



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 WRIT PETITION NO. 176 OF 2026

RAMUBAI GOVIND SAWAI

VERSUS

THE UNION OF INDIA AND OTHERS

...

Mr. A.A. Suryawanshi, Advocate for petitioner

Mr. R.B. Bagul, Senior Panel Advocate for respondent Nos.1 to 3

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CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.

DATE : 17th MARCH, 2026

ORDER : (PER : HITEN S. VENEGAVKAR, J.)

. Present petition under Article 226 of the Constitution of India seeks directions to respondent authorities to add the present petitioner for family pension and further directions to respondents to grant the petitioner family pension from the date of eligibility and also to pay the entire arrears of the family pension till the actual realization.

2 Brief facts in nutshell are that -

The deceased Govind Gopal Sawai (deceased employee) was

married to one Sakhubai and subsequently as there were no children born out of the said wedlock, he again married to present petitioner. From the second marriage the deceased employee had six children. The deceased employee expired on 13.11.2012 and few days thereafter even the first wife Sakhubai expired. The petitioner has placed on record the death certificates of deceased employee as well as first wife Sakhubai. The petitioner thereafter preferred an application for issuance of legal heirship certificate in the Court of Civil Judge Junior Division, Umri, Dist. Nanded. On 18.07.2013 the Civil Court issued legal heirship certificate to petitioner declaring her and her children as the surviving legal heirs of deceased employee. The petitioner states that as the deceased employee was serving in Post Office, Karkheli, Tq. Dharmabad, Dist. Nanded as Postman in Group 'D' employee and had retired from the services after attaining the age of superannuation on 31.12.2005, the petitioner applied for family pension. On receiving the said application the Superintendent of Post Office, Nanded Division, Nanded made a communication dated 14.12.2012 to the office of Sub Divisional Inspector (Post), Bhokar Sub Division to verify the details of petitioner and to her children for the grant of family pension. It is further submitted that Superintendent of Post Office, Nanded Division, Nanded by communication dated 12.03.2015 to the office of Director of Accounts (Post), Nagpur recommended the name of eligible family members of deceased employee for

getting family pension. In the said list of family members the name of petitioner was also included in recommendation and also name of deceased employee's first wife Sakhubai to the extent of their respective share. It is further submitted that on 29.05.2014 the Superintendent of Post Office, Nanded Division, Nanded by communication to the Sub Divisional Inspector (Post), Bhokar, again requested to verify the details of present petitioner, such as documentary proof pertaining to marriage like invitation card or any other supporting document. After verifying the details, Superintendent of Post Office, Nanded by communication dated 02.09.2014 wrote to the office of Director of Accounts (Postal), Nagpur for grant of family pension to petitioner and three unmarried children of petitioner. However, there was no further communication either from the office of Superintendent of Post, Nanded Division or from the office of Director of Accounts (Postal), Nagpur and, therefore, petitioner had submitted several representations to said office. In response to one of the representations the office of Superintendent of Post, Nanded wrote a reminder letter with a request to the office of Director of Accounts (Postal), Nagpur to decide the eligibility of present petitioner for grant of family pension at the earliest. The Director of Accounts (Postal), Nagpur thereafter communicated to the office of Superintendent of Post Office, Nanded, which was then forwarded to the office of Assistant Superintendent of Post, Nanded by letter dated 08.06.2015

stating that petitioner is not eligible for family pension of deceased employee. Thus, the present petition has been filed being aggrieved by the decision taken by the Director of Accounts (Postal), Nagpur dated 01.06.2015.

3 Learned Advocate appearing for petitioner argued that petitioner is the only surviving widow of deceased employee and the children born out of the said wedlock are the legitimate children. He further referred to the provision of Rule 54(7) of the Central Civil Services (Pension) Rules, 1972, wherein it has been clearly mentioned that in a case where there is one or more surviving widows, then the family pension is payable to both the widows in equal shares. He further submits that the rules also contemplate the eventuality that in a case where one of the widows expires without leaving behind any legal heir, then the share of deceased widow will pass on in its entirety to the surviving widow. He also places reliance on the Judgment of the Hon'ble Apex Court in **Radha Devi vs. Chief General Manager and others** [@ Diary No.2365/2022] in order to buttress his submission that the long standing cohabitation has also been considered as a legal marriage in order to give the surviving widow a life with dignity and also to help her financially. He thus prayed for allowing the petition.

4 Learned Standing Counsel appearing for respondent Nos.1 to 3 argues that second marriage of deceased employee was performed during the

survival of first marriage, as the first wife was very much alive at that time. He, therefore, submits that the marriage of deceased employee with the present petitioner was not legal and, therefore, she cannot be termed as legal heir or a legal member to receive the benefits of family pension. He further submits that the decision taken by the office of Director of Accounts (Postal), Nagpur and communicated to office of Assistant Superintendent of Post Office, Nanded is not a final decision, however, in the light of the fact that the petitioner not being a legally wedded wife, he submits that, she is not entitled for the benefits of family pension.

5 We have heard the Advocates for both the parties and have also perused the various communications made by respondents *interse* between the departments. One of the communications dated 12.03.2015 addressed by the Superintendent of Post Office, Nanded Division to the office of Director of Accounts (Postal), Nagpur clearly specifies that the deceased employee has nominated both his wives i.e. first wife Sakhubai as well as second wife i.e. present petitioner as his nominees and, therefore, it has been decided that family pension may be sanctioned in equal shares to both wives by giving proper description. In pursuance of this, there has been communication *interse* with the departments to verify the documents and also status of present petitioner, to which the record supports that there has been no

adversities noticed in the claim raised by present petitioner. In respect of the legal position the Rule 54(7) specifically deals with the family pension and thereby it reads as under :

“(7) (a) (i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(ii) On the death of a widow, her share of the family pension shall payable to her eligible child:

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.

(b) Whether the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner.

2[Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse, but shall be payable to the other widow or widows and/or to other child or children otherwise eligible, in equal shares or if there is only one widow or child, in full, to such widow or child].

3[(c) Where the deceased Government servant or pensioner is survived by widow by has left behind eligible child or children from a

divorced wife or wives the eligible child or children shall be entitled to the share of family pension which the mother would have received at the time of the death of the Government servant or pension had she not been so divorced]

[Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares, shall not lapse, but shall be payable to the other widow or widows and/or to the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child].

(d) Where the family pension is payable to twin children it shall be paid to such children in equal shares:

Provided that when one such child ceases to be eligible his/her share shall revert to the other child and when both of them cease to be eligible for family pension shall be payable to the next eligible single child/twin children].

Perusing the sub clause (7) of Rule 54 of the Central Civil Services (Pension) Rules clause (a) deals with the eventuality where the family pension is payable to more widows than one, then the family pension shall be paid to the widows in equal shares. Sub Clause (2) of clause (a) deals with the event if there is death of one widow, then her share of the family pension shall be payable to her eligible child. The proviso to the said sub clause then deals with the eventuality that in case there is no eligible

child or children of the deceased widow, then the family pension shall be payable to the other widow i.e. surviving widow, in full, to her.

6 We have also perused the Judgments of the Hon'ble Apex Court in the case of **Vidyadhari and others vs. Sukhrana Bai and others** reported in (2008) 2 SCC 238 and **Tulsa Devi Nirola and others vs. Radha Nirola and others** reported in 2020 SCC OnLine SC 283. More specifically the Judgment of **Tulsa Devi** (supra) deals with the children which is somewhat similar in facts to the present petition. Paragraph Nos.9 to 12 read thus -

“9. Family pension undoubtedly is not part of the estate of the deceased and will be regulated by the Pension Rules which confer a statutory right in the beneficiary eligible to the same. In *Violet Issaac* (supra), the family pension was sought to be paid to the brother of the deceased by virtue of nomination to the exclusion of the wife. The Rules did not provide for nomination but designated the person entitled to receive the family pension. It has therefore no application to the facts of the present case.

10. Rule 35 (5) provides that for the purpose of Rules 36, 37 and 38, family in relation to a government servant means wife or wives, including judicially separated wife. Rule 38 provides for nomination to be made by the government servant in Form 1 or 2 or 3 conferring on one or more persons, the right to receive death or retirement gratuity that may be due to him. In view of the partition deed the deceased while filling his nomination in the prescribed Form under Rule 38 mentioned the name of respondent no. 1 only as the sole

beneficiary of family pension. We are of the considered opinion that Rule 40(6) is conditional in nature and does not vest an automatic statutory right in appellant no. 1 to equal share in the family pension. The family pension would be payable to more than one wife only if the government servant had made a nomination to that effect and which option was open to him under the Pension Rules.

“40. Family Pension -

(6)(a)(i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares....”

11. The Pension Rules therefore recognize the nomination of a wife or wives for the purpose of family pension. True, the family pension did not constitute a part of the estate of the deceased. If the settlement deed had not been executed and acted upon different considerations may have arisen. The right to family pension in more than one wife being conditional in nature and not absolute, in view of nomination in favour of respondent no. 1 alone, appellant no 1 in the facts of the case can also be said to have waived her statutory right to pension in lieu of benefits received by her under the settlement deed. The deceased resided exclusively with respondent no.1 and occasionally visited appellant no.1. The deceased was exclusively taken care of by respondent no. 1 during his illness including the expenditure incurred on his treatment. In view of the statutory rules, it is not possible to accept the argument that respondent no. 1 was nominated only for purpose of receipt of the family pension and per force was required to share it equally with appellant no. 1.

12. In *Vidhyadhari* (supra), this Court accepted the claim of the second wife to receive inter alia pension based on nomination since,

like the present case, the deceased was residing with the second wife to the exclusion of the first. The grant of succession certificate to the second wife was held valid. However, to balance equities, this Court granted 1/5th share to the first wife in the properties. We may have also considered the balancing the equities if the deceased had not executed a settlement deed with regard to his movable and immovable properties and which was accepted and acted upon by the appellant no. 1.”

Thus, referring to the Judgment of **Tulsa Devi** (supra) and the provisions of Rule 54(7) of the Pension Rules, there is no doubt that the Law recognizes subsistence or survival of more than one widow of a deceased employee. Whenever such situation arises, then in accordance with the said rule the family pension is required to be paid in equal shares to all the surviving widows. Even when the death of one widow occurs and there is no child to the deceased widow, then the share of deceased widow is payable in full to the surviving widow. Once the law is clear on this aspect, then we do not find any reason why the authorities i.e. respondents’ officers cannot consider the case of present petitioner for paying family pension. Even the office memorandum dated 10.10.2024 issued by the Ministry of Personnel, Public Grievances and Pensions by the Department of Pension and Pensioners’ Welfare in clause 3, 4 and 5 recognizes this position of law by reference to Rule 50(8)(c) of the Central Civil Services (Pension) Rules, 2021 and it has

directed all the departments and ministries to follow the process with the consultation with department of legal affairs in respect of the family pension between the two wives under the Central Civil Services (Pension) Rules, 2021. In the aforesaid facts and circumstances we, therefore, direct respondent Nos.2 and 3 to consider the case of present petitioner for grant of family pension in accordance with the family pension rules and also the Central Civil Services (Pension) Rules, 2021 and in terms of office memorandum dated 10.10.2021 issued by the Ministry of Personnel, Public Grievances and Pensions by the Department of Pension and Pensioners' Welfare.

7 We expect that the decision on pension proposal of petitioner will be taken by respondent Nos.2 and 3 within a period of eight weeks from today and will release the family pension with arrears that are to be payable to petitioner, as early as possible. If at all any amount towards the pension is paid to the children of petitioner, then that should be adjusted towards the payment of arrears. With the aforesaid directions, writ petition stands **disposed of.**

(HITEN S. VENEGAVKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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