

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION**

**NOTICE OF MOTION NO.215 OF 2016
IN
PETITION NO.616 OF 2016**

Smt.Shanta Shankar Rolekar alias)
Shanta Shankar Matiwadar)....Petitioner/Applicant

And

The Administrative Officer, B.M.C)....Respondent

Ms.Vandana P.Santara for the petitioner/applicant.

Prof.Rohini Madhav Dandekar for the respondent.

**CORAM : K.R.SHRIRAM,J
DATE : 29.3.2017**

P.C.:-

1 This Notice of Motion is taken out on behalf of the widow of the deceased to direct the respondent to start the pension to the petitioner. The respondent is Municipal Corporation of Greater Mumbai, who though served copy of the Notice of Motion, has not filed any affidavit in reply. Nobody is appearing either the respondent. Ms.Santara for the applicant states that they have filed affidavit of service of the petitioner.

2 The deceased Shankar Mukari Rolekar alias Shankar Mukari Matiwadar was working as a Sweeper with the respondent. At

the time of the death, the deceased left behind the petitioner and 4 children, the first one being a daughter, 2nd & 3rd being sons and the 4th being a daughter. Admittedly, the petitioner and the deceased were living separately for many years because of personal marital problems. The caveator nos.1, 2 & 3 i.e., 1st daughter and the 2 sons remained with the deceased and the youngest daughter i.e., Anita Rolekar who is unmarried lived with the petitioner. Unmarried daughter has given her consent to the petitioner. In the affidavit in support of the caveat, various grounds have been raised as to why the petition should not be allowed. The primary ground is that the petitioner had abandoned deceased and the caveators and has been living separately with Anita since the childhood of the caveators. It is nobody's case that the petitioner and the deceased had divorced. The petitioner had only filed a petition for maintenance under Section 125 of the Cr.P.C and a petition under section 18(1) & (2) (a) & (b) of Hindu Adoption and Maintenance Act. After the death of the deceased, both the petitions abated.

3 The relief that is sought is only for directing the respondent to start the pension. Rule 59 (1), (5) and (6) of Pension Rules 1953 reads as under :-

"59 (1) A family pension not exceeding the amount specified in sub-rule (2) may, save in the circumstances described in sub-rule (8), be granted to the family of a Municipal servant in the event of his death after he has completed 20 years qualifying service and in exceptional circumstances with less than 20

years' qualifying service but not less than 10 years' qualifying service.....

(2).....

(3).....

(4).....

(5) In the absence of any valid nomination made under sub-rule (6) :-

(a) a pension sanctioned under this rule will be allowed :-

(i) to the eldest surviving widow, if the deceased is a male-Municipal servant or to the husband if the deceased is a female Municipal servant.

Note : The expression "eldest surviving widow" occurring in clause (a)(i) above should be construed with reference to the seniority according the date of marriage with the municipal servant and not with reference to the age of surviving widows

(ii) failing a widow or husband, as the case may be, to the eldest surviving son ;

(iii) failing (i) and (ii), to the eldest surviving unmarried daughter ;

(iv) these failing, to the eldest widowed daughter and

(b) in the event of no pension becoming payable under clause (a), the pension may be granted :-

(i) to the father ;

(ii) failing the father, to the mother ;

(iii) failing the father and the mother, to the eldest surviving brother below the age of 18 ;

(iv) these failing, to the eldest surviving married sister ;

(v) failing (i) to (iv), to the eldest surviving widowed sister.

(6) If a municipal servant who has completed 20 years service desires that the pension that may be sanctioned under this rule should be payable to any members of his family in any order to be specified by him, he may make a nomination for the purpose in the form E in Appendix VII indicating the order in which the pension should be payable to the members of his family....."

4 Professor Dandekar does not dispute the fact that the deceased has not left any valid nomination. Professor Dandekar also does not dispute that as per the rules, the petitioner as the widow, will be entitled to pension.

Therefore, the respondent is directed to start the pension and pay over the same to the petitioner including arrears if any,

within 8 weeks of receiving a copy of this order.

5 As regards the other grounds raised by the caveators, that would be considered independently at the time of hearing of the petition.

6 Professor Dandekar states that registry has raised an objection that instead of filing a caveat, they should file an affidavit opposing the petition. The counsel requests that the affidavit in support of the caveat already filed be considered as affidavit opposing the petition and delay if any, be condoned.

7 Delay condoned. Registry is directed to permit the counsel for the respondent to amend the cause title in the caveat and affidavit in support accordingly.

(K.R.SHRIRAM,J)