



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9861 OF 2022

Shaikh Shaheen Begum
wd/o Mohammed Asef
& another

.. Petitioners

Versus

State of Maharashtra & others

.. Respondents

Mr. Sujit Karlekar, Advocate holding for Mr. Shaikh T. M., Advocate
for the Petitioners.

Mr. S. K. Tambe, AGP for Respondent Nos. 1 to 4.
Advocate for Respondent No. 5 – Absent.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

**RESERVED ON : 6th MARCH, 2024.
PRONOUNCED ON : 19th MARCH, 2024**

ORDER : (Per R. M. Joshi, J.)

1. The Petitioners take exception to the communication dated 7th January, 2022, whereby the claim of Petitioner No. 1 for seeking pension on death of her husband Mohammed Asef is rejected.

2. It is the case of the Petitioner that she married to Mohammed Asef on 27th May, 2002 and out of the said wedlock, Petitioner No. 2 is born. Mohammed Asef was working as Assistant

Sub-Inspector in the police force at District Beed. Respondent No. 5 was his first wife and there were two sons and a daughter begotten from the said wedlock. It is the claim of the Petitioner that Mohammed Asef was suffering from illness such as cancer, diabetes, heart disease etc. and during his ailing period, Respondent No. 5 did not take his care. In such circumstances, marriage of Petitioner No. 1 and Mohammed Asef was performed according to the Muslim rites. The Petitioners also claim that Mohammed Asef retired on superannuation on 31st December, 2007 and was granted pension by Respondent No. 3 under Pension Payment Order No. PR-2/1008006845/5/P/08/10/60007852 dated 26th September, 2008. Mohammed Asef died on 16th May, 2021. The allegations are made with regard to the properties of Mohammed Asef being got transferred by Respondent No. 5 with the help of her son. Since Respondent No. 5 was the first wife of the deceased, as per the Service rules, her name was entered in service record as his nominee for family pension. It is claimed that Respondent No.5 is not solely entitled for retiral benefits as well as family pension of the deceased. Petitioner No. 1, therefore, moved an application for seeking family pension of deceased Mohammed Asef. Under an advice, she had also filed Regular Civil Suit No. 446/2021. By the impugned communication,

the claim of the Petitioner was rejected on the ground that in the nomination form, name of Respondent No. 5 is included by the deceased and hence the Petitioners are not entitled for seeking any pensionary and other benefits.

3. On behalf of Respondent No. 4, Prashant Shinde, Deputy Superintendent of Police, Beed, filed affidavit-in-reply contending that the record with the department reflects that the deceased died on 16th May, 2021 and during his life time he had nominated Respondent No. 5 as the legal heir entitled for pensionary benefits. Since the said entry is taken during the life time of the deceased, Respondent No. 5 only is entitled for said benefits. It is claimed that there is no illegality or perversity in the said rejection of claim of the Petitioner.

4. The learned Advocate for the Petitioners has relied upon the judgment of the Full Bench of this Court in the case of Kamalbai w/o Venkatrao Nipanikar vs. State of Maharashtra and others, **2019(3) Mh.L.J. 921**, wherein it is held that where there are two widows, who are legally wedded wives of the deceased, as per Rule 116(6)(a)(i) of the Pension Rules, the pension is payable equally to

both. He also relied upon judgment of the Hon'ble Supreme Court in case of R. Sundaram vs. the Tamil Nadu State Level Scrutiny Committee & others in Diary No. 5448/2020.

5. The claim of Petitioner No. 1 about having married with deceased Mohammed Asef is duly supported by the Marriage Certificate issued by Marathwada Wakf Board indicating the performance of marriage between deceased and Petitioner No. 1 on 20th June, 2002. The birth certificate as well as the school leaving certificate of Petitioner No. 2 also indicates that Petitioner No. 2 is the daughter of Mohammed Asef. Neither of the Respondents, has denied genuineness of these documents. Apart from this, perusal of the notice reply issued by Respondent No. 5 dated 29th July, 2021 shows that there is no dispute about the fact that the deceased got married to Petitioner No. 1 on 27th May, 2002. Thus, on the basis of available evidence on record, there is no dispute about the fact that Petitioner No. 1 is widow of deceased Mohammed Asef. Further, there is evidence to show that she was legally wedded wife of the deceased as both profess Muslim religion and as per the personal law, the performance of the second marriage is legal and valid. In the light of these facts, the judgment of Full Bench of this Court squarely

applies to the present case wherein it is held that Rule 116(6)(a)(i) of the Pension Rules provides that where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal share. Legal position that in case there are two legally wedded wives, they are entitled for family pension equally, is no more *res integra*.

6. It seems that Respondents No. 3 and 4 have refused the family pension on the ground that a nomination has been made by the deceased during his life time for receipt of pensionary benefits. In this regard, it would be relevant to take note of the Maharashtra Civil Services (Pension) Rules. Under Family Pension Rules, 1950, there is a provision of nomination under Rule 117(7) and such nomination could be done in Form No. 4 provided therein. This rule is conspicuously absent in subsequent rules. Pertinently, in the subsequent pension rules, i.e. Rule of 1962, 1964 as well as 1982, no such provision of nomination has been made with regard to the family pension. Rule 115 of Rules of 1982 provides for nomination to receive retirement/death gratuity under Rule 111 but not in respect of pension. It is thus clear that a nomination could be provided only in respect of receiving the benefits of gratuity and that the

nomination made for that purpose would not apply to the family pension. We, therefore, hold that it would not be open for the Respondents to consider the nomination made for gratuity for the purpose of extending benefits of family pension. Thus, the impugned communication refusing family pension to the Petitioner on the ground of nomination of first wife done by the deceased during his life time is wholly misconceived and not sustainable.

7. Learned Advocate for the Petitioners submits that Respondent No. 5 has received 100% pension amount from 16th May, 2021, though since beginning she was entitled to receive 50% pension only. He, therefore, seeks appropriate direction to Respondent No. 5 to pay 50% pension amount to Petitioner No. 1. The learned Advocate for Respondent No. 5 has opposed the said contention. Once it is held that Petitioner No. 1 is entitled to receive the pension equally as Respondent No. 5, such entitlement would be from the initial date itself. In such circumstances, Respondent No. 5 is directed to pay 50% of the total amount received by her, to Petitioner No. 1, till the payment in equal shares is effected under this order.

8. In the result, this **Writ Petition is allowed**. The impugned communication is set aside. It is held that Petitioner No. 1 is entitled to get family pension equally with Respondent No. 5. Appropriate authority to ensure the payment of pension to the Petitioner as per Rule 116(6)(a)(i) of Pension Rules, 1964, within period of 90 days from the date of this order.

(R. M. JOSHI)
JUDGE

dyb

(RAVINDRA V. GHUGE)
JUDGE