

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5463 OF 2016

(Ranjana wd/o Shriram Borkar vs. Hon'ble Registrar, Bombay High Court, Mumbai & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
Z.A. HAQ, JJ.
JULY 03, 2018.**

Heard Ms. S.T. Godbole, learned counsel for the petitioner, Shri A.M. Kukdey, learned counsel for respondent Nos. 1 & 2 and Shri A.M. Kadukar, learned AGP for respondent No. 3.

2. The petitioner is admittedly a second wife and marriage, therefore, is not legal. The contention is, provisions of Rule 116(6) of the Maharashtra Civil Services (Pension) Rules, 1982, (hereinafter referred to as Rules) allow payment of pension to the petitioner. The support is also being taken from Rule 26 of the Maharashtra Civil Services (Conduct) Rules, 1979.

3. The petitioner relies upon unreported judgment in Writ Petition No. 11839 of 2015 delivered at Bombay on 12.07.2017.

4. Shri Kukdey, learned counsel and the learned AGP appearing for the respondents oppose the petition.

They submit that the rules mentioned supra are not attracted. They are relying upon the Division Bench judgments of this Court in the case of Smt. Chanda Hinglas Bharati vs. The State of Maharashtra & Ors., reported at 2016 (7) ALL MR 5; Mrs. Banu Shaikh vs. The State of Goa & Ors., reported at 2017(1) ALL MR 875 and Ramabai Gulabrao Jamnik vs. State of Maharashtra & Ors., reported at 2018 (3) ALL MR 580.

5. After hearing respective counsel, we find that the Division Bench at Bombay on 12.07.2017 did not get advantage of considering the Division Bench judgments mentioned supra. Two of them are delivered at Nagpur while one is delivered at Panaji.

6. A perusal of Rule 116(6)(a)(i) of the Rules show that when in law, family pension is payable to more widows than one, then only said rule or Scheme therein is attracted. The petitioner has not demonstrated here that under any provision of law, family pension in present matter was payable to more than one widow.

7. Similarly, the effort to rely upon Rule 26 (supra) is erroneous. That Rule permits a Government servant to have more than one spouse if Personal law so permits. The other clause therein is wide enough and it may enable a Government servant to marry again during life time of one spouse in appropriate circumstances. However, it is not the case of the petitioner that the deceased Government servant

here had applied for and any permission under Section 26 of the Maharashtra Civil Services (Conduct) Rules, and Government granted the same. The provision of Rule 26 again can not override legal bar on marrying again.

8. We, therefore, find the issue covered by two judgments of Nagpur and one Division Bench at Panaji.

9. In the circumstances, no case is made out. Writ Petition is accordingly dismissed. However, there shall be no order as to costs.

JUDGE

JUDGE

*GS.