

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.632 OF 2018.

Fatima Fernandes

... Petitioner

Versus

Captain of Ports Department,
Govt. of Goa & Ors.

.... Respondents

Mr. Nigel Da Costa Frias and Ms. M. Correia, Advocates for the
Petitioner.

Ms. P. Bhandari, Additional Government Advocate for the
Respondents.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 10 July 2018.

P.C. :

Heard Mr. Nigel Da Costa Frias, the learned counsel for
the Petitioner and Ms. P. Bhandari, the learned Additional
Government Advocate for the Respondents.

2. The Petitioner is aggrieved by non action of the

Respondents-Authorities in respect of the release of family pension of the Petitioner's deceased husband who was working as a Sailor with Respondent No.1. According to the Petitioner, her husband had earlier married to one Ms. Francisquinha Fernandes and the Patriarchal Tribunal by affirmative sentence dated 14 September 2013, declared the marriage as null and void. According to the Petitioner, thereafter the Petitioner was married to the deceased Caetano Fernandes in the year 2012. When the Petitioner applied for grant of family pension, the Respondents-Authorities directed the Petitioner to produce requisite documents and stated that there was no valid proof of divorce between the first wife and the deceased husband of the Petitioner. The Authorities directed the Petitioner to produce the order from the competent Court of law declaring the first marriage as null and void and also an order from the competent Court for release of the family pension.

3. From the record that is placed before us, what we notice is that the deceased husband of the Petitioner had nominated the Petitioner for family pension. There is also a certificate issued by the Civil Registrar in respect of marriage of the Petitioner with the deceased Caetano. Thirdly, an affirmative sentence by the Patriarchal Tribunal in respect of divorce from Caetana and the first wife is also

placed on record. This *prima facie* would justify the claim of the Petitioner for grant of family pension.

4. The learned Additional Government Advocate submitted that in case there is any claim by the first wife or children, if any, from the first marriage, the Department will be placed in difficulty if the pension is released to the Petitioner.

5. Caetano Fernandes expired on 18 June 2015. We are informed that no claim for last three years has been put by the first wife or children, if any, till the date. It is only the Petitioner who is pursuing the matter with the Authorities and if the Authorities still want to be sure that there are no other claims, the Respondents-Authorities can call the Petitioner to submit an affidavit placing on record the details of the first wife and also if there are any children from the first wife. If the Respondents-Authorities want to be careful inspite of the documents produced by the Petitioner which *prima facie* demonstrate her rights, notice can be issued by the Authorities to the persons disclosed by the Petitioner in the affidavit calling upon them to show their rights for grant of family pension. Simply not accepting the valid documents produced by the Petitioner in absence of any other claim, does not justify withholding the family pension in

the manner it is sought to be done. The grant of family pension is to tide over the crisis for the spouse of the deceased pensioner.

6. We direct the Petitioner to tender an affidavit as above to the Respondent No.1. The Respondent No.1 thereafter will examine the documents produced by the Petitioner afresh and issue notice to the persons disclosed in the affidavit by the Petitioner as well as the first wife to examine their claim and then take a fresh decision regarding grant of family pension. Considering the fact that the widow is awaiting for grant of family pension for last three years, it is expected that the Authorities will take expeditious steps in this regard.

7. The Writ Petition is accordingly disposed of in above terms.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.