



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3092 OF 2023

Padmashree D/o Panditrao Chincholkar
and Another ...Petitioners

Versus

The State of Maharashtra & Anr ...Respondents

...
Mr. K. D. Jadhav, Advocate for the Petitioners
Mr. D. R. Korade, AGP, for the Respondents
...

CORAM	: RAVINDRA V. GHUGE & R. M. JOSHI, JJ
RESERVED ON	: MARCH 26, 2024
PRONOUNCED ON	: APRIL 05, 2024

ORDER (PER R. M. JOSHI, J)

1. This Petition is filed seeking direction to the Respondent No. 2 to pay available retiral benefits of deceased Panditrao Chincholkar (for short 'deceased') to the Petitioners, after his death including pension, gratuity and service benefits along with interest as per the judgment and order of the succession proceedings granted by the learned Civil Court and confirmed by the District Court in C.R.A. No. 79/2019.

2. It is the case of the Petitioners that deceased died on 29.09.2008, is husband of the

Petitioner No.2 and father of Petitioner No. 1. A proceeding MARJI No. 243/2008 came to be filed, which was clubbed with MARJI Nos. 199/2009 & 72/2014, for issuance of succession certificate for death cum retirement benefits of family pension. Being aggrieved by the common judgment dated 09.10.2015 passed in these proceedings, Regular Civil Appeal bearing no. 147/2015 under Section 384 of the Indian Succession Act came to be filed before the District Court. The said appeal was dismissed. Said judgment and order dated 15.03.2019 is confirmed by this Court in Civil Revision Application No. 79/2019. Petitioners claimed that they approached Respondent No. 2 by filing applications/representations with relevant documents for seeking retiral benefits of deceased but no heed was paid to their representations. On 10.09.2022 legal notice was issued on the basis of heirship and succession certificate granted on 09.10.2015. In this backdrop, Petitioners are challenging action of the denial of pension, gratuity and service benefits of the deceased to the Petitioners.

3. We have heard learned Counsels for both sides.

4. A short point arises for our consideration is as to whether the Petitioner No. 2, being second wife of the deceased and Petitioner No. 1 being daughter arising out of a relationship between Petitioner No. 2 and deceased, would be entitled for seeking retiral benefits of deceased.

5. There is no dispute about the fact that the first wife of the deceased is still alive. After coming into force of the Hindu Marriage Act, 1955 there cannot be any valid marriage between two Hindus in case they have a living spouse. In view of Section 11 of the Act such marriage is void. Needless to say that Petitioner No. 2 could not be considered as legally wedded wife of the deceased. Pension Rules, 1964 and 1982 provides that 'widow' would be entitled to receive the pension and other service benefits of the Government Servant. Respondent No. 2 not being legally wedded wife cannot be considered as widow of the deceased. No doubt, only in case of marriage being performed prior to year 1955, more than one wedded wife could be considered as widows, which is not case of Petitioners herein.

6. So far as the Petitioner No. 1 is concerned,

she claims to be the child begotten from the relationship between deceased and the Respondent No.2. In this regard, it is pertinent to note that there is nothing on record to indicate that any nomination was done by the deceased for the purpose of receipt of gratuity or provident fund payable after death of deceased. In absence of any such nomination, the widow of the deceased would be entitled to receive the same.

7. With regard to the pensionary benefits, there could not be even any nomination of any other person to receive the same. As far as Petitioner No. 1 is concerned, she or even any other child of the deceased begotten from wedlock with first wife, would be entitled to receive pensionary benefits, if eligible, only after the death of widow. Thus, no such situation has arisen in instant case.

8. In view of the above discussion, we do not find any merit in the Petition. In the result, **Petition stands dismissed.**

(R. M. JOSHI, J)
Malani

(RAVINDRA V. GHUGE, J)