

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 52 OF 2020

1. Sunanda w/o Pandurang Wagh
Age 56 years Occ. Household,
R/o. Ambejawalga,
Taluka and district Osmanabad

2. Varsha d/o Rajendra Kadam
age 40 years, Occ. Household,
R/o. Nari, Taluka Barshi,
District Solapur

... PETITIONERS
(Ori. Non-applicants)

VERSUS

Vidya Pandurang Wagh
Age 60 years, Occ. Household,
R/o. Umbre Kotha, behind D.Pharmacy
College, Osmanabad,
Taluka and Dist. Osmanabad

... RESPONDENT
(Ori. applicant)

....

Mr. Ramesh V. Naiknavare, Advocate for petitioners
Mr. M. B. Kolpe, Advocate for respondent

....

CORAM : R. G. AVACHAT, J.

JUDGMENT RESERVED ON : 11th JANUARY, 2021
JUDGMENT PRONOUNCED ON : 19th JANUARY, 2021

JUDGMENT :-

. Rule. Rule made returnable forthwith and heard finally
with consent of learned counsel for the parties.

2. Perused the impugned judgment and order and the relevant documents.

A short question that falls for consideration in this revision application is, as to whether the respondent who claims to be the widow of late Pandurang Wagh, is entitled to receive family pension along with petitioner No.1 – the widow of Pandurang.

3. Facts:-

Deceased Pandurang was serving as a teacher with Saraswati Vidyalaya, Nari, taluka Barshi. He passed away on 09.01.2013. From the pleadings, it appears that the respondent – Vidya, claims to have been married with Pandurang. According to her, it was an inter-caste love marriage. Since the parents of late Pandurang did not approve the said marriage, she separated from him and married with one Sunil Kulkarni. It is further her case that petitioner No.1, thereafter, married late Pandurang. Due to differences between Pandurang and petitioner No.1, both of them separated from each other. Respondent No.1, thereafter, obtained decree of dissolution of marriage by divorcing her husband Sunil Kulkarni and started residing with Pandurang as his wife.

Thus, it appears that respondent No.1 had come with a case of having been a legally wedded wife of late Pandurang. After demise of Pandurang, a question arose as to succession to his service benefits and property, as well. The respondent No.1, therefore, preferred application (Civil M. A. No.61/2013) for succession certificate before the Court of Joint Civil Judge, Senior Division, Osmanabad. After having been unsuccessful in the said application, she preferred appeal (R.C.A. No.36/2017) before the District Judge, at Osmanabad. The learned District Judge-1, Osmanabad, vide his judgment and order dated 09.04.2019, allowed the said appeal in terms of the following order:

- “1 The appeal is allowed.*
- 2 An impugned judgment and order in Civil M.A. no.61/2013 passed on 17.01.2017 by Joint Civil Judge, Senior Division Osmanabad is quashed and set aside.*
- 3 Civil Misc. Application no.61/2013 is allowed.*
- 4 Issue succession certificate in the name of appellant/applicant Vidya Pandurang Wagh and respondents.*
- 5 The succession certificate of the appellant/applicant is restricted to the Family Pension of deceased Pandurang Dasu Wagh only.*
- 6 The applicant Vidya Pandurang Wagh and respondent no.1 Sunanda Pandurang Wagh are entitled to equal share of Family Pension of deceased Pandurang Dasu Wagh.*

- 7 *The parties shall bear their own costs.*
8. *Decree be drawn accordingly.”*

The petitioners – original respondents in R.C.A. No.36/2017, are therefore before this Court in this revision application.

4. The respondent No.1 gave her oral evidence and relied on documents including a will allegedly executed by late Pandurang in her favour. Perusal of evidence in the matter discloses that there was no evidence in support of the respondent's claim to have been the first wife of late Pandurang. On the contrary, she has in no uncertain terms admitted that after having obtained a decree of divorce against her husband Sunil Kulkarni, she started residing with late Pandurang as his wife. The petitioner No.1 had already married Pandurang. Marital relationships between petitioner No.1 and late Pandurang continued till Pandurang breathed his last. Petitioner No.2 is the daughter born out of the said wedlock. As such, petitioner No.1 was legally wedded wife of late Pandurang and on his demise, being his widow, became entitle to succeed his estate.

5. Learned District Judge-1, Osmanabad, relying on the provisions of Rule 116(6)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982, held that the petitioner No.1 and the respondent being the co-widows of late Pandurang, are entitled to receive family pension in equal share. In support of his observations, the learned District Judge relied on a judgment in the case of ***Kantabai and others vs. Hausabai Dhulaji Shriram and ors*** reported in ***2015(3) Mh.L.J. 883***.

6. In my view, the learned Judge misinterpreted Rule 116(6)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982. The issue is no longer *res integra*. Full Bench of this Court in Writ Petition No.9933 of 2016 and connected writ petitions, decided on 31.01.2019, interpreted the said rules and held thus:

“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.”

7. Since the respondent – Vidya was not legally wedded wife of late Pandurang, she is not entitled to claim/receive family pension. Interference, therefore, is called for with the impugned

order dated 09.04.2019 passed by the learned District Judge-1, Osmanabad in R.C.A. No.36/2017. The impugned order, is therefore, set aside. The petitioner No.1 being the widow of late Pandurang, is entitled to receive family pension. The Civil Revision Application, thus, stands disposed of. Rule is made absolute, accordingly.

8. In view of disposal of Civil Revision Application, Civil Application No.8150 of 2020 also stands disposed of.

[R. G. AVACHAT, J.]

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