

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

**SECOND APPEAL NO. 470 OF 2021
WITH
CIVIL APPLICATION NO. 1125 OF 2019
IN
SECOND APPEAL NO. 470 OF 2021**

Smt. Komal Dyaneshwar Thorat Appellant
v/s.
Smt. Mangal Mahadev Thorat and ors. Respondents

Mr. Rohit Joshi for the Appellant.
Mr. Rahul Kate i/b. Mr. Digvijay Patil for Respondent No.1.
Mrs. Shehnaz V. Bharucha for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 10th NOVEMBER, 2023.

P. C. :-

. The Appeal is admitted on the following substantial questions of law :-

(a) Whether the First Appellate Court has erred and misdirected itself in relying upon the Pension Regulations for the Army, 1961.

(b) Whether the findings recorded by the First Appellate Court that the Respondent No.1 being the nominee is entitled to receive pensionary benefits, are perverse and contrary to the Navy (Pension) Regulations, 1964.

2. Considering the nature of the controversy, heard finally with consent of the learned counsel for the respective parties.

3. The Appellant, who is the widow of Dyaneshwar Thorat, has challenged the judgment and order dated 03/06/2019 whereby the Appellate Court partly allowed the appeal filed by the Respondent No.1 and modified the order dated 04/12/2018 in Civil Miscellaneous Application No.246/2018 and held that the Respondent No.1, the mother of the deceased – Dyaneshwar Thorat, is entitled to receive the entire pensionary benefits.

4. The brief facts necessary to decide this Appeal are as under :-

5. The Appellant is the legally wedded wife and Respondent No.1 is the mother of the deceased – Dyaneshwar Thorat. Said Dyaneshwar Thorat was working as a Carpenter in the office of Material Superintendent of Material Organization, Naval Depot of Navy Department, Ghatkopar (W), Mumbai. He was a permanent employee. He expired in a motor vehicular accident on 18/03/2018 leaving behind his widow, the parents and a brother.

6. The Appellant filed an application under section 372 of the Indian Succession Act, 1925 to grant succession certificate in her name, to collect and receive the entire pensionary and other benefits of her deceased husband. The Respondent No.1 though put in her appearance, did not contest the said application. The Trial court, upon considering the evidence adduced by the Appellant, held that the Appellant being the widow and the Respondent No.1 being the mother of the deceased are entitled to receive death benefits in equal proportion. The learned Judge further held that the Appellant herein is entitled to receive the entire family pension and employment on compassionate ground.

7. The Respondent No.1 challenged the said order before the First Appellate Court in Regular Civil Appeal No.22/2019. The First Appellate Court held that under the Pension Regulations for the Army, 1961, the mother is one of the eligible members to receive the family pension. Relying upon Regulations 216 and 219, the First Appellate Court held that the Respondent No.1 being the nominee, is entitled to receive the entire pension to the exclusion of the Appellant. Hence, this Appeal by the widow of the deceased.

8. Heard learned counsel for the Appellant and the learned counsel for Respondent No.1. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. It is not in dispute that Dyaneshwar Thorat was employed as a Carpenter in Naval Depot of Navy Department, Ghatkopar. He was a permanent employee. Said Dyaneshwar Thorat expired on 18/03/2018 in a road accident, leaving behind the Appellant, a young widow of 24 years of age and his parents as his legal heirs.

10. The deceased was an employee of Indian Navy hence, the Pensionary benefits are governed by The Navy (Pension) Regulations, 1964 framed in exercise of the powers under Section 184 of the Navy Act and not by Pension Regulations for the Army, 1961. The Regulations 119, 120 and 122 of The Navy (Pension) Regulations, 1964 (hereinafter referred to as 'the Navy Regulations') read thus :-

“ 119. Pension intended for the whole family. - A special family pension is intended for the support of all the eligible members of a family, irrespective of in whose name it stands.

120. Eligible members of the family. - the following members of the family of a deceased individual shall be considered as eligible for the grant of a special family pension, provided that they are otherwise qualified :-

- (a) Widow lawfully married.
- (b) Son, actual and legitimate (including validly adopted), below 18 years.
- (c) Daughter, actual and legitimate (including validly adopted) and unmarried.
- (d) Father.
- (e) Mother.

Explanation – (1) the term “Father”, “Mother” or “Parents” used in this or in any other regulation in this sub-section shall be deemed to include such putative parents (or surviving parents as the case may be) as had not contracted a lawful marriage, but were living as husband and wife at the time of, or got lawfully married subsequent to, the conception of the said deceased individual.

(2) The term ‘widow’ used in the above or any other regulation in this sub-section in respect of special family pensionary awards shall be deemed to include such a widow who was married after the individuals discharge or invalidment.

(3) The term ‘Child’ used in the above or any other regulation in this sub-section in respect of special family pensionary awards, shall be deemed to include

such a child born out of a marriage after discharge or invalidment of the individual.

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122. Nomination of an heir to family pension. -

(a) An individual need not make any nomination unless the intention be to change the order of eligibility laid down in regulation 120 and the revised order of priority shall apply only in cases where no nomination exists or the nominated person is dead or disqualified.]

(b) A Gorkha recruited from, or whose family resides in Nepal, may, however, nominate in addition, another relative from amongst those specified in regulation 120 as an alternative heir to special family pension. The second heir will, however, be treated as a nominated heir only if the first is dead or disqualified on the date on which the sanctioning authority decides that the claim to special family pension is admissible. ”

11. A plain reading of the aforesaid regulations would indicate that the family members of the deceased, as specified in Regulation 120 are entitled to receive the pension in the same order. Under this Regulation, the widow lawfully married, is entitled to receive the pension to the exclusion of the other family members as listed in

Regulation 120. In other words, when the employee is survived by a widow, who was lawfully married, she would have preferential right as against the other family members including the mother. Hence, under the Regulations, the Appellant being the widow is entitled to receive the entire pensionary benefits.

12. Suffice it to say that the family pension scheme is designed to provide relief to the widow and the children and the other family members by way of compensation for the untimely death of the deceased employee. The Regulation designate the persons who are entitled to receive the family pension. The Regulation do not provide for any nomination with regard to the family pension. Infact, Regulation 122 clearly stipulates that an employee is not required to make any nomination unless he had intention to change the order of eligibility laid down in Regulation 120 and that the revised order of priority would apply only in cases where no nomination exists or the nominated person is dead or disqualified. Hence, unless the deceased employee had an intention to change the order of eligibility, the family pension is payable only to those persons who are designated under the Regulation.

13. In the instant case, the deceased had nominated his mother - Respondent No.1 as his nominee. A perusal of the nomination form (Exhibit - 3) indicates that the nomination of Respondent No.1 was to become invalid on the marriage of the employee. This fact itself sufficiently establishes that the deceased employee did not have any intention to change the order of eligibility laid down in Regulation 120. In view of the marriage of the employee, the Respondent No.1 stands disqualified as a nominee. Hence, the Respondent No.1 who is otherwise placed in the 5th position as per the condition of eligibility provided in Regulation 120, is not entitled to claim any share in the family pension. In such circumstances, the findings of the First Appellate Court that the Respondent No.1 was entitled to receive the entire pensionary benefits by excluding the widow of the deceased employee who is otherwise legally entitled to receive the pensionary benefits, is perverse and contrary to the relevant regulations.

14. Under the circumstances, the Appeal is allowed. The impugned judgment dated 03/06/2019 passed in Regular Civil Appeal No.22/2019, is hereby set-aside and the judgment of the trial court stands restored. It is held that the Appellant is entitled to receive the

entire pensionary benefits. The Respondent No.2 – Material Superintendent of Material Organization, Naval Depot of Navy Department, Ghatkopar, Mumbai to pay the pensionary benefits to the Appellant herein on compliance of all the requisite formalities. The trial Court shall issue Succession Certificate to the Appellant on deposit of necessary stamp duty. In the event, the Respondent No.1 fails to deposit the stamp duty within a period of four weeks, liberty is granted to the Appellant to deposit the same.

15. Appeal stands disposed of in above terms. Pending applications stand disposed of in view of disposal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)