

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 361 OF 2019

(Subject:- Family Pension)

DISTRICT:-AURANGABAD

1. **Jijabai w/o Jaywanta Sonwane,**)
Age 52 years, occu. Household,)
R/o Panwadod, Tq. Sillod, Dist.)
Aurangabad.)
 2. **Kantabai w/o Jaywanta Sonwane,**)
Age 46 years, Occ. Household,)
R/o Ambhai, Tq. Sillod,)
District Aurangabad.)
-)APPLICANTS**

V E R S U S

1. **The State of Maharashtra**)
Through, it's Secretary,)
Revenue & Forest Deptt. Mantralaya,)
Mumbai - 32.)
 2. **The Divisional Commissioner,**)
Aurangabad Division, Aurangabad.)
 3. **The District Collector,**)
Aurangabad.)
 4. **The Sub-Divisional Officer,**)
Sillod, Tq. Sillod, Dist. Aurangabad.)
 5. **The Tahsildar,**)
Tahsil Office, Sillod,)
District Aurangabad.)
 6. **Accountant General-II,**)
Maharashtra State,)
Civil lines, Nagpur.)
-)RESPONDENTS**
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APPEARANCE : Shri A.D. Gadekar, learned counsel for
the applicants.
: Shri B.S. Deokar, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

RESERVED ON : **30.01.2024.**

PRONOUNCED ON : **15.03.2024.**

ORDER

Heard Shri A.D. Gadekar, learned counsel for the applicants and Shri B.S. Deokar, learned Presenting Officer for the respondent authorities finally at the stage of admission hearing.

2. By filing this Original Application the applicants are seeking directions to the respondents to grant family pension to the applicants (widows) in equal shares.

3. Facts in brief as stated by the applicants giving rise to the Original Application are as follows :-

(i) The applicants are the widows of the deceased Jaywanta Yeshwanta Sonwane. Deceased Jaywanta Sonwane initially joined the Government service in the Revenue Department on

the post of Talathi and thereafter, he was promoted to the post of Circle Officer. He died on 27.10.2011 while in service holding the post of Circle Officer. At the time of death, Jaywanta Sonwane was serving under the control of the respondent No.5.

(ii) It is the further case of the applicant that deceased Jaywanta Sonwane in his lifetime was having two wives i.e. the present applicants. After death of deceased Jaywanta, Tahsildar, Sillod by letter dated 22.11.2011 had quantified the retiral amount and the applicant No.1 was asked to obtain the succession certificate. The applicant No.1 is the first wife and applicant No.2 is the second wife. Thus the applicant No.1 filed M.A.R.J.I. No. 1199/2011 in the Court of Civil Judge Senior Division, Aurangabad and prayed for issuance of succession certificate in the name of applicant No.1 and her son namely Dnyaneshwar to get retiral benefits of deceased Jaywanta Sonwane. The applicant No. 2 herein and her son and daughters were the respondents in the above said M.A.R.J.I. Application. The copy of the same memo of M.A.R.J.I. No. 1199/2011 along with the letter dated 22.11.2011 is marked as Annexure 'A-2' collectively.

(iii) It is the further case of the applicants that both the applicants along with their children have arrived at compromise and accordingly submitted the compromise pursis in the M.A.R.J.I. No. 1199/2011. They have agreed that, the retiral benefits to the tune of Rs. 13,53,080/- are to be divided equally between them and in addition to that the applicant No. 2 will receive the amount of pension and the amount of pension due till the date of compromise will also be divided into the applicant Nos. 1 and 2 herein. The copy of said compromise terms is marked as Annexure 'A-3'. In view of same, M.A.R.J.I. No. 1199/2011 has been disposed of by order dated 22.08.2012 passed by the 3rd Joint Civil Judge Senior Division, Aurangabad. By order dated 26.09.2012, learned 3rd Jt. Civil Judge Senior Division, Aurangabad has granted succession certificate to the applicants and empowered the applicants thereby to receive/withdraw half share and respondent Nos. 2 to 7 to receive remaining half share out of the amount left behind by the deceased Jaiwanta Yashwanta Sonwane in the Tahsil Office, Sillod, Dist. Aurangabad. The copy of the said order dated 22.08.2012 is marked as Annexure 'A-4' and succession certificate dated 26.09.2012 is marked as Annexure 'A-5'.

(iv) It is the further case of the applicant that the retiral benefits have been received by the applicants herein but the family pension has not been sanctioned and paid to them since 27.11.2011 till today and thus they have facing financial hardship. After receipt of the succession certificate, it was submitted before the respondent No.5 and thereafter by letter dated 28.12.2015, the respondent No.5 had submitted the pension proposal to respondent No.6 for sanctioning the family pension to the applicants herein.

(v) It is further case of the applicants that the respondent No.6 by letter dated 11.05.2018 had returned the pension proposal to the respondent No.5 with the remark that, with regard to pensionary benefits to the second wife of the deceased Government servant, obtain sanction from the Government and furnish the copy of the sanction to the office, however, half family pension will be released in favour of the first wife Smt. Jijabai. The copy of said letter dated 11.05.2018 is marked as Annexure 'A-7'.

(vi) It is the further case of the applicants that thereafter the respondent No.6 on 07.09.2018 and 29.11.2018 had sent

the reminders to the respondent No.5 stating therein that there is no compliance of letter dated 11.05.2018.

(vii) It is the further case of the applicants that though deceased Jaywanta Sonwane was having two wives but entry pertains to nominee was not taken in his service book. In the succession certificate, however, it is proved that deceased Jaywanta Sonwane was having two wives i.e. the applicant Nos. 1 and 2 herein. Therefore, it would be just and necessary to grant them family pension in equal shares. Hence, this Original Application.

4. Learned counsel for the applicants submits that in terms of Rule 116 Sub-Rule (6) (a) (i) of Maharashtra Civil Services (Pension) Rules, 1982; where the Family Pension is payable to more widows than one, the Family Pension shall be paid to the widows in equal shares. Learned counsel for the applicants submits that in terms of compromise arrived between the applicants, the 3rd Joint Civil Judge, Senior Division, Aurangabad by order dated 22.08.2012 Below Exh. 1 in M.A.R.J.I. No. 1199/2011 has directed to issue succession certificate in the name of applicant Nos. 1 and 2 to receive half share and respondent Nos. 2 to 7 to receive

remaining half share out of the said amount of Rs. 13,53,080/- (Rs. Thirteen lacs fifty three thousand eighty only) left behind by deceased Jaywanta Yashwanta Sonawane in Tahsil Office, Sillod, Dist. Aurangabad. Needless to mention that the said amount consisting of Group Insurance Scheme (G.I.S.), Leave Encashment, General Provident Fund (G.P.F.), Gratuity and Family Pension. Learned counsel for the applicants submits that in the background of issuance of succession certificate with the specific order as mentioned aforesaid about pensionary benefits and family pension, there was no reason for respondent No.6 i.e. the Accountant General- II, Nagpur to return the pension proposal to respondent No.5 with the remark that with regard to the pensionary benefits to the second wife of the deceased Government servant, it is necessary to obtain sanction from the Government and furnish the copy of sanction to the office.

5. Learned counsel for the applicants submits that in terms of Rule 116 Sub-Rule (6) (a) (i) of Maharashtra Civil Services (Pension) Rules, 1982; where the Family Pension is payable to more widows than one, the Family Pension shall be paid to the widows in equal shares and there is no

provision at all about the previous sanction of the Government in this regard.

6. Learned counsel for the applicant at the request of this Tribunal has placed on record the compilation of all the cases refereed in **Writ Petition No. 9933 of 2016** in a case of **Kamalbai W/o Venkatrao Nipanikar Vs. the State of Maharashtra & Ors.** decided by Full Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad on 31.01.2019. However, it is not necessary to refer those cases referred by the Full Bench in the judgment.

7. Learned Presenting Officer on the basis of affidavit in reply filed by respondent Nos. 3 to 5 submits that after the death of Jaywanta Sonwane, the respondent No.5 had immediately calculated all the admissible retiral benefits and by letter dated 22.11.2011 had informed the applicant No.1 i.e. first wife of the deceased to submit the succession certificate issued by the competent Civil Court to release all the service benefits of deceased Jaywanta Yashwanta Sonwane. Thereafter the present applicants had approached to Civil Court for issuance of succession certificate by filing M.A.R.J.I. No. 1199/2011 and by order dated 22.08.2012,

learned 3rd Joint Civil Judge, Senior Division, Aurangabad has ordered to issue succession certificate in the name of present applicant No.1 to the extent of half share and in the name of second wife and her children namely Kantabai Jaywanta Sonwane to the extent of remaining half share of the service benefits payable in respect of death of Jaywanta Yashwanta Sonwane.

8. It is established on the basis of succession certificate that the present applicants are the wives of the deceased Jaywanta Sonwane and the applicant No.1 is first wife and applicant No.2 is second wife. Though the respondent No.5 has prepared the proposal for grant of family pension to the extent of half share each in their names and submitted the proposal to the office of Accountant General, Nagpur on 28.12.2015, the said office of Accountant General, Nagpur has scrutinized the said family pension proposal and by letter dated 11.05.2018 has informed the respondent No.5 to give explanation on the objections raised by the Accountant General Office. In view of objection raised by the office of Accountant General, Nagpur, the respondent No.5 had informed the applicant to submit the copy of succession certificate and also informed the Accountant General Office

that on the account of non submissions of relevant documents by the applicant, the delay has been caused for the compliance of the objection raised by the office of the Accountant General, Nagpur. Further the respondent No.5 vide report dated 10.07.2019 has cleared the objections raised by the A.G. Office, Nagpur.

9. Learned Presenting Officer for the respondents submits that the name of the deceased employee is mentioned in the first page of service book as "Jayant Sonwane" whereas in all subsequent correspondence made by the applicants and respondent No.5 to the office of Accountant General, Nagpur the name of the deceased employees has been mentioned as "Jaywanta Sonwane". As the Accountant General, Nagpur has raised the objection on the said aspect and called for the explanation, the respondent No.5 has directed the present applicants to submit the explanation in respect of the said ambiguity in the name of the deceased employee. However, the present applicants have not submitted any explanation.

10. Learned Presenting Officer submits that the respondent No.5 has also submitted a proposal for sanction

of the family pension to the second wife of the deceased employee Jaywanta Sonwane to the State Government through the District Collector, Aurangabad as the State Government is the Competent Authority to sanction for the payment of the family pension to the second wife of the deceased employee.

11. Learned Presenting Officer on the basis of affidavit in reply submitted on behalf of respondent No.6 i.e. Accountant General, Nagpur submits that the respondent No.5 has not forwarded the family pension proposal of late Shri Jayant Sonwane as per the procedure laid down in Rule 116 of Maharashtra Civil Services (Pension) Rules, 1982. Thus by letter dated 11.05.2018, the office of respondent No.6 has returned the pension proposal. Learned P.O. submits that as per the Maharashtra Government Resolution dated 30.08.2008, Rule 111(5) and Rule 116(B) of the Maharashtra Civil Services (Pension) Rules 1982, the first wife of the Government servant is legally wedded wife. In that regard the respondent No.6 has thus directed to obtain sanction from the Government for the pensionary benefits to the second wife and furnish the copy of sanction to the office. However, further made it clear that half of the family pension may be

released to the first wife. Learned Presenting Officer for the respondents submits that the action taken by the respondent No.6 is as per the Rules contemplated in Rules, 1982.

12. Learned Presenting Officer placed his reliance on the judgment of Hon'ble High Court of Bombay, Bench at Aurangabad in **Writ Petition No. 9933 of 2016** in a case of **Kamalbai W/o Venkatrao Nipanikar Vs. the State of Maharashtra & Ors.** decided on 31.01.2019 wherein the Full Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad has answered the reference that "in cases to which the 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. The 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 family pension". Learned P.O. submits that in view of same, this Original Application is liable to be dismissed with costs.

13. In the facts of the present case deceased Jaywanta Yeshwanta Sonwane was born on 02.06.1957 and entered into Government service on 26.12.1980. He died on

27.10.2011. Admittedly the applicant No.1 is first wife and applicant No.2 is the second wife of the deceased Jaywanta s/o Yeshwanta Sonwane. They are seeking directions to grant the equal family pension in their favour in view of succession certificate issued to them by 3rd Jt. Civil Judge Senior Division, Aurangabad dated 26.09.2012 which is mainly granted on the basis of settlement arrived between the applicant No.1 and applicant No.2 who are the wives of deceased Jaywanta Yashwanta Sonwane and further in terms of Rule 116 (6) (a) of Rules, 1982.

14. According to the applicants they are entitled for the family pension which is not paid to them till today. They are made to suffer economically at their old age. Though their husband expired in the year 2011, but till today the family pension has not been paid to them.

15. The respondent No.6 by letter dated 11.05.2018 has returned the pension proposal in respect of the applicants to respondent No.5 with the remark that, in regard to the pensionary benefits to the second wife of the deceased Government servant, sanction from the Government is necessary. However, it is made clear in the said letter that

the family pension may be released in favour of the applicant No.1 namely Smt. Jijabai Jaywanta Sonwane.

16. Thus the question arises as to whether the second wife is entitled to claim the family pension in terms of the provisions of Rules, 1982. This question is no more res-integra.

17. In a case of **Kamalbai W/o Venkatrao Nipanikar Vs. the State of Maharashtra & Ors.** in **Writ Petition No. 9933 of 2016** and other connected Writ Petitions, Full Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad on 31.01.2019 has answered the reference to the following issue, "In a cases to which, Maharashtra Civil Services (Pension) Rules, 1982, apply whether the second wife is entitled to claim family pension.?" Full Bench of High Court of Bombay, Bench at Aurangabad has referred the various provisions of the Rules, 1982 especially Rules, 111, 112, 113, 114, 115 and lastly Rule 116 in this regard and also referred the various cases of which the compilation is placed on record by the learned counsel for the applicant at the request of the Tribunal. In paragraph No. 26, Full Bench has answered 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. Full Bench while answering the reference in paragraph Nos. 13, 14, 15, 16, 17 and 21 has made the following observations:-

“13. In the present matters, we are concerned with the entitlement of the second wife to family pension upon the death of the Government employee. For the purpose of family pension the word 'family' will have to be interpreted. Sub Rule 5 of Rule 111 of the Pension Rules defines "family" in relation to the Government servant. Rule 111(5)(i) initially read as "wife or including judicially separated wife or wives in the case of male government servants". Under notification dated 18.01.2016 clause (i) has been amended and the word "wife" is substituted with the word, "legally wedded wife". The provision now is read as legally wedded wife or wives. Rule 111 deals with Retirement Gratuity/Death Gratuity. Rule 115 enables the Government servant to nominate one or more persons to receive the retirement gratuity/death gratuity. Proviso (I) to Sub Rule (I) of Rule 115 restricts the right of the Government servant to nominate any person other than a member of his family in case he has family. The provision would make it clear that unless wife is legally wedded wife as provided under Rule 111(5)(i) of the Pension Rules, the government servant has no right to nominate such a person. Rule 111(5) of the Pension Rules excludes a wife that is not a legally wedded wife from the definition of family. If the marriage is not legal and valid, the said woman would not be brought within contour of the definition "Family". Proviso (ii) to Rule 115(I) enables the Government servant to nominate any other person if he has no family, but sub Rule 4 of Rule

115 of the Pension Rules further prescribes that if at the time the government servant had made nomination who had no "family" at the time of making it, same shall become invalid in the event of the government servant subsequently acquiring the "family". Reading Rules 111 and 115 of the Pension Rules con-jointly the only irresistible conclusion that can be drawn is that a nomination can be made by a government servant only of a person who is member of the family, if the said Government servant has a family. The definition of family embodied in Rule 111(5)(i) specifically provides that legally wedded wife or wives only would be a member of the family. The one that is not a legally wedded wife is excluded from the definition of the term "family".

14. The family pension was initially governed by the Family Pension Scheme 1964 as contained in the Government Resolution dated 08th May, 1964. Same is incorporated in Rule 116. The nomenclature, "Family Pension" connotes payment of pension to the family, a woman who is not legally married cannot be included in the definition of family.

15. The definition of the term family enshrined under Rule 111(2) is for the purpose of the Rules 111, 112, 114 and 115 viz the payment of gratuity and the nomination to be made. The Government employee has a right to make a nomination in favour of a person to receive the family pension also. Form III is required to be filled in by the Government servant giving details of the members of the family. Under rule 116(6)(b), the phrase "family" has been defined.

16. The definition of the word "family" as contemplated under Rule 116 of the Pension Rules means wife in the case of male Government servant and husband in the case of female government servant. Wife is used in singular term in contradiction to the words used in Rule 111(5)(i) of the Pension Rules. Prior to amendment Rule 111(5)(i) included wife or wives including judicially separated wife or wives in the definition of family. However, under Rule 116(6)(b) the words wives is absent. The term 'wife' is used in singular sense,

thereby leaving no scope for further interpretation. There cannot be any dispute with the proposition that where the words are clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to interfere or take upon itself the task of amending or altering the provision as is observed by the Apex Court in a case of **J. P. Bansal Vs. State of Rajasthan and another** (supra).

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.

21. The meaning of the term "wife" as used in Rule 116(6)(b) of the Pension Rules cannot be different than the one in Rule 111(5) (i) of the Pension Rules."

19. Full Bench in the aforesaid paragraphs has observed unequivocally that Rule 116 (6) (a) (I) of the Pension Rules 1982, "Where the family pension is 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. It cannot be different than one in Rule 111 (5) (i) of the Pension Rules, 1982 wherein it is defined for the purpose of Rule 112,114 and 115 that the "Family", in relation to a Government servant means, (i) legally wedded wife or wives, including judicially separated wife or wives in the case of a male Government servant.

20. In the instance case there is no dispute that the provisions of Rules, 1982 are made applicable and in terms of the authoritative pronouncement while answering the reference by the Full Bench, the family pension can be claimed by the widow who was legally wedded wife of the deceased employee. Admittedly, the applicant No.2 is second wife and she cannot be legally wedded wife of the deceased Jaywanta Yashwanta Sonwane. On the basis of settlement arrived between the applicants in the succession proceedings, if the succession certificate has been issued, the same, would not confer any right to the applicants against the statute to claim the family pension in equal shares. Hence, the following order:-

ORDER

- (A) The Original Application is partly allowed.
- (B) The respondents are hereby directed to grant family pension to applicant No.1, who is the legally wedded wife of deceased Jaywanta s/o Yeshwanta Sonwane as expeditiously as possible preferably within the period of six months from the date of this order.

- (C) The Original Application is hereby dismissed to the extent of claim of applicant No.2.
- (D) In the circumstances there shall be no order as to costs.
- (E) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 15.03.2024

SAS O.A. 361/2019(S.B.) Family Pension