

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 3719 OF 2015**

Radhabai wd/o Maruti Choure
Age : 49 years, Occ : Household,
R/o Parali (Vaijnath), Tq. Parali (Vaijnath),
Dist. Beed.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
Public Works Division,
Mantralaya, Mumbai – 32
2. The Accountant General – II,
Nagpur, Dist. Nagpur.
3. The Sub Divisional Engineer,
Public Works Sub-Division,
Parali (Vaijnath), Tq. Parali (Vaijnath),
Dist. Beed.
4. Ganesh s/o Maruti Choure,
Age : 42 years, Occ : Labourer,
R/o Dhangar Galli, Ambajogai,
Tq. Ambajogai, Dist. Beed.
5. Rahul S/o Maruti Choure
Age : 31 years, Occ : Education,
R/o Dhangar Galli, Ambajogai,
Tq. Ambajogai, Dist. Beed.
6. Manisha W/o Tanaji Sherkar
Age : 40 years, Occ : Household,
R/o Gaosud, Tq. Osmanabad,
Dist. Osmanabad.

7. Shridevi W/o Tanaji @ Balaji Sherkar
Age : 36 years, Occ : Household,
R/o Gaosud, Tq. Osmanabad,
Dist. Osmanabad.
8. Yogeshwari d/o Maruti Choure
Age : 36 years, Occ : Household,
R/o Dhangar Galli, Ambajogai,
Tq. Ambajogai, Dist. Beed.

..RESPONDENTS

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Advocate for Petitioner : Ms. Supriya L. Pansambal h/f Mr.
V.D. Gunale

APP for Respondent nos. 1 to 3 : Mr. S.K. Tambe
Advocate for Respondent Nos.4 to 8 : Mr. S.S. Thombre

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**CORAM : S.S. SHINDE &
P.R. BORA, JJ.**

**RESERVED ON : 25th February, 2016
PRONOUNCED ON : 2nd March, 2016**

PER COURT :-

This Petition under Article 226 of the
Constitution of India is filed with the following prayer :-

“C) By writ of mandamus or any other appropriate writ, order or directions, the respondent No.3 be directed to forward the proposal of petitioner for family pension being she is the nominee of her deceased husband Maruti Choure and further the respondent No.2 be directed to decide the said proposal after receipt of proposal from respondent No.3 and to decide the

same in accordance with law and release the family pension to the petitioner from the date of death of her husband.”

2. The brief facts, as disclosed in the memo of the Petition, leading for filing this Writ Petition are that, the petitioner is the legally wedded wife of deceased Maruti Chure. The husband of the petitioner was working as “Mukadam” in the office of Respondent No.3. He was permanent employee and died on 6th August, 2011, when he was in service. It is the case of the petitioner that, earlier the husband of the petitioner was married to one “Kesharbai” and from their wedlock, they begotten five children i.e. Respondent Nos. 4 to 8. Kesharbai died on 24th April, 2005. The petitioner's husband died due to Cancer. The petitioner was looking after her husband at the last moment of his life. Her husband submitted his nomination in the office of Respondent No.3, and in the said nomination form, he has mentioned the name of the petitioner, as his nominee for the purpose of pensionary benefits, and to that effect, he had submitted the affidavit on 1st November, 2010. It is the further case of the petitioner that, her husband died on 6th August, 2010 i.e. about one year after giving nomination by

him, and to deprive her legal claim of receiving family pension and share in the property of the deceased husband i.e. house property bearing House No.5-197 situated at Dhangar Galli, Ambajogai, the Respondent Nos. 4 to 8 have filed Misc. Application No. 207/2011, before the Civil Judge, Senior Division, Ambajogai for succession certificate. The Civil Judge, Senior Division, Ambajogai has held that, her son Yogiraj is the legal heir of deceased Maruti along with Respondent Nos. 4 to 8. The said judgment and order was challenged by the petitioner, by filing Regular Civil Appeal No. 56/2014, before the Additional District Judge, Ambajogai, and the said appeal is pending before the Additional District Judge, Ambajogai.

3. The learned counsel appearing for the petitioner invited our attention to the copies of nomination form in Namuna No.A with verification of Respondent No.3 thereon, and the affidavit submitted by the deceased husband of the petitioner before the Respondent No.3, and relying upon the said documents, it is submitted that, the petitioner has been nominated by her husband, and therefore, the Respondent No.3 ought to have forwarded the proposal of

the petitioner for family pension, being nominee of her deceased husband Maruti Chaure. Therefore, the learned counsel appearing for the petitioner, relying upon the pleadings/grounds taken in the Petition, annexures thereto, submits that, the appropriate directions may be issued to Respondent Nos. 3 to forward the proposal to Respondent No.2 and Respondent No.2 may be directed to act upon the proposal of the petitioner for family pension, and decide the same, as expeditiously as possible, with further direction to release the family pension to the petitioner, from the death of her husband.

4. The Respondent Nos. 4 to 8 have filed the affidavit in reply and disputed the nomination in favour of the petitioner, and submitted that, the nomination in favour of the petitioner by deceased Maruti Chaure is not the genuine document and same has been prepared by the petitioner in collusion with the authorities. It is submitted that, the petitioner had no relationship with deceased Maruti Chaure and the Civil Court has already held that, the petitioner is not the legal heir of deceased Maruti Chaure. Appeals are pending before the Appellate Court. It

is further submitted that, without admitting, but assuming that, the petitioner is nominated by deceased Maruti Chaure, mere nomination would not entitle the petitioner to receive the pension amount. In support of the aforesaid contention, the learned counsel placed reliance in the case of **Vishin N. Khanchandani and another Vs. Vidya Lachmandas Khanchandani and another**¹ and also in the case of Smt. **Sarbatl Devi and another V/s Smt. Usha Devi**².

5. The learned A.G.P. appearing for the State, relying upon the averments in the affidavit in reply filed on behalf of Respondent No.3, submits that, the husband of the petitioner has submitted the information in Form 'A', in which the name of the petitioner is shown as nominee. However, the said Form 'A' is incomplete, as far as there is no signature of two witnesses. He further submits that, since the dispute is pending between the parties before the Appellate Court, therefore, it would not be appropriate to release pensionary benefits in favour of the petitioner. Respondent No.4, namely Ganesh Maruti Choure, has

1 AIR 2000 SC 2747

2 AIR 1984 SC 346

submitted an application that, there is dispute pending before the Appellate Court about the heirship and till the dispute is decided, the Respondent No.3 may not act upon the pension proposal submitted by the petitioner.

6. We have given careful consideration to the rival submissions advanced by the learned counsel appearing for the parties, perused the pleadings in the Petition, annexures thereto, affidavit in reply filed by the Respondent No.3, and also by the Respondent Nos. 4 to 8.

7. Upon careful perusal of the material placed on record, it appears that, the Petition raises the disputed questions of facts, and therefore, it is not desirable to enter into the merits of the matter. Since the Civil Court is seized with the dispute, about who are the legal heirs of Maruti Chaure. Even in case of nomination of the petitioner, some dispute is raised by the respondents and also there are adverse comments incorporated in the affidavit in reply filed by the Respondent No.3. Therefore, in our considered view, this is not the appropriate stage for the petitioner, to agitate the grievance that, her proposal for family pension

submitted to the Respondent No.3, has not been acted upon. If this Court enters into the merits of the matter, it may cause prejudice to the petitioner and other parties when the dispute about the heirship is pending before the Competent Court.

8. For the reasons aforesaid, and since the Petition raises the disputed questions of facts, we declined to entertain the Petition, at this stage. However, the petitioner would be at liberty to raise the issues raised in this Petition, after the Appellate Court at Ambajogai takes final decision in appeals filed by the parties. Hence the Petition stands disposed of.

(P.R. BORA, J.)

(S.S. SHINDE, J.)

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