

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

**ORIGINAL APPLICATION NO. 250 OF 2016**

DIST. : LATUR

Ashabai W/o Kishanrao Kulkarni,  
Age 58 years, Occ. Household,  
R/o A/p Satala, Tq. Ahmedpur,  
Dist. Latur.

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**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 Sub Divisional Office,  
Agricultural Department, Udgir,  
Tq. Udgir, Dist. Latur.

4. Smt. Radhabai w/o Kishanrao Kulkarni,  
Age. 73 years, Occu. Household,  
R/o A/p Satala, Tq. Ahmedpur,  
Dist. Latur.

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**RESPONDENTS**

APPEARANCE : Shri S.K. Mathpati, learned Advocate for the  
applicant.

: Shri D.R. Patil, learned Presenting Officer for  
respondent nos. 1 to 3.

: Shri Avinash S. Khedkar, learned Advocate for  
the respondent no. 4 (**absent**).

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**CORAM : HON'BLE SHRI J. D. KULKARNI, MEMBER (J)**  
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**J U D G E M E N T**

**(Passed on this 30<sup>th</sup> day of January, 2017)**

1. Heard Shri S.K. Mathpati, learned Advocate for the applicant and Shri D.R. Patil, learned Presenting Officer for respondent nos. 1 to 3. Shri Avinash S. Khedkar, learned Advocate for the respondent no. 4 **(absent)**.

2. The applicant Smt. Ashabai w/o Kishanrao Kulkarni has filed this original application and has prayed that the communication dated 12.1.2016 issued by the res. no. 2 the Accountant General . II (A&E), Nagpur be quashed and set aside. As per the said communication the res. no. 2 was pleased to reject the applicant's claim for family pension / half share of the family pension. The impugned communication dated 12.1.2016 reads as under :-

*“महोदय,*

*उपरोक्त विषय के संदर्भ में आपको सूचित किया जाता है की स्वर्गीय श्री. किशनराव एन. कुलकर्णी इनका इस कार्यालयीन पेन्शन प्रकरण रिकार्ड जॉव करने के पश्चात पाया गया है की, श्रीमती राधाबाई किशनराव कुलकर्णी ही उनकी पहली पत्नी है।*

*इस कारण दुसरी पत्नी श्रीमती आशाबाई किशनराव कुलकर्णी इन्हे **Hindu Marriage Act** तथा वित्त विभाग, शासन निर्णय दि. ३/११/२००८ के **GR** अनुसार अवैध है। एव दुसरी पत्नी परिवारीक पेन्शन लाभ उठाणे के लिये पात्र नहीं है।*

कु. रेणुका को मिळनेवाला पारिवारीक पेन्शनका हिस्सा **MCS(P) Rules 1982** के नियम 99६ (६) (c) के अनुसार श्रीमती राधाबाई को देने हेतु खजाना अधिकारी लातुर को इस कार्यालय के दि. २५/४/२०१२ के पत्रानुसार सुचित किया जा चुका है।

अतः इस मामले मे आशाबाई को पारिवारीक पेन्शन देय नहीं है।

भवदीय  
सही/-  
वरिष्ठ लेखा अधिकारी”

3. It is undisputed fact that late Kisanrao s/o Narharrao Kulkarni was working as a Assistant Agriculturist in the Sub Divisional Office, Agriculture Department, Tq. Udgir, Dist. Latur and the applicant Smt. Ashabai second widow of late Kishanrao Kulkarni. Late Kisanrao Kulkarni died while in service on 6.4.1985. He got married with one Smt. Radhabai i. e. the res. no. 4 in the year 1963 . 64, but said Smt. Radhabai did not get any child from the first marriage till 1984. Therefore, with the prior permission of first wife Smt. Radhabai late Shri Kisanrao Kulkarni got married with the present applicant viz. Smt. Ashabai. Out of this wedlock the applicant Smt. Ashabai Kulkarni has given birth to one female child viz. Renuka on 1.3.1985.

4. The present applicant Smt. Ashabai & the res. no. 4 . Smt. Radhabai throughout the life were residing together. After the death of Shri Kishanrao Kulkarni, the applicant and the res. no. 4 filed Misc. Application no. 16/1985 for heir ship certificate in the court of Civil Judge Jr. Division, Ahmedpur, Dist. Latur and accordingly the heir ship

certificate was granted in favour of the applicant and the res. no. 4 on 23.12.1985. The applicant and the res. no. 4 along with minor daughter Renuka thereafter applied for family pension. The applicant's name was assigned as a guardian of minor child Renuka. The res. no. 2 granted ½ share of the family pension of late Kishanrao to his first wife Smt. Radhabai i. e. the res. no. 4 and the remaining ½ share was granted in favour of the applicant's minor daughter Renuka from 6.4.1985 and ½ share of her minor daughter was received by her regularly being guardian of Renuka.

5. Smt. Radhabai had executed a consent letter and submitted that she was willing to grant ½ share of the family pension in favour of the applicant Smt. Ashabai. Such a letter has been executed on 26.9.2002, since Renuka got married on 4.12.2007. Due to marriage of daughter of the applicant viz Renuka on 4.12.2007, the res. no. 2 has stopped the ½ share of the family pension in favour of Renuka. According to the applicant, she being a mother of Renuka and widow of deceased Kishanrao, is entitled for family pension as per rule 116 of the M.C.S. (Pension) Rules, 1982. Since her claim has been rejected, the present original application is filed by the applicant.

6. The res. no. 2 has filed affidavit in reply and submitted that the applicant is a second wife of late Kishanrao Kulkarni and said Kishanrao married with the applicant Smt. Ashabai during the subsistence of first wife Smt. Radhabai. As per rule 116 (5) (iii) of the M.C.S. (Pension)

Rules, 1982, ½ share was authorized in favour of the first wife Smt. Radhabai i. e. the res. no. 4 and remaining ½ share was authorized in favour of Renuka i. e. the daughter of the applicant Smt. Ashabai. Since Renuka got married, the applicant is not eligible for getting family pension being the second widow of the deceased Kishanrao.

7. The learned Presenting Officer has invited my attention to the judgment delivered by this Tribunal in O.A. no. 169/2015 [Radhabai w/o Ranuji Muley Vs. the State of Maharashtra & Ors.] on 30.11.2016. In the said judgment, this Tribunal has referred to various rules of M.C.S. (Pension) Rules, 1982 and also considered the observations of Hon'ble Supreme Court in the case of **RAMESHWARI DEVI VS. STATE OF BIHAR AND OTHERS [AIR 2000 SUPREME COURT 735]** in para 12 of the said judgment this Tribunal observed as under :-

***“12. The Hon’ble Apex Court in the case of RAMESHWARI DEVI Vs. STATE OF BIHAR AND OTHERS reported in AIR 2000 SUPREME COURT 735 has observed as under :-***

***“Under Section 16 of Hindu Marriage Act, children of void marriage are legitimate, under the Hindu Succession act, 1956 property of a male Hindu dying intestate devolve firstly on heirs in Clause (i) which include widow and son. Among the widow and son, they all get shares. The second wife taken by deceased Government employee during subsistence cannot be described a widow of deceased employee,***

***their marriage void. Sons of the marriage between deceased employee and second wife being the legitimate sons of deceased would be entitled to the property of deceased employee in equal shares along with that of first wife and the sons born from the first marriage. That being the legal position when Hindu male dies intestate, the children of the deceased employee born out of the second wedlock would be entitled to share in the family pension and death-cum-retirement gratuity. The second wife was not entitled to any thing and family pension would be admissible to minor children only till they attained majority.”***

8. In view of above observations, the application of the second widow was rejected by this Tribunal. The learned P.O., therefore, submits that the applicant's claim in the present matter also be rejected in view of above judgment of this Tribunal.

9. The learned Advocate for the applicant, however, placed reliance on the recent judgment of Hon'ble Bombay High Court, Bench at Aurangabad in **Civil Revision Application no. 72 of 2013 [Kantabai Dhulaji Shriram & Ors. Vs. Hausabai Dhulaji Shriram]** delivered on 25.10.2013. In the said judgment, the judgment of Hon'ble Supreme Court in the case of **RAMESHWARI DEVI VS. STATE OF BIHAR [AIR 2000 SC 785]** as cited supra along with various rules have been considered and Hon'ble High Court has also referred to the case of

**RAMESHCHANDRA DAGA VS. RAMESHWARI DAGA [AIR 2005 SC**

**422]**. The relevant observations are as under :-

***“24. In Rameshchandra Daga v. Rameshwari 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.***

***25. 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’s Case [(1854) 3 C.Rep.7a, 7b] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction ut res magisvaleat 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, Cr.P.C., such a woman is to be treated as the legally wedded wife.***

***28. Lastly, the Hon'ble Apex Court has concluded in para no.27 in Badshah's Case (supra) as follows :***

***27. 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."***

***29. The husband of these two widows has died in 1998. Both the widows are leaning towards old age. The issue of family pension has been pending for years. In light of the facts and law discussed above and the view of the Hon'ble Apex Court in the Badshah's case (supra), I conclude that the case of the petitioners is squarely covered by Rule 116 at***



**issue. The impugned judgments dated 09/03/2012 and 13/12/2012 are hereby quashed and set aside. The petitioner No.1 is held to be entitled for an equal share of family pension alongwith respondent No.1. Civil Revision Application is thus allowed with no order as to costs.”**

10. The above judgment of Hon<sup>ble</sup> High Court, Aurangabad Bench was not referred in the earlier judgment delivered by this Tribunal in O.A. no. 169/2015 [Radhabai w/o Ranuji Muley Vs. the State of Maharashtra & Ors.] on 30.11.2016 and, therefore, the same was not considered by the Tribunal at that time.

11. The learned Advocate for the applicant has also placed reliance on another judgment delivered by Hon<sup>ble</sup> Bombay High Court, Bench at Nagpur on 20.11.2014 in **writ petition No. 4467/2014 [Union of India & Another Vs. Smt. Jaywantabai wd/o Ramrao Kewoo]**. In the said judgment Hon<sup>ble</sup> High Court has observed in para 8 as under :-

**“8. We cannot be oblivious of what is going on in the society and a further fact that during subsistence of the first marriage, the husband performs the second marriage by practicing fraud indulging in cheating with the second woman who, thus, falls an easy prey to such person for no fault of her. Such cases are myriad. But then, since the parties are Hindus, Section 11 of the Hindu Marriage Act holds such marriages void. It is true that the Courts or the Tribunals should not enforce or make any order or decree**

***contrary to law, and in this case, Section 11 of the Act. But the next question is whether such a second wife/widow, after the death of her husband, in this case, the railway employee, should be left to starve by giving all the pensionary and terminal benefits of his service to first wife only? This question will have to be answered with all seriousness and in the light of the revolution for emancipation of women. We feel that though Hindu Personal Law may not be strictly interpreted on the anvil of the Constitution of India or the fundamental rights, and should not be denigrated by the Courts, fact remains that the constitutional provisions can be pressed into service for interpretation of laws/Rules for achieving the ultimate object of the constitutional goal.”***

12. It is material to note that, this judgment was assailed by the Union of India before Hon<sup>ble</sup> Supreme Court in Special Leave to Appeal (C) No (s). 11491/2015 and vide judgment dated 8.5.2015, Hon<sup>ble</sup> Supreme Court was pleased to dismiss the said special leave petition, though the question of law as to whether the second wife can claim the pensionary benefits or any part thereof, despite rule 21 of the Railway Services (Conduct) Rules, 1966 has been kept open.

13. In view of the discussion in foregoing paragraphs and the observations of Hon<sup>ble</sup> High Court, various citations referred hereinabove and in view of the order of Hon<sup>ble</sup> Supreme Court as referred hereinabove, I am satisfied that the applicant Smt. Ashabai

Kulkarni is entitled to equal share in the family pension of the deceased Kishanrao Kulkarni along with the res. no. 4 Smt. Radhabai Kulkarni.

Hence, I pass the following order :-

**ORDER**

- (i) The original application is partly allowed.
- (ii) The impugned order dated 12.1.2016 issued by the res. no. 2 is quashed and set aside. The res. nos. 1 to 3 are directed to sanction / grant  $\frac{1}{2}$  share of family pension to the applicant Smt. Ashabai Kulkarni from the date on which her daughter Renuka was held disentitled to the pension due to her marriage.
- (iii) The res. nos. 1 to 3 are also directed to disburse pension to the applicant Smt. Ashabai Wd/o Kishanrao Kulkarni & res. no. 4 Smt. Radhabai Wd/o Kishanrao Kulkarni in equal share until the lifetime of both the waives and also in case of death of either of them, the surviving party shall be entitled to full part of the family pension.

There shall be no order as to costs.

**MEMBER (J)**