

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2238 OF 2023

Laxmi @ Laxmibai Rajaram Kolekar

...Petitioner

Versus

The Accounts Officer

Pay & Pension Section,

PAD BSF, Pushpa Bhavan, New Delhi-62 & Ors.

...Respondents

Mr. Vaibhav R. Gaikwad a/w Atharva R. Bhingardev, for the
Petitioner.

Mr. Suresh Kumar a/w Jyoti Yadav, for Respondent Nos.1 to 6.

Ms. P. M. Joshi – Deshpande, AGP for the Respondent No.7 – State.

Mr. Umesh Pawar a/w Sagar Sonawane, for the Respondent No.8.

**CORAM : NITIN W. SAMBRE &
ASHWIN D. BHOBE, JJ.**

DATE : 24th JANUARY, 2025

P. C. (Ashwin D. Bhoobe, J.)

1. Heard learned counsel for the Petitioner and the Respondents.
2. Rule. By consent of parties, the Petition is heard finally.
3. The Petitioner is before this Court seeking a direction against the Respondent Nos.1 to 4 and 6 to release the pensionary and financial benefits, in the name of the Petitioner, being the mother of deceased Dattatray Rajaram Kolekar (Dattatray).

4. Factual matrix :

- (a) Dattatray was working as a Constable in the Border Security Force (BSF). Dattatray was married to the Respondent No.8. While in service on 5th April, 2008, Dattatray passed away. The pensionary and other financial benefits payable to Dattatray were paid to the next of kin i.e. the widow of Dattatray. As per the nomination form submitted by Dattatray, the Respondent No.8 was shown as the first nominee, the Petitioner as the second nominee and father of Dattatray as the third nominee.
- (b) Respondent No.8 got remarried with Mr. Mukesh Balu Falle on 4th July, 2010. In view of the remarriage, the family pension payable to the Respondent No.8 was stopped with effect from 4th July, 2010.
- (c) The Petitioner i.e. mother of Dattatray approached the Respondent No.2 with a request to pay the family pension to the Petitioner, in view of the subsequent development i.e. Respondent No.8 having remarried and the Respondent No.8 having her own source of income.
- (d) Upon scrutiny of the request made by the Petitioner, the Respondent No.2 opined that the Respondent No.8 being a childless widow was eligible for getting family pension even

after remarriage. Such family pension could be denied to a widow only in the event of she having independent income from all sources equal to or higher than the minimum prescribed family pension.

- (e) The Petitioner is thus before this Court seeking the following substantive relief :-

“(a) That this Hon’ble Court may be pleased to issue a writ of certiorari and/or any other appropriate writ, order and/or direction in the nature of certiorari in exercise of the powers vested with this Hon’ble Court under Article 226 of the Constitution of India and thereby direct the Respondents herein to consider the Application of the Petitioner herein and thereby grant and release the family pension in the name of the present Petitioner herein and further also grant all the pensionary benefits in the name of Petitioner herein from August 2010.”

5. Respondent Nos.1 to 4 and 6 have filed their affidavit-in-reply dated 1st July, 2021, contending that the widow of the deceased Dattatray even after remarriage would be entitled to the family pension. Respondent No.8 would dis-entitled to the family pension only in the event of her income from all sources being equal or higher to the minimum prescribed family pension. Reliance was placed on Regulations 8.4 and 8.6 of the Office Memorandum dated 2nd September, 2008 which deals with the rules regulating pension, retirement/death/service gratuity/family pension/disability pension and *ex-gratia* lump-sum compensation.

6. The Respondent No.8 opposed the Petition by filing her reply

dated 28th June, 2024. Respondent No.8 admitted of having remarried with Mukesh Balu Falle on 4th July, 2010 and being blessed with a son out of her second marriage. She further stated that she has secured a job on the post of “Tax and Administrative Officer Group – C” at Mhaswad Municipal Council and she is working on the said post with effect from 22nd January, 2019. Respondent No.8 by placing reliance on clause 8.6 of the office memorandum dated 2nd September, 2018, claimed that she would be entitled to get benefit of family pension and accrued arrears between the period 4th July, 2010 upto 22nd January, 2019. In paragraph 12 of the said affidavit, Respondent No.8 gave no objection for release of family pension to the Petitioner, with effect from 22nd January, 2019 on-wards, the Petitioner being the second nominee of Dattatray.

7. The issue as raised in the Petition is the entitlement of the Petitioner to get the benefit of family pension and accrued arrears with effect from 4th July, 2010.

8. Today, Mr. Umesh Pawar, advocate for the Respondent No.8 states that the Respondent No.8 has instructed him to give no objection for release of the family pension to the Petitioner with effect from 4th July, 2010 and for the subsequent payments. He further states that the Respondent No.8 gives up her claim for the family pension with effect from 4th July, 2010.

9. Mr. Suresh Kumar, learned advocate for Respondent Nos.1 to 4 and 6 states that the family pension payable to the Respondent No.8 was stopped with effect from 4th July, 2010 on account of the dispute *inter-se* between the Petitioner and Respondent No.8 and the consequent claim and counterclaim made by them.

10. Though in the affidavit dated 28th July, 2024, the Respondent No.8 had made a claim to the family pension and accrued arrears between the period 4th July, 2010 to 22nd January, 2019, the Respondent No.8 has today fairly conceded to the claim and entitlement of the Petitioner to the family pension with effect from 4th July, 2010 and thereafter. Mr. Umesh Pawar submits that Respondent No.8 concedes to the payment of family pension to the Petitioner with effect from 4th July, 2010 in view of the Respondent No.8 having remarried and her independent income being more than the minimum prescribed pension that would be payable. The said statement made by the Respondent No.8 is accepted. Mr. Suresh Kumar submits that the Respondent Nos.1 to 4 and 6 would have no objection for release of family pension to the Petitioner in view of the no objection given by the Respondent No.8.

11. In view of the statements and the concession made today before this Court, we find that the Petitioner the mother of Dattatray and being the second nominee as per the nomination submitted by Dattatray, would be entitled to release of the family pension with effect from 4th July, 2010, along with all arrears. Such payments

shall be made by the Respondent Nos.1 to 4 and 6 within a period of eight weeks from today, with interest at the rate of 6% payable on the said amount.

12. Petition is allowed in above terms.

[ASHWIN D. BHOBE, J.]

[NITIN W. SAMBRE, J.]