

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

COMMON JUDGMENT IN O.A. NOS. 32, 199 AND 261 ALL OF 2017

**(1) ORIGINAL APPLICATION NO. 32 OF 2017**

DIST. : JALGAON

Subhadrabai w/o Namdeo Sonwane, )  
Age. 70 years, Occu. Household, )  
R/o A/p Vikharan, Tq. Erandol, )  
Dist. Jalgaon. ) -- APPLICANT

VERSUS

1. The State of Maharashtra, )  
Through its Secretary, )  
Finance Department, Mantralaya,) )  
Mumbai – 400 032. )
2. The Accountant General –I, )  
Accounts & Entitlement, )  
Maharashtra, )  
101 Maharshi Karve Marg, )  
Mumbai 400 020. )
3. The Treasury Officer, )  
Jalgaon, Dist. Jalgaon, )  
Tq. & Dist. Jalgaon. )
4. The Sub Treasury Officer, )  
Erondol, Dist. Jalgaon )-- RESPONDENTS

**WITH**

**(2) ORIGINAL APPLICATION NO. 199 OF 2017**

DIST. : JALGAON

Rajubai w/o Shivaji Patil, )  
Age. 58 years, Occu. Household, )  
R/o A/p Ram Mandir Chook, )  
Tamaswadi, Tq. Parola, Dist. Jalgaon. ) -- APPLICANT

VERSUS

1. The State of Maharashtra, )  
Through its Secretary, )  
Finance Department, Mantralaya,)

- Mumbai – 400 032. )
2. The Accountant General –I (A&E), )  
2<sup>nd</sup> Floor, Pratishtha Bhavan, )  
Near Marine Lines, )  
101 Maharshi Karve Marg, )  
Mumbai. Maharashtra. )
3. The Superintendent of Police, )  
Jalgaon, Tq. & Dist. Jalgaon. )-- RESPONDENTS

**WITH****(3) ORIGINAL APPLICATION NO. 261 OF 2017**

DIST. : OSMANABAD

Shivram s/o Yadav Surwase, )  
Age. 82 years, Occu. Retire, )  
R/o At Bolegaon, Post – Aloor, )  
Tq. Tuljapur, Dist. Osmanabad. ) -- APPLICANT  
**(since dead through LR's)**

1-A Smt. Shakuntala @ Sakhubai )  
w/o Shivram Survase, )  
Age. Major, Occu. : Household, )  
R/o At – Bolegaon, Post Aloor, )  
Tuljapur, Tq. Tuljapur, )  
Dist. Osmanabad. ) -- APPLICANT

**VERSUS**

1. The State of Maharashtra, )  
Through its Secretary, )  
Finance Department, Mantralaya,) )  
Mumbai – 400 032. )
2. The Accountant General –II (A&E), )  
Pension Wing Old Building, )  
In front of Ravi Bhavan, )  
Nagpur. )
3. The Superintendent of Police, )  
Osmanabad, )  
Tq. & Dist. Osmanabad. )-- RESPONDENTS

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APPEARANCE :- Shri S.K. Mathpati, learned Advocate for  
the applicants in all these three Original  
Applications  
: Shri V.R. Bhumkar, learned Presenting  
Officer for the respondents in all these  
three Original Applications.  
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**CORAM : Hon'ble Shri B.P. Patil, Acting Chairman**

**RESERVED ON : 28<sup>th</sup> August, 2019**

**PRONOUNCED ON : 05<sup>th</sup> August, 2019**  
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### **COMMON JUDGMENT**

1. Facts and the issues involved in all these Original Applications are similar and identical therefore I have decided all these Original Applications by the common order.

2. The applicants in all the Original Applications have claimed family pension on the ground that they are entitled to get it as they being second wives of deceased Government employee, by filing the present Original Applications.

3. Smt. Subhadrabai w/o Namdeo Sonwane the applicant in O.A. no. 32/2017 is widow of deceased Shri Namdeo Hula Sonwane. Deceased Shri Namdeo Hula Sonwane was appointed as a Peon in the Treasury Office, Erandol, Dist. Jalgaon on 7.5.1957. He rendered unblemished service and thereafter retired on 30.5.1988 after rendering service of 27 years, 3 months and 29

days. Respondent no. 2 after verifying the service record of the deceased Shri Namdeo Hula Sonwane granted pension to him in the year 1988. Deceased Shri Namdeo Hula Sonwane had got married with one Smt. Bhikubai Sonwane (first wife) in the year 1952-53. Out of first marriage they had not conceived any child and therefore deceased Namdeo Sonwane has taken divorce from his first wife i.e. from Bhikubai Sonwane with mutual consent on 26.12.1964 by executing bond sr. no. 9097 and thereafter got married with the present applicant on 19.1.1965. The said marriage was duly registered in the office of Marriage Registration Office before the Registrar, Erandol - 1. It is contention of the applicant that her husband namely Shri Namdeo Sonwane died on 30.11.1990. It is contention of the applicant that her husband Shri Namdeo Sonwane received pension till his death i.e. till 30.11.1990. It is contention of the applicant that out of her wedlock with Namdeo Sonwane she had begotten three sons and three daughters. It is her contention that her name has been recorded in the nomination form as she being second wife of deceased Shri Namdeo Sonwane and therefore she is entitled to get the family pension. First wife of deceased namely Smt. Bhikubai w/o Namdeo Sonwane is not entitled to get family pension as she had been divorced, but the respondents have wrongly granted family pension to the first wife of the deceased

namely Smt. Bhikubai Sonwane without consent of the applicant. Therefore, Smt. Bhikubai Sonwane and the present applicant had applied on 22.6.2010 to the respondent authorities and prayed to grant family pension to Smt. Bhikubai Sonwane and the present applicant equally. They have submitted required documents along with the said application, but the respondents had not considered their application in view of the provisions of Rule 116 (6) (a) & (b) of the Maharashtra Civil Services (Pension) Rules, 1982. It is her contention that Smt. Bhikubai Sonwane (first wife) died on 6.11.2011 and after her death the applicant has applied to the respondents for granting family pension to her, but the respondents had not considered her request. Therefore she approached this Tribunal by filing the present O.A. and prayed to direct the respondents to grant family pension to her in view of provisions of the Rule 116 (6) (a) & (b) of the M.C.S. (Pension) Rules, 1982. It is her contention that as she is second wife of deceased Shri Namdeo Sonwane she is entitled to get the family pension. It is her contention that she is legally wedded wife of deceased Shri Namdeo Sonwane as her marriage has been performed after divorce of Shri Namdeo Sonwane from his first wife Smt. Bhikubai Sonwane and therefore there is no impediment in granting family pension to her.

4. Respondent nos. 1 to 4 in O.A. no. 32/2017 resisted the contentions of the applicant. It is their contention that one Smt. Bhikubai Sonwane was the first wife of deceased Shri Namdeo Hula Sonwane. It is their contention that as per the contention of applicant deceased Shri Namdeo Sonwane divorced his first wife by mutual consent by executing agreement on 26.12.1964. It is their contention that said consent was signed on 30.3.1965 and the deceased Shri Namdeo Sonwane got married with the applicant on 19.1.1965. It is their contention that the divorce in between deceased Shri Namdeo Sonwane and his first wife Smt. Bhikubai Sonwane is questionable due to fact that there is no order or decree of the competent Court and therefore it cannot be said that the deceased Shri Namdeo Sonwane divorced Smt. Bhikubai and due to said facts the Accountant General, Mumbai while sanctioning the pension case of the deceased Shri Namdeo Sonwane sanctioned family pension to Smt. Bhikubai Sonwane without considering his second marriage with the applicant. After the death of Shri Namdeo Sonwane the applicant submitted application on 5.9.1991 for family pension to the Treasury Office, Jalgaon, which was forwarded to the Accountant General, Mumbai by letter dated 19.9-1991. The Accountant General, Mumbai rejected the said proposal as second marriage of deceased Shri Namdeo Sonwane took place in the year 1965 and therefore it

was not valid one and hence family pension was not admissible to the second wife. It is their contention that they informed the applicant to produce the original legal heirship certificate and other required documents, but she had not submitted the same. On the contrary she has admitted that she is not legally wedded wife of the deceased Shri Namdeo Sonwane. It is their contention that the Government of Maharashtra in Finance Department vide G.R. dated 3.11.2008 clarified that the definition of the husband and wife in M.C.S. (Pension) Rules, 1982 means legal husband / wife. Pension and the benefit of D.C.R.G. and family pension is allowed only to the legally eligible member's of the family. If the second marriage is illegal the second wife does not get the legal status of legal wife and hence family pension is not admissible to the second wife. It is their contention that the second wife of the deceased Shri Namdeo Sonwane is not covered under the provisions of M.C.S. (Pension) Rules, 1982 and therefore the applicant is not entitled to get family pension. On these grounds they have prayed for dismissal of the O.A.

5. Smt. Rajubai Patil, applicant in O.A. no. 199/2017, is widow of deceased Shri Shivaji Baliram Patil, Deceased Shri Shivaji Baliram Patil was initially appointed as a Police Constable in the Police Department in the year 1971. He rendered 33 years

unblemished service and retired on 11.4.2003 as a Police Head Constable and after his retirement pension has been sanctioned to him. It is contention of the applicant that Shri Shivaji Baliram Patil died on 9.2.2013 and he received pension regularly till his death. It is her contention that deceased Shri Shivaji Baliram Patil got married with Smt. Sunanda (first wife) on 2.6.1969 but they had not begotten any child till the year 1983. Therefore with the prior permission / consent of Smt. Sunanda Patil deceased Shri Shivaji Patil solemnized second marriage with the applicant on 9.12.1983 as per the rites then prevailing in the Hindu religion. The applicant lived entire life from the date of her marriage with Shri Shivaji Patil till his death and there was no dispute between the first wife and her and both of them were living together with the deceased. In the year 1987 for first time a female child was born to the first wife and thereafter another female child in the year 1989. Again she had given birth to male child in the year 1991 and female child in the year 1993. It is contention of the applicant that after retirement the deceased Shri Shivaji patil nominated both his wives for family pension. After death of deceased Shri Shivaji Patil his first wife namely Smt. Sunanda w/o Shivaji Patil executed an affidavit on 23.8/9.2013 stating that both the wives have equal share in the family pension. First wife of the deceased Shri Shivaji Patil namely Smt. Sunanda w/o



Shivaji Patil died on 30.1.2014. After the death Smt. Sunanda w/o Shivaji Patil the applicant along with four children of Smt. Sunanda Patill applied for heirship certificate and collected the same and thereafter filed an application to the res. no. 3 for granting family pension. Four children born to Smt. Sunanda Patil have also consented to grant family pension to the applicant. The res. no. 3 forwarded her application to the res. no. 2, but the res. no. 2 by the communications dated 12.10.2014 and 27.1.2015 rejected her claim. Therefore she approached the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing writ petition No. 2539/2015. The Hon'ble High Court disposed of the matter on 5.3.2015 with liberty to the applicant to avail alternate remedy and therefore she filed the present O.A. It is contention of the applicant that she is legally wedded wife of the deceased and therefore she prayed to grant family pension by quashing the impugned communications dated 12.10.2014 and 27.1.2015 issued by the res. no. 2.

6. Respondent no. 2 resisted contentions of the applicant by filing his affidavit in reply. It is his contention that the Comptroller and Auditor General of India discharges duties through field offices, i.e. Accountants General / Pr. Accountant General offices in accordance with the provisions of Article 149 of

the Constitution of India read with the comptroller and Auditor Generals (Duties, Powers and Conditions of Service) Act, 1971 passed by the Parliament in 1971. Accordingly, the role of the Accountant General / Pr. Accountant General in matters related to pensionary benefits of the retired employees of the State of Maharashtra, in his capacity as Audit Officer of the State, is limited to scrutiny of proposals received from Heads of Offices of Government of Maharashtra from where the employee/s retired, in the light of the provisions contained in M.C.S. (Pension) Rules, 1982, and with reference to Government Resolutions issued from time to time and to authorize the disbursing authority concerned to make payment of the pensionary benefits sanctioned by the departments of the State Government. This Respondent does not act on its own violation and cannot authorize payment of pensionary benefits without receipt of proper pension proposals from the Head of Office. If the proposals are found in contravention to any provisions of M.C.S. (Pension) Rules, 1982, the pension is not being authorized.

7. It is his contention that deceased Shri Shivaji Baliram Patil retired voluntarily from service on 11.4.2003 (Before Noon). His pension proposal was submitted to his office by the res. no. 3 i.e. the Superintendent of Police, Jalgaon vide letter dtd. 27.1.2004.

As per the family details furnished in form no. 3 the names of Smt. Sunanda & Smt. Rajubai were mentioned as wives. The pension case of Shri Shivaji Patil was finalized by his office on 16.2.2004 without incorporating names of two wives in the Pension Payment Order as clarification was sought from the department regarding status of legally wedded wife who is actually eligible for family pension as per rule 116 (7) of the M.C.S. (Pension) Rules, 1982. The department vide its letter dtd. 16.3.2004 clarified the name of first wife Smt. Sunandabai who was eligible for family pension and forwarded the necessary family pension papers in respect of Smt. Sunandabai. Accordingly, necessary instructions were issued by him to the Treasury Office, Jalgaon vide letter dtd. 13.4.2004 to grant family pension to Smt. Sunandabai in the event of death of the government servant Shri Shivaji B. Patil. It is his contention that as per the Hindu Marriage Act, 1955 the second marriage is null and void when the first wife is alive and second wife cannot be considered as legally wedded wife and to be eligible for family pension. It is his contention that as regards payment of family pension to the second wife, the Government of Maharashtra in Finance Department under their Circular dated 3.11.2008 has issued the clarification that as per rule 116 (16) (B) of M.C.S. (Pension) Rules, 1982 the legal wife is eligible for family pension and the benefit of

D.C.R.G. & family pension should be allowed to the legally eligible member of family. Since the second wife does not acquire a legal status, the family pension is not admissible to the second wife. The impugned communications dated 10.12.2014 and 27.1.2015 issued by his office stating that the applicant being second wife was not eligible for family pension in view of the above rule provisions and the G.R. It is his contention that by the letters dtd. 10.12.2014 & 27.1.2015 he requested the Department to furnish the names of eligible children, if any, born to Smt. Sunandabai being the eligible members to draw family pension after the death of Smt. Sunandabai, since the marriage of deceased with the second wife Smt. Rajubai is treated as null and void. The Department vide letter dated 11.6.2015 forwarded the form no. 12 and identification documents of Kum. Seema Shivaji Patil, being the legal heir to draw family pension after the death of her mother i.e. Smt. Sunandabai w/o Shivaji Patil. Accordingly, his office vide authority letter dtd. 30.9.2015 had authorized family pension of Rs. 2550/- per month to Kum. Seema Shivaji Patil w.e.f. 30.1.2014 to 16.11.2014. It is his contention that the applicant being second wife is not entitled to get family pension and therefore he supported the impugned orders and prayed to reject the O.A.

8. Respondent no. 3 resisted contentions of the applicant by filing his affidavit in reply. He has reiterated the contentions raised by the res. no. 2 in his affidavit in reply. It is his contention that the applicant is not legally wedded wife of Shri Shivaji Patil in view of the provisions of Hindu Marriage Act, 1955 and therefore she is not entitled to get family pension. He has submitted that the res. no. 2 is the competent authority to sanction family pension and he had forwarded the pension proposal along with necessary documents to the res. no. 2 and recommended for sanction of family pension to the applicant vide proposal dated 27.10.2014 and 5.1.2015. But the res. no. 2 refused the family pension to the applicant on the ground that she is not entitled to family pension as she is not legally wedded wife of deceased Shri Shivaji Baliram Patil. It is his contention that the res. no. 2 has rightly rejected the claim of the applicant in view of the provisions of M.C.S. (Pension) Rules, 1982. There is no merit in the Original Application. Therefore, he has prayed to dismiss the Original Application.

9. Applicant Smt. Shakuntala @ Sakhubai, the legal heir of deceased Shri Shivram s/o Yadav Surwase in O.A. no. 261/2017, has contended that the deceased Shri Shivram s/o Yadav Surwase was her husband. Shri Shivram Yadav Surwase was appointed

as a Constable in the Police Department on 1.5.1952 and after rendering 33 years unblemished service he retired as a Assistant Sub Inspector on attaining the age of superannuation on 2.7.1992. After retirement, he was getting pension regularly till his death. It is contention of the applicant that the deceased Shri Shivram Surwase married with one Smt. Kamal Surwase (first wife) in the year 1955, but she was unable to conceive the child hence with prior permission or consent of first wife namely Smt. Kamal Surwase deceased Shri Shivram Surwase performed marriage with her in the year 1972 as per the rites then prevailing in the Hindu religion. Since the date of marriage she is residing with Shri Shivram Surwase. There is no dispute between her and first wife Smt. Kamal Surwase. Both of them resided with the deceased Shri Shivram Surwase and neither Smt. Kamal Surwase nor the applicant conceived any child. It is contention of the applicant that when deceased Shri Shivram Surwase was appointed as a Head Constable in Police Department the Bombay Civil Services Pension Rules, 1950 were in existence. The Government has introduced new Family Pension Rules, 1964 and as per the said rules two widows are entitled to get family pension equally. It is her contention that the first wife of deceased namely Smt. Kamal Surwase died on 9.9.1999. It is contention of the applicant that Shri Shivram Surwase was on the death bed and

therefore he has executed affidavit on 9.4.2013 after death of his first wife Smt. Kamalbai for deleting her name and recording name of present applicant i.e. second wife as his nominee for getting family pension. Accordingly he filed an application on 21.5.2015 with the res. no. 2 for inclusion of name of the applicant in the concerned record for getting family pension, but the res. no. 2 had not taken any decision and therefore he had filed another application in the month of October, 2015. On 18.12.2015 the res. no. 3 informed deceased Shri Shivram Surwase that he married with Shri Shakuntala in the year 1972 when his first wife was alive and Smt. Shakuntala being second wife of the deceased Shri Shivram Surwase, she is not entitled to claim family pension as per Hindu Marriage Act, 1955. Therefore, deceased Shri Shivram Surwase filed another application on 28.3.2016 for reconsideration of his request in view of provisions of rule 115 (5) of M.C.S. (Pension) Rules, 1982, but the res. no. 2 rejected his application by the impugned order dtd. 12.5.2016. Therefore, the deceased Shivram approached this Tribunal challenging the impugned communications dated 18.12.2015 and 12.5.2016 issued by the res. no. 2 by filing the present Original Application. It is contention of the applicant that the impugned orders are in contravention of provisions of M.C.S. (Pension) Rules, 1982. The respondents have not considered Rule 116 (a) (i) (ii) & 6 (b) of

M.C.S. (Pension) Rules, 1982 and therefore he prayed to allow the present O.A.

10. Res. nos. 1 & 3 resisted contentions of the applicant by filing their affidavit in reply. It is their contention that the applicant is a second wife of deceased Shri Shivram Surwase and therefore she is not eligible for family pension and therefore family pension was not granted to her. It is their contention that the res. no. 2 has rightly refused to grant family pension to the applicant. Therefore they justified the impugned orders.

11. Respondent no. 2 resisted contentions of the applicant by filing his affidavit in reply. It is his contention that the Superintendent of Police, Osmanabad by his letter dtd. 11.2.1992 forwarded the proposal for grant of pensionary benefits to deceased Shri Shivram Surwase. In form no. 3 i.e. details of family the name of both the wives namely Smt. Kamalbai and Smt. Shakuntala were mentioned as wives stating the year of marriage as May 1955 and the second marriage as 1972 respectively. From the fact it is clear that deceased Shri Shivram Surwase had entered into second marriage with Smt. Shakuntala during the subsistence of the first marriage. Therefore element of family pension was incorporated only in the name of first wife Smt. Kamalbai. As per section 5 of the Hindu Marriage Act, 1955



second marriage solemnized with Smt. Shakuntala during the subsistence of the first marriage is null and void. It is his contention that in reply to the representation dtd. 28.3.2016 for inclusion of family pension element in favour of second wife Smt. Shakuntala, he has intimated the deceased Shri Shivram Surwase vide letter dtd. 12.5.2016 that since the element of family pension was already included as per the details in the form received from the Department, no modification or revision was possible at that stage. Moreover as per the provisions of G.R. dtd. 3.11.2008 second marriage solemnized during the subsistence of the first marriage is not only null and void, but the children born out of such wedlock are also not eligible for family pension. It is his contention that he has decided the applications of deceased Shri Shivram Surwase as per the provisions of G.Rs. and M.C.S. (Pension) Rules, 1982 and there is no illegality. Therefore, he has supported the impugned orders.

12. I have heard Shri S.K. Mathpati, learned Advocate for the applicants in all the three cases and Shri V.R. Bhumkar, learned Presenting Officer for the respondents in all the three cases and perused the documents filed on record.

13. Learned Advocate for the applicants has submitted that the applicants in the present O.As. are second wives of the deceased

Government servants. He has submitted that in view of provisions of rule 116 (6) of the M.C.S. (Pension) Rules, 1982 the family pension is payable to more widows than one. He has submitted that the word 'widows' has been used in the said provision and it shows that more than one widows are entitled to get the family pension and therefore the second wife of deceased Government servant is also entitled to claim family pension. He has submitted that the said issue has been considered by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **writ petition no. 9933/2016 (Kamalbai w/o Venkatrao Nipanikar Vs. the State of Maharashtra & Ors.)** decided along with writ petition nos. 11256/2016 and 12308/2016 decided on 31.1.2019. He has attracted my attention to paras 40 to 45, wherein it has been observed by the Hon'ble High Court as follows :-

*"40. After I had delivered the judgment in **Kantabai (supra)**, the Division Bench at Nagpur delivered the judgment on 26.11.2015 in **Chanda Hinglas Bharati vs. State of Maharashtra and others, 2016 (2) Bom. C.R. 623**, which has interpreted Rule 116 and especially the opening sentence "where the family pension is payable to more widows than one". It was, therefore, concluded that such pension would be payable to more than one widow if the deceased employee professes Muslim religion and would also be payable in the case of Hindu widows, if the marriage was performed prior to 18.05.1955 when the Hindu Marriage Act was introduced. However, Rule 4 (vi) as found under the new pension scheme 1964 under the Bombay Civil Services Rules, 1950 and the judgment of the Honourable Supreme Court in *Badshah (supra)* were not cited before the learned Division Bench in **Chanda Bharati (supra)**.*

41. In **Badshah vs. Urmila Badshah Godse, (2014) 1 SCC 188**, decided on 18.10.2013, it was intended that a broader meaning should be given to the provisions of law when it comes to ensuring life with dignity for a woman who may have been enticed or defrauded by a male in marrying him rendering her to be a second wife. The Honourable Supreme Court, therefore, concluded that a construction/ interpretation of a provision which reduces the legislation to futility should be avoided and a bolder construction based on the view that the Parliament would legislate for the purpose of giving the provision an effective result, should be opted for.

42. The observations of the Honourable Supreme Court in paragraphs 16, 18, 19 and 20 of **Badshah (supra)** read thus:

"16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the life of the law, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the Court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purpose of the law.

18. The Court as the interpreter of law is supposed to supply omissions, correct uncertainties and harmonize results with justice through a method of free decision—"libre recherché scientifique" i.e. "free Scientific research". We are of the opinion that there is a non rebuttable presumption that the

Legislature while making a provision like section 125, Criminal Procedure Code, to fulfill its Constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from Shah Bano to Shabana Bano guaranteeing maintenance rights to Muslim women is a classical example.

19. In *Rameshchandra Rampratapji Daga vs. Rameshwari Rameshchandra Daga*, (AIR 2005 SC 422), the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not 'immoral' and hence a financially dependent woman cannot be denied maintenance on this ground.

20. Thus, while interpreting a statute the Court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon Case [(1584) 3 Co Rep 7a] which became the historical source of purposive interpretation. The Court would also invoke the legal maxim construction ut res magis valeat quam pereat, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective

result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under section 125, Criminal Procedure Code, such a woman is to be treated as the legally wedded wife."

(Emphasis supplied)

43. Finally, the Honourable Supreme Court concluded in paragraph 22 in **Badshah case (supra)** that "In taking the aforesaid view, we are also encouraged by the following observations of this Court in Capt. Ramesh Chander Kaushal vs. Veena Kaushal (1978) 4 SCC 70: "The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause the cause of the derelicts".

(Emphasis supplied).

44. I concur with the view expressed by my esteemed brother Justice Gangapurwala concluding that a woman, other than the widow (legally wedded wife), would not be entitled for pension in any share and that her minor children would be titled for her share subject to the prescription under Rule 116(6)(a)(i) and Rule 116(b) of the 1982 pension rules, owing to the amendment introduced on 18.01.2016 by which the word "wife" was replaced by the words "legally wedded wife". This amendment was introduced after I had delivered the judgment in **Kantabai (supra)**.

45. Nevertheless, I hold the view that both the widows (or more) would be entitled to equal shares of pension from the introduction of the 1964 New Pension Scheme, till the introduction of the MCS (Pension) Rules, 1982, in view of Rule 4(vi) and **Badshah (supra)**. Hence, the view taken in **Kantabai (supra)** can be said to be applicable till the introduction of the 1982 Rules in view of the amendment dated 18.01.2016 by which the word "wife" was replaced by the words "legally wedded wife". I, therefore, deem it appropriate to hold that if any widow or widows are already being paid pension in equal shares, owing to the judgments delivered by the High Court and the

*Honourable Supreme Court in Badshah (supra), they should not be deprived of such shares in view of this judgment.”*

14. He has submitted that the case of present the applicants has to be considered in view of the provisions of M.C.S. (Pension) Rules, 1982 before amendment dtd. 18.1.2016 and, therefore, the applicants are entitled to get the family pension.

15. Learned Presenting Officer has submitted that the full bench of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad has decided the issue 'in cases to which, Maharashtra Civil Services (Pension) Rules, 1982, apply whether the second wife is entitled to claim the family pension?'. He has submitted that the said issue has been referred to the full bench and the full bench after considering various decisions of the Hon'ble Supreme Court and the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 held that the family pension can be claimed by the widow, who was legal wife of the deceased Government employee. Second wife, if not legally wedded wife would not be entitled for family pension and if the second wife is legally wedded wife, then she is entitled for family pension. He has also placed reliance on the full bench judgment of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in case of **Kamalbai w/o Venkatrao Nipanikar Vs. the State of**

**Maharashtra & Ors.** in **writ petition no. 9933/2016.** He has submitted that now the controversy in respect of entitlement of second wife to claim family pension has been set at rest and therefore in view of the said legal principle the applicants, who are second wives of the deceased Government employees are not entitled for family pension as they are not legally wedded wives and therefore he prayed to reject the Original Applications.

16. On perusal of record it is crystal clear that all the applicants are second wives of the deceased Government employees. Their marriages had been performed with the deceased employees during the subsistence of their first marriage. Therefore, the marriages of the respective applicants with the respective deceased Government employees were *void-ab-initio*. Therefore, the applicants cannot acquire the status of legally wedded wife. They being second wives are not entitled to claim family pension in view of the provisions of M.C.S. (Pension) Rules, 1982 in view of the settled principles laid down by the full bench of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in the above cited decision. In the said decision the Hon'ble High Court has specifically observed 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 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.*



18. *The interpretation of the term “family” for the purpose of gratuity and family pension cannot be different. The words and phrases appearing in a statute or rule ought to be given same meaning. It is well laid down that, the statute is governed by one spirit and policy and intended to be consistent and harmonious in its several parts and provisions.”*

17. It has been further observed by the Hon’ble High Court in para 25 & 26 as follows :-

*“25. The Three Judges Bench of the Apex Court in a case of **Raj Kumari and another Vs. Krishna and others** 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 Vs.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.”*

18. Considering the above settled legal position it is crystal clear that second wife in general parlance is not entitled for family pension unless she is legally wedded wife and therefore she is not entitled to get family pension under the provisions of rule 116 of the M.C.S. (Pension) Rules, 1982. However, the second wife is legally wedded wife then she is entitled for family pension in view

of the provisions of rule 116 (6) (a) of M.C.S. (Pension) Rules, 1982.

19. In the present cases the applicants are legally not wedded wives of the deceased Government employees. Their marriages have been performed during the subsistence of first marriage of the deceased Government employees. Therefore, their marriages are invalid and therefore it do not confer the status as legally wedded wife on them. Consequently, they cannot claim family pension in view of the provisions of rule 116 (6) (a) (i) of M.C.S. (Pension) Rules, 1982. The respondents have rightly rejected the claim of the applicants on the said ground. There is no illegality in the impugned orders issued by the respondents rejecting the claim of the applicants. Therefore, no interference is called for in the impugned orders. There is no merit in the Original Applications. Therefore, the Original Applications deserve to be rejected.

20. In view of the discussion in foregoing paragraphs, the Original Application Nos. 32/2017, 199/2017 and 261/2017 stand rejected with no order as to costs.

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**Place : Aurangabad**  
**Date : 05<sup>th</sup> August, 2019**