

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

WRIT PETITION NO.6117 OF 2007

Deelip s/o Shrihari Gadewar,
Age : Major, Occ.: Nil,
R/o.: Hadolti, Tq. Ahmedpur,
Dist. Latur.

... Petitioner.

Versus

- 1) Government of Maharashtra
Through : Secretary, Women
and Child Development
Department, Mantralaya,
Mumbai - 2.
- 2) Deputy Commissioner, Women
and Child Development,
Maharashtra State, Pune.
- 3) Secretary, Maharashtra State
Social Welfare Board,
Chembur (E), Mumbai - 71.

...Respondents

Mr. M.B. Bharaswadkar, Advocate for petitioner
Mr. S.N. Moranpalle, Asst. Govt. Pleader for
respondent Nos.1 and 2
Mr. P.A. Salvi, Advocate for respondent no.3

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

DATE : 13-11-2017

JUDGMENT (PER : SANGITRAO S. PATIL, J.)

The petitioner has challenged the order dated 15th March, 2007 passed by respondent no.2 – Deputy Commissioner, Women and Child Welfare Department, State of Maharashtra, Pune, whereby his claim for grant of family pension consequent upon the death of his wife namely Sunanda Hanmantrao Kavtikwar came to be rejected.

2. The learned counsel for the petitioner submits that the wife of the petitioner namely, Sunanda was not medically fit to conceive child. Therefore, he got married to another woman with the consent of Sunanda in the year 1988. According to him, it was permissible to perform second marriage in view of the provisions of Rule 26(2) (b) of the Maharashtra Civil Services (Conduct) Rules, 1979, ("Conduct Rules", for short). Subsequently, Sunanda was appointed as Bal Sevika on 16-03-1990. Since it was a regular appointment, her services were pensionable in view of the Government Resolution dated 14th June, 1996. She

died in harness on 6th October, 1995. The petitioner, being the widower, was entitled to get family pension in view of the provisions of Section 116(5) (i) of the Maharashtra Civil Services (Pension) Rules, 1982 ("Pension Rules" for short). He submits that the petitioner did not get remarried after the death of Sunanda. Therefore, he was entitled to get family pension, though he had performed second marriage. However, as per the impugned order dated 15-03-2007, respondent no.2 wrongly rejected the claim of the petitioner for family pension on the ground that he is not widower, since he has got married. The learned counsel for petitioner prays that the impugned order may be set aside and the respondents may be ordered to pay family pension to the petitioner.

3. On the basis of the replies filed on behalf of respondent Nos.1 to 3, the learned Assistant Government Pleader and the learned counsel for respondent no.3, strongly opposed the petition. They submit that though the petitioner had got

married for the second time during the life time of the deceased Sunanda, after the death of Sunanda, he cannot be called as a widower and he would be treated as a married person as per Rule 116 (5) (i) of the Pension Rules. The family pension is payable to a widower up to the date of his death or remarriage, whichever is earlier. It is submitted that since the petitioner had already got remarried, he was not entitled to get family pension after the death of Sunanda. They supported the impugned order.

4. The contention of the learned counsel for the petitioner that the petitioner was justified in performing second marriage since the deceased Sunanda was not medically fit to conceive a child, has no relevance to the issue - subject matter of this petition. As per Rule 26 of the Conduct Rules, it would be misconduct on the part of the Government servant, who enters into, or contracts a marriage with a person having a spouse living. Sub-rule (2) of Rule 26 reads as under:-

“(2) no Government servant, having a

spouse living, shall enter into or contract, a marriage with any person:

Provided that the Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (1) and (2), if it is satisfied that :-

- (a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and
- (b) there are other grounds for so doing."

5. In the present case, the petitioner is not a Government servant. Admittedly, the deceased Sunanda had not performed second marriage with the petitioner. In the circumstances, the provisions of Rule 26 (2) would have no bearing at all on the question posed for determination in this writ petition i.e. whether the petitioner is entitled to get family pension consequent upon the death of his first wife, when he had already performed the second marriage.

6. As per Rule 116(5) (i) of the Pension Rules, in the case of a widower, the family pension is payable upto the date of his death or remarriage,

whichever is earlier. The meaning of the word 'widower' as stated in Black's Law Dictionary, 9th Edition is "a man, whose wife has died and who has not remarried". It is true that the petitioner has not got remarried after the death of Sunanda, but indisputably, in view of his second marriage with some other woman during the life time of Sunanda, may be with the consent of Sunanda, he would not assume the status of 'widower', who has not performed marriage. He certainly continues to be the husband of the woman with whom he has performed second marriage. It would be rather a hyper-technical an approach to say that the petitioner, who has already performed a second marriage/remarriage, should not be called as a person "remarried" for the purpose of getting family pension, only because the said remarriage was not after the demise of his wife Sunanda. The intention underlying Rule 116(5) (i) of the Pension Rules is not to extend the benefit of family pension to a person, who is enjoying a marital life with some other woman than the

deceased Government servant.

7. As stated above, the case of the petitioner certainly would not fall under Rule 116(5) (i) of the Pension Rules since he is enjoying the marital life even after the death of Sunanda. The petitioner would not be entitled to get family pension, claiming himself to be the widower of the deceased Sunanda, since he has remarried.

8. The impugned order being legal and proper does not call for any interference. There is no substance in the Writ Petition. It is dismissed. Rule is discharged. No costs.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE