

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.503 of 2021 (S.B.)

- (1) Laxmi Wd/o Arun Mahato,
aged 55 years, Occ. Service (Sweeper),
r/o Civil Lines, 160 Gade Ravinagar Nagar,
Nagpur.
- (2) Deleted.

Applicant.

Versus

- (1) The State of Maharashtra,
through its Principle Secretary,
Public Health Department 5th floor
Mantralaya, Mumbai.
- (2) Dean, Indira Gandhi Government Medical
College and Hospital (MAYO),
Hansapuri Road, Nagpur.
- (3) Accountants General (A&E) II
Office Pension Branch, West
High Court Road, Nagpur.
- (4) The Chief Accounts Officer,
Pay and Accounts Department,
Indira Gandhi Government Medical College and
Hospital Hansapuri Road, Nagpur.
- (5) Pushpa Mahato,
aged about Major r/o, C/o Laxmanrao
Ambulkar Timki, Bhankheda,
Nagpur.

Respondents.

Rashi Deshpande, Advocate for the applicant.
Shri H.K. Pande, P.O. for respondent nos.1 to 4.
Mrs. P.D. Sood, Advocate for respondent no.5.

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

Date of Reserving for Judgment : 11th August,2022.

Date of Pronouncement of Judgment : 12th September,2022.

JUDGMENT

(Delivered on this 12th day of September,2022)

Heard Mrs. Rashi Deshpande, learned counsel for applicant, Shri H.K. Pande, learned P.O. for respondent nos.1 to 4 and Shri Smt. P.D. Sood, learned counsel for respondent no.5.

2. The applicant has filed the present O.A. for the following reliefs -

“(9) (i) To kindly set aside the communication dated 29/05/2021 (Annexure-1) and direct the respondent to disburse Family Pension, Death Cum Retirement Gratuity, provident fund and other retirement financial benefits to the applicant no.1 she being the nominee and legally wedded wife of the deceased Arun Mahato in terms of the Nomination filled in service book by the deceased.

10 (a) Direct the respondents to disburse family pension to the applicants regularly during the pendency of the application it will cause no harm to the respondent, otherwise the applicant is facing great financial crisis, further

(b) Not to release any kind of pension or retirement benefits or any emoluments to the respondent no.5 during the pendency of the application.”

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

The applicant is legally wedded wife of deceased Arun Mahato. Deceased Arun Mahato died on 15/02/2021. He was working

as Attendant on permanent post at Indira Gandhi Government Medical College and Hospital (IGMC), Nagpur. On 25/03/2021, the applicant moved application to the authorities praying for release of Death cum retirement dues, release of family pension and also for appointment of her son on compassionate ground. The applicant was married with deceased Arun Mahato in the year 1979. Out of the wedlock, two issues were born namely Deepak and Jyoti.

4. It is the case of applicant that respondent no.1 informed the applicant directing her to produce Succession Certificate because one Pushpa (R/5) is claiming to be wife of the deceased. The respondent no.5 also claimed the Death Cum Retirement benefits and other pensionary benefits of the deceased. The applicant had submitted all the relevant documents to the respondent nos.1 to 4, but the respondent no.1 not paid any Death Cum Retirement benefits and other pensionary benefits of deceased Arun Mahato to the applicant. Hence, this O.A.

5. The respondent no.2 has filed reply-in-affidavit. It is contention of the respondent no.2 (employer) that deceased Arun Mahato was working as Attendant in the IGMC, Nagpur. He died on 15/02/2021. The applicant namely Laxmi Arun Mahato and Pushpa Arun Mahato (R/5) both are claiming the benefits after the death of Arun Mahato. Therefore, the respondent no.2 informed the applicant

and respondent no.5 to produce Succession Certificate from the competent Court for further action.

6. The respondent no.5 filed written submission and denied the contention of the applicant. It is submitted that the applicant is not legally wedded wife of deceased Arun Mahato. The respondent no.5 is legally wedded wife of deceased Arun Mahato. Her marriage was solemnised with deceased Arun Mahato in the year 1996. The marriage was registered on 23/05/2017. Her name was also changed as per Government Notification. It is submitted by respondent no.5 that she has delivered two daughters from deceased Arun Mahato. The applicant Laxmi had no any relation with deceased Arun Mahato, therefore, only the respondent no.5 is entitled for all the retiral benefits of deceased Arun Mahato.

7. Heard Rashi Deshpande, learned counsel for the applicant. She has submitted that the respondent no.2 not disputed about the relationship of applicant. In the service record, the name of applicant, her son Deepak and daughter Jyoti are shown as wife, son and daughter of Arun Mahato. The documents are at page nos.22 to 25. In the Adhar Card her name shows as Laxmi wife of Arun Mahato.

8. Learned counsel for applicant Rashi Deshpande has pointed out various decisions to show that legally wedded wife is

entitled to receive all the retiral / pensionary benefits of her deceased husband.

9. Heard Shri H.K. Pande, learned P.O. for respondent nos.1 to 4. He has submitted that the applicant and respondent no.5 both are claiming that they are legally wedded wives of deceased Arun Mahato. There is a dispute between the applicant and respondent no.5. The dispute as to who is legally wedded wife cannot be decided by this Tribunal. The retiral / pensionary benefits cannot be given to the applicant or to respondent no.5. The learned P.O. has submitted that respondent no.2 rightly informed the applicant and respondent no.5 to produce the Succession Certificate from the competent Court so as to pay the retiral / pensionary benefits of deceased Arun Mahato.

10. The learned P.O. has submitted that this Tribunal in O.A.No.1078/2021 directed the applicant to approach to the competent Court and produce the Succession Certificate. The learned P.O. has submitted that the Tribunal cannot record the evidence etc. He has pointed out Section 22 of the Administrative Tribunals Act.

11. The learned P.O. has pointed out the decision of Hon'ble Bombay High Court in the case of **G.S. Rathore Vs. Union of India and Ano.,2007 (6) Mh.L.J.,313**. The learned P.O. has submitted that this Tribunal cannot go into question of fact. The said fact can be decided by the competent Court. In support of his submission pointed

out the decision of the Hon'ble Bombay High Court in the case of **Chandrakant Punju Wagh Vs. Chairman and Managing Director and Ano., 2018 (4) Mh.L.J.,840.**

12. Heard Mrs. P.D. Sood, learned counsel for respondent no.5. She has pointed out the documents filed on record. As per her submission, the name of respondent no.5 was recorded in the pension papers. The affidavit of deceased Arun Mahato shows that she had performed marriage with respondent no.5. She has pointed out the marriage certificate and other documents. Mrs. P.D. Sood, learned counsel submitted that the respondent no.5 married to deceased Arun Mahato on 13/04/1996. Her marriage was registered in the Sub Registrar Office in the year 2017. Her name is also changed as Pushpa Arun Mahato as per the publication in the Government Gazette. She has pointed out all those material documents. The learned counsel for respondent no.5 has pointed out the Citations supporting her contention that second wife is entitled for Death Cum Retirement benefits and other pensionary benefits.

13. There is no dispute that the applicant as well as respondent no.5 both are claiming that she is legally wedded wife. Who is legally wedded wife is to be decided by the competent Court, therefore, respondent no.2 rightly issued letter to the applicant and respondent no.5 on 29/05/2021 directing them to approach to the

competent Court and produce the Succession certificate for payment of Death Cum Retirement benefits of deceased Arun Mahato.

14. There is no dispute that deceased Arun Mahato was working as Attendant in the IGMC, Nagpur. There is no dispute that as per the service record of the year 1997, the names of applicant Laxmi along with son Deepak and daughter Jyoti were recorded as legal heirs of Arun Mahato. These documents are filed on record by the applicant from page nos. 20 to 34.

15. On the other hand, the respondent no.5 has filed documents from page nos.50 to 123. Deceased Arun Mahato submitted documents about the family members in the office of respondent no.2. The names of respondent no.5 and daughter Arti are shown as legal heirs of Arun Mahato. The name of respondent no.5 is shown as Pushpa w/o Arun Mahato. The documents such as marriage certificate, affidavit of deceased show that deceased Arun Mahato married with the respondent no.5 on 13/04/1996. Her marriage was registered in the office of Sub Registrar in the year 2017. Her name was changed from Pushpa Laxman Ambulkar to Pushpa Arun Mahato. It is published in the Government Gazette. All these documents filed by respondent no.5 show that she is wife of deceased Arun Mahato, but the affidavit of deceased Arun Mahato from page nos. 53 to 55 shows that applicant was the first wife of

deceased Arun Mahato, since last 13 years they were residing separate. Deceased Arun Mahato married with respondent no.5. The respondent no.5 is the second wife. This affidavit at page no.53 itself shows that there was no any divorce between the applicant and deceased Arun Mahato. Therefore, as to whether the respondent no.5 is legally wedded wife or the applicant is legally wedded wife are to be decided by the competent Court. It is the contention of respondent no.5 that the applicant is not legally wedded wife of deceased Arun Mahato.

16. It is the contention of respondent no.5 that Arti and Durga both are born to her from deceased Arun Mahato. The documents of birth certificates of Arti and Durga are filed on record from page nos.120 to 123. Birth certificates and Adhar Cards of Arti and Durga show that they were born on 07/05/2016 and 26/12/2017. Along with these documents, one document at page no.119 shows that the semen of Arun Mahato was used by the Test Tube Baby Centre. This document is not signed by any Doctor, there is no any seal. The applicant has filed document issued by the Urban Family Welfare Centre, Mayo General Hospital, Nagpur. This document issued by the Hospital shows that Arun Mahato had undergone vasectomy operation (family planning operation) on 18/03/1984. This document is signed by the Doctor and there is a stamp. This document if considered with

the document filed on record by respondent no.5, then it appears that the document filed by respondent no.5 appears to be not reliable. In the year 1984 itself, deceased Arun Mahato had undergone vasectomy operation (family planning operation) and therefore the evidence is required as to whether Arti and Durga born in the year 2016 and 2017 are the daughters of deceased Arun Mahato. Moreover the document filed by respondent no.5 at page nos.106 dated 31/07/2014 show their names as under –

- (i) Arun Lotan Mahato
- (ii) Sau. Pushpa Arun Mahato
- (iii) Ku. Arti Arun Mahato

17. If this document is considered with the documents filed by respondent no.5 about the birth certificates issued by the Municipal Corporation, then it is clear that the documents about the birth of Arti and Durga appear to be not correct because in the document at page no.106, the name of Ku. Arti Arun Mahato shows as daughter of Arun Mahato. This document is signed by deceased Arun Mahato. This document is **dated 31/07/2014**, whereas, the birth certificate of Arti Arun Mahato shows that she was born in the **year 2016**. Therefore, it is clear that the documents about the birth of Arti and Durga appears to be fabricated. Therefore, detailed evidence is required to decide the issue. After hearing, the case was fixed for Judgment / order, the

respondent no.5 moved application for return of documents. There is no provision to return of documents and therefore it was rejected.

18. It is clear from the documents filed on record that applicant and respondent no.5 both are claiming legally wedded wife of deceased Arun Mahato, therefore, it is necessary to record the evidence and give the declaration. It is to be done by the competent Court. In O.A.No.1078/2021 this Tribunal has observed that “ *the question is one of Civil Status. It is a matter of record that respondent no.4 was served with notice, but she did not contest the same. The contention of the applicant no.1 with regard to her status as the only legally wedded wife of the deceased and the status of respondent no.4 as the second wife has gone unchallenged. However, since the issue pertains to Civil status of the parties, merely on account of failure of respondent no.4 to traverse pleading of the applicant, status of applicant no.1 as the only legally wedded wife of deceased cannot be said to have been satisfactorily established.*”

19. In para nos.13 and 14 of the Judgment, this Tribunal has observed as under –

“13. *The matter could have been decided had there been conclusive material about applicant no.1 being the only legally wedded wife of deceased Mangal Khandate, and subsequent marriage between respondent no.4 and the deceased being void on account of the same*

having taken place during subsistence of valid marriage between applicant no.1 and the deceased. But such is not the case.

14. *For the reasons discussed hereinabove I hold that no relief can be granted to the applicant no.1 in the absence of declaration from competent Court that she alone is the legally wedded wife of the deceased. It would be open to applicant no.1 to avail proper legal remedy for redressal of her grievance. The O.A. stands dismissed with no order as to costs.”*

20. The Hon’ble Bombay High Court in the case of **G.S. Rathore Vs. Union of India and Ano.,** (cited supra) has held that in view of Section 22 of the Tribunals Act, the procedure is to be established by the Tribunal. In para-6 the following observations are made –

“6. Chapter IV of the Act deals with the matters relating to procedure and powers of the Administrative Tribunal. Section 22 of the Act opens with the negative language, stating that the tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908. It is to be guided by the principles of natural justice and, furthermore, the tribunal is vested with the power to regulate its own procedure in relation to the various aspects. In other words, it is not the Legislative intent that the provisions of the Code should be applicable stricto sensu. The paramount precept of administrative procedure before the tribunal is the principle of natural justice, added by the own prescribed procedure of the tribunal. (Of course, further to add to the same provision of Section 22(3) of the Act, to what extent the tribunal shall be vested with the power of the civil court).

The application of the provisions of the Code would, therefore, be limited and restricted to the extent specified specifically in the provisions of Section 22(3) of the Act. The object of the Legislation is clear that it intended to exclude, by using specific language, application of the Code

*per-se and made restricted provisions applicable to the tribunal and to give liberal construction to this provision, would neither be fair nor permissible. In fact, it may amount to defeating the very object and purpose of the substantive provisions of Section 22 and the scheme of the Act. **The very purpose of constitution of the tribunal was for expeditious disposal of matters or disputes or complaints arising in respect of recruitment and conditions of services of persons appointed to the public service and posts.** The tribunal, therefore, would exercise powers of civil court only limited by the requirements of Clause (a) to (i) of Sub-section (3) of Section 22 of the Act. With some emphasis, the contention of the learned Counsel for the petitioner was that Section 22(3)(b) of the Act empowers the tribunal to require discovery and production of documents and this by necessary implications, would include power to serve interrogatories”.*

21. In the case of **Chandrakant Punju Wagh Vs. Chairman and Managing Director and Ano.,** (cited supra) the Hon'ble Bombay High Court has held in para-11 as under –

“(11) In view of the facts and record placed before us, we are not inclined to go into questions of facts as to why the petitioner’s name was not included in the certificate issued by the Chopda Municipal Council in the year 1993 and as to on what basis the petitioner’s date of birth was mentioned in the certificate issued in the year 2016. All these issues may be gone into by a fact finding forum or by an appropriate authority entrusted with such powers.”

22. In view of the Judgments cited by P.O., Judgments cited by applicant and respondent no.5 are not considered.

23. In view of the Section 22 and Judgment of Hon'ble Bombay High Court, it is clear that the duty of the Tribunal is to decide cases expeditiously on the basis of averments / in the pleadings and documents filed on record. The Tribunal cannot establish a lengthy

procedure for recording of evidence etc. For deciding the status of applicant and respondent no.5 the declaration is necessary as to who is the legally wedded wife of deceased Arun Mahato. Therefore, it is necessary for the applicant and respondent no.5 to approach to the competent Court for deciding their status and entitlements of their legal claims in respect of Death Cum Retirement benefits of deceased Arun Mahato. The intimation / information issued by respondent no.2 vide letter dated 29/05/2021 directing the applicant and respondent no.5 to produce Succession certificate is perfectly legal and correct and therefore it cannot be quashed and set aside. Therefore, I pass the following order –

ORDER

The O.A. is dismissed. No order as to costs.

Dated :- 12/09/2022.

(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 Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 12/09/2022.

Uploaded on : 13/09/2022.

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