



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5252 OF 2022

Mrs. Gyanbai W/o Devidasrao Kondagir
Age: 60 years, Occ: Household work,
R/o: Islampur, Tq. Udgir, Dist. Latur
At present residing at Janwada,
Tq & Dist. Bidar (Karnataka)

...Petitioner

Versus

1. The State of Maharashtra
Through the Secretary, Revenue and
Forest Department, Mantralaya,
Mumbai – 32
2. The Accountant General (Pension)
Maharashtra State -2, Nagpur
3. The Dy. Director of Land Records
Damdi Mahal, Near Panchayat
Samiti, Aurangabad
4. The Superintendent of Land Records
Administrative Building, Latur,
Tq & Dist. Latur.
5. The Dy. Superintendent of Land Records,
Ahmednpur, Tq. Ahmedpur, Dist. Latur
6. Mrs. Shobhabai Devidas Kondagir,
R/o. Islampur, Tq. Udgir,
Dist. Latur

...Respondents

...

Mr. B. B. Yenge, Advocate for the Petitioner
Mr. P. K. Lakhotiya, AGP, for the Respondent Nos. 1 & 2
Mr. N. L. Jadhav h/f Mr. M. S. Kokate, Advocate for the
Respondent No.6

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CORAM

**: RAVINDRA V. GHUGE &
R. M. JOSHI, JJ**

RESERVED ON : MARCH 14, 2024
PRONOUNCED ON : APRIL 04, 2024

JUDGMENT (PER R. M. JOSHI, J)

1. Petitioner by filing this Petition seeks direction for payment of family pension on account of death of her husband Devidasrao Raosaheb Kondagir (for short '**deceased**'), an employee of Respondent No. 5.

2. It is the case of the Petitioner that she is legally wedded wife of deceased, who died on 17.03.2022. The marriage of the Petitioner with deceased was performed in the year 1976 and out of the said wedlock a son is begotten, namely, Shivaji, in the year 1977. The deceased was working lastly with the office of Respondent No. 5 as a Surveyor, who retired from services on 30.11.2011. According to the Petitioner, due to the differences and domestic violence sustained at the hands of deceased, she was forced to live with her parents at Janwada, Tq and Dist. Bidar. She delivered a male child while she was at her parental home. Since, the deceased was not taking her proper care as well as of the child, proceeding under Section 125 of Code of Criminal Procedure was filed before the learned JMFC, Bidar vide

Criminal Misc. Application No. 12/1998. In the said proceeding, deceased has candidly admitted in the pleadings as well as in the evidence that the Petitioner is legally wedded wife and that he did not perform any second marriage. The learned JMFC granted maintenance of Rs. 500/- per month to the Petitioner and the said amount came to be increased to Rs. 2,000/- per month subsequently. It is alleged by the Petitioner that after deserting her, her husband started staying in illicit relationship with one lady, namely, Shobhabai (Respondent No.6). It is claimed that Shobhabai is not wife of deceased and as such, she is not entitled to receive any pension after the death of deceased. Deceased while in service had recorded name of the Respondent No. 6 as nominee to receive the pensionary benefits and hence, Petitioner's claim for release of pension in her favour is rejected by Respondent No. 5. Hence, this Petition.

3. Respondent No. 6 – Shobhabai filed affidavit-in-reply contending that she is legally wedded wife of the deceased and the marriage was performed as per the hindu rituals on 10.05.1973. It is claimed that out of

said wedlock, four children are begotten. It is further claimed that her name was recorded as nominee in Form No. 3 while indicating the details of the family of deceased. She, therefore, claims her right to receive pension and other benefits. In support of her contention, certificate dated 24.11.2023 issued by Sarpanch & Gramsevak, Grampanchayat Islampur, 7/12 extract and death certificate of deceased are relied upon.

4. Petitioner filed affidavit in rejoinder denying the contentions of the Respondent No. 6 and her claim to be legally wedded wife of deceased. It is reiterated that the Petitioner is legally wedded wife of the deceased. She placed reliance on the photocopies of certified copies of pleadings and evidence recorded in Criminal Misc. Application No. 12/1998 before learned JMFC, Bidar and judgment dated 10.10.2005 passed therein. These documents are not disputed by Respondent no.6.

5. Respondent No. 2 filed affidavit-in-reply contending that the deceased had nominated Respondent No. 6 as the person to receive the pension after his

death and that this Respondent is not in a position to authorize pensionary benefits, if either the proposal is not received from the Head of the Office/pension Sanctioning Authority or, if received, it is not in the prescribed format with requisite documents, or if it is found not conforming to any of the provisions of Maharashtra Civil Services (Pension) Rules, 1982.

6. Respondent No. 5 filed reply of Raju Chaganrao Rokade accepting the fact that deceased was an employee in the office of Respondent No. 5 and on attaining age of superannuation, he ceased to be in the employment with effect from 30.11.2011. Deceased died on 17.03.2022 and in Form No. 3 name of Respondent No. 6 – Shobhabai is shown as nominee in the record of service book. It is claimed that Petitioner has not raised grievance at any time i.e., at time of nomination, finalization of all the procedures and disbursement of the pension and as such, Petition raising such grievance at belated stage deserves to be dismissed. To support the said contention, photocopies of relevant record indicating nomination of Respondent No. 6 are placed before this Court.

7. The learned Counsel for the Petitioner submits that there is overwhelming evidence in the form of birth certificate of child begotten out of wedlock of Petitioner with deceased and the certified copies of pleadings and evidence recorded before JMFC, Bidar in Criminal Misc. Application No. 12/1998, to prove the fact that Petitioner is legally wedded wife of deceased. It is his submission that the parties being Hindu unless the said marriage is lawfully dissolved, question of deceased performing any other valid marriage does not arise. To support his submissions, he placed reliance on following judgments: *Kantabai Dhulaji Shriram and Others Vs. Hausabai Dhulaji Shriram and Others, 2013 DGLS (Bom.) 14, Raksha and Another Vs. State of UP and Others, 2024:AHC:25661 & Smt. Shamal Mahadeo Tate Vs. District Collector, LAWS (BOM)-2022-2-64.*

8. The learned Counsel for Respondent No. 6 vehemently opposed the said contention by stating that the Respondent No. 6 has been nominated as the wife of the deceased which is sufficient evidence to prove her status as wife of deceased. He further contends that no

objection is raised by the Petitioner in this regard for long period of time and on that count itself Petition be rejected. He further argued that the question as to whether the Petitioner or Respondent No. 6 is the legally wedded wife, requires adjudication by competent Civil Court and till the time, Petitioner does not seek such declaration, she is not entitled to get pensionary benefits. It is his contention that since the Respondent No. 6 was not party to the proceeding of Criminal Misc. Application No. 12/1998 and hence, the said judgment does not bind her.

9. The learned AGP submits that the deceased has nominated the Respondent No. 6 as his wife and that considering the information given in Form No. 3, there would be no reason or justification to allow this Petition.

10. We are conscious of the fact that in an appropriate case where there is a genuine dispute with regard to the status of any woman to be legally wedded wife or not, the same would require adjudication. However, at the same time no one can be permitted to deny such status of a woman, unless, at least *prima*

facie, there is some material to hold existence of such dispute. The Petitioner herein claims to have married to deceased and one son being begotten out of the said marriage. To support/substantiate the said contention, apart from other evidence, mainly Petitioner has placed reliance on certified copy of the pleadings, evidence and judgment in Criminal Misc. Application No. 12/1998 before learned JMFC, Bidar. Genuineness of the said documents are not in dispute. Perusal of the reply filed by deceased in the said Application clearly shows that he admits relationship as husband with the Petitioner herein. It is specifically stated in the reply that "it is submitted that the Petitioner is the legally wedded wife fo the Respondent is correct". It is further averred therein that "but she has left the Respondent very recently before filing of this Petition. A son of the Petitioner has been brought up by the Respondent". In paragraph 5 of the said reply it is stated that "Respondent has not at all contracted second marriage and mentioning the name and year etc are false. The said Shobha is not the wife of the Respondent as alleged by Petitioner". Similarly, in cross-examination, deceased has admitted in no

uncertain terms that her marriage with the Petitioner was solemnized in 1975. He also denied suggestion that he got married for second time in the year 1982 and that name of his second wife is Shobha. These undisputed pleadings and evidence of deceased conclusively prove that Petitioner is legally wedded wife of deceased.

11. As against this, Respondent No. 6 has not placed any evidence on record in order to indicate that she was ever married to deceased. The certificate sought to be relied upon issued by Sarpanch and Gramsevak, is not even *prima facie* sufficient to establish her contention, as there is no record available with the office of Grampanchayat with regard to her marriage with and deceased. Apart from this, other documents, on which reliance is placed, no way indicate the factum of legal marriage between deceased and Respondent No. 6. The document i.e., Form No. 3 placed on record by Respondent No. 5 indicates name of Respondent No. 6 as his wife, however, that would not be sufficient to declare her as legally wedded wife of the deceased, in view of the candid admissions of

deceased in the judicial proceedings about marriage with Petitioner and also denying performing of any other marriage.

12. In view of the aforestated facts which appear from record, *prima facie* we do not find any issue being involved in the Petition which requires adjudication. Even accepting that the deceased was residing with Respondent No. 6 for long period of time and children are begotten from said relationship, having regard to the provisions of Hindu Marriage Act, while the first marriage of the deceased with Petitioner was subsisting, Respondent No. 6 does not acquire status of legally wedded wife. We do not wish to make any observation with regard to the claim, if any, of children of Respondent No. 6 and it would be open for them to raise and substantiate any claim as per law.

13. Suffice it to say that the right of legally wedded wife of the deceased, Government Employee, cannot be denied unless there is some *prima facie* evidence on record in order to indicate existence of any real/genuine dispute requiring determination by competent Court of law. We, therefore, do not find any

reason or justification to accept the contention of the learned Counsel for Respondent No. 6 that the Petitioner is required to file any proceeding before the Civil Court in order to get her claim as the wife of deceased adjudicated.

14. Now question arises as to whether the contention of Respondent No. 5 can be accepted that since there is nomination done by the deceased of Respondent No. 6 to be the person to receive pensionary benefits, claim of Petitioner is not justified. In this regard, perusal of the relevant pension rules applicable to this case indicate that there could not be any nomination in respect of receipt of pension. Even perusal of Form No. 1 under Rule 116 of the Pension Rules filed on record by Respondent No. 5 clearly show that the said nomination has been made in respect of the receipt of amount of gratuity. The said nomination even if accepted to be correct cannot be used for the purpose of extending pensionary benefits to Respondent No. 6. Though learned AGP has tried to submit that the Government Employee is required to furnish the family information in Form No. 3, however,

merely because the name of the present Petitioner has not been included by the deceased in the information, the same would not disentitle the Petitioner to claim the pensionary benefits in the capacity of being the legally wedded wife of the deceased. Perusal of the Pension Rules, 1964 and 1982 clearly indicate that the widow is entitled to receive the family pension. The widow necessarily means to be the legally wedded wife of the deceased employee.

15. In the present case, there is more than sufficient evidence on record in order to conclude that the Petitioner is legally wedded wife of the deceased. Section 11 of the Hindu Marriage Act prohibits a marriage where either of the party has a living spouse at the time of marriage. Any such marriage is void. Respondent No. 6, therefore, ought to have shown evidence to indicate that she was married prior to 1975, as deceased has candidly stated about his marriage with Petitioner in 1975 in the reply filed by deceased in Criminal Misc. Application No. 12/1998 and evidence led before the said Court. We, therefore, have no hesitation to hold that this is a fit case to

declare that Petitioner is entitled to receive pension of deceased. Consequently, non consideration of the request made by the Petitioner for release of family pension to her by Respondent cannot sustain.

16. **This Writ Petition is, therefore, allowed.**
Respondent No. 5, is directed to submit the proposal for release of family pension in the name of Petitioner. Such proposal shall be forwarded within a period of 30 days from the date of this judgment. Respondent No. 2 to take appropriate decision thereon within a period of 90 days thereafter. Orders so passed be communicated to the Petitioner forthwith.

(R. M. JOSHI, J)

(RAVINDRA V. GHUGE, J)

AFTER PRONOUNCEMENT:

1. After this judgment was pronounced, the learned Advocate for the Respondent No. 6 prayed for staying the operation of this judgment.

2. The learned Advocate for the Petitioner opposes the said request.

3. Since we have come to a conclusion that Respondent No. 6 is not the legally wedded wife and as we have directed the compliance of this judgment within 30 days, request for staying the judgment is rejected.

(R. M. JOSHI, J)
Malani

(RAVINDRA V. GHUGE, J)