

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5393 of 2026

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Najma Khatoon W/o Late Md. Usman, resident of Aman Colony, ward no. 23,
P.S.- Phulwari Sharif, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Health Department,
Government of Bihar, Patna.
2. The Director, Health Services, New Secretariat, Bihar, Patna.
3. The District Magistrate, Lakhisarai.
4. The Civil Surgeon, Lakhisarai.
5. The In-charge Medical Officer, Community Health Centre, Surajgadha,
Lakhisarai.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeeb Kumar Sanju, Advocate Mr. Sunil Kumar, Advocate Mr. Bhaskar Sandilya, Advocate Mr. Ravi Kumar, Advocate
For the A.G.	:	Mr. Raj Nandan Prasad, Advocate Mr. Vishesh Kumar Singh, Advocate
For the Respondent/s	:	AC to Additional Advocate General (13)

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 21-07-2026

Heard Mr. Sanjeeb Kumar Sanju, learned counsel
appearing on behalf of the petitioner; Mr. Raj Nandan Prasad,
learned counsel for the Accountant General, Bihar and learned
AC to AAG-13 for the State.

2. The petitioner in paragraph no. 1 of the present
writ petition has sought, *inter alia*, the following relief(s), which



is reproduced hereinafter:-

"That this is an application for issuance of proper writ or writs, order or orders, direction or directions to the respondents to immediately start the Family Pension to the petitioner as the husband of the petitioner already died on 14.10.2024.

For

A further direction to the respondents to make payment of arrears of Family Pension from 15.10.2024 to the date on which Family Pension starts in favour of petitioner with statutory and penal interest."

3. Learned counsel appearing on behalf of the petitioner submitted that the resolution contained in Memo No. 1549 dated 27.06.2011 clarifies that in the case of a deceased Muslim employee, who is permitted under Mohammedan Personal Law to contract up to four marriages, all surviving widows are entitled, upon his death, to receive family pension in equal proportion. Learned counsel in these backgrounds clarifies the statement made in paragraph no. 10 of the counter affidavit filed on behalf of respondent no. 6 that Late Md. Usman (deceased employee) had sent a letter dated 14.09.2021 to the office to update/amend the name of family pensioner in the P.P.O. No. 300244 and add name of his second wife Najma Khatoon in place of first wife Khurshid Jahan, who used to receive family pension, died on 28.04.2021 and her second wife younger daughter Ms. Tahsin Fatima in place of his son Mr. Faijan Ahmed after attaining the age 21 years. The said letter



has been brought on record by way of Annexure-R/3 addressed to the In-charge Medical Officer, Primary Health Centre, Suryagarha, Lakhisarai (Respondent No. 5), wherein, he had shown his desire that he has a son namely Faijan Ahmed from his second wife (petitioner), whose date of birth is 22.09.1997 as per the Matriculation Certificate and is aged about more than 21 years and he has also a daughter, whose date of birth is 30.10.2002 as per the Matriculation Certificate. Learned counsel submitted that respondents have not denied the Letter dated 14.09.2021 addressed to the In-charge Medical Officer, Primary Health Centre, Suryagarha, Lakhisarai (Respondent No. 5) by the deceased employee Late Md. Usman and the misleading statement made in paragraph no. 10 of the counter affidavit for denying the claim of the petitioner is required to be deprecated.

4. Learned counsel further submitted that the respondents have not denied in a clear manner that petitioner is not entitled for family pension as per the clarificatory resolution contained in Memo No. 1549 dated 27.06.2011. Learned counsel in support of her claim, has relied on several decisions of the co-ordinate Bench of this Court:

(i) *Abshar Ahmad Vs. Bihar State Electricity Board and Ors.* reported in 2005 (2) PLJR 467.



(ii) *L.P.A. No. 1419 of 2013 (Bina Ansari vs. The State of Bihar & Ors.)*

(iii) *CWJC No. 7488 of 2021 (Shamima Khatoon vs. the State of Bihar & Ors.)*

(iv) *CWJC No. 10501 of 2021 (Bibi Shagufta @ Bibi Shugupta vs. the State of Bihar & Ors.)*

(v) *CWJC No. 16707 of 2022 (Tartila Khatoon vs. the State of Bihar & Ors.)*

5. In the above background, learned counsel contended that Mohammedan Personal Law permits four wives and petitioner being only surviving wife of the deceased employee Late Md. Usman, is entitled for family pension considering the facts and circumstances of the case, as well as, the pathetic condition of the petitioner, who has to take care of three children, who are major but not employed and are dependent upon the petitioner.

6. *Per contra*, learned counsel appearing on behalf of the State submitted that there is no dispute with regard to the settled legal position that, in the absence of any legislation introducing a Uniform Civil Code or prohibiting polygamy amongst Muslims, Mohammedan Personal Law continues to govern matters relating to marriage and family relations. He



next submitted that Rule 23 of the Bihar Government Servants Conduct Rules, 1976 specifically regulates the service condition of a Government servant, which provides for seeking prior permission of the Government for contracting a second marriage even if the applicable personal law allow polygamy. Such requirement is intended to ensure service discipline and cannot, by itself, a government servant ignore to inform the authority in respect of a marriage valid under Mohammedan Personal Law.

7. Learned counsel appearing on behalf of the respondent-Accountant General (A&E), Bihar, Patna submitted that the respondent has its role to fix the pension and family pension duly authorised by a competent authority and has no independent jurisdiction to determine the entitlement of any person of family pension. Pensionary benefits are authorised strictly on the basis of the sanction issued by the competent Pension Sanctioning Authority in accordance with the Bihar Pension Rules, 1950 and the resolutions issued by the Government of Bihar. He next submitted that during the lifetime of Late Md. Usman, family pension had been authorised in accordance with the sanction received from the competent authority and accordingly the substitution of the name of his second wife, namely, Najma Khatoon (petitioner) was



substituted. The respondent sought clarification from the concerned department regarding the validity of the second marriage and whether the same had been contracted with prior departmental permission, as the benefit of family pension to more than one widow under Finance Department Resolution No. 1549 dated 27.06.2011 is available only where the second marriage has been solemnised with the permission of the Government.

8. Learned counsel further submitted that the concerned department, by its communication dated 15.06.2023, informed that no evidence of departmental permission for the second marriage had been produced by Late Md. Usman and it appeared that the second marriage had been contracted without such permission. Consequently, the respondent informed him that the aforesaid Resolution was not applicable to his case and also clarified that the issue of recognizing the entitlement of the second wife to family pension or incorporating her name in the PPO falls exclusively within the domain of the Pension Sanctioning Authority and not that of the Accountant General.

ANALYSIS AND CONCLUSION

9. The Constitution of India, under Article 44, envisages the endeavour of the State to secure for its citizens a



Uniform Civil Code as a Directive Principle of State Policy. Equally, the freedom of religion guaranteed under Article 25 is not absolute but remains subject to public order, morality, health and the other provisions of Part III of the Constitution. As on date, no legislation has been enacted at the national level abolishing the practice of polygamy among Muslims, although the subject continues to engage constitutional and public discourse, with certain States expressing support for the implementation of a Uniform Civil Code. In the absence of any statutory prohibition operating throughout the country, the issue remains within the domain of legislative policy rather than judicial legislation.

10. The Article 29(1) of the Constitution provides to secure a mandate for the protection of minority interests, granting sections of citizens the absolute right to conserve their distinct culture and practices. The Legislative competence in relation to marriage and divorce is conferred upon both Parliament and the State Legislatures under Entry 5 of List III (Concurrent List) of the Seventh Schedule. Consequently, States possess constitutional authority to legislate on marriage and family law, subject to constitutional limitations and the doctrine of repugnancy where applicable. These constitutional



protections ensure that the pluralistic identity and personal laws of minority communities are shielded from arbitrary state or administrative decisions.

11. In the background of the above facts and governing law, I proceed to consider the applicability of the Mohammedan Law in the background of the Constitutional provisions, and the statutory service rules governing Government servants. It is a settled principle that, unless expressly modified or abrogated by a competent legislation, personal laws continue to regulate matters relating to marriage, divorce and family relations of the respective communities. The Constitution, while aspiring through Article 44 of the Constitution of India towards the eventual implementation of a Uniform Civil Code, has not by itself abrogated the personal laws governing different religious communities. In the absence of any legislation introducing a Uniform Civil Code or otherwise prohibiting polygamy among Muslims at the national level or by the State Government, the Mohammedan Personal Law continues to govern the marital rights and obligations of Muslims. Consequently, the validity of a marriage contracted by a Muslim male has to be examined with reference to the applicable personal law, subject to any valid statutory restriction



governing the service conditions of a Government servant.

12. I find that Rule 23 of the Bihar Government Servants Conduct Rules, 1976, framed under Article 309 of the Constitution of India, places a restriction on a Government servant from contracting a second marriage during the subsistence of the first marriage. However, the proviso to the said Rule expressly carves out an exception where such marriage is permissible under the personal law applicable to the Government servant and the other party to the marriage, subject to the permission of the Government. Under Mohammedan Personal Law, a Muslim male is legally permitted to contract up to four marriages during the lifetime of the first wife. A Muslim man is generally not liable for the offence of bigamy under Sections 82 and 85 of the Bharatiya Nyaya Sanhita, 2023 (formerly Sections 494 and 495 IPC), because his personal law recognizes polygamy.

13. It is well settled that personal laws have historically occupied a distinct position from ordinary statutory enactments. It has been noticed by the Apex Court in the case of ***Rameshwari Devi vs State of Bihar & Ors.*** reported in ***AIR 2000 SC 735***, which case arose from the judgment passed by this Court, the Apex Court observed in paragraph no. 12 that a



government servant may enter into a second marriage, subject to the condition that such marriage is permissible under the personal law governing the government servant to which he or she belongs. The paragraph no. 12 of the ***Rameshwari Devi (Supra)***, is reproduced hereinafter:

"12. In State of W.B. v. Prasenjit Dutta [(1994) 2 SCC 37 : 1994 SCC (L&S) 638 : (1994) 26 ATC 902] departmental proceedings were initiated against the respondent, who was a member of the Police Service of the State of West Bengal under Rule 5(4) of the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980 for having contracted a second marriage. That rule says that no government employee who has a wife/husband living shall contract another marriage without previously obtaining the dissolution of the first marriage in accordance with law for the time being in force, notwithstanding such second marriage is permissible in the personal law of the community to which he or she belongs. On an inquiry made by an officer, appointed for the purpose, and on his report that the respondent was guilty of misconduct alleged, an order of dismissal was passed by the disciplinary authority. The respondent approached the High Court and the order of his dismissal was stayed. Nevertheless the High Court was of the view that the second marriage was a serious matter, which could not be left to be decided by the departmental authorities, in proceedings such as these, and a civil or matrimonial court needs to pronounce thereon properly and finally. On appeal filed by the State Government this Court said:

"5. The view of the High Court may be correct that a matter such as the present one concerning the existence or not of a relationship of husband and wife is normally to be dealt with in a matrimonial or a civil court. It cannot at the same time be said that the departmental authorities cannot go into such question for the limited purposes of sub-rule (4) of Rule 5 of the aforesaid rules. When contracting another marriage, in the presence of the previous one, has been termed to be misconduct visiting



departmental punishment it is difficult to keep suspended action under the rule till after a proper adjudication is made by the civil or matrimonial court. It would, thus, have to be viewed that the departmental proceeding could not be shut in the manner in which the High Court has done and it would have to go on to some finality at a departmental end, on the culmination of which, it may then give rise to the delinquent approaching the civil court for determining his matrimonial status.” (emphasis supplied)

14. I have perused the counter affidavit wherein the state has not denied the claims of the petitioner. The Finance Department, Government of Bihar, by issuing Resolution contained in Memo No. 1549 dated 27.06.2011, has clarified that the Notification dated 06.09.1996 would not operate to deny family pension to the surviving widows of a deceased Muslim Government employee, whose marriage is valid under Mohammedan Personal Law. The said Resolution, being clarificatory in nature, has not been withdrawn or superseded and, therefore, has retrospective operation.

15. In view of the facts and circumstances of the case and the settled principles of law, I direct the Civil Surgeon, Lakhisarai (Respondent No. 4), to take all necessary steps to facilitate the sanction of the family pension in favour of the petitioner, in light of the decision made hereinabove.

16. The Accountant General, Bihar once receives the required documents must immediately take steps to issue



Pension Payment Order, in accordance with law.

17. It is made clear that for any personal reason or any reason, which is not in accordance with law, the Civil Surgeon concerned delays in sanctioning the pension, beyond a period of two weeks, the petitioner is at liberty to take legal action against him in accordance with law.

18. Accordingly, the present writ petition is allowed.

19. This Court appreciates the manner in which Mr. Ali Muqtadin Ahmad, learned counsel has shown his readiness to assist this Court to arrive at the above conclusion.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	31.07.2026
Transmission Date	N/A

