

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 84/2023 (S.B.)

Laxmibai wd/o Chandrabhan Gadge,
Aged about 78 years,
Occupation- Nil,
R/o. Patil Mandali, Patur,
Tah. Patur, District -Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai – 400 032.
- 2) The State of Maharashtra,
Through its Secretary,
Finance Department,
Mantralaya, Mumbai – 400 032.
- 3) Accountant General Maharashtra-II,
Civil Lines, Nagpur.
- 4) District Treasury Officer,
Collector Office Akola, Tah. and
District – Akola.
- 5) Superintendent of Police,
Akola. Tah. and District – Akola.

Respondents

Shri A.M.Tirukh, Id. Advocate for the applicant.

Shri V.A.Kulkarni, Id. P.O. for the Respondents.

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

Dated :- 12.12.2023.

JUDGEMENT

Heard Shri A.M.Tirukh, Id. counsel for the applicant and Shri V.A.Kulkarni, Id. P.O. for the Respondents.

2. Case of applicant in short is as under-

The deceased Chandrabhan Gadge husband of the applicant was working in the Police department. He retired on 14.05.1997. The husband of applicant died on 17.05.2021 and leaving behind him the applicant and one son. Husband of applicant has not shown the applicant as a nominee in the pension papers and therefore she is not getting the family pension. Therefore, the applicant has approached to this Tribunal for the following reliefs-

- i) allow the application and hold and declare that applicant is entitled to receive family pension after the demise of her deceased husband Chandrabhan and direct the respondents to insert the name of applicant as nominee in the service record of the deceased Chandrabhan Gadge and further direct to disburse the regular monthly family pension to the applicant;*

ii) direct the respondents to pay the arrears of family pension to the applicant for the period from the month of June 2021 till the date from which the respondents would start disbursing the regular monthly family pension to the applicant along with the interest at the rate 12% per annum.

3. The O.A. is strongly opposed by the respondents. It is submitted that as per the Rule, employee before retirement has to submit nomination papers. It is submitted that the applicant applied to respondent no.5 i.e. Superintendent of Police, Akola by letter dated 15.02.2022. The applicant was directed by respondent no.5 to submit P.P.O. order. The applicant could not submit the said paper. Therefore, the respondents are not paying the pension to the applicant.

4. There is no dispute that the applicant was a legally wedded wife of deceased Chandrabhan Gadge. There is no dispute dependent / wife has right for claiming family pension. Applicant is not getting pension only because her name is not mentioned in the pension papers as a nominee.

5. During the course of submission, the learned counsel for the applicant has pointed out the legal heir certificate granted by the Civil Judge Junior Division, Patur dated 07.01.2022. This certificate shows that applicant is a legally wedded wife of the deceased Chandrabhan Gadge. The applicant and her son Gajanan are the only legal

representatives of the deceased to get family pension. The applicant being a widow is entitled to get family pension.

6. The learned counsel for the applicant has submitted that the nomination is not the sole criteria to reject the family pension. He has pointed out the Rule 117 of the Maharashtra Civil Services (Pension) Rules, 1982 (in short "M.C.S. (Pension) Rules"). He has pointed out the Rule 117 of sub-rule 7(a) and sub-rule 6(a) of the M.C.S. (Pension) Rules. As per sub-rule 7(a) of the M.C.S. (Pension) Rules, *a Government servant shall on his confirmation in a service or post, make a nomination in **Form no.4** indicating the order in which a family pension should be paid to the members of his family-----.*

As per sub-rule 6(a), *except as may be provided by nomination under sub-rule (7), the family pension sanctioned under this rule shall be payable –*

(i) to the widow, and if there are more widows than one, to the eldest surviving widow, if the deceased was a male Government servant, or to the husband, if the deceased was a female Government servant -----.

7. The learned counsel for the applicant has pointed out the decision of the Hon'ble Supreme Court in the case of **G.L.Bhatia Vs. Union of India and Another (1999)5 SCC 237 decided on 23.04.1999.** The Hon'ble Supreme Court has held that right to family pension

accruing under the Statute law, cannot be defeated by making a nomination to the contrary, if made contrary, would not be operative.

8. As per the submission of respondents, the applicant has not made any nomination. The applicant is the only widow of deceased to get family pension and therefore nomination itself is not the criteria to deny the pension to the widow of deceased employee.

9. The learned counsel for the applicant has pointed out the decision of the Hon'ble Bombay High Court in the case of **Kanta Anant Dhayarkar Vs. the State of Maharashtra through the Secretary, Higher & Echnical Education Department Mantralaya and Others 2021 SCC OnLine Bom 5028 decided on 1.12.2021.** The Hon'ble Bombay High Court in para nos. 25 and 27 has observed as under-

25. The fact that petitioner was not nominated for Form-3 submitted by husband of petitioner during his life time would, therefore, no longer to be relevant as after the death of the nominee the nomination becomes null and void. The counsel for respondents Mr. Ronghe, relies upon Rule 117(6)(a) of the Maharashtra Civil Services (Pension) Rules, to submit that the use of the word "Except" clearly suggests the mandatory nature of the Rule and that without being nominated as per prescribed Form no claim to family pension can be made by petitioner. Rule 117 (6), 117 (7) and 117 (8) are quoted as under-

"117 (6) (a) Except as may be provided by nomination under sub-rule (7), the Family Pension sanctioned under this rule shall be payable

(1) to the widow, and if there are more widows than one, to the eldest surviving widow, if the de ceased was a male

Government servant, or to the husband, if the deceased was a female Government servant;

Explanation:

The expression "eldest surviving widow" shall be construed with reference to the seniority according to the date of the marriages of the surviving widows and not with reference to their age;

(ii) failing a widow or husband, as the case may be, to the eldest surviving son;

(iii) failing (i) and (ii) above, to the eldest surviving unmarried daughter,

(iv) failing (i), (ii) and (iii) above to the eldest surviving widowed daughter.

(b) If there are no surviving members of the family as in clause (a), the family pension may be granted

(1) to the father;

(ii) failing (1) above, to the mother,

(iii) failing (1) and (ii) above, to the eldest surviving brother below the age of eighteen years;

(8) (a) A Family Pension granted under this rule shall not be payable to more than one member of a Government servant's family at the same time.

(b) If the Family Pension granted under this rule ceases to be payable on account of death or marriage of the recipient or other causes, it shall be regranted to the person next lower in the order mentioned in sub-rule (6) or to the person next lower in the order shown in the nominations made under sub-rule (7) as the case may be, who satisfies the other provisions of this rule."

27. In the case at hand, pursuant to the duly issued succession certificate by a competent Court, Petitioner's right to family pension has been legally endorsed as the rightful claimant. Rule 117 (6)(a) relied upon by the counsel for respondents, in our view, does not mandate a nomination when using the word "Except" as

the use of this word cannot be construed to be a non-obstante in view of our above discussion.

10. The Hon'ble Bombay High Court in the above cited decision has held that Rule 117 (6)(a) of the M.C.S. (Pension) Rules is very clear. As per this rule, even though nomination is not made, then also legally wedded wife / widow of the deceased is entitled to get family pension. In the case in hand, the applicant is the only legally wedded wife of deceased to get family pension. Respondents are not paying the same on the ground that her name was not shown in the nomination. The applicant and her son are the legal representatives of deceased as per legal heir certificate issued by Civil Judge Senior Division, Patur dated 07.01.2021. Being a widow, the applicant is entitled to get family pension. Hence, the following order-

ORDER

1. The O.A. is allowed.
2. It is held that the applicant is entitled to receive family pension after the death of her husband Chandrabhan Gadge.
3. The respondents are directed to pay family pension to applicant after the death of deceased Chandrabhan Gadge.

4. The respondents are directed to pay the arrears of family pension, if admissible, as per Rules.
5. The respondents are directed to complete the process of payment of family pension of the applicant within a period of three months from the date of receipt of this order.
6. No order as to costs.

(Shri Justice M.G.Giratkar)
Vice Chairman

Dated :- 12/12/2023.
rsm.

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

Name of Steno : Raksha Shashikant Mankawde.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 12/12/2023.
and pronounced on