

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.857/2020

Smt. Pradnyashila wd/o Ramesh Ghate,
aged about 60 years, Occ. Retired,
r/o At House No. 106-B, Medical Road,
Behind Isolation Hospital, Imamwada,
Nagpur-03 **.....PETITIONER**

...V E R S U S...

1. The State of Maharashtra through
its Secretary, Department of Education,
Mantralaya, Mumbai-32.
2. Accountant General (A and E)-II,
through its Chief Officer, Nagpur.
3. Joint Director of Education,
Civil Lines, Nagpur.
4. Education Officer (Primary),
Zilla Parishad, Chandrapur,
Provident Fund Pathak,
Primary Education Department,
Jublee High School Parisar, Vastigruh
Imarat, Kasturba Road, Chandrapur. **...RESPONDENTS**

Mr. A. V. Lokhande, Advocate for petitioner.
Ms. N. P. Mehta, A.G.P. for respondent nos. 1 to 3.
Mr. G.G. Mishra, Advocate for respondent no.4.

CORAM:- SUNIL B. SHUKRE & ANIL L. PANSARE, JJ.
DATED :- 19.10.2022

ORAL JUDGMENT (Per: Sunil B. Shukre, J.)

Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The petitioner, by this petition, has sought a relief of direction to be issued to the respondents for grant of family pension to the petitioner from the date of death of Late Ramesh Wamanrao Ghate (the deceased). For grant of the relief, as claimed by the petitioner, it is necessary that the petitioner has been declared to be the person, who is wife of the Government servant and, accordingly, has also been nominated to be the person, to whom the family pension be paid. However, from the communication dated 05.01.2019, which is forming part of the record, it becomes clear that the deceased Ramesh, during his lifetime and service, has disowned the petitioner as his wife by stating that there was dissolution of his marriage with the petitioner and that the petitioner was living separately and was leading an independent existence. The deceased Government servant has even gone further. In none of the requisite forms, relating

to the pension case of the Government servant, like form-1, form-3, form-5 and form 42-A, has the deceased Government servant shown the petitioner as a nominee, she being the wife and thus entitled to receive the benefit of family pension. On the contrary, the deceased Government servant has nominated in the forms, his children such as, Madhyama and Pallavi. The record of the pension case of the deceased Government servant, as reflected in the communication dated 05.01.2109, shows that on that day i.e. on 05.01.2019, Madhyama and Pallavi had crossed the age of 24 years and were also married. Therefore, the authorities found that both the daughters of the deceased Government servant were not eligible to receive any family pension.

3. Such being the facts of the present case, we do not find that the petitioner would be entitled to receive any family pension. If at all the petitioner wishes to prove her entitlement to receive the family pension, the petitioner would have to first obtain a declaration from the Civil Court of competent jurisdiction that she was the legally wedded

wife of the deceased Government servant, that there was no dissolution of their marriage, that their marriage was subsisting on the date of death of the deceased Government servant and that the Government servant had not disowned her, in any manner. It is only upon a declaration of such a status *vis-a-vis* the deceased Government servant, the petitioner may perhaps stake a claim for receiving the family pension, as per the rules.

4. Learned counsel for the petitioner has relied upon the view taken by the Full Bench of this Court in **Kamalbai w/o Venkatrao Nipanikar Vs. State of Maharashtra and Ors.**¹ wherein the Full Bench held that the family pension can be claimed by a widow, who is legally wedded wife of the deceased employee and that the second wife, if not legally wedded wife, cannot be found to be entitled for receiving the family pension.

5. This is exactly what we have already held in this case. Unless and until the petitioner obtains a decree of

1 2019 (3) Mh. L. J. 921

declaration in her favour, granted by the Civil Court of competent jurisdiction, disclosing the nature of relationship with the Government servant in the manner stated above, the petitioner would not be able to successfully lay her claim to the family pension.

6. The petition, thus, deserves to be dismissed. It is accordingly dismissed without costs.

Rule is discharged.

(Anil L. Pansare, J.)

(Sunil B. Shukre, J.)

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