
(2013) 02 PAT CK 0004
In the Patna High Court
Case No : CWJC No. 18151 of 2008

Smt. Biyafi Devi @ Banhi Devi

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Hindu Marriage Act, 1955 — Section 11

Citation : (2013) LabIC 3147 : (2013) 2 PLJR 638

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : B.J. Ojha, for the Appellant; Basant Kumar, Anil Kumar Rai and Mr. Kumar Priya Ranjan for the Union of India, for the Respondent

Judgement

Navaniti Pd. Singh, J.—The petitioner is the second wife of late Ram Pran Ram, who was a constable in Central Industrial Security Force (hereinafter referred to as CISF) and posted at Dhanbad when he died-inharness on 9.5.2005. CISF as per nomination made by the said constable paid entire death-cum-retiral dues to the first wife, i.e., Banhuvi Devi @ Banai Devi (respondent no. 5). By this writ petition, the petitioner has challenged this action of the authorities. Having heard the learned counsel for the parties and perused the counter affidavit filed on behalf of CISF, I am of the view that the petitioner on her own has no right. CISF has referred to Government of India decision no. 13 given in respect of Rule 54 of CCS Pension Rules that clearly states that in view of Section 11 of the Hindu Marriage Act, 1955 second marriage in the lifetime of the first wife is void. It may be noted here that prior to 1955 it was not the case. Thus, if the second marriage after 1955 is void, which is the case in the present as well, then no legal recognition can be given to the second wife of a male Hindu marrying after 1955, taking any other view would be legitimizing the illegality. Further, it is not denied that the late constable had made nomination only in favour of his first wife ignoring his second wife. The law is well settled that wherever a nomination is made and the nomination not being in conflict with law or contrary to law the payer has to make payment to the payee who is authorized to give a valid

discharge but the nominee does not succeed to the estate or the payment but is only a trustee for the rightful claimants. The payer cannot refuse to pay the nominee otherwise. Thus, CISF having been made payment to the nominee, which nomination is valid, nothing can be said against the action taken by CISF.

2. I may note here a distinction in Bihar Pension Rules at a particular point of time it was provided that if a person has more than one wife the pensionary benefits would be shared equally. The reason for this was that prior to 1955 a male Hindu was allowed polygamy. Therefore, when those Pension Rules were made, there would have been legally wedded second wife surviving, she could not be deprived of their right by subsequent amendment in law. They have to be thus provided but the same cannot apply to the second marriage in teeth with provisions of Section 11 of the Hindu Marriage Act, 1955 where such marriages have been declared void by law. Such marriage being void cannot be granted sanctity treating the lady to be a lawfully wedded wife when the law speaks otherwise. However, the position with regard to the children from the second marriage is concerned, the law is settled that illegitimate children would have a right as well for they have not sinned. In the net result, this writ petition cannot succeed in so far as petitioner's claim for herself is concerned. It cannot be said that the CISF did anything wrong by paying according to the nomination. Petitioner has no legal right but that may not be the case in respect of her minor children. If the petitioner is able to satisfy the authorities that she has minor children from the wedlock with the late constable then the family pension would be divided half and half, that is, half for the first wife and half amongst the minor children of the second wife so long as they are eligible. This would operate prospectively as giving effect to the order retrospectively and especially in view of the fact that the petitioner has never demanded for her minor children.