

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

WRIT PETITION NO.8477 OF 2019

Padminbai Wd/o Sheshrao Bhand,
Age-77 years, Occu:at present Nil,
R/o-Yeloor, Post-Gonar,
Taluka-Kandhar, District-Nanded

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32,
- 2) The Accountant General (A & E)-II,
Maharashtra, Nagpur-440 001,
- 3) The Education Officer (Primary),
Zilla Parishad, Nanded,
- 4) Block Education Officer,
Panchayat Samiti, Kandhar,
Taluka-Kandhar, District-Nanded,
- 5) Sow. Janabai W/o Tanaji Bhalerao,
Age-40 years, Occu:Household,
R/o-Pethwadaj, Taluka-Kandhar,
District-Nanded,
- 6) Madalsa W/o Tukaram Bhand,
Age-30 years, Occu:Household,
R/o-Pethwadaj, Taluka-Kandhar,
District-Nanded.

...RESPONDENTS

...
Mr.V.S. Panpatte Advocate for Petitioner.
Mrs.Vaishali Patil-Jadhav, A.G.P. for Respondent Nos.1 and 2.
Mr.S.B. Pulkundwar Advocate for Respondent Nos.3 and 4.
None present for Respondent Nos.5 and 6 though served.
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**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE : 17th OCTOBER, 2022

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule returnable forthwith. With the consent of the parties, Petition is taken up for final disposal at the admission stage.

2. The petitioner, who is 77 years old lady, appears to have constrained to file present Writ Petition for issuing writ of mandamus or any other appropriate writ against respondent Nos.2 and 3 to sanction the family pension to her after the demise of her husband Sheshrao Ganpati Bhand, who was primary school teacher in Zilla Parishad, Nanded.

3. The brief facts giving rise to the Petition are that the petitioner is the legally wedded wife of deceased Sheshrao

Ganpatrao Bhand. Their marriage took place in the year 1963 and she has son by name Vilas from her husband. The petitioner is blind by birth. Her husband was assistant teacher in primary school run by Zilla Parishad, Nanded and his services were transferable. According to the petitioner, when Sheshrao's posting was at Pethwadaj, Taluka-Kandhar, District-Nanded, she was residing with him, however when he was transferred to Malegaon, he took sister-in-law of his brother along with him and developed intimacy with her i.e. after about 20 years of the marriage and thereafter Sheshrao neglected the petitioner and her son. He even did not provide maintenance and therefore, the petitioner was required to approach the Court of Judicial Magistrate First Class, Kandhar under Section 125 of the Code of Criminal Procedure for claiming maintenance from her husband. Misc. Criminal Application No.10 of 1984 came to be allowed by the learned Judicial Magistrate First Class, Kandhar on 3rd April 1985 and her husband was directed to pay maintenance at the rate of Rs.300/- per month. Sheshrao did not join the company of the petitioner nor he had given legal divorce to her. He paid the maintenance for some years till his retirement. However, before his retirement Sheshrao, in his pension papers, had

shown the name of the second wife Kaushalyabai as his nominee. Sheshrao retired from service on superannuation on 23rd April 1998. Pension at the rate of Rs.1150/- per month was sanctioned vide order dated 18th March 1998 by the office of respondent No.2 to Sheshrao, lump-sum D.C.R.G. of Rs.74,760/- and in the event of death of Sheshrao, family pension at the rate of Rs.920/- per month was sanctioned to Kaushalyabai up to 7th April 2005 or for seven years whichever is earlier and thereafter at the rate of Rs.460/- per month with effect from the date of death of pensioner i.e. Sheshrao. Copy of the order dated 18th March 1998 is annexed. Sheshrao expired on 30th April 2015 and his second wife Kaushalyabai also died on 27th August 2015. The petitioner got knowledge about the retirement of her husband, regarding his pension papers and the order and thereafter she approached respondent No.2 for grant of family pension after death of her husband. She made representation on 28th October 2015 to respondent No.3. Respondent No.3 advised her to get heir-ship certificate from the Civil Court. Accordingly the petitioner and her son filed Application bearing Misc. RJE No.332 of 2018 before the Civil Judge, Junior Division, Kandhar. The daughter of deceased Sheshrao from Kaushalyabai and wife of

deceased son Tukaram (begotten to Kaushalyabai from Sheshrao) were made non-applicants and after following the procedure, the learned Joint Civil Judge, Junior Division, Kandhar, by order dated 29th October 2018 declared the applicants and non-applicants therein as the legal heirs of the deceased Sheshsrao and granted heir-ship certificate dated 16th November 2018. Thereafter again on 26th November 2018 the petitioner made representation to respondent No.3 by producing the heir-ship certificate and requesting to sanction family pension to her. Respondent No.2 by letter dated 12th December 2018 directed respondent No.3 to take necessary action in the matter of the entitlement of the petitioner for the family pension. Again the petitioner by representation dated 20th December 2018 requested respondent No.3 to initiate necessary action. Thereafter, respondent No.3 by letter dated 26th December 2018 communicated to respondent No.4 that if the family pension is admissible to the petitioner, necessary documents be sent. There appears to be no response and therefore the petitioner once again made representation on 1st January 2019 to respondent No.4 requesting to take further action. Respondent No.4 by letter dated 15th January 2019, directed headmaster of the concerned

school to inquire in respect of admissibility of the family pension to the petitioner. Headmaster of the Zilla Parishad Central Primary School, Rui, Taluka-Kandhar, after making necessary inquiry, opined that the petitioner is entitled for the family pension of deceased Sheshrao, by letter dated 19th January 2019. Thereafter respondent No.4 submitted proposal, for sanction of family pension to the petitioner, on 29th January 2019 to respondent No.3. Respondent No.3 forwarded the same by letter dated 7th February 2019 to respondent No.2. In the meantime respondent No.2 recalled the original pension payment order of deceased Sheshrao from the treasury office, Nanded and accordingly it was sent by the said office on 16th March 2019. Once again office of respondent No.2 by letter dated 8th May 2019 called further explanation / clarification from respondent No.3, whether divorce has taken place between petitioner and deceased Sheshrao. After detailed representation dated 28th May 2019, the petitioner pointed out to respondent Nos.2 and 3 that there is no legal divorce between her and deceased Sheshrao and that Kaushalyabai was not the legally wedded wife of Sheshrao and this was so held by the Civil Court also. The petitioner claims that as per the provisions of Rule 116

of the Maharashtra Civil Services (Pension) Rules, 1981, she is entitled to receive the family pension, however, the respondents are avoiding it on one or the other pretext and therefore she is required to approach this Court.

4. Affidavit-in-reply on behalf of respondent No.2 – Accountant General (A & E)-II, Maharashtra, Nagpur has been filed. It is affirmed by Santosh Moreshwar Khadatkhar, working as Assistant Accounts Officer in the said office. It can be seen from his affidavit-in-reply that earlier the family pension was granted to Smt. Kaushalyabai after death of Sheshrao and petitioner had never objected to the same. However, an inquiry was directed as to whether there was a divorce between the petitioner and deceased Government servant and compliance of the same is still awaited from the pension sanctioning authority. The entire matter is administrative in nature and therefore, respondent No.2 needs to be deleted from the array of the respondents.

5. Interestingly, there is no affidavit-in-reply by respondent Nos.1, 3 and 4. It will not be out of place to mention here that respondent Nos.5 and 6 are the daughter and daughter-in-law of

deceased Sheshrao and deceased Kaushalyabai. They were served twice i.e. at the admission stage as well as for final hearing also, however, they have remained absent.

6. Heard Mr. Panpatte, learned Advocate for the petitioner, Mrs. Vaishali Patil-Jadhav, learned AGP for the State and Mr. Pulkundwar, learned Advocate for respondent Nos.3 and 4.

7. The facts in the case are crystal clear, so also the documents those have been produced. The petitioner had approached the learned Judicial Magistrate First Class, Kandhar by filing Misc. Criminal Application No.10 of 1984 on 10th January 1984 itself for grant of maintenance to her under Section 125 of the Code of Criminal Procedure. That matter was contested by Sheshrao and he had taken up the defence that there is a registered divorce deed between him and the petitioner and therefore, it was claimed that there was legal divorce between him and the petitioner. However, it is to be noted from the points those were framed for determination that upon the proof it was held by the concerned Court that the present petitioner, who was the applicant therein, had proved that she is the legally wedded

wife of Sheshrao. The Judgment would show that the learned Judicial Magistrate First Class had come to the conclusion that the so-called divorce deed has not been proved by the respondent-husband. It was held that she is the legally wedded wife and they have child by name Vilas from the said marriage. Note was also taken about the second marriage of Sheshrao with Kaushalyabai and it has been concluded that Kaushalyabai is the second wife and applicant therein i.e. present petitioner is the first legally wedded wife of Sheshrao. There appears to be no challenge by Sheshrao to this Judgment and it has gone unchallenged on record that Sheshrao was paying maintenance to the petitioner as per the said order for some years till his retirement. When the status of the parties has been affirmed even by the Criminal Court then it will have to be accepted. Further documents would show that the status of the petitioner as the first legally wedded wife of Sheshrao has been affirmed in Misc. RJE No.332 of 2018 by the learned Joint Civil Judge, Junior Division, Kandhar. It was the application filed for grant of heirship certificate under Rule 8(2) of Bombay Regulation Act, 1827. The parties who could have objected to the said application i.e. daughter of Sheshrao and Kaushalyabai as well as the widow of

son of Sheshrao and Kaushalyabai; though served with the notice of the said application, remained absent. Even publication was issued in daily newspaper "Godatir" and objections were invited, however, none appeared. Under such circumstance, that Court also concluded that the petitioner is the legally wedded wife of Sheshrao. When in fact two Courts, one Criminal Court and second Civil Court had given decision in favour of the petitioner then it was absolutely not necessary for the respondents to give directions to make an inquiry as to whether there was legal divorce between petitioner and deceased Sheshrao.

8. Even though it appears that deceased Sheshrao had given the name of his second wife i.e. Kaushalyabai as his nominee for the family pension, yet, legally it was not correct. Merely because the petitioner had not objected, she cannot be deprived of her rights. Further, we will have to take a note of the fact that petitioner is blind by birth and also illiterate. Unless she would have been told about everything, she could not have approached the appropriate authority within time. The position now stands that Sheshrao expired on 30th April 2015 and Kaushalyabai also

expired on 27th August 2015. The petitioner is entitled to receive the family pension and unnecessary delay is causing injustice to the petitioner and therefore, the directions are required to be issued to respondent Nos.2 and 3 for passing an appropriate order for the sanction of family pension to the petitioner.

9. With the above said observations, the Writ Petition stands allowed in terms of prayer clause "(B)". Rule is made absolute, accordingly.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/NOV22