

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7314 OF 2018**

Usha Daulat Kolge ...Petitioner
Versus
Union of India & ors. ...Respondents

Mr. S. B. Desai, for the Petitioner.
Mr. A. A. Garge a/w Mr. A. M. Sethana, for respondent nos.1
to 6.

**CORAM: RANJIT MORE &
N. J. JAMADAR, JJ
DATED: 20th SEPTEMBER, 2019**

PC:-

1. Heard the Mr. Desai, the learned Counsel for the Petitioner and Mr. Garge, the learned Counsel for Respondent nos.1 to 6.

2. The petitioner married with Mr. Daulat Sonaji Kolge on 16th February, 1994. Prior to petitioner's marriage with Daulat, first wife of Daulat, namely, Smt. Asha had expired on 16th January, 1990. The petitioner's husband was working as 'Nayak' with Respondent no.6 and he took voluntary retirement with effect from 30th November, 1992. The husband of petitioner expired on 13th April, 2016.

3. From the first marriage, the petitioner's husband had three children, namely, Sou. Sangeeta Avinash Kadam, Sandeep Daulat Kolge and Sou. Jyoti Balasaheb Pathare i.e.

respondent nos.7, 8 and 9.

4. Deceased Dault, nominated respondent nos.7, 8 and 9, the children from his first wife in the pension papers. However, admittedly, they are not entitled for the pension since they have crossed 25 years of age and got married.

5. The petitioner, thereafter, on 1st August, 2016 submitted her application to respondent no.6 for grant of family pension. By the reply dated 5th April, 2017, respondent no.6 stated that the pension can not be granted to the petitioner since the petitioner did not submit documents in respect of the children of deceased Daulat, from his first wife. In the light of above facts, the petitioner has approached this Court seeking direction to respondent no.6 to grant her family pension.

6. It is pertinent to note that respondent nos.7, 8 and 9 have filed Affidavit-in-Reply, dated 17th August, 2018, to this petition. In paragraph IV, the following averments are made:

(iv) As regards to para-12, the contents thereof is true and correct. These respondents submit that it is true and correct that we are children of first wife of late Daulat Sonaji Kolge who was working with Respondent no.6. These Respondents further submit that it is true and correct that neither these Respondents are eligible for claiming family pension consequently death of Daulat sonaju Kolge nor they have any objection to grant family pension to the Petitioner if statutory pension Rules permits.”

7. The above averments make it clear that respondent

nos.7, 8 and 9, children of deceased Daulat from his first wife, are not interested in claiming family pension and this fact is not disputed by Mr. Garge, the learned Counsel for respondent nos.1 to 6.

8. Respondent nos.1 to 6 have filed Affidavit-in-Reply dated 17th June, 2018. Mr. Garge, the learned Counsel for the respondents relies upon the same. He opposed the petition on three grounds, namely, (i) deceased Daulat had already made nomination of respondent nos.7, 8 and 9 in his pension papers, (ii) cause of action arose in the State of Madhya Pradesh and (iii) the petitioner being a second wife must produce succession certificate.

9. Having considered the rival submission and having gone through the petition, we find merit in the petition. Though it is fact that in the nomination papers deceased Daulat had nominated respondent nos.7, 8 and 9, however, they are not entitled for family pension because they have already attained majority and even crossed age of 25 years and got married. Even, respondent nos.7, 8 and 9 by filing Affidavit have accepted this position. In these circumstances the ground of opposition of Mr. Garge that the petitioner is not entitled to pension as deceased Daulat had nominated respondent nos.7, 8 and 9 in the pension papers has no

substance.

10. So far as the petitioner's marriage with the deceased Daulat is concerned the petitioner has annexed marriage certificate at Exhibit 'D' at page 18. It clearly shows that petitioner got married with deceased Daulat on 16th February, 1994. The petitioner made an application to respondent no.6 for claiming family pension and annexed following documents:

- (i) Form No.14 (details of family members).
- (ii) Sepcimen signature of the applicant i.e. Smt. Usha Daulat Kolge.
- (iii) Thumb and finger impressions of Smt. Usha Daulat Kolge.
- (iv) Descriptive roll of the applicant i.e. Smt. Usha Daulat Kolge.
- (v) Birth Certificate of Sonam Daulat Kolge.
- (vi) Original marriage certificate issued from St. Francis Xavier Church, Rahata.
- (vii) Original date of birth certificate of Smt. Usha Daulat Kolge.

11. The correspondence on page 27 Exhibit 'F' by the respondent no.6 makes it clear that they required following documents from the petitioner to process her claim for the

family pension.

- (i) Date of Birth certificate of first wife's children.
- (ii) Marriage certificate of first wife's children if they are married.
- (iii) Earning certificate of first wife's children (certificate attested by the Gazetted officer).

12. The above correspondence shows that respondent no.6 never disputed petitioner's marriage with deceased Daulat and, on the contrary, they accepted the same and in order to process petitioner's claim for family pension demanded the above stated three documents. The said documents relate to the children of the first wife and as stated above the children have also accepted their non-entitlement to the family pension and granted no objection to the petitioner to receive the same. There is evidently no dispute among the dependants of the deceased Daulat, regarding the entitlement to Family Pension. Even the respondent no.6 did not call upon the petitioners to produce succession certificate. Therefore, in our considered view, respondent nos.1 to 6 now can not deny the petitioner's right to the family pension due to the death of her husband Daulat Kolge.

13. Mr. Garge's last submission was regarding the jurisdiction and place of accrual of cause of action. We are

not impressed by the said submission. Though the deceased Daulat was serving in the Madhya Pradesh the petitioner is staying in Pune District and the office of respondent no.1 is at Navi Mumbai, which is within the jurisdiction of this Court. Therefore, this petition is maintainable by virtue of the provisions of Article 226 (2) of the Constitution of India. In the totality of circumstances, we are more than satisfied that the petitioner is entitled for the family pension after the death of her husband i.e. Daulat Kolge and we accordingly direct respondent nos.1 to 6 release the same as expeditiously as possible, preferably within four weeks from the date of receipt of this order. Accordingly, the petition is made absolute in terms of prayer Clause (a).

14. In view of the above, the petition stands disposed of.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]