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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4081 OF 2006**

Dwarkabai Hanumant Salunkhe ... Petitioner

Vs.

Commissioner of Police (Adm) and Ors. ... Respondents

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Ms. Nazia S. A. Sheikh i/b. Mr. Pradeep J. Thorat for the Petitioner.
Ms. Aparna Vhatkar, AGP for Respondent nos. 1 to 3.

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**CORAM : A.S. OKA &
A.K. MENON, JJ.
DATE : 30th MARCH, 2017**

ORAL JUDGMENT (PER A.S.OKA, J.)

1. Heard the learned Counsel for the Petitioner. We have heard the learned AGP appearing for the respondent. According to the case of the petitioner, her late husband Hanumant Laxman Salunkhe was working in Police Department and after his superannuation on 31st July, 1988 he was regularly receiving pension. His Pension Account is bearing No. 1157 and P.P.O No. M-86327. The said Hanumant Laxman Salunkhe died on 25th January, 1997. According to the petitioner, he died leaving behind the petitioner and one married daughter as the only legal heirs and representatives.

2. When the petitioner applied for grant of family pension, it appears that the petitioner was informed to produce a succession

certificate under Section 372 of the Indian Succession Act, 1925 (for short “the said Act”). Accordingly, the petitioner filed a Miscellaneous Application No. 74 of 1997 before the Court of learned Joint Civil Judge Senior Division at Satara. A copy of the judgment and order dated 30th September, 2002 in the said application has been annexed to the petition. The said judgment and order shows that one Alka, the opponent to the said Miscellaneous Application contended that she was also the widow of late Hanumant Laxman Salunkhe. The judgment and order records that the said Alka contended that she is the only lawfully wedded wife of late Hanumant Laxman Salunkhe and she herself and her son Prakash are the legal representatives of late Hanuman Laxman Salunkhe. It is stated that the present petitioner is not legally wedded wife of late Hanumant Laxman Salunkhe. By the said judgment and order, the learned Joint Civil Judge Senior Division, Satara held that petitioner is the legally wedded wife of late Hanumant Laxman Salunkhe. We may note hear that the succession certificate was applied in respect of the family pension. Accordingly, by the said judgment and order, on the application made by the petitioner, a succession certificate under Section 372 of the said Act was ordered to be issued to the petitioner. A copy of the succession certificate is also annexed. The relevant part thereof reads thus :-

“Whereas you applicant above-named appeared in the

Miscellaneous Civil Application No. 74/97 for getting the Succession Certificate under section 372 of India Succession Act, 1925 in respect of getting the pension amount per month and arrears of Pension amount of the deceased husband Buckle No. 144 Jamadar Shri. Hanmant Laxman Salunkhe, who was servant of Indian Railway Police Department. After retirement from service, he was getting the Pension from Railway Superintendent of Police, Western Railway, Mumbai through Satara Treasury Office, Bank of Maharashtra, Nagthane Branch, Taluka and District Satara – Account No. 1157 and P.P.O No. 86327.

This succession certificate is accordingly granted to you Smt. Dwarakabai Hanmant Salunkhe and you are entitled to collect the entire amount of family pension and arrears of Pension amount and also monthly family pension per month as legal heir of deceased Hanmant Laxman Salunkhe.”

(underline supplied)

3. The grievance made in this Writ Petition under Article 226 of the Constitution of India is that notwithstanding the grant of succession certificate, the family pension is not been paid to the petitioner. Reliance is placed on the correspondence made by and on behalf of the petitioner. Reliance is also placed on the notice dated 18th January, 2006 issued by Advocate for the petitioner to the State Government calling upon the State Government to release the family pension.

4. Exhibit-I to the petition is the letter issued by the Commissioner of Police, Railways, Mumbai to the petitioner enclosing therewith objections raised by the Office of the Director General of Police. A copy of the objections is annexed to the said letter. The office of the Director General of Police called upon the Commissioner of Police, Railways to submit original applications made by the petitioner and the said Alka, original succession certificate granted to both of them, birth certificates of children, a photo copy of ration card and service book.

5. Obviously the original application for grant of family pension will not be in the custody of the petitioner and therefore, the concerned authority will have to forward the same to the Office of the Director General. Succession certificate is already issued to the petitioner after a contest by the said Alka who was claiming to be the legally wedded wife of the deceased. The petitioner cannot be called upon to produce the service book as all the details are available with the State Government with regard to the employment of late Hanumant Laxman Salunkhe. The petitioner will have to produce birth certificate / proof of date of birth of her daughter.

6. If the order issuing succession certificate has attained finality, there is no reason to withhold the family pension. Hence, the petition must succeed.

7. Hence we dispose of the petition by passing following order :

(a) We direct the petitioner to file an affidavit before the Commissioner of Police, Railways, Mumbai stating that the order granting succession certificate and the succession certificate granted in Miscellaneous Application No. 74 of 1997 has attained finality and the same continues to be valid till today. Such affidavit shall be filed by the petitioner within a period of one months from the date on which this order is uploaded;

(b) After such affidavit is filed, the concerned department will issue a notice to Smt Alka Hanumant Salunkhe only for the purpose of calling upon her to state whether she had challenged the order dated 30th September, 2002 granting succession certificate to the petitioner;

(c) If the concerned authority is satisfied that the succession certificate granted to the petitioner is still valid and subsisting, steps shall be taken to immediately to release the family pension to the petitioner subject to condition of the petitioner producing the original succession certificate, documents evidencing the date of

birth of the daughter and a copy of ration card, if any.

The petitioner shall submit said documents within a period of one month from the date on which this order is uploaded;

(d) We direct the respondents to ensure that the family pension payable to the petitioner upto 31st July, 2017 is paid to the petitioner on or before 31st August, 2017 subject to the petitioner making compliance as aforesaid. If any interest is accrued on the said family pension amount, even the same shall be paid to the petitioner within the specified time;

(e) From August, 2017, onwards the family pension amount shall be paid or credited to the account of the petitioner regularly and punctually on or before 15th day of every calendar months;

(f) Rule is made absolute on above terms.

(g) All concerned to act on an authenticated copy of the judgment and order.

(A.K. MENON, J)

(A.S. OKA, J)