IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5931 OF 2013

Smt. Heerabai Shivram Sagale ... Petitioner

Vs

1. The Officer, Pension Department, India Security Press & Ors. ... Respondents

Ms. Neeta T. Gaikwad for the Petitioner.

Ms. Neeta V. Masurkar with Mr. S.G.Thakkar for the Respondent Nos.1 and 2.

Ms. Pooja R. Singh i/b Mr. N.R. Bubna for the Respondent No.3.

CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

WEDNESDAY, 30TH NOVEMBER, 2016

P.C. :

1. The petitioner claims to be the widow of the deceased Shivram Bhima Sagale. He expired on 8th July, 2011. The deceased was employed with the first respondent.

2. It is stated that the petitioner is the legal wedded wife inasmuch as the deceased married her on 4th November, 1956. The marriage certificate is not available, but the petitioner relies

upon the testimony of the deceased in legal proceedings and particularly the matter, details of which are set out in paragraph 6 of the writ petition.

3. It is claimed that from this marriage, the petitioner gave birth to one son Rajeev Shivram Sagale and one daughter Lata Shivram Sagale. Lata has since married.

4. The petitioner states that she is an illiterate lady. She does not have any source of income and will suffer acute hardship and pecuniary loss leading to virtual starvation in the event the first respondent is not directed to release the pensionary benefits admissible to the deceased, to the petitioner. The petitioner relies on a communication addressed by her advocate and claiming that the pecuniary benefits be released in her favour. Such are the pleadings in the writ petition which has been filed in this Court on 9th May, 2013. A writ of certiorari or any other appropriate writ order or direction is sought to call for the records and proceedings in relation to the service rendered by the deceased. Further, a writ of mandamus is sought so as to direct the first respondent to release the pensionary benefits in her favour.

5. On such a writ petition, after notice was issued, the first respondent has filed an affidavit in reply. It is pointed out that while it is true that Shivram Sagale was employed as a Mazdoor and eventually retired from Government service on attaining the age of superannuation with effect from 31st December, 2000, he had filed a nomination while he was in service on 31st October, 2000, and 13th November, 2000, in favour of Smt. Jeejabai Shivram Sagale. Accordingly, the family pension was sanctioned and authorised in favour of Jeejabai Shivram Sagale. That was on the basis of the nomination. The petitioner obtained the information under the Right to Information Act, but has not set out this fact in the writ petition. The said Jeejabai was not made even a party to the writ petition. While it is true that the deceased expired on 8th July, 2011, as per the death certificate, given the nomination in favour of Jeejabai as also a clear dispute as to who could be the legally wedded wife of the deceased, the first respondent states that it is not obliged to release the pensionary benefits in favour of the petitioner. It is stated that one Rajeev Shivram Sagale, on behalf of the petitioner, allegedly sought the information by addressing a notice / letter. The

petitioner did not make any application. However, the said Rajeev was duly informed by the first respondent about the aforesaid fact and, therefore, advised to work out his remedies in a competent Court.

6. Thereafter, what we have on record is a rejoinder affidavit in which the petitioner claims that now Jeejabai is made respondent No.3 to the writ petition. The petitioner states and has a positive case that Shivram Bhima Sagale claiming to be her husband filed Special Suit No.142 of 1994 in the Court of the Civil Judge, Senior Division at Malegaon for a declaration that he and the petitioner had legally married. On such a petition and on an application for amendment thereto, an order has been passed by the said Court and which is heavily relied upon.

7. It is claimed that Jeejabai cannot be said to be the legally wedded wife of the deceased for the third respondent Jeejabai did not obtain any divorce from one Shivaji Nagare. She was married to this Shivaji Nagare and from the relationship gave birth to a female child. Therefore, it is only the petitioner who can be said to be entitled to the family pension / pensionary benefits.

8. After having heard the advocate for the petitioner at some length, we do not think that this Court in its writ jurisdiction can grant any relief. The plea raised is concerning the relationship of the deceased with the petitioner and whether they are legally wedded or not. The proceedings in that regard are pending before the competent court. Once the first respondent has placed an affidavit and relied upon official record to state that in the teeth of the pending legal proceedings and the dispute involved therein, it would not be possible to release the pensionary benefits in favour of the petitioner, then, that stand can neither be termed as perverse or vitiated by any error of law apparent on the face of the record. We do not think that on the strength of any observations made in the interlocutory order of the trial court in the pending legal proceedings, we can grant the relief all the more when that order has been challenged by the petitioner before us as well by filing a writ petition. That writ petition is pending before a single Judge of this Court.

9. To such a case, the law laid down by a learned single Judge of this Court in the case of *Draupada @ Draupadi Jaydeo Pawar &*

Ors. vs. Indubai d/o Kashinath Shivram Chavan & Anr. does not apply. In that case Draupada claimed that her marriage was solemnized with Jaydeo in the year 1979. There were five children born from the wedlock. Jaydeo died on 10th July, 2003. He had executed a Will and bequeathed the entire property in favour of Draupada. After the death of Jaydeo, Draupada applied for Letters of Administration and on that basis she claimed that Jaydeo married her in 1979. The second marriage with Indubai allegedly performed was solemnized in the year 1981 and, therefore, Indubai had no claim in the pension or pensionary benefits of Jaydeo. The dispute was who was the legally wedded wife of the deceased. The Court considered the rival pleadings and on an appraisal thereof was of the view that the points raised for consideration stand concluded in favour of Draupada. That is how the First Appeal was allowed. Thus, it was a judgment in the case of an application seeking Letters of Administration with a Will which was left by the deceased that this Court appraised the oral and documentary evidence, analyzed the submissions and by a detailed judgment allowed the First Appeal. We do not have the benefit of a complete trial or any final judgment binding the parties being delivered in the pending proceedings. In view

thereof, we do not think that the judgment rendered by this Court in the First Appeal can be of any assistance.

10. As a result of the above discussion, the writ petition fails and is dismissed.

B.P. COLABAWALLA, J. ***S.C. DHARMADHIKARI, J.***