

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 634/2022 (S.B.)

Mandakini Tulsiram Avghade
@ Mandakini D/o Harisingh Nagore,
Aged about 63 years,
Occ. Nil, R/o C/o S. R. Gupta,
Behind Old R.T.O. Officer, Pratap Nagar,
Wardha - 442 001.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
School & Education Department,
Mantralaya, Mumbai- 400 032.
- 2) Education Officer (Continuing),
Zilla Parishad, Amravati.
- 3) Adult Education Department,
Through its Supervisor,
Amravati.
- 4) Accountant General (A & E)-II,
Civil Lines, Nagpur.

Respondents

Smt. S.Dashputre holding for Shri S.U.Ghude, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 01st April, 2024.

Judgment is pronounced on 03rd April, 2024.

Heard Smt. S.Dashputre holding for Shri S.U.Ghude, Id. counsel for the applicant and Shri S.A.Sainis, Id. P.O. for the Respondents.

2. Case of the applicant is as follows. Tulsiram was employed in the respondent department. He had performed marriage with one Pushpabai. From this marriage there was no issue. The applicant is second wife of Tulsiram. From this marriage two daughters and a son are born. Tulsiram retired on superannuation on 01.03.1990. Pushpabai died on 19.10.2019 (A-1). Tulsiram used to get pension till his death on 20.01.2020 (A-2). He had applied in July, 2014 (A-4) for changing nomination in respect of pension in favour of the applicant by cancelling nomination made earlier in favour of his first wife Pushpabai. This application was supported by affidavit dated 25.06.2014 (A-5). In these facts direction needs to be issued to respondents 2 & 3 to enter name of the applicant as nominee, and to pay family pension to her. Hence, this Original Application.

3. Respondent no. 2 has resisted the O.A. on the ground that the applicant is not legally wedded wife of Tulsiram and hence she is not entitled to get family pension.

4. Regarding dates of retirement and death of Tulsiram there is no dispute. Status of Pushpabai as legally wedded wife of Tulsiram and date of her death i.e. 19.10.2019 are also not disputed.

5. In affidavit dated 25.06.2014 (A-5) Tulsiram had affirmed as follows:-

माझ्या पहिल्या पत्नीला सौ. पुष्पाबाई तुळशीराम अवघडे हिला संतती नसल्यामुळे मी सन १९८० ला दूसरी पत्नी नामे सौ. मंदाकिनी तुळशीराम अवघडे हिचे सोबत सर्वांच्या संमतीने व सहकार्याने आम्ही दोघे गेले ३४ वर्षांपासून पती पत्नी या नात्याने मुलाबाळासहीत राहात आहो. तिचे पासून मला २ मुली व एक मुलगा सुध्दा आहे. कायद्याचे बंधन असल्यामुळे आम्ही रितसर कोणत्याही पध्दतीने विवाह करू शकलो नाही.

6. Keeping in view aforesaid facts it would be necessary to consider definition of "family" given in Rule 116 (16) (b) of the Maharashtra Civil Services (Pension) Rules, 1982 which reads as under:-

(16) For the purposes of this rule:-

(a) XXX

(b) "family", in relation to a Government servant means-

(i) wife in the case of a male Government servant, or husband in the case of a female Government servant.

(ii) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.

(iii) *son who has not attained the age of twenty one years and unmarried daughter who has not attained the age of twenty four years, including such son and daughter adopted legally before retirement.*

I have referred to affidavit of Tulsiram. Considering contents of the same the applicant does not fall within the definition of “family”.

7. The applicant has relied on paras 29 to 32 of Judgment of the **Hon’ble High Court of Andhra Pradesh in Gaddam Ruth Victoria Vs. State of Andhra Pradesh by its Principal Secretary & Ors. 2023 SCC Online AP 1690**, which read as under:-

29. The Hon’ble Apex Court in Tulsa Devi Nirola (supra) held the right of family pension in favour of the second wife, as the sole nomination was in her favour. The Hon’ble Apex Court observed that the deceased husband resided exclusively with the second wife and occasionally visited the first wife. The deceased was exclusively taken care of by the second wife during his illness including the expenditure incurred on his treatment. The contention as raised in that case that the nomination in favour of 2nd wife was only for purpose of receipt of the family pension and perforce she was required to share it equally with the 1st wife was not accepted by the Hon’ble Apex Court.

30. In Tulsa Devi Nirola (supra) the Hon’ble Apex Court, however, observed that if the deceased had not executed settlement deed with

regard to the movable and immovable properties, which was accepted and acted upon by the first wife, the Court could have considered, balancing the equities in favour of the 1st wife as well.

31. The principle as laid down in the said case with respect to grant of family pension is that the family pension is not the estate of the deceased and if the rules provide for nomination and the nomination has been made, in favour of the second wife, she would be entitled for the family pension, and the nomination is not for the purpose of mere receipt of the family pension, requiring her to share equally with the 1st wife, perforce.

32. In view of the aforesaid judgments, we are of the considered view that in such matters, even if it is found that the second wife does not acquire the status of wife, for the marriage having been contracted during the subsistence of the first marriage, still for the service benefits and service claims of the deceased husband, she is entitled for protection. The endeavour of the Courts has always been to balance the equities amongst two wives though the second may not be understood in the strict sense as 'wife', a legally wedded. For balancing the equities, the Courts can pass appropriate orders in favour of both the wives.

(Emphasis Supplied)

Rule 115 (i) & (ii) of the Maharashtra Civil Services
(Pension) Rules, 1982 read as under:-

115. Nominations

(1) A Government servant shall, on his initial confirmation in a service or post, make a nomination in Form 1 or Form 2, as may be appropriate in the circumstances of the case, conferring on one or more persons the right to receive the [retirement gratuity/death gratuity] payable under rule 111.

Provided that if at the time of making the nomination-

(i) the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family: or

(ii) the Government servant has no family, the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not.

Facts of this O.A. are distinguishable. In this case legally wedded wife Pushpabai was nominated by Tulsiram to receive family pension. During his life time there was no change in it. Pushpabai pre-deceased Tulsiram. During Pushpabai's lifetime Tulsiram could not have nominated the applicant to receive family pension. The applicant does not fall within the definition of "family" given in the Rules of 1982. For these reasons the O.A. is liable to be dismissed. **It is accordingly dismissed with no order as to costs.**

Member (J)

Dated :- 03/04/2024

aps

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 03/04/2024
and pronounced on

Uploaded on : 04/04/2024