

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 1077 of 2021 (S.B.)**

Smt. Asmita wd/o Hemraj Mate,  
Aged about 34 years, Occ. Nil,  
R/o C/o Bhaurao Meshram, Indira Nagar, Khandgaon Road,  
Wadi, Nagpur.

**Applicant.**

**Versus**

(1) The State of Maharashtra,  
Through Secretary, Home Department,  
Mantralaya, Mumbai-32.

(2) Superintendent of Police,  
Nagpur (Rural), District- Nagpur.

(3) Dipika Hemraj Mate,  
Aged about 31 years, R/o Near Post Office,  
Devali (Kalbande), Tah. Hingna, District- Nagpur.

**Respondents.**

---

**S/Shri B.C. and Paritosh Chandrakapure, Prakash Ramteke,  
Advs. for the applicant.**

**Shri V.A. Kulkarni, learned P.O. for respondent nos.1&2.  
None for respondent no.3.**

---

**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

---

**Date of Reserving for Judgment : 9<sup>th</sup> February,2024.**

**Date of Pronouncement of Judgment : 22<sup>nd</sup> February,2024.**

**JUDGMENT**

**(Delivered on this 22<sup>nd</sup> day of February,2024)**

Heard Shri B.C. Chandrakapure, learned counsel for the  
applicant and Shri V.A. Kulkarni, learned P.O. for the respondent  
nos.1&2. None for respondent no.3.

2. The case of the applicant in short is as under –

The applicant is legally wedded wife of the deceased Hemraj Ajabrao Mate. She had one female child from the said wedlock, namely "Tanu", aged about 13 years. Deceased Hemraj, husband of the applicant was working as a Police Constable at Nagpur Police Station of the respondent- Police Department. Hemraj died on 01/02/2020 while he was in the service of respondents.

3. The applicant had filed case in the Family Court for grant of maintenance against her husband. Maintenance of Rs.1,000/- was granted by the Family Court. The applicant was receiving maintenance till the death of her husband. However, after the death of her husband, the maintenance amount is stopped.

4. Deceased Hemraj during the subsistence of first marriage, married with respondent no.3 in the year 2010 without the consent of applicant. The second marriage of respondent no.3 is null and void. She is not legally wedded wife therefore she is not entitled to receive any amount of pension, gratuity and other benefits. The respondent no.3 is not entitled to get employment on compassionate ground. The applicant filed Petition No.A/799/2009, in the Family Court. The said Petition was allowed ex-parte on 17/09/2011 and granted decree of divorce and granted permanent maintenance of Rs.2,000/- p.m. to the applicant.

5. The applicant had submitted applications on 04/03/2020 and 27/07/2021 respectively to respondent no.2 for appointment on compassionate ground and also to pay gratuity and family pension and other legal dues of service to the applicant. However, the respondents have not paid any legal dues to the applicant. The respondents have not given appointment to the applicant on compassionate ground till filing of this application.

6. The applicant has passed 12<sup>th</sup> Standard and is eligible to appoint on compassionate ground in the Police Department. The applicant is a legally wedded wife of deceased Hemraj Mate. Therefore, she is entitled to get appointment on compassionate ground. She is entitled to receive family pension, gratuity etc., but the respondents are not paying the same. Therefore she approached to this Tribunal for the following reliefs –

*“(A) By way of appropriate order or direction declare that, the action of the respondents by not appointing the applicant on compassionate ground and not releasing the pensionary benefits, gratuity, pension and other benefits, is illegal, arbitrary and violative of Article 14 of the Constitution of India and the Government Resolution;*

*(B) By way of appropriate order or direction to the respondent nos.1 and 2 to appoint the applicant on compassionate ground in the interest of justice ;*

*(C) By way of appropriate order or directions to the respondent nos.1 and 2 to release gratuity, pensionary benefits to the applicant, in the interest of justice;*

7. The respondents have filed reply. It is submitted by respondent no.2 that the applicant has concealed the material facts from this Tribunal and on this count only the O.A. deserves to be dismissed. The applicant has filed divorce Petition No.A-799 of 2009 before the Family Court alleging cruelty against the deceased husband. The said petition was decided by the Family Court on 17/09/2011 in favour of applicant and granted divorce to the applicant.

8. It is submitted by respondent no.2 that the respondent no.3 is the second wife of deceased employee Shri Hemraj Mate and is having two children out of the wedlock from respondent no.3. The deceased had nominated the respondent no.3 for his post death / retirement benefits as per the procedure. Being the nominee, all the retirement benefits are sanctioned in the name of respondent no.3.

9. It is further submitted that the mother of the deceased Hemraj, namely Smt. Kisanabai Ajabrao Mate is also alive and this information is concealed by both the wives of the deceased. Mother of deceased filed Misc. Civil Application No.28/2020 for grant of Legal Heir Certificate and informed the respondents to stop payment of gratuity and other benefits to any person till the decision of the proceeding. The copy of said application is filed at Annex-R2-2. It is submitted that respondent no.2 has no hesitation to grant legal claim as per the law. The respondent no.3 being nominated by deceased for

his retirement benefits, it is obligatory on the answering respondents to prepare the case in the name of nominee. Accordingly, the steps are taken in that direction. There is no illegality or delay on the part of answering respondents.

10. The applicant is divorced from the deceased by virtue of the order of the Family Court and therefore she has no right to claim the retirement benefits when the deceased has already nominated the respondent no.3 as his beneficiary. Thus the applicant is now not entitled for the relief claimed by her. Hence, the O.A. is liable to be dismissed.

11. During the course of submission, the learned counsel for applicant has pointed out the various decisions. The learned P.O. has pointed out the Misc. Application filed by the mother of the deceased in the Court of Civil Judge Junior Division, Hingna. This material fact is suppressed by the applicant.

12. The Judgment cited by the learned counsel for the applicant in the case of ***Shamal Mahadeo Tate Vs. District Collector, Solapur, 2022 (3) Mh.L.J.,235*** shows that both wives had filed Misc. Civil Application before the Civil Judge Senior Division, Solapur and in that matter there was compromise between two widows. The Hon'ble High Court has held that second wife is not

entitled to family pension because her marriage is not legal and proper.

13. The Hon'ble High Court in the case of ***Kantabai Dhulaji Shriram & Ors. Vs. Hausabai Dhulaji Shriram & Ors., 2015 (3) Mh.L.J.,883*** held that as per the Rule 116 of the Maharashtra Civil Services (Pension) Rules,1982 both the widows are entitled to get equal share.

14. The Hon'ble Bombay High Court Bench at Nagpur in the case of ***Nirmala Shankarrao Solanke Vs. State of Maharashtra & Ors., 2021 (7) ALL MR 64*** held that only legally wedded wife is entitled to get pension. Second wife not legally wedded wife, not entitled to get pensionary benefits. In the case of ***Kamalbai Venkatrao Nipanikar Vs. State of Maharashtra & Ors.,2019 (3) Mh.L.J.,921***, the Full Bench of Hon'ble Bombay High Court, Bench at Aurangabad has held that only legally wedded wife is entitled to get family pension etc. Second wife, if not a legally wedded wife would not be entitled for family pension. However, if second wife is legally wedded wife, then she is entitled for the family pension.

15. The learned counsel for applicant has submitted that respondent no.3 is not a legally wedded wife of deceased Hemraj, therefore, she is not entitled to get family pension.

16. Documents filed on record show that the applicant herself applied for divorce. Deceased Hemraj appeared, but not contested the said matter and therefore the divorce petition filed in the year 2009 was allowed by the order dated 17/09/2011. As per the contention of the applicant that respondent no.3 married with deceased Hemraj in the year 2010 and therefore she is not entitled for family pension. It is pertinent to note that the applicant has suppressed the material facts from the Court. Her mother-in-law i.e. mother of deceased namely Smt. Kisanabai A. Mate filed Misc. Application No.28/2020. The applicant was non-applicant no.1 in that proceeding. Her daughter Tanu was non-applicant no.2. Dipika was non-applicant no.3 and her daughter and son were made non-applicant nos.4 and 5. Therefore, it is clear that the applicant was well aware about the proceeding before the Civil Judge Junior Division in Misc. Civil Application No.28/2020, but she has not produced any order of the Court. Therefore, it is for the applicant to establish before the Civil Court that only she is entitled to get family pension and other benefits. The Judgments pointed out by the learned counsel for the applicant show that legally wedded wife is entitled to get family pension. A mere nomination made by deceased employee not conferred any right on the nominee to get family pension etc. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer

gets a valid discharge of its liability under the policy as held by the Hon'ble Supreme Court in the case of **Smt. Sarbati Devi & Ano. Vs. Smt. Usha Devi, AIR 1984 SCC,346**. In other Judgment in the case of **Shipra Sengupta Vs. Mridul Sengupta & Ors. 2009 (4) Civil LJ,653**, the Hon'ble Supreme Court has held that "*nomination merely indicates the hand which is authorised to receive amount or manage property -- Such amount or property, as the case may be, can be claimed by heirs of the deceased in accordance with law of succession governing them-- Nomination does not confer any beneficial interest on nominee.*"

17. The learned counsel for applicant has submitted that in view of the decision, the respondents cannot say that only respondent no.3 is entitled to get family pension etc. because deceased had made nomination in her favour. There is no dispute about the principle, but the applicant has to establish by the order of the Civil Court that marriage of respondent no.3 is void because she has married during the subsistence of first marriage. Documents filed on record clearly show that the applicant had applied for divorce in the year 2009. It appears from the Judgment that deceased Hemraj appeared, but not contested the said matter. Therefore, divorce was granted to the applicant in the year 2011. As per the case of the applicant that



respondent no.3 married with deceased Hemraj in the year 2010 and therefore, her marriage is not legal and proper.

18. There is no dispute that respondent no.3 married with deceased Hemraj. Whether she married after the divorce of the applicant or not is to be decided by the Civil Court. The applicant should have approached to the Civil Court for declaration that marriage of respondent no.3 is not legal and therefore it is void as per the provisions of the Hindu Marriage Act. The applicant has suppressed the material facts from this Tribunal. She is well aware about the proceeding i.e. MCA No.28/2020 filed by her mother-in-law Smt. Kisanabai before the Civil Judge Junior Division, Hingna. The applicant was party in that Petition. This Petition shows that the applicant, her daughter and second wife namely Dipika, her daughter Neha and son Vishesh were the party in MCA No.28/2020. From the prayer in the M.C.A., it appears that the applicant, i.e., mother of deceased prayed for grant of legal heir ship certificate in her name and in the name of non-applicant nos.2,3,4 and 5. Therefore, it is clear that in M.C.A. No.28/2020 the legal heirs certificate was not prayed in the name of the applicant. The result of the M.C.A. is not on record. Therefore, it is proper for the Civil Court to decide the dispute as to whether the marriage of respondent no.3 was legal. The status of

respondent no.3 is to be decided by the Civil Court and not by this Tribunal. Hence, the following order –

**ORDER**

The O.A. is dismissed with no order as to costs.

**Dated** :- 22/02/2024.

**(Justice M.G. Giratkar)  
Vice Chairman.**

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 22/02/2024.