

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6812 OF 2020

Maroti s/o Hariba Gotavale,
Age-61 years, Occu-Retired,
R/o 'Mauli Krupa Sadan', Deepjyoti Nagar,
Latur, Tal. And Dist.Latur

– PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-32.
2. The Accountant General (Accounts and
Entitlement)-II,
Maharashtra, Near Ravi Bhavan, Nagpur,
3. The Education Officer (Secondary),
Zilla Parishad, Latur,
4. The Head Master,
Tirupati Vidyalaya, Pangaon,
Tal.Renapur, Dist.Latur

– RESPONDENTS

Mr.V.D.Gunale, Advocate for the petitioner.
Mr.P.S.Patil, AGP for respondent Nos. 1 to 3.
Mr.A.N.Sabnis, Advocate for respondent No.4.

(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)

DATE : SEPTEMBER 22, 2021

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner, a retired teacher, has put forth prayer clause 'C' as under :-

“By writ of mandamus or any other writ, order or directions, the respondent Nos. 1 and 2 be directed to sanction and grant the pension to the petitioner and pay the petitioner his regular monthly pension with other consequential pensionary benefits including the arrears since his date of retirement i.e. 31.08.2017 forthwith and for that purpose necessary orders be passed”.

3. We have considered the strenuous submissions of the learned Advocate of the appearing parties and have gone through the petition paper book and the affidavits in reply, with their assistance. Considering the short issue raised before us, we are not required to advert to their entire submissions. Suffice it to say, that the petitioner has peacefully retired from employment on 30/08/2017. He is alleged to have nominated his purported second wife Kranti under Rule 115 of the Maharashtra Civil Services (Pension) Rules, 1982. As an alternative to

Smt.Kranti, he has also nominated his daughter Ms.Gitanjali, a son Mr.Dnyaneshwar and another daughter Ms.Pooja.

4. We have perused the communication issued by respondent No.2 to respondent No.3, which indicates that the gratuity amount of the petitioner is quantified at Rs.2,60,803/-, his provisional pension at Rs.10,645/- per month and the commutation of a portion of pension at Rs.4,27,725/-. A remark in English is mentioned in the said communication as ;

“STATUS REGARDING MARRIAGE STATUS OF FIRST WIFE SMT.KUSUM WHETHER DIVORCED/JUDICIALLY SEPARATED MAY BE FORWARDED. ALSO DATE OF MARRIAGE WITH 2ND WIFE MAY BE FORWARDED WITH DOCUMENTARY EVIDENCE.”

5. The learned Advocate for the petitioner submits that he has received the gratuity amount and the provisional pension upto February 2020. From March 2020, the pension has been stopped. So also, the commutation of pension amount is not paid to him.

6. The learned AGP points out from paragraph Nos. 2, 3 and 4 of the affidavit in reply filed by Shri Rajshekhar Swami Reddy, Assistant

Accounts Officer, Court Case Cell from the office of AG (A & E) II, Maharashtra, Nagpur, that provisional pension is granted till finalization of judicial enquiry, which is said to be with regard to whether Smt.Kranti or Smt.Kusum, is the legally wedded wife of the petitioner.

7. The learned Full Bench of this Court (to which one of us R.V.Ghuge, J. is a party) has held in the matter of **Kamalbai w/o Venkatrao Nipanikar Vs. State of Maharashtra and others [2019(3) Mh.L.J.921]** that a widow would always mean a legally wedded wife and during the subsistence of the first marriage, no other wife could be a legally wedded wife. The issue in the said case was as regards apportionment of the pension, due to the death of the retired employee, to his widow. He had left behind two wives. Under Rule 115(1)(i) of the M.C.S.(Pension) Rules, 1982, no person other than the member of the family can be nominated by the employee to be the beneficiary of pension after his death.

8. In the case before us, the petitioner is alive and he would be entitled to pension as well as the commutation amount. The issue as to

whether Smt.Kusum or Smt.Kranti would be entitled to pension, would not arise during the life time of the petitioner. As such, respondent No.2 need not be involved in this issue as there is no need to consider this aspect at this stage. We have not been pointed out any provision under the Pension Rules that the pension cannot be paid to the employee unless the issue of his nominee is settled.

9. In view of the above, this petition is allowed. Respondent No.2 shall ensure that the final pension amount payable to the petitioner, from the date of his superannuation, onwards, is settled within 4 weeks from today and all arrears of pension amount shall be paid to him on or before 30/11/2021. The amount towards commutation of pension of Rs.4,27,725/- shall be paid to the petitioner on or before 25/10/2021, if not already paid.

10. In so far as interest on the unpaid amounts is concerned, the pendency of the Special Civil Suit No.10/2017 filed by Smt.Kusum Vs. the petitioner and Smt.Kranti, cannot be an impediment for payment of such dues in the absence of any direction of a Court restraining such payment. As such, respondent No.2 shall calculate the rate of interest

which is normally paid to such employees, on account of delayed payment, as there was no injunctory order of a Court and the said amount would be paid on or before 30/11/2020.

11. It is made clear that this Court has not expressed any view as regards the litigation between the two ladies claiming to be the legally wedded wife of the petitioner.

12. Rule is made absolute in the above terms.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)