IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1671 OF 2020

Ku. Ramabai alias Rambai d/o Bhikam
Gavatiya, aged about 70 years,
occupation : nil, r/o House behind
Gajanan Mandir, Plot No.17/64,
Chandra Nagar, Bhagwan Nagar
Post Office, Nagpur-440027. ... Petitioner

- Versus -

1) Union of India, through
General Manager, Central Railway,
Mumbai CST-400001.

2) Divisional Railway Manager,
Central Railway, Nagpur Division,
Kingsway, Railway Station Road,
Nagpur-440001.

3) Senior Divisional Finance Manager,
D.R.M.'s office, Central Railway,
Nagpur – 440001. ... Respondents

Ms. R.A. Deshpande, Advocate for petitioner.

Shri K.A. Patil, Advocate for respondents.

CORAM : SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.

DATED : OCTOBER 13, 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

Rule. Rule is made returnable forthwith. Heard finally with the consent of Ms. Deshpande, learned Counsel for the petitioner and Shri Patil, learned Counsel for the respondents.

2) The petitioner is desirous of getting family pension under the Family Pension Scheme of the Railways. Her contention is that she being an unmarried daughter of the deceased employee, she is eligible to get the family pension.

3) The facts of the case show that father of the petitioner, who was a Railway employee, retired on attaining the age of superannuation in the year 1982 and died on 14/5/1999. Till his death, the father of the petitioner was receiving pension. After his death, mother of the petitioner started receiving family pension till her death, which occurred on 17/3/2012. Sometime in the year 2015, the petitioner learnt that under the Family Pension Scheme, even unmarried daughters were eligible to receive the family pension and, therefore, she made a representation to the respondents. This representation was rejected by the respondents on 7/7/2016 on the

ground that the name of the petitioner was not included in the Pass Card, which is issued under Pass Rules, 1986 and that her name was also not included in the Medical Card. The concerned Authority, i.e. respondent no.2 considering these facts and other relevant material, recorded a finding that there was suspicion regarding status of the petitioner as unmarried daughter and, therefore, rejected her application for grant of family pension.

4) The order of the respondent no.2 dated 7/7/2016 was challenged by the petitioner before the Central Administrative Tribunal. The Central Administrative Tribunal by its judgment and order dated 22/8/2019 found that there was no sufficient evidence showing that the petitioner was an unmarried daughter and, therefore, refused to interfere with the order of the respondent no.2. It is this order, which has been challenged before this Court by the petitioner.

5) Ms. Deshpande, learned Counsel for the petitioner, submits that even though name of the petitioner has not been mentioned by her father in Pass Card or Medical Card, there is a reference made in the Pass Card showing that deceased father of the

petitioner had an unmarried daughter. According to her, this fact of deceased employee having an unmarried daughter ought to have been read in the light of report of the Inspector dated 25/1/2016 (page 83) and if it had been done by the Authorities below, there would have been an inescapable conclusion that the petitioner was the only unmarried daughter of the deceased employee and, therefore, eligible for getting family pension.

6) According to Shri Patil, learned Counsel for the respondents, the impugned orders are correct and it is only the Civil Court of competent jurisdiction, which can determine the status of the petitioner as unmarried daughter or otherwise.

7) The rival arguments made before us would have to be appreciated in the light of the facts admitted by the petitioner and the other material available on record. So far as the facts relating to non inclusion of the name of the petitioner in the Pass Card or Medical Card is concerned, there is no dispute. Had name of the petitioner been included in the Pass Card or Medical Card, even the Authorities would not have found any difficulty in granting benefit of family pension to the petitioner. The difficulty of the Authorities has

arisen because now the Authorities are not in a position to determine with any certainty as to whether or not the petitioner is an unmarried daughter. The report of the Inspector, of course, would have helped the case of the petitioner had it been given in a categorical and unequivocal manner, but this is not the case here. The report of the Inspector dated 25/1/2016 shows that he has not recorded any finding on the basis of enquiry made by him that the petitioner was indeed an unmarried daughter. All that he has stated in the report is that two neighbours, namely, Umeshcandra K. Yadav and Sunderlal B. Chouhan have stated that the petitioner is an unmarried daughter of deceased employee. This report, therefore, even when read along with the entry taken in the Pass Card that deceased employee had an unmarried daughter would not lead us anywhere. In such a case, the status of the petitioner to be unmarried daughter of the deceased employee as claimed by her, would have to be determined by the Civil Court of competent jurisdiction.

8) The discussion far made thus would show that this petition involves disputed question of fact regarding status of the petitioner as an unmarried daughter and this fact could not have

been decided conclusively either by the respondent no.2 or by any other Authority except for and under the authority of Civil Court of competent jurisdiction.

9) In view of above, we find nothing wrong in the impugned orders. The petition deserves to be dismissed. The petition stands dismissed. Rule is discharged. No costs.

JUDGE JUDGE

khj

Digitally Signed By:KAMAL HUNDRAJ JESWANI
Signing Date:14.10.2022 10:27