

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 603 OF 2017

Smt. Sushila Ashok Ahire } Petitioner
versus
Central Railway and Anr. } Respondents

Mr. Vijaykumar R. Garad for the petitioner.

Ms. Smita V. Thakur for respondent no. 1.

Mr. K. K. Mishra for respondent no. 2.

**CORAM: DIPANKAR DATTA, CJ &
 M. S. KARNIK, J.**

DATE: JUNE 10, 2022

P.C.:

1. The petitioner, widow of a Central Railway employee, is claiming pensionary benefits by this writ petition filed on 11th February 2017. It is not in dispute that she was the second wife of the employee.

2. Reliance has been placed by Mr. Garad, learned advocate for the petitioner on the decision of a coordinate Bench of this Court reported in 2015 (2) Mh. L. J. 328 (**Union of India and Anr. vs. Jaywantabai wd/o Ramrao Kewoo**) in support of his contention that the petitioner, despite being the second wife, is entitled to equally share the pension with the other widow (first wife) of the employee.

3. Ms. Thakur, learned advocate for the Union of India, has placed before us the decision of another coordinate Bench of

this Court reported in (2022) 3 Mh. L. J. 235 (**Shamal Mahadeo Tate vs. District Collector, Solapur and Ors.**), where the decision in **Jaywantabai** (supra) has been distinguished and it has been ruled that a second wife is not entitled to a share of the retiral benefits.

4. Be that as it may, we are of the opinion that since the deceased employee was in the employment under the Central Railway, the petitioner ought to have approached the Central Administrative Tribunal (hereafter "the Tribunal", for short) at the first instance.

5. Confronted with such a situation, Mr. Garad seeks leave to withdraw this writ petition together with liberty to approach the Tribunal.

6. Accepting such prayer, the writ petition stands dismissed as withdrawn with liberty as prayed for. No costs.

7. Since the writ petition was pending on the file of this Court for more than 5 (five) years, the Tribunal is requested to consider the provisions of section 14 of the Limitation Act, 1963 while it considers the application for condonation of delay, if any, filed by the petitioner.

SALUNKE
J V

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(M. S. KARNIK, J.)

(CHIEF JUSTICE)