

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12242 OF 2016

Smt. Asha Raghu Roman,
C/o Avdut Nathu Pachpute,
D-203, Suresh Complex,
Gymkhana Road, Near Hanuman
Mandir, Sangarli, Dombivali,
District: Thane-421 203.

.... Petitioner

- Versus -

1. Mumbai Board of Trustees of the Port
of Mumbai, a Statutory Corporation
incorporated under the Major Port
Trust (Amendment) Act, 1974,
having office at Vijay Deep,
S.V. Marg, Mumbai.

2. Finance Department, Pension Branch,
Mumbai Port Trust, Imperial Chambers,
S.S. Tolani Marg, Ballard Estate,
Mumbai-400 001.

.... Respondents

Ms Aditi S. Naikare i/by Mr. Pradeep J. Thorat for
the Petitioner.

Mr. Rakesh Singh with Mr. Pushkal Mishra and
Mr. Kunal Cheddha i/by M/s. M.V. Kini & Co. for the
Respondents.

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

DATE : DECEMBER 01, 2016

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. Rule. The respondents through their counsel waive service. By consent, rule is made returnable forthwith and the writ petition is taken up for hearing and final disposal.

2. The petitioner has approached this Court claiming that she is the widow of one Raghu Sakhru Roman. He was the employee of respondent No.1. He was entitled to pension. The writ petitioner claims that she was married to another gentleman Shri Zimesh Darshrath Phapale on 27-5-2003, at Pune, according to Hindu vedic rites and ceremony. She stayed with the said Phapale till 15-9-2003. They separated because of difference of opinion. Their relations were strained. Eventually they executed a written Deed of Divorce. That was a Deed dated 14-12-2007. By consent and without any force or pressure, they agreed to separate and dissolve their marriage. After this

document was executed, the petitioner married the deceased Raghu Sakhru Roman on 21-9-2010. The said Phapale also remarried. The petitioner claims that she resided with the deceased till his demise. The ration card also demonstrates the petitioner as wife of Raghu. Raghu also executed an affidavit requesting the first respondent to insert the name of the petitioner in the Service Record so as to enable the petitioner to avail medical facilities. It is stated by Raghu, in the affidavit, that the petitioner is his wife. Relying upon this affidavit and the entries in the Medical Aid Registration Card of Mumbai Port Trust, so also the proof of residence of the petitioner with Raghu, it is claimed that upon demise of Raghu on 3-9-2011, the petitioner is his only heir and legal representative. She is entitled to pensionary benefits. Accordingly, an application was made for payment of family pension. However, one Dnayaneshwar Roman filed a complaint with respondent No.1 raising objection. That objection was based on the relationship of the petitioner with the deceased. It is stated that by virtue of this objection and the complaint therein that the petitioner is not

the legally wedded wife of the late Raghu, the respondents stopped paying the pension with effect from 1-10-2013 and then directed the petitioner to obtain appropriate directions and orders from a Competent Court.

3. Since the respondents insisted on a Court's order, the petitioner along with her ex-husband Zimesh Phapale filed Marriage Petition No.373 of 2014 in the Court of Civil Judge, Senior Division at Khed, District Pune. They invoked Section 13B of the Hindu Marriage Act, 1955 claiming a decree of dissolution of their marriage by mutual consent.

4. That petition was allowed on 23-3-2015. The marriage came to be dissolved. It is stated that since the marriage was not dissolved with effect from 14-12-2007 but the date of the decree was reckoned as the date of dissolution, the employer/respondents did not accept the stand of the petitioner based on this Judgment and Decree. They insisted that the marriage has to be dissolved from the date claimed by the petitioner, namely, 14-12-2007. That is how she approached the

Competent Court and sought correction of the Judgment and Decree. That has been granted.

5. After obtaining that declaration and the correction, as aforesaid, the petitioner approached respondent No.2-Finance Department which issued a communication dated 31-3-2016 that since the date of dissolution of the marriage is 23-3-2015, she was not competent to marry the deceased. That is how once again the petitioner was denied the pensionary benefits. The petitioner tried to reason it out with the respondents by pointing out that the date of marriage with the ex-husband is 27-5-2003. That has been dissolved by a Competent Court and the Decree to that effect is passed in 2015, but the marriage performed on that date stands dissolved. It is, therefore, only a reinforcement of the written Deed of Divorce executed between the petitioner and her ex-husband. The respondents cannot question the same.

6. After having perused this writ petition and all the annexures thereto, we do not think that in the given facts and circumstances the respondents were justified in denying the

pension to the petitioner.

7. The petitioner pointed out that there was a separation between her ex-husband and herself. That was effective from 14-12-2007. The marriage was solemnised much prior, namely, 27-5-2003. After the Deed of Divorce executed and in writing between the parties, they have been residing separately. Their marriage was dissolved by consent. There is no question of that marriage being held to be subsisting, particularly when both the petitioner and her ex-husband had re-married. In the circumstances, the petitioner should not have been called upon to obtain any clarification or further directions or orders from the Court. Rather, in the given facts and circumstances, it is for the complainant to prove that the marriage was not dissolved or that during the subsistence of the first marriage with the said Zimesh Phapale, the deceased purportedly married her and which cannot be said to be a lawful marriage. For that the complainant ought to go to a Competent Court and claim appropriate declaration. Based on the record and supplied by the petitioner including an order from the

Competent Court, it was not for the respondents to have stopped the pension. Admittedly, they had been releasing it in favour of the petitioner after the death of deceased Raghu. Raghu expired on 3-9-2011. In such circumstances, we do not think that this stand of the respondents accords with the mandate of Articles 14 and 16 of the Constitution of India. A public body and particularly an authority within the meaning of Article 12 of the Constitution of India should not have acted unfairly and unjustly and denied the pensionary benefits to the petitioner.

8. As a result of the above discussion, we allow this writ petition in terms of prayer clause (a). We direct that the respondents shall continue to release the pensionary benefits to the petitioner. It would be open for the complainant to work out his remedies and in a Competent Court. All arrears and the regular pension for the ensuing month shall be released in favour of the petitioner as expeditiously as possible and within a period of four weeks from the date of receipt of a copy of this order. Rule is made absolute in the above terms.

9. All concerned to act upon an authenticated copy of this order.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)