

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

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WRIT PETITION NO. 303 OF 2019

Harsha V. Kale

..... Petitioner

VERSUS

Union of India & Ors.

..... Respondents

Mr. M.V.Thorat, a/w. Mr.Amar Bodke, i/b. Ms.P.V.Thorat for the
Petitioner.

Mr.D.P.Singh for the Respondent no.1.

Mr.R.R.Shetty, a/w. Mr.M.S.Bhardwaj for the Respondent no.2.

Mr.Prosper D'souza for the Respondent no.3.

**CORAM: R. D. DHANUKA AND
ABHAY AHUJA, JJ.**

DATE : 13th SEPTEMBER, 2021

P.C:-

Rule. Learned counsel for the respondent nos. 1, 2 and 3
respectively waive service. By consent of parties, the writ petition is
heard finally.

2. By this writ petition filed under Article 226 of the Constitution
of India, the petitioner seeks an order and direction against the
respondent no.2 to forthwith consider the claim of the petitioner as per

law and the rules applicable to the respondent no.2 for compassionate appointment. The petitioner also prays for quashing and setting aside letter dated 26th May, 2017 and an order restraining the respondent no.2 from disbursing the pension amount into the account of the respondent no.3 and further seeks order and direction to disburse the monthly pension amount into the account of the petitioner.

3. The petitioner is one of the daughter of Mr.Vishnu Kale who was an employee of the respondent no.2. The said Mr.Vishnu Kale was married to Ms.Sangita Kale who expired sometime prior to 2011. It is the case of the respondent no.3 that she got married to the father of the petitioner on 9th November, 2013. Out of the said first wedlock between Mr.Vishnu Kale and Ms.Sangita Kale, there are two daughters and one son. The mother of the said Mr.Vishnu Kale, Mrs.Jalsabai Kale is alive.

4. Insofar as the claim for compassionate appointment made by the petitioner is concerned, the respondent no.2 in its affidavit in reply dated 22nd February, 2018 has shown its readiness and willingness to consider the claim of the petitioner amongst the other eligible persons

seeking compassionate appointment. It is the case of the respondent no.2 that the second marriage of Mrs.Kaushalya Vishnu Kale (respondent no.3) is not dissolved officially by the court of law. It is stated in the affidavit that at present there are four posts, one for the UDC, one for the LDC and two of drivers vacant but that compassionate appointment can only be made in 5% of the vacant post. It is stated that the question of filling up any of these four available posts by way of compassionate appointment does not arise.

5. Learned counsel for the respondent no.2 however states that as and when any vacancy arises, according to the service rules, the claim of the petitioner would be considered on its own merits and in accordance with law. Statement is accepted.

6. Mr. Thorat, learned counsel for the petitioner has no objection if the claim of the petitioner is considered on its own merits as and when the vacancy arises as stated in the said affidavit filed by the respondent no.2 and as per the statement made by the learned counsel for the respondent no.2 across the bar. Statement is accepted.

7. Insofar as the claim for pension made by the petitioner is

concerned, it appears that prior to February 2018, the respondent no.2 had released certain pension amount in favour of the respondent no.3 and the legal heirs of the said deceased Mr.Vishnu Kale who was the employee of the respondent no.2.

8. Insofar as respondent no.3 is concerned, the petitioner has disputed the alleged divorce of the respondent no.3 with Mr.Sunil Kamble. In support of this stand of the petitioner, the petitioner has placed reliance on a complaint filed by the respondent no.3 under section 498A against the said Mr.Sunil Kamble and others on 13th September, 2006 alleging that offence under section 498A was committed by her husband Mr.Sunil Kamble and others.

9. Our attention is invited to the affidavit dated 11th August, 2017 filed by Mr.Sunil Sitaram Kamble stating that the respondent no.3 and continued to stay in his house for a period of six months only. The said Mr.Sunil Sitaram Kamble has admitted the existence of the marriage between him and the respondent no.3 on the date of the said affidavit.

10. We repeatedly called upon the learned counsel for the respondent no.3 to produce a copy of the divorce decree between his client and the

said Mr.Sunil Sitaram Kamble prior to the marriage of the respondent no.3 with Mr.Vishnu Kale on 9th November, 2013. Learned counsel is unable to produce any such divorce decree between the respondent no.3 and the said Mr.Sunil Kamble.

11. In our view, even if the respondent no.3 is able to prove that she was a divorcee on the date of her marriage with the said Mr.Vishnu Kale, she will not be entitled to the pension amount more than 1/5th i.e. 20% of the pension amount due and payable to the legal heirs of the said Mr.Vishnu Kale. In past the respondent no.2 has paid certain amount of pension till February 2018 out of which some amount is also received by the respondent no.3.

12. Mr.Thorat, learned counsel for the petitioner states that the petitioner as well as other two daughters and a son of the said Mr.Vishnu Kale have no objection if the pension amount is paid by the respondent no.2 to the mother of the said Mr.Vishnu Kale exclusively. Learned counsel for the respondent no.2 however states that his client has no objection if the amount is paid to these legal heirs viz. the petitioner, two daughters and one son and the mother of the said

Mr.Vishnu Kale as per rules and in accordance with the Succession Law to the petitioner and other legal heirs of the said Mr.Vishnu Kale. Statement is accepted.

13. Since the respondent no.3 claims to be the widow of the said Mr.Vishnu Kale and claims to be divorcee as on the date of her marriage with Mr.Vishnu Kale, we are of the view that for the time being insofar her alleged share of 20% in pension as widow of the said Mr.Vishnu Kale is concerned, shall be earmarked separately and shall be deposited in this Court.

14. We accordingly direct the respondent no.2 to pay the arrears of pension since February 2018 to the extent of 80% thereof to the petitioner and other two daughters and one son and the mother of the said deceased on their filing appropriate forms with the respondent no.2 to be filed within two weeks from today. Upon the legal heirs filing of such forms, the respondent no.2 to release the amount in favour of the legal heirs of the said deceased within two weeks thereafter including all the arrears from February 2018 onwards as per law.

15. Insofar as the balance 20% amount towards pension is concerned, such amount shall be deposited by the respondent no.2 in this Court within four weeks from today. The Registrar of this Court shall invest the said amount in the fixed deposit for a period of three months in any of the nationalized bank within one week from the date of such deposit to be made by the respondent no.2.

16. The respondent no.3 is granted liberty to file an interim application for seeking liberty to withdraw the said 20% amount upon producing the proof of her divorce decree showing the divorce prior to the date of her marriage with the said Mr.Vishnu Kale i.e. prior to 9th November, 2013. A copy of such interim application shall be served upon the petitioner's advocate as well as upon the respondent no.2's advocate.

17. This Court will pass the appropriate order if any such interim application is filed after hearing the parties concerned for granting liberty to withdraw such 20% amount. It is made clear that if no such application is made by the respondent no.3 within eight weeks from today, the petitioner and other legal heirs of the said deceased

Mr.Vishnu Kale will have liberty to apply for withdrawal of the said 20% amount. A copy of such application in that event shall be served upon the learned counsel for the respondent no.3 as well as the respondent no.2. This Court will accordingly decide in that application whether the petitioner and the other legal heirs shall be allowed to withdraw the said 20% amount and if so, on what terms.

18. Insofar as future pension is concerned, the same also shall be distributed amongst the legal heirs in accordance with law and as per Service Rules.

19. Writ petition is disposed of in the aforesaid terms. No order as to costs. Rule is made absolute accordingly.

20. The parties to act on the authenticated copy of this order.

[ABHAY AHUJA, J.]

[R.D.DHANUKA, J.]