

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.359/2021

DISTRICT: AURANGABAD

Hajrabee @ Nurbee Shaikh Nijam,
Age-72 Years, Occu.: Household,
R/o. Vihamandwa Tq. Paithan,
Dist. Aurangabad.

...APPLICANT

V E R S U S

1] The State of Maharashtra,
The Secretary,
Irrigation (Jalsampada) Department,
Mantralaya, Mumbai-400032

2] The Chief Engineer & Chief Administrator,
(Jalsampada Division), Command Area Development
Authority, Aurangabad

3] The Superintending Engineer
& Administrator, Command Area Development
Authority, Aurangabad

4] The Executive Engineer,
Jayakwadi Irrigation Division, Nathnagar (North),
Paithan, Dist. Aurangabad.

5] The Accountant General -II,
Nagpur, Pension Department,
Opposite Ravi Bhavan,
Nagpur 440001, Maharashtra State

6] The Accounts Officer,
Pay Verification Unit, Aurangabad.

7] Shaikh Shakilabi Nijam,
Age-63 Years, Occu: Household,
R/O. Vihamandwa, Tq. Paithan,
Dist. Aurangabad.

...RESPONDENTS

APPEARANCE : Shri Ravindra V. Gore, Counsel for Applicant.
: Shri S.K.Shirse, Presenting Officer for respondent nos.1, 5 & 6.
: Shri D.T.Devane, Counsel for Respondent nos.2 to 4.
: Shri Abed M. Pathan, Counsel for Respondent no.7.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN.

DECIDED ON : 14.03.2023.

ORAL ORDER:

1. Heard Shri Ravindra V. Gore, learned Counsel for Applicant, Shri S.K.Shirse, learned Presenting Officer for respondent nos.1, 5 & 6, Shri D.T.Devane, learned Counsel for Respondent nos.2 to 4 and Shri Abed M. Pathan, learned Counsel for Respondent no.7.

2. Applicant is the first wife of deceased Government servant, namely, Shaikh Nijam Shaikh Nanyumiya and has filed the present O.A. claiming her share in the family pension after the death of deceased Government servant. As is revealing from the pleadings in the O.A., initially, the name of the present applicant was entered as nominee of the deceased Government servant in his service record. Subsequently, the applicant contracted second marriage

and it appears that he changed the nomination thereafter and substituted the name of his first with the second wife as his nominee. It is the case of the applicant that the applicant being legally wedded wife of the deceased Government servant, she alone is entitled for the amount of pension. The applicant has, therefore, prayed for deleting the name of respondent no.7 from the pension papers of deceased and include name of the applicant alone as the legal heir of the deceased and the entire amount of family pension be paid to her.

3. Respondent authorities, on principle, have not disputed the legal aspects. Respondent no.7, however, has resisted the contention raised in the O.A. as well as the prayers made therein. According to respondent no.7 i.e. the second wife of the deceased, wish of the deceased has to be honored; when he removed the name of his first wife as his nominee and substituted the name of respondent no.7 i.e. his second wife, he made his intention explicitly clear that he was not intending to give any share to his first wife. Learned Counsel for respondent no.7 submitted that as the provisions of law permit, the deceased could have nominated more than one person as his nominee and could

have also nominated the first wife or would not have removed her name from the column of nominee. When that has not been done by him, according to respondent no.7, the applicant is not entitled for any amount of pension.

4. As I have stated earlier, the State authorities in so far as the legal aspects are concerned appear to be with the applicant. Learned P.O. submits that if the pension rules permit more than one widows to share pension and if the factual aspects are sufficiently proved by the applicant, appropriate order can be passed in her favour.

5. Learned Counsel for the applicant pointed out that a petition was filed by the applicant in Civil Court seeking declaration which has been granted in her favour and a clear finding has been recorded by the Civil Court that the applicant is legally wedded wife of the deceased Government servant. In the said petition, respondent no.7 was also party. Nothing has been brought to my notice showing that the decision rendered by the Civil Court has been challenged in any higher court or the same has been finally set aside by any higher court.

6. Learned Counsel for the applicant has invited my attention to the provision under Rule 115 and 116 of the

Maharashtra Civil Services (Pension) Rules, 1982 (“the Pension Rules” for short). My attention was also invited to the definition of family. Sub-clause 6(a)(i) of Rule 116 entitles the second wife also for receiving the amount of pension. Learned Counsel submitted that whether the second wife is entitled for pension was the issue which was referred to the Full Bench of the Hon’ble Bombay High Court. While deciding the said reference, the Hon’ble Bombay High Court has recorded finding holding that, legally wedded second wife would be entitled to the share in the amount of pension of the deceased husband in equal proportion with the first wife.

7. Sub-rule 6(a)(i) of Rule 116 of the Maharashtra Civil Services (Pension) Rules, 1982 is relevant in the present matter, which reads thus:

“116. Family Pension 1964

(6) (a) (i) Where that Family Pension is payable to more widows than one, the Family Pension shall be paid to the widows in equal shares ; on the death of a widow, her share of the Family Pension shall become payable to her eligible child :

(Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.)”

8. It is the contention of the applicant that she is legally wedded wife of the deceased Government servant and as such she alone is entitled to receive amount of family pension. As has come on record, the deceased Government servant has entered the name of respondent no.7 as his wife. On the basis of the entry as such in the service book, it is the contention of respondent no.7 that she alone is entitled for the amount of family pension. On the basis of the service record, respondents have prepared papers holding respondent no.7 entitled for the family pension amount. Since the respondents did not include the name of the applicant, she has approached this Tribunal by filing the present O.A.

9. As is revealing from the pleading in the O.A. the deceased Government servant had initially entered name of present applicant as his nominee. This fact has not been disputed by the Government authorities. On the contrary, as is revealing from the contentions raised in the affidavit in reply filed on behalf of the respondent authorities, the deceased Government servant had named the present applicant and respondent no.7 both as his nominees, however, subsequently deleted the name of the applicant.

In view of the provisions under Rule 111(5) of the Pension Rules, for the purpose of Rule 111, 112, 114 and 115 of the Pension Rules, "family" in relation to a Government servant means the legally wedded wife or wives including judicially separated wife or wives in the case of male Government servant. Therefore, there may not be any difficulty in reaching to the conclusion that when the deceased Government servant had entered the names of applicant and respondent no.7 both as nominees, both of them can be held legally wedded wives of the deceased Government servant. The dispute has arisen only because the deceased Government servant subsequently deleted the name of the applicant from the column of nominee.

10. The question arises whether because of deletion of her name from the column of nominee, the applicant can be deprived from the family pension payable to the legally wedded wife or wives of the deceased. The applicant has brought on record sufficient evidence proving that she is the legally wedded wife of the deceased Government servant. Respondent no.7 also had not brought on record any evidence so as to reject the contention of applicant that she is legally wedded wife of the deceased. In the

circumstances, merely because the deceased Government servant deleted name of the applicant from the column of nominees would not disentitle her from her right to receive the family pension on account of the death of her husband i.e. the deceased Government servant. It has to be, therefore, held that the applicant is entitled to the family pension.

11. The next question arises whether the applicant alone is entitled to receive the entire amount of pension as claimed by her and whether the request made by her in the present application to delete the name of respondent no.7 from the array of nominees of the deceased Government servant can be sustained ? At the outset, it has to be stated that though such prayer is made in the O.A., while arguing the matter on behalf of the applicant, learned Counsel for the applicant did not press the aforesaid prayer for deleting the name of respondent no.7. On the contrary, learned Counsel himself placed on record the judgment delivered by the Full Bench of the Hon'ble Bombay High Court in the case of **Kamlabai w/o. Venkatrao Nipanikar V/s. The State of Maharashtra & Ors. in W.P.No.9933/2016** with other connected W.Ps., wherein

the Full Bench has held that, “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.”

In view of the law laid down as above, it is quite evident that respondent no.7 cannot be deprived from the family pension.

12. I have already reproduced hereinabove sub rule 6(a)(i) of Rule 116 of the Pension Rules. As per the said Rule, the family pension shall be payable to applicant and respondent no.7 in equal shares. The respondents are, therefore, directed to include the name of the present applicant in the pension papers as the legally wedded first wife of the deceased along with the name of respondent no.7 and ensure that the amount of family pension is paid in equal shares to both of them. The O.A., thus, stands partly allowed in the aforesaid terms.

Place : Aurangabad

Date : 14.03.2023.

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VICE CHAIRMAN