

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

SECOND APPEAL NO.: 170 OF 2015

1. The State of Maharashtra,
Through the District Collector,
Collector Office, Jalgaon.
2. The District Supply Officer,
Jalgaon, Near Collector Office,
Jalgaon.
3. The District Treasury Officer,
Jalgaon, Premises of Collector Office,
Jalgaon.

... **APPELLANTS**
[ORIG.DEFENDANTS]

VERSUS

Smt. Pramila Ravindra Chaudhari,
R/o. 165, Ganesh Coloney, Jalgaon,
Dist. Jalgaon.

... **RESPONDENT**
[ORIG. PLAINTIFF]

AGP for the Appellants: Mrs. R. K. Ladda.
Advocate for Respondent: Mr. Pramod P. Dhorde.

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CORAM:- T. V. NALAWADE, J.
DATED:- 28th OCTOBER, 2015.

JUDGMENT:

1. The appeal is admitted. Notice after admission, waived by learned counsel for the Respondent. By consent of both the sides, the appeal is taken up for final hearing forthwith.

2. The appeal is filed by original defendants Nos.1 to 3 of Regular Civil Suit No.360 of 2005 which was pending in the Court of Civil Judge, Senior Division, Jalgaon. The suit was filed by present Respondent for relief of declaration and for mandatory injunction. In the suit, she has contended that she is the widow of one Ravindra Choudhari and Ravindra was working as Driver with defendant No.2. Ravindra died on 28th September, 1999. It is her case that after the death of Ravindra she had applied to the employer of Ravindra, defendant No.2 for giving her family pension and other amounts to which Ravindra was entitled after retirement. It is contended that those amounts were given and monthly pension of R.3,300/- was also fixed and sanctioned. Then it is contended that the monthly pension was given upto the year 2004 but after that pension is stopped.

3. It is the case of plaintiff that as per her information a brother of Ravindra viz. Vasudeo had made complaint to the defendants and he has contended that she has married second time on 9th February, 2004 and so she is not entitled to any pension. It is contended that false allegations of marriage are made against her and so she

is entitled to get the family pension.

4. One A.G.P. filed appearance for defendant Nos.1 to 3. Written Statement was not filed in time and so “no w.s.” order was made. Then an application was given for setting aside this “no w.s.” order and for allowing defendants to file written statement but the trial Court rejected that application. Then, plaintiff gave evidence. Nobody turned up for defendants when the evidence was given and so on the aforesaid contentions and un-rebutted evidence of plaintiff, declaration is given that plaintiff Smt. Premila Ravindra Choudhari was legally wedded wife of Ravindra and she is entitled to get the family pension. This decision was challenged by filing Regular Civil Appeal No.81 of 2009. The Appellate Court held that sufficient opportunity was given to the defendants to file the written statement but no material was produced and written statement was not filed and so they are not entitled to get any opportunity, remand of the matter.

5. The learned A.G.P. submitted for the State that substantial questions of law are involved in the matter like the jurisdiction of the Court in view of provision of

Section 4 of Pension Act, 1871. She submitted that there is record to show that one Rane has shown this lady as his wife in the government department wherein he is in service and there is record available to show that in February, 2004 she married with said Rane. She submitted that in view of this circumstance the entitlement of present respondent, plaintiff needs to be ascertained as such the lady loses her right to get family pension. She submitted that opportunity needs to be given to the defendants as record is available and it is exceptional case and if opportunity is not given probably on the basis of wrong decision, public money will be required to be paid to the plaintiff as family pension when she is not entitled to get pension.

6. After hearing both the sides and after going through the record which was shown by learned A.G.P. this Court has formed opinion that for pronouncement of judgment on the dispute involved, it is necessary to consider the additional evidence which was not available before the Courts below. In view of the provision of Order 41 Rule 27 of Civil Procedure Code such permission can be granted as this record may change

the decision itself. Further, the point raised about the jurisdiction of the civil Court also needs to be reconsidered by the trial Court. Few questions are required to be decided, which are as follows:

- (i) Whether plaintiff got married with other man in the year 2004.
- (ii) Whether the plaintiff is entitled to get pension due to her marriage with other man in the year 2004 and from which date she is not entitled to get the family pension if she has married with other man.
- (iii) Whether due to the nature of dispute, civil Court can decide the suit of the plaintiff.

7. The right of defendants to produce the record is considered by this Court and this Court holds that in view of the provision of Order 41 Rule 27 C.P.C. permission needs to be granted to the defendants to produce the evidence of the marriage. For many years the Courts are noticing that the matters of the Government are not being attended properly and sincerely and due to that such situations are arising. The concerned departments are not cooperating the

pleaders appointed by the Government to defend the matters and so they are not able to file written statements. No interest is shown virtually by the departments itself for collecting the relevant record. It can be said that in the present matter the same thing happened. As it is a public money, and for just decision of the matter, the necessary record needs to be considered. This Court holds that the appeal needs to be allowed and matter needs to be remanded to the trial Court. The submissions made show that up to the date of the so called marriage the pensionary benefits are already paid to the plaintiff. If they are not paid, they need to be paid but the decree needs to be set aside and the dispute with regard to rights of the plaintiff after the said date needs to be decided on merits.

8. The learned counsel for Respondent, plaintiff placed reliance on some reported case (1) **2015 (4) Mh.L.J. 148 [Surjit Singh and others V/s Gurwant Kaur and others]** (2) **2012 (3) Mh.L.J. 126 [Shapoor M. Mehta V/s Allahabad bank]** (3) **2010 (4) Mh.L.J. 691 [Prabhavati Ramgarib B. V/s Divisional Railway Manager, Western Railway Manager,**

Mumbai] (4) 2009 (2) Mh.L.J. 864 [Manager, Solapur Municipal Corporation and others V/s Devidas Mahadeg Potdar and others] (5) 2015 (3) Mh.L.J. 428 [Anant Kavlekar and others V/s Milan Dantie @ Anita Dantie and others]. There cannot be any dispute over the proposition made by this Court and the Apex Court about the rights of the employees to get pension and also about the requirements for granting permission to lead evidence in appeal. In view of the peculiar facts and circumstances of this case, this Court has come to the conclusion that it is necessary to give fullest opportunity to both the sides and have a decision on merits.

9. In the result, the aforesaid point of giving opportunity is answered in favour of the Appellant, original defendants and the following order is made:

The appeal is allowed. The judgment and decree of the trial Court and the first Appellate Court is set aside and the matter is remanded back to the trial Court. The trial Court to give opportunity to the defendants to file written statement. After that, issues are to be framed -and opportunity to both the sides to lead evidence be

given. The trial Court is directed to expeditiously dispose of the matter and in any case within five months from the date of receipt of this order. It is made clear that the respondent at present so called wife of retired employee, can take pensionary benefits only up to the period ending 31st January, 2004.

[T. V. NALAWADE, J.]

Dated:28/10/2015.
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