

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3599 OF 2017

The Executive Engineer
Pune Irrigation Division

.. Petitioner

Vs.

Shri Kantabai Nathsaheb Holkar

.. Respondent

Ms. Vaishali Nimbalkar, AGP for the Petitioner.

Mr. Pramod J. Pawar for the Respondent.

CORAM : A.K. MENON, J.

DATED : 28th FEBRUARY, 2019.

P.C. :

1. Considering the limited issue in this petition, by consent of parties the petition can be disposed of finally at the stage of admission.
2. Accordingly, I issue Rule. Rule made returnable forthwith.
3. The order impugned in this Writ petition is passed by the 2nd Labour Court, Pune directing the respondent Executive Engineer, Pune Irrigation Division to pay to the respondent pension amount due to Late Nathsaheb Holkar alongwith interest @ 6% per annum on the accumulated pension amount on the basis that the respondent is the legal heir of the former employee of the Irrigation Division.

4. The judgment dated 21st March, 2014 proceeds on the basis that the respondent who was applicant there in Application no. IDA/5/2008 is the widow of the employee who was working as a Canal Inspector and who retired on 31st March, 1976. The undisputed facts are that late Mr. Holkar was married to Krishnabai Holkar and had five children out of wedlock. Krishnabai being unwell and being unable to look after the children, the said Holkar is said to have married again during the life time of first wife Krishnabai. After retirement Mr. Holkar wrote a letter to the Irrigation department requesting that pension to be divided equally among his two wives after his demise. This request was declined.

5. Meanwhile Krishnabai expired on 26th July, 2005 during the life time of the said Mr. Holkar who expired on 15th November, 2005. A request was then made for payment of the pension amount to second wife. In view of the fact that the second marriage was solemnized without obtaining a divorce, the Court framed an issue as to whether the applicant was entitled to claim pension. This was answered in the affirmative. Interest was also granted.

6. The said order is challenged on the basis of an order of the Division Bench of this Court which interprets Rule 116 explanation 5 and explanation 6(a) to hold that since first wife Krishnabai was alive when the second marriage was solemnized, the respondent was not entitled to receive the amount of pension.

7. Learned AGP relies upon the decision of this Court in *Ramabai Gulabrao Jamnik vs. State of Maharashtra and Ors 2018 [(2) Bom.C.R. 730]* which deals with the Railway Services (Pension) Rules, 1993, provision of the Hindu Marriage Act, 1955 and the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and the provision relating to pension. The Rule 9(16) in question clearly provides the definition of “family” which is reproduced below:

“9(16) Family means a Government servant's wife or husband, as the case may be, residing with the Government servant and legitimate children and step-children residing with the wholly dependent upon the Government servant. It includes, in addition, parents, sisters and minor brothers if residing with and wholly dependent upon the Government servant”

Rule 26(1) and (2) of the Maharashtra Civil Services (Conduct) Rules, 1979 are reproduced below

*26(1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and
26(2) No Government servant, having a spouse living, shall enter into, or contract, a marriage with any person*

8. In view of the above the division Bench held that the statutory scheme would reveal that a marriage by a Government servant having spouse living would be viewed as misconduct unless such a marriage is permitted by the Government upon being satisfied that such marriage is permissible under the personal law applicable to the Government servant and the grounds

justifying such marriage. This second marriage was found to be violative of section 5 of the Hindu Marriage Act whereby marriage between any two hindus could be solemnized provided neither party had a spouse living at the time of marriage. After interpreting this provision, the Court held that the second marriage would not be valid and accordingly such a person claiming to be a legal heir would not fall within the definition of 'family' and is therefore not entitled to any claim.

9. The factual situation in the instant case is squarely covered by the aforesaid decision which has since also been followed in *Chanda Hinglas Bharati (Smt) vs. State of Maharashtra and ors. [(2016)(1) AIR Bom R 550]* also a decision of this Court. In view of the above the impugned order cannot be sustained and accordingly, I pass following order :

- (i) The impugned order dated 21st March, 2014 is set aside.
- (ii) Rule. Rule made absolute in the above terms.
- (iii) No order as to costs.

(A.K. MENON,J.)