IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16029 OF 2022

Nikhil Kantaram Thorat : Petitioner

V/s.

Union of India & Ors. : Respondents

Mr. Prashant Trivedi a/w Khushboo Jain i/by Sudha Dwivedi for the Petitioner.

Smt. Neeta V. Masurkar for Respondent Nos.1 to 5.

Mr. S. N. Pillai for Respondent No.6.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. & ARIF S. DOCTOR, J.

DATE : 16th JANUARY, 2024

P.C. :

1. Heard Mr. Trivedi, learned counsel representing the Petitioner, Smt. Masurkar, learned counsel representing Respondent Nos.1 to 5 and Mr. Pillai, learned counsel appearing for Respondent No.6.

2. By means of this Petition filed under Article 226 of the Constitution of India, a challenge has been made to the judgment and order dated 19th December, 2022, passed by the Mumbai Bench of Central Administrative Tribunal in Original Application No.754 of 2019, which was filed by Respondent No.6. By the impugned order, the Original Application filed by Respondent No.6 has been allowed in part in terms of prayer clauses 'a' and 'c' made in the Original Application which are extracted hereinbelow;

> *"a) This Hon'ble Tribunal may kindly be pleased to issue directions to the respondents to consider the copies of Nomination Forms and Family details, submitted by the applicant and duly acknowledged by Respondents, as per Annexure-V and process the claim of the applicant for Family Pension, Death Gratuity and other terminal benefits, in terms of sub-rule (2) of Rule 54 of C.C.S (Pension) Rules, 1972 read with Government of India, Ministry of Finance, OM No.F.8(9) – E. V(1)/60 dated 13.12.1960 as stated in paragraph 4 (m) above;*
>
> *b) ….*
>
> *c) The Hon'ble Tribunal may be further pleased to issue directions to the respondents to consider the request of the applicant for providing Employment to her eldest son on compassionate ground, as applicable under the Rules."*

3. By the impugned order, prayer 'b' made before the Central Administrative Tribunal has been rejected. Further, the

claim put forth by the Petitioner that he is entitled to his share of pension and gratuity has been rejected by the Central Administrative Tribunal on the ground that he had not filed any supporting documents such as ration card, nomination form, marriage certificate of his parents or even photographs or any other document to show that the Petitioner is the legal heir of the deceased employee through his mother Smt. Maya (predeceased).

4. The facts which are necessary for appropriate adjudication of the issues involved in this Writ Petition are that one Kantaram Thorat was employed as Notice Server, a group 'C' post in the Income Tax Department, who unfortunately died in harness on 16th June, 2018. It is the case of the Petitioner that two sets of claims, the one by Respondent No.6, Smt. Surekha Thorat claiming herself to be the wife of the deceased employee and the other by the Petitioner claiming himself to be the son of the deceased employee from the second marriage said to have been solemnized with his mother, Smt. Maya, were

put forth before the departmental authorities. The fact that there were two sets of claims to the post retirement benefits in respect of the deceased employee is clear from perusal of letter dated 11th March, 2019, written by the Administrative Officer to the Zonal Accounts Officer of the department which has been enclosed at pages 116-117 of the Writ Petition. It appears that none of the claims were being granted, which led to filing of the Original Application bearing No.754 of 2019 by Respondent No.6, wherein, she claimed that she is the legally wedded wife of the deceased employee and accordingly in terms of the provisions of the Rule governing the payment of family pension, gratuity and other post retirement dues, she is entitled to the same. In the said Original Application, the Petitioner was impleaded as a party Respondent, who contested the claim of Respondent No.6 before the Central Administrative Tribunal by asserting that along with Respondent No.6, he is also entitled to his share of the amount of family pension and gratuity in terms of the provisions contained in the relevant Rules. It was also the case of the Petitioner put forth by him before the Central

Administrative Tribunal that he is entitled to payment of 50% share of the pension from the date of death of the deceased employee till he attains the age of 25 years as per the prescription available in the relevant provisions of the Central Civil Services (Pension) Rules, 2021 (hereinafter referred to as the Pension Rules).

5. The Central Administrative Tribunal however partly allowed the Original Application issuing direction to the departmental authorities to consider the request of Respondent No.6 for providing employment to her eldest son on compassionate ground and also to process the claim of family pension and death gratuity and other relevant benefits. The Central Administrative Tribunal, by the impugned order, however, rejected the claim of the Petitioner by observing that in support of his claim he failed to produce any documents.

6. Learned counsel for the Petitioner has argued that all the documents along with the claim of the Petitioner was furnished with the departmental authorities as is apparent from

a perusal of the letter dated 11th March, 2019. He has further argued that the Income Tax Department, in its written reply filed before the Central Administrative Tribunal, has admitted that along with his claim, the Petitioner had submitted certain documents in support thereof. Our attention has also been drawn by the learned counsel for the Petitioner to certain averments made in the rejoinder affidavit filed by the department to the counter affidavit filed by the Petitioner in the proceedings of the Original Application. He has, thus, submitted that the department admits availability of records and documents submitted by the Petitioner to establish his claim that he, being the son of the deceased employee from his second wife late Smt. Maya, is also entitled to the benefit of family pension to the extent of 50% and therefore the finding recorded by the Central Administrative Tribunal that no documents are available in support of the claim of the Petitioner is incorrect. He has categorically stated that the Petitioner is entitled to 50% of the pension being son of the deceased employee, only from the date of his death till the Petitioner attains the age of 25 years in terms of the provisions of the Rules and similarly he is also entitled to only 30% amount of gratuity as per nomination made by the deceased employee i.e. his father while he was in service.

7. Learned counsel representing Respondent No.6, however, has opposed the Writ Petition and submitted that there is nothing on record to establish that the Petitioner is the son of the deceased employee, who admittedly is the husband of the Respondent No.6. He has also argued that initially the case put forth by the Petitioner was that her mother, late Smt. Maya, married the deceased employee only after the deceased employee had divorced the Respondent No.6. However, now the claim is that the Petitioner is the son of the deceased employee from his second wife i.e. the mother of the Petitioner and such shifting of stands cannot be permitted. It has also been argued by the learned counsel for Respondent No.6 vehemently that all the documents furnished by the Petitioner in support of his claim that he is the son of the deceased employee from his second wife late Smt. Maya, are forged, fabricated and not genuine, hence, on the basis of such documents, no right can be said to

have accrued to the Petitioner to claim any portion of the retirement benefits. He categorically denies that the Petitioner is the son of the deceased employee Kantaram Thorat as there is no proof of such a relationship and in absence of any such proof, he cannot claim any portion of post-retirement benefits.

8. Learned counsel representing Respondent Nos.1 to 5 has submitted that on account of there being dispute between the Petitioner and Respondent No.6 regarding their respective claims for grant of post retirement dues, the department has not released either the family pension or the amount of gratuity.

9. So far as the payment of pension to the employees of the Central Government is concerned, the same is governed by the Pension Rules. The family pension is governed by Chapter VIII of the Pension Rules, according to which, where a government servant dies, the family pension is payable to the members of the family of the deceased government servant or pensioner in the following order;

(i) Widow or widower, subject to provisions of sub-rule (8) of rule 50 of the Pension Rules.

(ii) Children (including adopted children, step children and children born after retirement of the pensioner) subject to provisions of sub-rule (9) of rule 50 of the Pension Rules.

(iii) Sub-rule (7)(b) of rule 50 of the Pension Rules provides that where the family pension is payable to more than one member of the family at the same time, it will be paid in equal shares and if the share of the family pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee.

(iv) Sub-rule (8)(c) of rule 50 of the Pension Rules also provides that in case deceased government servant or pensioner is survived by more widows than one, the family pension shall be paid to the widows in equal shares and on the death or ineligibility of a widow, her share of the family pension shall become payable to her child or children who fulfil the eligibility conditions mentioned in sub-rule (9).

(v) Sub-rule (9)(a) of rule 50 of the Pension Rules provides that in case the deceased government servant or the pensioner is not survived by a widow or widower or if the widow or widower dies or ceases to be eligible for family pension, family pension shall be payable to the child or children who fulfil the conditions and as per the said conditions such a child or children should be unmarried and below the age of 25 years and not earning for their livelihood.

(vi) Sub-rule (9)(e) of rule 50 of the Pension Rules provides that the elder child shall be entitled to family pension till he or she attains the age of 25 years or married or has started earning his or her livelihood, whichever is earliest.

10. On the basis of the aforesaid provisions, the claim put forth on behalf of the Petitioner is that since he is the son of the

second wife of the deceased employee late Smt. Maya, who had predeceased her husband, he, being the only surviving son from the second wife of the deceased employee, is entitled to 50% of the amount of family pension and 30% of the amount of gratuity as per the nomination, though in absence of nomination he would have been entitled to 50% of the amount of gratuity as well. He has also stated that the Petitioner would be entitled to get the 30% amount of gratuity and 50% amount of the family pension from the date of death of the deceased employee till he has attained the age of 25 years.

11. The question, thus which calls for our determination is as to whether the reasons given by the Central Administrative Tribunal while passing the impugned judgment and order for not upholding the claim of the Petitioner are relevant and germane and sustainable. From a perusal of the letter dated 11th March, 2019 as mentioned above, it is clear that after the death of the deceased employee during his service period, two sets of claim were put forth before the authorities including that of the Petitioner himself as is apparent from the letter. When we

peruse the said letter dated 11th March, 2019, it is apparent that the Petitioner had laid his claim and had furnished certain documents in support of his claim such as list of relatives said to be present for wedding of the deceased employee with his mother, late Smt. Maya, copy of the letter received from Pension Cell of the department, copy of wedding photograph, copy of wedding card, copy of death certificate of Smt. Maya, copy of birth certificate of the Petitioner, copy of Bank of India passbook, copy of divorcee/separation affidavit etc. We may also note certain averments made by the department in the reply filed by it before the Central Administrative Department to the Original Application preferred by Respondent No.6. Paragraph 5(c) of the written reply furnished by the department before the Central Administrative Tribunal states *inter alia* that the Petitioner had claimed death benefits like family pension, gratuity, GPF etc. of late Kantaram Thorat and had filed papers to that effect with the department. Paragraph 5(c) of the reply filed by the department before the Central Administrative Tribunal is extracted hereinbelow;

> *"5. ...*
> *a. ....*
> *b. ....*
> *c. Both, Smt. Surekha Kantaram Thorat, and Mr. Nikhil K. Thorat, have claimed death benefits like family pension, gratuity, GPF etc., of Late Shri Kantaram Maruti Thorat, and have filed papers to that effect with this office."*

12. In the said reply, it was also stated by the department that both Smt. Surekha Kantaram Thorat (Respondent No.6) and Mr. Nikhil K. Thorat (Petitioner) are eligible to receive family pension and further that family pension papers of Respondent No.6 and those of Petitioner as well have already been forwarded to the Zonal Accounts Office for further processing. The said averments have been made in paragraph No.5(d) of the reply filed by the department before the Central Administrative Tribunal, which is extracted hereinbelow;

> *"5. ...*
> *a. ....*
> *b. ....*
> *c. ....*
> *d. As far as the disbursement of family pension is concerned, reliance is placed on para (19) of Government of India's decisions under Rule (54) of CCS (Pension) Rules, 1972, which deals with the eligibility of children from a void or voidable marriage, for family pension, and clarifies that, "**share of children from illegally wedded wife in the family pension***

> ***shall be payable to them under Sub-rule 7(c) of Rule 54 of CCS(Pension) Rules, 1972, along with the legally wedded wife".*** *And as such, both Smt. Surekha Kantaram Thorat and Mr. Nikhil K. Thorat, are eligible to receive family pension. Family pension papers of Smt. Surekha Kantaram Thorat and Mr. Nikhil Kantaram Thorat have already been forwarded by respondent no.4 to the Respondent No. 5 i.e. Zonal Accounts office for further processing."*

13. It is also to be noticed that even in the rejoinder affidavit filed by the department to the counter affidavit which was filed by the Petitioner before the Central Administrative Tribunal, it was admitted that the Petitioner had filed certain documents for establishing his claim for grant of post retirement dues. In paragraph No.3(a) of the said rejoinder filed by the department before the Central Administrative Tribunal, it was stated that the Petitioner (who was Respondent No.6 before the Central Administrative Tribunal) had filed his birth certificate, Aadhar card, copy of marriage invitation card of the deceased employee with the mother of the Petitioner Smt. Maya, as per the Zonal Accounts Office's letter dated 19th February, 2019. Paragraph 3(a) of the rejoinder affidavit is extracted hereinbelow;

"3. …

a. I say that as per records, an Affidavit on twenty rupees Stamp Paper of Divorce Deed of Smt. Surekha Kantaram Thorat and Shri Kantaram Maruti Thorat dated 05.09.1991 is available.The Respondent No.6 i.e. Mr. Nikhil Thorat has filed his birth certificate, Aadhar Card, and copy of Marriage invitation card of Shri Kantaram Maruti Thorat and Smt. Maya J Brahmane (Mother of Mr. Nikhil). As per ZAO's letter dated 19.02.2019, the applicant and respondent no.6 has been asked to submit a Succession Certificate in support of the claim, to safeguard the public money. It is matter of fact that the succession certificate is not submitted by the applicant or by the Respondent No.6 as on date. I say that the disputed claim between the applicant and respondent no.6 cannot be decided by these respondents. I accordingly submit that applicant and respondent no.6 are first required to get their claim adjudicated by competent court of law as both of them are asking for 100% claim for dues of the deceased employee claiming to be rightful family (on the basis of alleged Valid Marriage) of the deceased."

14. Accordingly, it cannot be said by any stretch of imagination that the Petitioner had not submitted documents with a view to establish his claim that he is the son of the deceased employee from his second wife, late Smt. Maya. It is altogether a different question that till date, neither any authority of the department nor the Central Administrative Tribunal has given any finding as to the veracity, truthfulness, genuineness or otherwise of the said documents being relied upon by the Petitioner. To establish the claim of grant of 50%

amount of family pension and 30% amount of gratuity, it is necessary for the Petitioner to establish that he is the son of the deceased employee from his second wife, late Smt. Maya and in absence of any such determination by the authority concerned, he will not be entitled to any of the benefits claimed by him.

15. We may, at the cost of repetition note that the learned counsel representing Respondent No.6 has, while opposing the Writ Petition, vehemently argued and submitted that all the documents being relied upon by the Petitioner to establish his claim are either forged or fabricated or not genuine. However, at the same breath we find it appropriate to observe that Petitioner ought to have been given some forum and opportunity to prove his claim either before the authorities of the department where the deceased employee was employed or before the Central Administrative Tribunal.

16. For the aforesaid reasons, we are of the opinion that for determination of the issue in this case, it will be appropriate that Petitioner is given an opportunity to establish his claim

before the authorities of the department concerned. Accordingly, we dispose of the Writ Petition with the following directions;

a) The competent authority of the Respondent-Department shall consider the claim of the Petitioner on the basis of documents available before it which are found mentioned in the letter dated 11th March, 2019 issued by the office of D.D.O.RG.19(1), 1st Floor, Matru Mandir, Opp. Bhatia Hospital, Nana Chowk, Grant Road (W), Mumbai – 400 007. For this purpose the Petitioner shall be given an opportunity of hearing to establish his claim on the basis of the said documents.

b) We further direct that while the competent authority of the department concerned considers the claim of the Petitioner on the basis of the documents mentioned in the aforesaid letter dated 11th March, 2019, Respondent No.6 shall also be given an opportunity of presenting her case and being heard by the authority concerned.

c) Respondent No.6 shall be paid the family pension excluding the amount which the Petitioner may be entitled i.e. 50% of the pension only for the period between the date of death of the deceased employee and the date on which the Petitioner attains the age of 25 years.

d) Such withholding of part of pension under this order will however be subject to final outcome of the proceedings which shall be drawn by the competent authority of the department concerned under this order for determination of the claim of the Petitioner.

e) In case the Petitioner succeeds in his claim, he shall be entitled to be paid 50% of amount of pension from the date of death of the deceased employee till he attains the age of 25 years.

f) Similarly, Respondent No.6 shall be paid the amount of gratuity except 30% of the total amount of gratuity.

Withholding of 30% amount of the gratuity shall be subject to final decision which may be taken by the competent authority under this order on the claim of the Petitioner.

g) The competent authority while deciding the claim of the Petitioner for payment of part of family pension shall also consider as to whether nomination said to have been made in favour of the Petitioner for receiving amount of gratuity to the extent of 30% is correct and genuine.

h) The amount as directed above of the pension and gratuity shall be paid to Respondent No.6 within eight weeks, failing which, the authority concerned may make himself/herself liable for contempt of Court.

i) The decision under this order on the claim of the Petitioner shall be taken within a period of three months from today.

j) As directed by Central Administrative Tribunal, the department shall consider the claim of the eldest son of Respondent No.6 for compassionate appointment and take appropriate decision thereon within this period of three months.

k) The judgment and order dated 19th December, 2022 passed by the Central Administrative Tribunal stands modified to the aforesaid extent.

l) No order as to costs.

(ARIF S. DOCTOR, J.) **(CHIEF JUSTICE)**