

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3889 OF 2019**

Smt. Shanta Baburao Takkekar	Petitioner
Versus	
The State of Maharashtra & Ors.	Respondents

Mr. Anand S. Patil, Advocate for the Petitioner.
Mrs. R.M. Shinde, AGP for the Respondent-State.

**CORAM : RANJIT MORE &
SURENDRA P. TAVADE, JJ.**

DATE : 16th JANUARY, 2020.

P. C. :

1. Heard learned counsel for the respective parties.
2. By this petition filed under Article 226 of the Constitution of India, petitioner is challenging the letter issued by respondent No.2 dated 25.09.2018 informing her that office of Deputy Director of Education has no objection to grant family pension, if she produces order of the Court to the effect that she is the legal heir of deceased Baburao Omna Takkekar.
3. The brief facts giving rise to the present petition are thus:-

One Baburao Takkekar was serving as a Teacher in the Secondary School run by respondent No.3-Zilla Parishad, Kolhapur. He retired as a Headmaster from the said school w.e.f.31.03.1991. The said Baburao died on 25.11.2016. From his retirement till his death, admittedly he was getting a pension.

4. It is the petitioner's case that Baburao initially got married with one Ratnabai Subrao Patil on 09.12.1969. However, in the year 1982 there was

a customary divorce between them and in the year 1983 said Baburao got married with the petitioner. It is further case of the petitioner that after her marriage with Baburao, her name was entered in the service book by Baburao as a nominee for availing family pension benefit. However, this entry was subsequently deleted and entry in the name of Ratnabai was inserted as a nominee in the service record of Baburao and this was done ex-parte without knowledge of the petitioner.

5. Be that as it may, it is also the petitioner's case that said Ratnabai, the first wife of Baburao, died on 15.10.2015, and as on date she is the only alive widow of Baburao, and therefore, she is entitled for family pension.

6. Learned AGP has filed an affidavit opposing the present petition. She has relied upon Rule 116(6)(a) of the Maharashtra Civil Services (Pension) Rules, 1982. She submitted that Baburao married with two women viz. Ratnabai and the petitioner. The petitioner's marriage with Baburao being contrary to the provisions of the Hindu Marriage Act, 1955, the same is not legal, and therefore, the petitioner is not entitled for the family pension after the death of Baburao.

7. Having considered the rival submissions and having gone through the relevant documents on record, we find merit in the petition. Reading of the provisions of Rule 116(6)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 makes it clear that more than one widow is entitled for the family pension. However, the petitioner's claim was rejected relying upon the Circular dated 03.11.2008 issued by the Finance Department. Under the said circular, in order to be eligible for the family pension, all

widows must have got legally married with the concerned Government servant.

8. It is the petitioner's case that there was a customary divorce between Baburao and Ratnabai on 20.05.1982. This fact is not disputed by the learned AGP. Besides, this fact is supported by the document at Exhibit 4 annexed with the affidavit-in-reply of the Account Officer in the office of Deputy Director of Education, Kolhapur Region, Kolhapur. The said document is the acknowledgment by Ratnabai to the effect that she has taken customary divorce from Baburao.

9. It is pertinent to note that after the marriage of deceased Baburao with the petitioner, deceased Baburao entered the name of petitioner in the service record as his nominee for family pension benefit and petitioner remained to be nominee in the service record till 06.02.1992. The nomination of the petitioner in service record was made at the instance of deceased Baburao only. This fact supports the petitioner's case that she got married with Baburao.

10. The petitioner is denied family pension only on the ground that there were two wives of Baburao and petitioner did not submit any document demonstrating that she has got married with Baburao. In this regard, it is pertinent to note that the petitioner has annexed the marriage certificate at Exhibit B, which shows that she had got married with deceased Baburao on 20.05.1983.

11. In the above peculiar facts especially when Ratnabai, the first wife of

Baburao, has expired on 15.10.2015 i.e. during the life time of Baburao, we are of the opinion that petitioner's claim could not have been refused by the respondents. In our considered opinion, the petitioner is the only alive widow of deceased Baburao, and therefore, she is entitled for the family pension.

12. In the light of above, we dispose of the petition by passing following order:-

ORDER

(i) The impugned order-cum-letter of rejection issued by respondent No.2 dated 25.09.2018 is hereby quashed and set aside.

(ii) We direct respondent Nos.2 to 5 to grant/pay family pension to the petitioner viz. Smt. Shanta Baburao Takkekar, she being widow of deceased Baburao.

(iii) Necessary procedure for giving the family pension to the petitioner shall be concluded within a period of eight weeks from the receipt of this order.

(iv) Petitioner is directed to cooperate with Respondent Nos.2 to 5 in the purpose of fixation of family pension.

[SURENDRA P. TAVADE, J.]

[RANJIT MORE, J.]