepura
5. The Accountant General, Government Bihar, Patna

..... Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Sharan Chand Mishra  
For the State : Mr. Anil Kumar Jha, J.C. to S.14  
For Accountant General : Mrs. Nandini Mishra

**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA**  
**ORAL ORDER**

7 16-10-2012

Heard learned counsel for the petitioner and learned  
counsels for the State and for the Accountant General, Bihar.

The petitioner is aggrieved by the order dated 23.11.2011  
passed by the District Education Officer, Madhepura, by which he  
has rejected the claim of the petitioner for payment of family  
pension. It is stated in the said order that the petitioner being the  
second wife and having married to the deceased employee while the  
first wife was still alive is not entitled to payment of any family  
pension in terms of the Finance Department letter No.10059 dated  
6.9.1996. It is, however, stated in the said order that the case of the  
minor son of the petitioner would be considered in terms of the

letter dated 6.9.1996 since the facts are not in dispute.

It is also not disputed that the deceased employee after his retirement on 31.1.1994 had received all the post-retiral dues and subsequently died on 11.7.2004. His first wife Dasrubi Devi died on 4.8.2008.

In view of the provisions of the letter dated 6.9.1996, learned counsel for the petitioner does not press the application for quashing the order dated 23.11.2011 to the extent that the claim of the petitioner with respect to family pension has been denied. However, he submits that the respondents may be directed to ensure that the family pension in terms of the letter dated 6.9.1996 is paid to the minor son of the petitioner.

In the above facts and circumstances, the writ application is disposed of with a direction to the respondents to ensure that the family pension is paid to the dependents of the deceased employee including the son of the petitioner in terms of the letter dated 6.9.1996 of the Finance Department within a period of four months from today and in case there is a dispute among the claimants as to their share in the family pension, the parties must be given an opportunity of being heard in the matter before taking a final decision.

V.P.Sinha/-

*scf*  
(Ramesh Kumar Datta, J)

STAMP TO BE TRUE PHOTO COPY

*21/11/12*  
For Joint Registrar (J)  
Patna High Court

Established 1794 Act 1 of 1879

*A. H. ...*  
*21/11/12*  
*99121922*