



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO. 7960 of 2023

Smt. Ushabai wd/o Udaybhan Dhoke .. PETITIONER

VERSUS

South East Central Railway, through its Senior Divisional
Officer, Personnel Department, Nagpur. .. RESPONDENTS.

.....
Shri C. F. Bhagwani, Advocate for petitioner.
.....

CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE :- 13th DECEMBER, 2023

P. C.

1. Drawing support from the decision in *Vidhyadhari and others vs. Sukhrana Bai and others [(2008) 2 SCC 238]* a contention of Shri Bhagwani, learned counsel for the petitioner, is that the order dated 21st April, 2023 passed by the Central Administrative Tribunal cannot be said to be sustainable as, according to him, even if the petitioner is the second wife and there was no divorce from the first wife, still in view of Clause 7 of Rule 75 of the Railway Service Pension Rules, 1975 (for short, the Pension Rules), the petitioner is entitled for the pensionary benefits.

2. We have considered the aforesaid provision i.e. Clause (7) of Rule 75 of the Pension Rules which read thus :

“75 (7)(i) (a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(b) On the death of a widow, her share of the family pension, shall become payable to her eligible child:

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal share, or if there is only one such other widow, in full, to her.

(ii) Where the deceased railway servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the railway servant or pensioner:

Provided that on the share or shares of family pension payable to such a child or children or a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows or the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.

(iii) Where the deceased railway servant or pensioner is survived by a widow but has left behind child or children from a divorced wife or wives, such child or children if they satisfy the conditions of eligibility for payment of family pension shall be entitled to the share of family pension which the mother would have received at the time of death of the railway servant or pensioner had she not been so divorced:

Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and or the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow, or child”.

3. The aforesaid Rule starts with payability of the pension to more widows than one. It further provides that pensionary benefits shall be paid in equal shares.

4. Apart from above in the matter of *Vidhyadhari* (supra), the Hon’ble Apex Court while considering the claim of such second wife who is married during the subsistence of first marriage was held entitled only to the limited

benefits. The observations made by the Hon'ble Apex Court in paragraphs 12 and 14 in the aforesaid decision are as under:

“12. However, unfortunately, the High Court stopped there only and did not consider the question as to whether in spite of this factual scenario Vidhyadhari could be rendered the succession certificate. The High Court almost presumed that succession certificate can be applied for only by the legally wedded wife to the exclusion of anybody else. The High Court completely ignored the admitted situation that this succession certificate was for the purposes of collecting the provident fund, Life Cover Scheme, pension and amount of life insurance and amount of other dues in the nature of death benefits of Shetaldeen. That Vidhyadhari was a nominee is not disputed by anyone and is, therefore proved. Vidhyadhari had claimed the succession certificate mentioning therein the names of four children whose status as legitimate children of Sheetaldeen could not and cannot be disputed.”

14. Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would choose to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children. However, we must balance the equities as Sukhrana Bai is also one of the legal heirs and besides the four children she would have the equal share in Sheetaldeen's estate which would be 1/5th. To balance the equities we would, therefore, choose to grant succession certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the trial Court to the satisfaction of the trial Court.”

5. Apart from above, the Full Bench in the case of *Kamalbai Venkatrao Nipanikar vs. State of Maharashtra and others [2019(3) Mh.L.J. 921]* delivered at Aurangabad Bench also goes against the petitioner. Wherein the Full Bench particularly in paragraphs **25** and **26** has observed that the parties like the petitioner are not entitled for benefit of pension.

6. That being so, we hardly see any reason to cause interference in the judgment delivered by the Central Administrative Tribunal in O.A.No.2025/2020. As such, the writ petition fails and the same is dismissed accordingly. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.