

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

WRIT PETITION NO.3716 OF 2021

Ratnamala Manohar Pradhan
Age: 50 years, Occu: Nil,
R/o: Milind Nagar, Osmanpura,
Aurangabad

... Petitioner

Versus

1. The Secretary,
Ministry of Personnel,
Public Grievances and Pension,
Department of Pension and Pensioners
Welfare, Lok Nayak Bhawan,
Khan Market, New Delhi

2. The Secretary,
Ministry of Road, Transport and Highways
And Shipping (Transport Bhawan),
1, Sansad Marg, New Delhi 110 001

3. The Chairman (IAS),
Port House, 2nd Floor,
Mumbai Port Trust,
S. V. Marge, Ballard Estate,
Mumbai – 400 001.
(Email : chairman@mumbaiport.gov.in)

4. The Financial Advisor and
Chief Accounts Officer,
Mumbai Port Trust,
Pension Branch, Ground Floor,
Imperial Chambers, Wilson Road,
Ballard Estate, Fort, Mumbai – 400 001.
(Email : fa@mbptmail.com)

... Respondents

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Mr. A. B. Tele, Advocate for the Petitioner
Mr. S. S. Deve, Advocate for Respondent Nos.1 an 4

...

**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

Reserved on : 12.06.2023

Pronounced on : 05.07.2023

JUDGMENT : [PER S. G. CHAPALGAONKAR, J.]

1. The petitioner approaches this Court under Article 226 of the Constitution of India and impugns the order dated 14/12/2020 passed by respondent no.4 i.e. Financial Adviser and Chief Accounts Officer, Mumbai Port Trust, thereby rejecting her claim for grant of family pension in the capacity of divorcee daughter of deceased employee.

2. The petitioner contends that her father late Manohar Dashrath Pradhan was employed with respondent no.3 / Mumbai Port Trust as Head Watchman. He attained the age of superannuation and retired on 31/08/1992. He was receiving pensionary benefits as admissible until his death on 24/11/2004. Thereafter family pension was granted to mother of petitioner Smt. Indubai Pradhan till her death i.e. 10/12/2015. The petitioner further contends that she got married on 16/05/1989 with Sunil Magan Sadashive, however, owing to matrimonial discord, she got separated from him as per registered divorce deed dated 19/09/2022 executed in the office of Assistant Registrar, Aurangabad. Since then, she was residing with her parents.

She continued to reside with her mother even after death of father and has been totally dependent upon family pension being received by her mother.

3. The petitioner further contends that after death of her mother, she moved an application for grant of family pension to her in the capacity of divorcee daughter. She had submitted the documents supporting her claim which includes a registered divorce deed. In response to her application, respondents asked her to submit the Divorce Decree passed by the Competent Court. Therefore, she instituted a proceeding for dissolution of marriage under Section 13 (1) (i-a) and (i-b) of the Hindu Marriage Act, 1955 vide Petition No. A-84/2016 before the Principal Judge, Family Court, Aurangabad. Unfortunately, vide order dated 25/05/2016, her petition was dismissed. Thereafter, she approached this Court vide Family Court Appeal No.15/2019. This Court allowed her appeal vide judgment and order dated 05/04/2019, and granted decree of divorce.

4. The petitioner further contends that, she submitted the copy of Divorce Decree passed by this Court to the respondents. However, vide impugned communication dated 14/12/2020 respondent no.4 communicated that her request for grant of family pension is regretted as proceeding for divorce was instituted by her after death of parents.

Impugned communication further stipulates that, the family pension is admissible to divorcee daughter, only when, divorce proceeding had been instituted before Competent Court during the lifetime of employee / pensioner or his spouse.

5. Mr. Tele, the learned Advocate appearing for the petitioner would submit that the petitioner had obtained customary divorce from her husband during lifetime time of her father who was receiving pension from the respondents. He would submit that the petitioner was dependent on her father. Even after his death, Smt. Indubai wife of Manohar Pradhan i.e. mother of the petitioner was receiving family pension till her death on 10/12/2015. The petitioner was dependent on her mother and income received by her through family pension. He would submit that the petitioner being a divorcee daughter of the pensioner / employee falls within the definition of “Family Members”. He would submit that on insistence of the respondents, the petitioner had instituted divorce proceeding before the Family Court at Aurangabad and ultimately was granted Divorce Decree by this Court vide order dated 05/04/2019, passed in Family Court Appeal No.15/2019. He would submit that the basic intention behind the rules enabling grant of family pension is to provide financial support to the family of deceased employee. Referring to Rule – 54 of CSS [Pension Rules], 1972, he would submit that dependent daughters and divorcee

daughters are also covered within the meaning of family. Therefore, he urged that impugned order refusing family pension to the petitioner is illegal. He places reliance on the judgment and order of this Court dated 03/04/2018 in the matter of **Union of India and Anr. Vs. Smt. Usha Eknath Patil** passed in **Writ Petition No.6884/2016** and submitted that similar issue has been dealt with by this Court holding that a divorced or a widowed daughter is entitled to family pension, once it is established that they were dependent on the deceased employee.

6. Mr. Deve, learned Advocate appearing for respondent nos.1 to 4 would submit that office memorandum dated 19/07/2017 issued by the Government of India elaborately deals with eligibility of divorced daughter for grant of family pension. A clarification has been issued explaining that the family pension is admissible to divorced daughter only if the proceeding for divorce had been instituted in the Competent Court during lifetime of the employee / pensioner or his/her spouse subject to fulfillment of all the other conditions for grant of family pension. He would further clarify that the family pension commences from the date of divorce.

7. Having considered the submissions advanced by the learned Advocates appearing for both the sides and after going through the record, it is apparent that the petitioner is the daughter of the

deceased / retired employee of respondent, having entitlement of pension and family pension under employment regulation. After the death of the deceased employee, his wife – Indubai i.e. mother of the petitioner was receiving family pension till her death i.e. 10/12/2015. The petitioner claims that although she was married in the year 1989, she had been separated from her husband during lifetime of her father. A registered divorce deed dated 19/09/2002 was executed in the office of Assistant Registrar at Aurangabad and since then the petitioner was continuously residing with her parents as dependent on the pensionary income of the family. The petitioner has placed on record a copy of registered divorce deed depicting customary divorce owing to matrimonial discord with her husband. We do not find any reason to disbelieve the said document, since it is registered and executed in the year 2002 i.e. during the lifetime of petitioner's father, who also signed it as a witness.

8. Pertinently, the petitioner approached the Family Court after the death of her mother seeking the decree of divorce, probably to comply with the requirement of the respondents/authorities who were insisting for submission of a Divorce Decree passed by the Competent Court. Finally, this Court vide judgment and order dated 05/04/2019, allowed the Family Court Appeal No.15/2019 and granted the Divorce decree. A copy of the judgment is also placed on record before us. Pertinently,

this court in Paragraph No.7 of the judgment observed that *“there is irretrievable breakdown of the marriage and separation of the petitioner from her husband for over 15 years”*. Hence, it is crystal clear that petitioner was separated from her husband more than 15 years before passing the decree. Although her customary divorce may not have statutory recognition, her separation from husband can be safely presumed based on contents of registered document dated 19/09/2002 that has been signed by her father. There is nothing on record to show that the petitioner has remarried. Even nothing has been placed before us to show that the petitioner has been dependent on pensionary income of the family.

9. The impugned communication dated 14/12/2020 shows that the petitioner has been denied family pension for the reason that the decree of divorce has been passed by competent court subsequent to the death of her parents. However, similar issue has been considered by Division Bench of this Court in the case of **Smt. Usha Eknath Patil** (*Supra*). The observation in Paragraph No.22 reads thus:

“In present facts, though customary divorce on 21/7/1992 may not be legally recognized, facts show that from said date Usha was not residing with her husband and was therefore member of family of her deceased father. She was therefore a destitute residing with her mother Vatsala who expired on 28/12/1999. When the provision entitles unmarried or a divorced or a widowed daughter to family pension, we find that Usha is definitely covered thereunder.”

10. Considering analogy adopted by this court (supra), we have no hesitation to hold that relevant clause of the pension rules includes not only a widowed or divorced daughter but also destitute daughters. Clause must be given wide interpretation so as to advance welfare of family of deceased employee to take in its sweep even destitute daughter who was dependent for her livelihood on pensionary income of her father. In our considered view keeping in mind intention and object behind the provision under rules governing grant of family pension, it would be difficult to accept the contention of the respondents that only because, the decree for divorce has been passed after the death of parents, the petitioner is not entitled to the pensionary benefit.

11. The respondents have relied on clarification offered under the office memorandum dated 19/07/2017 regarding eligibility of divorced daughter for grant of pension, which states as under:

“5. This department has been receiving grievances from various quarters that the divorce proceedings are a long-drawn procedure which take many years before attaining finality. There are many cases in which the divorce proceedings of a daughter of a Government employee/pensioner had been instituted in the competent court during the life time of one or both of them but none of them was alive by the time the decree of divorce was granted by the competent authority.

6. The matter has been examined in this department in consultation with Department of Expenditure and it has been decided to grant family pension to a divorced daughter in such cases where the divorce proceedings had been filed in a competent court during the life-time of employee/pensioner or

his/her spouse but divorce took place after their death providing the claimant fulfills all other conditions for grant of family pension under rule 54 of the CCS (Pension) Rules, 1972. In such cases, the family pension will commence from the date of divorce.”

12. We observe that aforesaid clarification expands the horizon of family pension even to the daughter of the pensioner, who was prosecuting or subjected to divorce proceeding, during the lifetime of her parents, although the divorce decree has been passed after their death. Therefore, pre-condition of holding divorce decree during lifetime of pensioner parents of destitute daughter appears to have been liberally interpreted by respondents in line with the beneficial object of family pension scheme.

13. In that view of the matter, we adopt the view taken by this Court in the matter of **Smt. Usha Eknath Patil** (*Supra*) and follow the same course. Resultantly, we are inclined to quash and set aside the impugned order / communication dated 14/12/2020 issued by respondent nos.3 and 4 by which her claim for grant of family pension has been negated giving the reason that her divorce took place after the death of parents. Hence, we proceed to pass the following order:

ORDER

- (i) The writ petition is allowed.

(ii) The impugned communication / order dated 14/12/2020 passed by respondent nos.3 and 4 rejecting the claim of the petitioner for grant of family pension is hereby quashed and set aside.

(iii) The respondent nos.3 and 4 are hereby directed to reconsider the claim of the petitioner for release / grant of regular family pension in the capacity of divorcee daughter of late Manohar Dashrath Pradhan within a period of twelve (12) weeks. However, respondent nos.3 and 4 shall not reject the claim for the reason as stated in the impugned order / communication dated 14/12/2020.

(iv) The respondent nos.3 and 4 shall communicate the decision to the petitioner within the given timeline.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

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