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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 3758 OF 2025

KUSUM GANPAT GALANDE,

Aged 64 years, adult,

Indian inhabitant

(Widow of Late

Shri. Ganpat Ramchandra Galande)

Presently Residing at:

C/o: The kalakunj Co-operative

Housing Society Limited,

Room NO. 11, Chawl No. 2,

Panchshil Nagar, Smashan Bhumi Road,

Chunabhatti Sion, Mumbai 400 022

Permanent Address at:

At Post: Yeralwadi, Tal: Khatav,

Dist: Satara, Pin: 415 507

... Petitioner

Versus

1. MUMBAI PORT TRUST AUTHORITY,

Finance Department, Pension Branch

Imperial Chambers, S. S. Tolani Marg,

Ballard Estate, Mumbai 400 001

2. ACCOUNT OFFICER

MUMBAI PORT TRUST AUTHORITY

Finance Department, Pension Branch

Imperial Chambers, S. S. Tolani Marg,

Ballard Estate, Mumbai 400 001

3. Gajrabai Ganpat Galande

Residing at: Vadiyerai Baug,

Taluka: Kadegaon,

District Sangli,

Pin code: 415 305

... Respondents

Mr. Shailesh K. More, Advocate for the Petitioner.

Mr. S. B. Rao (Thr. VC), i/b. Ms. Gauri S. Rao, Advocate for
Respondent Nos. 1 & 2.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

RESERVED ON : 27th NOVEMBER, 2025

PRONOUNCED ON : 16th DECEMBER, 2025

FINAL ORDER : (*Ashwin D. Bhobe, J*)

1. Heard Mr. Shailesh K. More, Advocate for the Petitioner and Mr. S. B. Rao through VC, Advocate for the Respondent Nos. 1 & 2.

2. Petitioner claiming to be the second widow / second wife of Ganpat Ramchandra Galande (Ganpat), is before this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India, assailing the orders dated 21.06.2022 (Exhibit-J), 14.08.2024 (Exhibit-N) and dated 21.02.2025 (Exhibit-R), by which the Respondent Nos. 1 & 2 have rejected the claim made by the Petitioner for grant of the family pension of Ganpat.

3. The material facts of the case are that Ganpat was working as a Senior Worker in the Traffic Department of the Respondent Nos. 1 & 2, since 17.06.1963. Ganpat was married to Gajrabai Galande (Gajrabai) on 18.05.1971 and had two children out of the said wedlock. Gajrabai deserted the matrimonial house and re-married Jaisingh Tukaram Mandale on 07.07.1988. Ganpat re-married the Petitioner on 15.11.1988.

4. Ganpat superannuated from service w.e.f. 01.06.1988 and was paid pension during his lifetime.

5. Ganpat expired on 10.11.2008. Thereafter, Petitioner approached the Respondent No. 1 & 2 for grant of family pension. Said request was rejected by the Respondent No. 2 on 21.06.2022, observing that Ganpat had remarried the Petitioner without obtaining divorce from his first wife Gajrabai, as such the second marriage was not valid (Exhibit-J).

6. Vide Advocate's notice dated 03.08.2024 and 07.08.2024, Petitioner called upon the Respondent Nos. 1 & 2, to reconsider their decision and to grant family pension. Vide order dated 14.08.2024, Respondent No.2 rejected the claim of the Petitioner by reiterating that the re-marriage of Petitioner with Ganpat on 15.11.1988 was without legal separation of Ganpat and Gajrabai, as such the second marriage was not a valid marriage (Exhibit-N).

7. Petitioner through her relatives approached Gajrabai and Jaisingh Tukaram Mandale and obtained declaration from them stating Garjabai has no claim on the family pension / terminal benefits of Ganpat.

8. Dis-satisfied with the orders dated 21.06.2022 and 14.08.2024, Petitioner made an appeal to the Respondent Nos. 1 & 2 demanding the Family pension. Declaration / consent letter obtained from Gajrabai and Jaisingh Tukaram Mandale was relied in the appeal. Respondent No. 2 by order dated 21.02.2025 rejected the appeal (Exhibit-R). Reasons recorded in order dated 21.02.2025 are extracted herein under :-

“By this office letters of even Nos. 762 & 3198 dated 21/06/2022 & 14/08/2024 respectively opinion of Legal Division, Mumbai Port Authority was conveyed to you that second marriage of Late Shri Galande with you is not valid as per the Hindu Marriage Act, 1955, for the reason that Late Shri Galande married you on 15.11.1988 without obtaining the mutual Decree of Divorce, i.e. within one year of desertion by first wife.

2. Contention of your letter under reference is perused and noted that no new points or documents/papers have been brought out/submitted. Hence, status quo of the case remains, i.e. as informed earlier your request for Family Pension can not be acceded to.”

9. Petitioner is therefore before this Court seeking the following substantive reliefs :-

“a. That this Hon'ble Court may be pleased to hold and declare that the Respondent's act of denying family pension/non-fixation of Family Pension to the petitioner widow is in violation of Articles 14, 16 & 300-A of the Constitution of India.

b. That this Hon'ble Court may in exercise of powers under Article 226 of the Constitution of India to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent Nos. 1 & 2 to forthwith fix

and/or pay proper Family Pension [PPO/B 1683] to the Petitioner Widow after quashing orders dated 21-06-2022 (Exhibit-J), 14-08-2024 (Exhibit-N) & 21-02-2025 (Exhibit-R) and/or an any adverse orders and pay the arrears of Family Pension from the death of the deceased husband i.e. 10-11-2008 till date along with its accrued interest @ 18% per annum thereon till the date of payment or its realization.

c. That this Hon'ble Court may in exercise of powers under Article 226 of the Constitution of India to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent to forthwith pay interim pension to the Petitioner Widow till disposal of the Petition for her survival;"

10. Mr. Shailesh K. More, Advocate for the Petitioner submits that Gajrabai the first wife of Ganpat having re-married to Jaisingh Mandale, her marriage with Ganpat came to an end with effect from the date of her re-marriage. He submits that Gajrabai upon re-marriage lost all her rights in respect of Ganpat. He submits that the marriage of Gajrabai with Ganpat got automatically dissolved upon her second marriage and as such there was no question of Ganpat obtaining any divorce from the Court. He submits that Petitioner being the second legally wedded wife of Ganpat, was entitled to all the rights and terminal benefits payable to Ganpat. He submits that Gajrabai who had lost the status of the wife of Ganpat, had given her consent to the payment of all the pensionary benefits / family pension to the Petitioner as such the Respondents were bound to grant the family pension to the Petitioner. He relies on the decisions of the Hon'ble Supreme Court in the case of

Radha Devi Vs. Chief General Manager and Ors.¹; Smt. Shiramabai & Ors. v/s. Cap. Record Officer for O.I.C. & Anr.²; and Badri Prasad v/s Dy. Director of Consolidation & Ors.³

11. Mr. S. B. Rao, appearing through VC has opposed the present Petition on the ground that the marriage of the Petitioner with Ganpat is not valid and is contrary to the Hindu Marriage Act, 1955. He relies on the reasons given in the orders dated 21.06.2022, 14.08.2024 and 21.02.2025 to oppose the Petition.

12. From the rival contentions of the parties, the limited issue that requires to be answered is whether the Petitioner would be entitled to claim pensionary benefits of Ganpat, when her marriage with Ganpat was during the subsistence of his first marriage with Gajrabai?

13. Records of the case bear out that the Petitioner married Ganpat during the subsistence of his first marriage with Gajrabai. Petitioner does not claim that the marriage of Ganpat with Gajrabai was dissolved by judicial separation or by a decree of divorce.

1 SLP (C) Diary No 2365 of 2022

2 AIR 2023 Supreme Court 3920

3 AIR 1978 Supreme Court 1557

14. Petitioner contends to be the legally wedded wife of Ganpat. Said contention is premised on the ground that Gajrabai (first wife) having eloped with Jaising Tukaram Mandale and thereafter having remarried him, would amount to dissolution of Ganpat's marriage with Gajrabai. Consequently, the remarriage of Petitioner with Ganpat and her continued cohabitation with Ganpat confers a status of Petitioner being legally wedded wife of Ganpat.

15. Dissolution of marriage under the Hindu Marriage Act, 1955, can occur through fault based divorce or divorce by consent. In the instant case, marriage of Ganpat with Gajrabai was subsisting during the life time of Ganpat. Living separately is just a factual situation, whereas judicial separation is a legal status granted by a Court of Law. Petitioner has neither produced any document indicating judicial separation of Ganpat with Gajrabai, nor does the Petitioner claim of Gajrabai being judicially separated with Ganpat. Marriage of Petitioner with Ganpat was during the subsistence of the first marriage. In view of the said factual position, we are unable to accept the contention of the Petitioner, of she being the legally married wife of Ganpat.

16. Family pension is payable to the widow of the deceased employee, unmarried daughter of the deceased employee or the minor son of the deceased employee. In the instant case, there are two women claiming to be “widow”. Gajrabai was admittedly married to Ganpat. As observed hereinabove, Petitioner was married to Ganpat during the subsistence of his marriage with Gajrabai.

17. It is no longer *res integra* that for a woman “to be a widow”, she has to be legally married woman as per law applicable to the parties. Family pension can be claimed by a widow who is a legally wedded wife of deceased employee. Second wife, if not a legally wedded wife would not be entitled for the family pension. The Full Bench of this Court in the case of ***Kamalbai v/s. The State of Maharashtra & Ors.***⁴ to which one of us (Shri RavindraV. Ghuge, J) was a member, in paragraphs 17, 25, 26, 30, 47 has held as follows :

“17. The definition of the phrase “family” as appearing in Rule 116(16)(b) will have to be interpreted considering Rule 116(16)(a)(i) of the Pension Rules. Rule 116(16)(b), (a)(i) of the Pension Rules will have to be interpreted referring to the context, “where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal share.” This sub rule will have to be interpreted as that “where” two or more widows are entitled for the family pension. For a lady to be widow at the first instance she has to be legally married woman. The concept and institution of marriage is governed by personal law. There may be instances where the second

4 2019 SCC OnLine Bom 2219

marriage may be legal and valid in that case two widows may be entitled for pension. While interpreting Rule 116(6)(a)(i) of the Pension Rules, we need not import personal law, however, while considering the word “widow”, it will be necessary that for a woman to be a “widow”, she has to be at the first instance a legally married woman as per the law applicable to the parties. Rule 26 of the Maharashtra Civil Services (Conduct) Rules prohibits a Government servant from entering into or contracting a marriage with any person during the subsistence of his marriage. Proviso to Rule 26(2) of the M.C.S. (Conduct) Rules enables the Government to permit a Government servant to enter into or contract any such marriage as is referred in Clause (i) or Clause (ii), if it is satisfied that such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage and (b) there are other grounds for so doing or if according to personal law, if second marriage is permissible, then the second wife would come within the definition of widow on death of a Government Servant. The second wife in general parlance would not be entitled for family pension, unless she is a legally wedded wife. A second wife, who is not a legally wedded wife would not be entitled for family pension under Rule 116 of the Pension Rules. However a second wife if is a legally wedded wife would be entitled for the family pension. It is in this context Rule 116(6)(a)(i) of the Pension Rules, “where the family pension payable to more widows, than one” shall have to be read and interpreted Rule 116(6)(a)(i) of the Pension Rules cannot be read de hors the concept of legally wedded wife. The same also can be found credence in the definition of family as appearing in Rule 111(5) (i) of the Pension Rules.

25. *The Three Judges Bench of the Apex Court in a case of Raj Kumari v. Krishna, reported in (2015) 14 SCC 511 has also observed that normally pension is given to the legally wedded wife of a deceased employee. Same view is taken by the Apex Court in a case of Rameshwari Devi v. State of Bihar (supra) and it is held that the second wife is not entitled for family pension.*

26. *In view of the aforesaid discussion, we answer the reference as under: “In cases to which Maharashtra Civil Services (Pension) Rules, 1982 apply, the family pension can be claimed by a widow, who was legally wedded wife of the deceased employee. Second wife, if not a legally wedded wife would not be entitled for family pension and if the second wife is legally wedded wife, then should be entitled for the family pension.”*

30. *The first wife Hausabai had contended that the Hindu Marriage Act and the Hindu Succession Act do not recognize a second marriage performed during the subsistence of the first marriage. The second wife, therefore, would not be entitled to any share in the family pension in view of the law laid down in Rameshwari Devi (supra). It was conceded that though the second wife should be deprived of any pension, the minor children of the second wife would be entitled for family pension till they attain the age of majority.*

47. *Considering relevant Pension Rules particularly Rules, 111, 112, 114, Clause (I) under Rule 111(5) amended on 18-1-2016 by which the word ‘wife’ was replaced by the word “legally wedded wife” and Rule 116(6)(a)(i) referred in earlier part of the judgment and decision of the Apex Court in the case of Rameshwari Devi v.State of Bihar (supra), wherein it was considered that the woman in void marriage is not a widow, I concur with the view expressed by my learned brother Justice S.V. Gangapurwala that the second wife in general parlance would not be entitled for family pension unless she is legally wedded wife. A second wife who is not legally wedded wife would not be entitled for family pension under Rule 116 of the Pension Rules. However, a second wife if is legally wedded wife would be entitled for family pension, Rule 116(6)(a)(i) of the Pension Rules cannot be read de hors the concept of legally wedded wife and that the view taken by the Division Bench in the case of Chanda Hinglas Bharti v. State of Maharashtra (supra), Ramabai Gulabrao Janmik (supra) and the view of the learned single Judge in the case of Indubai Jaydeo Pawar (supra) appears to be correct view.”*

18. The decision in the case of ***Radha Devi (supra)*** cited by Mr. More, learned Advocate for the Petitioner had a different factual matrix. Radha Devi had continued to live as spouse with Jay Narayan Maharaj after the death of his first wife. Position of Radha Devi as a “spouse” was not disputed. In the peculiar facts and circumstances of the case, wherein Jay Narayan Maharaj and Radha Devi had lived and cared for

each other, post the death of the first wife of Jay Narayan Maharaj, the Hon'ble Supreme Court observed that Radha Devi at the old age should not be denied the status of spouse, as such held Radha Devi to be entitled to receive pension.

19. *Smt. Shiramabai (supra)* was a case wherein Subhedar Bhave was married to Anushuya. During the subsistence of his marriage with Anushuya, he married Shiramabai. Subsequently, Subhedar Bhave and Anusuya got separated by a decree of divorce by mutual consent, by paying a lumpsum amount to her. In such circumstances and taking note of the judicial separation of Subhedar Bhave and Anusuya, the fact of Shiramabai continuing to cohabit with Subhedar Bhave for 11 long years after his judicial separation, that the Hon'ble Supreme Court found Smt. Shiramabai to be entitled to receive the pension payable on demise of Subhedar Bhave. The decision in the case of Badri Prasad (*supra*) was referred to in the case of *Shiramabai (supra)* in the context of the partners having lived together for long spell as husband and wife.

20. It hardly needs to be stated that a decision is an authority for the proposition that has been laid down in a given factual matrix of a case and not for all that which logically follows from what has been laid

down. Decisions in the case of Radha Devi (supra), Shiramabai (supra) and Badri Prasad (supra) do not assist the case of the Petitioner.

21. Reliance placed on the declaration / consent letter of Gajrabai in the absence of any document indicating judicial separation of Gajrabai with Ganpat would not be of any help to the case of the Petitioner. Things would have been different if the Petitioner had produced a declaration from the Court of Law indicating either the Petitioner is entitled to estate / terminal benefits of Ganpat and/or Gajrabai having relinquished her rights in a manner recognized by law.

22. In view of the above, no fault can be found in the rejection of the Petitioner's claim by the Respondent Nos. 1 and 2. No case is made out to entertain the Petition. Consequently, **the Petition is dismissed** with no orders as to costs.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)