

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4734 OF 2021

NISHA KISHOR RAJPUT
VERSUS
THE UNION OF INDIA AND OTHERS

...
Advocate for Petitioner : Mr. Rajendra S. Kasar
AGP for Respondent Nos. 1 to 4 : Mr. A.B. Dhongade

...
CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.

DATE : 8th DECEMBER, 2021

PER COURT :-

1. The petitioner claims to be the divorced daughter of Kishor Rajput. She claims family pension. The claim of the petitioner for family pension is rejected. As the decree of divorce was not passed during the life time of one of the parents, she is not entitled for family pension. Learned counsel for the petitioner submits that petitioner was living with mother and father since the year 2012. The marriage of the petitioner was solemnized with one Sachin Walmiki on 2nd January, 2011. Husband of the petitioner was not interested in continuing the marital relationship, as such, he drove the petitioner out of his house. On 05-12-2012 with consent of the parties in presence of the community members, customary divorce under notarized deed was executed. The mother of the petitioner died on 22-04-2015. On 18-12-2012 father of the petitioner also executed the affidavit before the Special Executive Magistrate, Ahmednagar that petitioner is his elder daughter and she is divorcee from 05-12-2012, she is residing with him, so also, fully dependent upon him. The father of petitioner died on 23-03-2019. According to learned counsel, subsequently even decree for divorce is passed on 11-02-2020, by the Civil Judge, Senior Division, he relies

upon the judgment in the case of *Union of India and another Versus Smt. Usha Eknath Patil*, reported in *2018(3) All M.R. 6.*

2. Mr. Dhongde, learned Advocate for the respondents submits that the married daughter to be entitled for family pension, should have filed proceeding for divorce during life time of the employee or his or her spouse. Reference is made to the office memorandum dated 19-07-2017. In the present case, divorce took place after the death of father, who was entitled for pension. In view of that, respondents have not committed any illegality in issuing the impugned communication. The decree for divorce is obtained only on 11-02-2020 i.e. after the death of the father of the petitioner.

3. We have considered the submissions. The rule governing the grant of family pensions is part of beneficial and social welfare piece of legislation. The same will have to be construed pragmatically. The record shows that the petitioner was residing with father since 05-12-2012 and there was document also executed of customary divorce.

4. Of course, the petitioner cannot prove the customary divorce. The customary divorce cannot be proved without evidence. In writ jurisdiction, no finding can be given of customary divorce on the notarized documents. However, the circumstances and facts on record are sufficient to demonstrate that at least from 05-12-2012 the petitioner was residing with the father and the petitioner was deserted by her husband. She was completely dependent upon her parents. The decree of divorce passed by the Civil Judge, Senior Division also records the findings that the petitioner was driven away from her home and in the presence of members of the community, the document dated 05-12-2012 was executed before Notary thereby putting an end to the relationship.

5. Though legally, it cannot be said that relationship was put to an end for particular purpose, but the marital relationship of the petitioner with her husband had come to an end and since 2012, the petitioner is residing with her parents. Other sister of the petitioner is married, according to the petitioner. The learned Civil Judge, Senior Division at the time of granting decree of divorce has recorded the findings and came to the conclusion that at least since 05-12-2012, the petitioner was residing separate from her husband and that she was deserted by her husband. In the facts and circumstances of the case, the judgment delivered by the Division Bench of this Court in the case of *Union of India (Supra)* is clearly applicable to the present case.

6. In the light of the above, the impugned communication is quashed and set aside.

7. The respondents shall consider the proposal of the petitioner for granting family pension on account of death of father viz Kishor Rajput and shall not reject the claim of family pension on the ground, on which the communication was issued and the same would be considered preferably within a period of six months from today.

8. Writ petition accordingly allowed. No costs.

(S.G. DIGE)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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