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

WRIT PETITION NO. 1550 OF 2023

Union of India & Anr.	}	Petitioner
Versus		
Geeta W. Dhule	}	Respondent

Mr. R. R. Shetty with Mr. D. P. Singh for the petitioner (UoI).

Mr. Vicky Nagrani for the respondent

**CORAM: S. V. GANGAPURWALA, Act.CJ.&
SANDEEP V. MARNE, J.**

DATE: FEBRUARY 16, 2023

P.C.:

1. The present respondent had approached the Central Administrative Tribunal, Mumbai Bench, Mumbai (for short “the Tribunal”) by filing Original Application No. 812 of 2019, thereby challenging the order passed by the petitioner rejecting the request for grant of family pension.

2. It is not disputed that the present respondent/original applicant before the Tribunal is the second wife of deceased Walku Dhule.

3. Upon the death of Walku, 100% pension was paid to the first wife, namely, Sunita. It is the case of the present respondent that 50% pension was paid by Sunita to her. The Tribunal allowed the original application filed by the present respondent directing payment of arrears of family pension from the date of death of the first wife till the date of actual payment.

4. The learned advocate for the petitioners submits that the second wife would not come within the ambit of definition of ‘wife’

as contemplated under the provisions of the Railway Servants (Pension) Rules, 1993 (for short “the Rules of 1993”) so also the provisions of the Hindu Marriage Act, 1956 and as such, would not be entitled for pension. Reliance is placed on a Full Bench decision of this court delivered under the Maharashtra Civil Services (Pension) Rules, 1982 in the case of **Kamlabai w/o. Venkatrao Nipanikar vs. State of Maharashtra and Ors.**, reported in 2019 (3) Mh. L. J. 921. The learned advocate submits that the provisions of family pension under the Rules of 1993 and the provisions of the family pension under the Maharashtra Civil Services (Pension) Rules, 1982 (for short “MCS Pension Rules”) are *pari materia*. The Tribunal has committed an error while allowing the original application of the respondent.

5. The learned advocate for the respondent submits that the names of both the wives were mentioned in the PPO. The proceedings were filed for grant of succession certificates by the first as well as the second wife. Though the pension was sanctioned in the name of the first wife, the first wife used to pay 50% of the pension amount to the present respondent. Rule 75 of the Rules of 1993 itself provides for grant of pension even to the second wife/widow of the deceased railway servant along with the first wife and the same has been upheld by the Division Bench of this Court at Nagpur Bench in Writ Petition No. 4467 of 2014. According to the learned advocate, no error has been committed by the Tribunal.

6. We have considered the submissions.

7. The undisputed factual matrix is that the present respondent is the second wife of deceased Walku Dhule. On his death, admittedly, the pension was sanctioned in the name of first wife Sunita. It may be an internal arrangement between the

present respondent and Sunita to share the pension amount; however, the present petitioners had sanctioned the pension to the first wife, namely, Sunita.

8. The Full Bench judgment of this Court in **Kamlabai** (supra) had an occasion to consider the provisions of MCS Pension Rules dealing with the payment of family pension. The provisions of MCS Pension Rules appear to be *pari materia* with the Rules of 1993. Rule 7(i)(a) of the Rules of 1993 provides that where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares. Similar provision exists in MSC Pension Rules in Rule 116(6)(a)(i). The Full Bench of this Court interpreted the provision of Rule 116(a)(i) and held that a second wife who is not legally wedded wife would not be entitled for family pension. However, a second wife, if is legally wedded wife, would be entitled for family pension. In para 17 of the said judgment, the Full Bench observed that “where” the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares. It was observed that this sub-rule will have to be interpreted and made applicable only to a situation “where” two or more widows are entitled for the family pension. For a lady to be widow at the first instance she has to be legally married woman. It has been further observed that the concept and institution of marriage is governed by personal law. There may be instances where the second marriage may be legal and valid in that case two widows may be entitled for pension.

9. The Tribunal has allowed the original application relying on a Division Bench judgment of this Court (Nagpur Bench) in Writ Petition No. 4467 of 2014 dated 20th November 2014, which has subsequently been held to be not laying down correct legal position in Full Bench judgment in **Kamlabai** (supra). It appears

that Full Bench decision in **Kamlabai** (supra) was not brought to the notice of the Tribunal.

10. In light of the above, the Tribunal has committed error in allowing the original application. The impugned judgment is, therefore, quashed and set aside. The writ petition is, accordingly, allowed. No costs.

SALUNKE
J V

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(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)