

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.79 OF 2019

Smt. Seema w/o Panditrao Chincholkar
Age 37 years, Occu. Household
R/o Naik Nagar, Nanded,
At present C/o House of Dattarao
Ganpatrao Shete, Kinwat Road, Bhokar,
Tq. Bhokar, District Nanded.

...PETITIONER
(Original Applicant)

VERSUS

1. Superintendent of Police,
Office of District Superintendent
of Police, Nanded.
2. Jyoti w/o Panditrao Chincholkar,
Age major, Occu. Household
3. Sudarshan s/o Panditrao Chincholkar,
Age 30 years, Occu. Service.
4. Sneha d/o Panditrao Chincholkar,
Age 26 years, Occu. Education
5. Shweta d/o Panditrao Chincholkar,
age 24 years, Occu. Nil
6. Annapurnabai w/o Laxmanrao Chincholkar,
Age 70 years, Occu. Household

Nos.2 to 6 all R/o Sharadnagar,
Nanded

...RESPONDENTS
(Original Respondents)

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Shri A.D. Ostwal, Advocate holding for
Shri K.D. Jadhav, Advocate for applicant
Shri Y.G. Gujarathi, A.G.P. for respondent No.1.
Shri S.N. Janakwade, Advocate for respondents No.2 to 5

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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 2nd March, 2021

Date of pronouncing judgment : 6th April, 2021

J U D G M E N T :

The challenge in this revision application is to the common judgment and order dated 9/10/2015, passed by the Court of Civil Judge, Senior Division in Misc. Application Requiring Judicial Inquiry (MARJI) No.72/2014 (Old MARJI No.243/2008, MARJI No.13/2010 and MARJI No.199/2009) and confirmed by the judgment and order dated 15/3/2019, passed by Additional District Judge-2, Nanded in Regular Civil Appeal No.147/2015.

By the impugned judgments and orders, the claim of the applicant for grant of succession certificate to receive pensionary benefits came to be negated. The applicant is, therefore, before this Court.

FACTS :-

2. Panditrao (deceased) was in the service of Police Department. He died on 29/9/2008. Deceased Panditrao had married Jyoti (respondent No.2) in the year 1989.

Respondents No.3 to 5 are the children born of the said wedlock. Respondent No.6 is the mother of the deceased Panditrao. During the subsistence of his first marriage with Jyoti, Panditrao married the applicant on 17/12/2003. A daughter, Padmashree was born of the said marriage. On the demise of Panditrao, the applicant and her daughter Padmashree on one hand and the respondents No.2 to 6 on the other filed aforesaid two applications for grant of succession certificate to receive retiral benefits, inclusive of pension. Both the applications were heard together and decided by common judgment and order dated 9/10/2015. The learned Civil Judge, Senior Division granted succession certificate in favour of respondents No.2 to 6 and Padmashree (applicant No.2 in MARJI No.72/2014) to receive amount of gratuity, provident fund and other service benefits. The respondent No.2 Jyoti has been held to be entitled to receive pensionary benefits to the exclusion of all other claimants. In view of learned Judge, the applicant – Seema married the deceased during subsistence of his marriage with respondent No.2 Jyoti. The applicant did not have a status of a wife of Panditrao and that of his widow on his demise and, therefore, not entitled to succeed any of the estate/ property including retiral benefits of the deceased. The appellate Court has

confirmed the said finding.

3. Shri A.D. Ostwal, learned counsel appearing for the applicant would submit that, with the consent of respondent No.2 Jyoti the applicant had married Panditrao. Since the day of her marriage till Panditrao breathed his last, the applicant had all along been residing with him. A daughter – Padmashree was born of the said marriage. In view of Rule 116(6) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short the Pension Rules), in case of there being more than one widow of the deceased employee, all such widows would be entitled to share pension equally. In support of his contentions, the learned counsel has relied on the following authorities :-

- (1) Kantabai w/o Dhulaji Shriram & ors. Vs. Hausabai Dhulaji Shriram & ors. [2014 (7) ALL MR 299]
- (2) Smt. Laxmibai wd/o Shripat Kumare Vs. Chief Executive Officer, Nagpur & ors. [2004 (4) ALL MR 621]
- (3) Tulsa Devi Nirola & ors. Vs. Radha Nirola & ors. [2020 SCC Online SC 283 – Civil Appeal no.1835 of 2020]
- (4) Vidhyadhari & ors. Vs. Sukhranabai & ors. [(2008) 2 SCC 238]
- (5) Nikita Sutar Minor Vs. State of Assam & ors. [2020 SCC Online Gau. 4074 – W.P. (C) No.6536/2017]

- (6) Rameshwari Devi Vs. State of Bihar & ors.
[(2000) 2 SCC 431]
- (7) Kamalbai w/o Venkatrao Nipanikar Vs. State of Maharashtra
& ors. [2019 (3) Mh.L.J. 921]

4. The learned counsel would further submit that, clause 2 and clause 4 of the impugned order dated 9/10/2015 are inconsistent with each other so far as regards entitlement to receive amount of pension is concerned. He would further submit that, in case of there being no widow surviving, the children of the deceased would be entitled to receive family pension. The learned counsel meant to say that, in case of certain contingencies, Padmashree, the daughter of the applicant may become entitled to receive the family pension. The learned counsel, therefore, urged for grant of the application.

5. Shri Janakwade, learned counsel appearing for respondents No.2 to 5 would, on the other hand, submit that, the Full Bench of this Court had an occasion to interpret Rule 116 of the Pension Rules in case of Kamalbai Nipanikar (supra). It has been held therein that :

“26. In cases to which Maharashtra Civil Services (Pension) Rules, 1982 apply, the

family pension can be claimed by a widow, who was legally wedded wife of the deceased employee. Second wife, if not a legally wedded wife would not be entitled for family pension and if the second wife is legally wedded wife, then should be entitled for the family pension.”

The learned counsel would, therefore, urge for rejection of the revision application.

6. Rule 116(6) of the Maharashtra Civil Services (Pension) Rules, 1982 reads as under :-

“116. (6) (a) (i) Where the Family Pension is payable to more widows than one, the Family Pension shall be paid to the widows in equal shares;

(ii) on the death of a widow, her share of the Family Pension shall become payable to her eligible child :

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full to her.

(b) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of Family Pension, which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner.

Provided that on the share or shares or of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and/or to other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.

(c) *Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from a divorced wife or wives, the eligible child or children shall be entitled to the share of Family Pension which the mother would have received at the time of the death of the Government servant or pensioner had she not been so divorced.*

Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and/or to other child or children otherwise eligible, in equal shares, or if there is only one widow or child in full, to such widow or child.

(d)

Provided that”

7. Rule 116(6)(a)(i) was a subject of interpretation by a Full Bench in case of Kamalbai (supra), wherein it has been held :-

“26. In cases to which Maharashtra Civil Services (Pension) Rules, 1982 apply, the family pension can be claimed by a widow, who was legally wedded wife of the deceased employee. Second wife, if not a legally wedded wife would not be entitled for family pension and if the second wife is legally wedded wife, then should be entitled for the family pension.”

8. The learned counsel for the applicant would not, therefore, be benefited by the authorities referred in paragraph No.3 hereinabove :-

9. In the judgment of Kantabai (supra), it has been held that, even a second wife (widow whose marriage was void in view of Section 5 of the Hindu Marriage Act) would be entitled for equal share of family pension along with the first wife (widow) in view of Rule 116(1)(a)(i) of the Pension Rules, 1982.

In view in Kamalbai's case (supra), the judgment in case of Kantabai would no longer hold the field.

10. The Division Bench of this Court in Shakuntala's case (supra), held the second wife of the deceased to be entitled to family pension solely relying on the judgment in case of Kantabai. The applicant would also, therefore, not be

benefited by the judgment in Shakuntala's case in view of there being the Full Bench judgment.

11. So far as regards facts of Laxmibai's case (supra) are concerned, it is to be stated that, the Zilla Parishad, Nagpur had been paying the family pension to both the widows of the deceased employee. The question before the Court was whether the first wife (widow) would be entitled to receive the family pension in its entirety on the demise of the co-widow.

The facts of Tulsa Devi Nirola's case (supra) were altogether different. Rule 40(6) of Sikkim Services (Pension) Rules was subject of interpretation in the said case. The Apex Court observed that, the Pension Rules recognize the nomination of the wife or wives for the purpose of family pension. In paragraph No.7 of the judgment, it was observed that, no material has been placed by the appellant that the second marriage was solemnized under 1963 Rules and, therefore, the Court had no hesitation in holding that it does not invalidate the second marriage of the deceased with the respondent No.1 therein. The deceased had executed a settlement deed on 30/6/2008 to ensure that, in future the dispute do not arise between his two wives and their progeny.

It is reiterated that, in the facts and circumstances of the said case, and on the interpretation of the relevant Rules of Sikkim Civil Services (Pension) Rules, the second wife therein was held to be entitled to have share in the family pension.

The facts of Vidhyadhari's case (supra) would indicate that, Vidhyadhari being second wife of the deceased, was only held to be entitled to receive family pension in view of being nominated to receive the same. The Apex Court has held therein that, Vidhyadhari would receive the pension to the extent of one fifth share in trust for the first wife of the deceased who had no issue. Vidhyadhari had four children born by the deceased. The facts would further indicate that, Vidhyadhari was to receive four fifth share in the pension amount for and on behalf of her minor children and not for herself. The Apex Court has rendered the said judgment with a view to balance the equity. It has been held :-

“To balance the equities we would, therefore, choose to grant succession certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. It should not be understood by the above that we are, in any way, deciding

the status of Vidhyadhari finally. She may still prosecute her own remedies for establishing her own status independently of these proceedings.”

12. So far as regards judgment of the Apex Court in case of Rameshwari Devi (supra) is concerned, it has to be observed that, the decision of the High Court holding that the second widow would not be entitled to receive family pension has been upheld. The minor children of the second marriage were, however, held to be entitled to receive family pension. The Bihar Civil Services (Conduct) Rules were considered by the Apex Court. The State Government (Bihar) was authorised to hold a proper and bonafide inquiry for determining entitlement of rival claims to family pension. Doors of Civil Court are always open to any party after and even before a decision is reached by the Government as to who is entitled to pensionary benefits. The State Government had held an enquiry and on the basis thereof, the judgment impugned therein was passed. The second wife (widow) had not been held to be entitled to receive family pension.

13. It is reiterated that, the marriage of the applicant with the deceased Panditrao was void in view of Section 5 of the Hindu Marriage Act. She, therefore, would not have a

status of a wife (widow) of deceased Panditrao. In view of the judgment of the Full Bench in case of Kamalbai, the applicant would not be entitled to have a share in the family pension. Both the courts below have rightly negated the claim of the applicant. No interference is called for with the impugned orders. The Civil Revision Application thus fails. The same is, therefore, dismissed.

**(R. G. AVACHAT)
JUDGE**

fmp/-