



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

WRIT PETITION NO.1081 OF 2022

Smt. Tilottama W/o Sharad Bansi,
Age-47 years, Occu:Household,
Through G.P.A. Holder,
Prashant S/o Bhoraji Ahire,
Age-41 years, Occu:Advocate,
R/o-21, Ganesh Colony,
Sakri Road, Dhule,
Taluka and District-Dhule.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai,
- 2) The Chief Executive Officer,
Zilla Parishad, Jalgaon,
- 3) The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
- 4) P.R. High School Society,
Dharangaon, Taluka-Dharangaon,
District-Jalgaon,
Through its Secretary/President,
- 5) P.R. High School,
Dharangaon, Taluka-Dharangaon,
District-Jalgaon,
Through its Headmaster,

- 6) Smt. Mathabai W/o Ramlal Bansi,
Age-84 years, Occu:Nil,
R/o-Matoshri Nagar, Dharangaon,
Tal-Dharangaon, District-Jalgon.

...RESPONDENTS

...
Mr. S.B. Solanke Advocate for Petitioner.
Mr. S.K. Shirse, A.G.P. for Respondent Nos.1 and 3.
Mr. M.S. Sonawane Advocate for Respondent No.2.
Mr. A.G. Talhar Advocate for Respondent No.5.
Mr. Vinod P. Patil Advocate for Respondent No.6.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 30th JANUARY, 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.

2. Present Writ Petition has been filed for following relief:-

“(B) By issuing a writ of mandamus or any other writ, order in the like nature, this Hon’ble Court may be pleased to direct the respondent Nos.2 to 5 to pay the pension and pensionary benefits including gratuity, leave encashment and other benefits to the petitioner, within stipulated period and for that purpose issue necessary orders.”

3. The factual matrix leading to the Petition are that the husband of the petitioner, Sharad Ramlal Bansi was working as an assistant teacher with respondent No.5 school as permanent employee. Sharad died on 26th September 2020 at Gold City Hospital, Jalgaon due to Covid-19. After demise of her husband, the petitioner had filed applications to respondent No.3 for payment of gratuity and other benefits and also with the prayer to start the pension in her favour. However, no action has been taken by respondent Nos.2 to 5. The petitioner had filed Civil Misc. Application No.585 of 2020 before the Civil Judge, Junior Division, Dhule for issuance of heirship certificate. However, respondent No.6 had filed application under Order 1 Rule 10 of the Code of Civil Procedure for impleading her as party in the said proceeding. Accordingly, respondent No.6 came to be added as party respondent. Further, respondent No.6 and one Smt. Meena had filed Civil Misc. Application No.160 of 2020 before the Civil Judge, Junior Division, Dharangaon for issuing heirship certificate. In the said proceeding, present petitioner and her son were added as party respondents. From the said application, the petitioner came to know that said Smt. Meena is claiming to be the second wife of deceased Sharad. The second

wife is not entitled to get pension and pensionary benefits in view of the provisions of Maharashtra Civil Services (Pension) Rules. The respondent authorities are not paying any heed to the request made by the petitioner and they are insisting for heirship certificate. The respondent authorities are not forwarding the documents in respect of the pension and other benefits for further process. Hence this Writ Petition.

4. Respondent No.6, who is mother of deceased Sharad Bansi, has filed affidavit-in reply. Respondent No.6 is contending that petitioner is not concerned with the service benefits of deceased Sharad. After the death of son, the mother is entitled to receive the service benefits. Proceedings had filed by her before the Civil Court for grant of succession certificate. The name of the present petitioner is not appearing in the service record of deceased Sharad and therefore, petitioner is not entitled to get any service benefits.

5. Heard learned Advocate Mr. Solanke for the petitioner, learned AGP Mr. Shirse for respondent Nos.1 and 3, learned Advocate Mr. Sonawane for respondent No.2, learned Advocate

Mr. Talhar for Respondent No.5 and learned Advocate Mr. Patil for respondent No.6.

6. At the outset, it is to be noted that it is not in dispute that respondent No.6 is the mother of deceased Sharad. The application filed by the petitioner before Dhule Court appears to have been dismissed in default on 7th February 2023. But respondent No.6 has admitted that she along with one Meena, have filed application before the Civil Judge, Junior Division, Dharangaon for succession certificate, to which the present petitioner and her son are party respondents. The copy of the said Miscellaneous Application has been filed on record. The pleadings of the same would make it very clear that said Smt. Meena, who is applicant No.2 in the said Civil Misc. Application No.160 of 2020, claims that she is the second wife of deceased Sharad. Further respondent No.6 accepts that present petitioner, who is respondent No.1 therein, is the first wife of deceased Sharad and respondent No.2 therein is the son of present petitioner and deceased Sharad. It is the say of respondent No.6 that as there was dispute between present petitioner and deceased Sharad, their relationship got strained and then

present petitioner left the matrimonial home when she was pregnant of three to four months and thereafter never returned. There is absolutely no mention that there was legal divorce between deceased Sharad and the present petitioner before the alleged marriage between Sharad and Smt. Meena. Thus, when present respondent No.6 along with Smt. Meena accepts that present petitioner is the first wife of deceased Sharad, the burden is on them to show that there was legal divorce between deceased Sharad and present petitioner. Even the affidavit-in-reply filed on behalf of respondent No.6 is silent about it.

7. The position of law as regards the pensionary benefits is concerned, it has been not *res integra*. The Full Bench of this Court in ***Kamalbai w/o Venkatrao Nipanikar vs. State of Maharashtra and others, 2019 (3) Mh.L.J. 921***, held that:-

“The second wife in general parlance would not be entitled for family pension unless she is legally wedded wife. A second wife who is not legally wedded wife would not be entitled for family pension under Rule 116 of the Pension Rules.”

8. Certainly, the mother would also be entitled to get the pensionary benefits as per the rules. The objection, if any, on

behalf of the petitioner to that effect cannot be considered taking into consideration the legal position. In view of this position of law, respondent Nos.4 and 5 who are duty bound to forward the pension papers and other communication for release of the gratuity, leave encashment and other service benefits, ought not to have waited for the decision by any Court. We reiterate that in view of the plain and simple pleadings, the decision ought to have been taken by respondent Nos.4 and 5 for forwarding the pension papers and other communications to higher authorities. Under the said circumstance, the Petition deserves to be allowed. Following order is, therefore, passed:-

ORDER

(I) Writ Petition is hereby allowed.

(II) Respondent Nos.4 and 5 to forward the pension papers and also to make the other correspondence for release of gratuity, leave encashment and other service benefits to the petitioner and respondent No.6, as per the provisions of law, discussed above, within the period of TWO MONTHS from today.

(III) After the pension papers and other correspondence as stated above is received to respondent No.3, he should take further necessary actions within a period of ONE MONTH, thereafter.

(IV) Rule is made absolute in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JAN24