

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 947 / 2020 (S.B.)**

1. Shri Yamuna Wd/o Sopan Mule,  
Age - 41 years, Occupation:-Household.
  
2. Rechal D/o Sopan Mule,  
Age - 17 years, Occupation – Student.
  
3. Rocky S/o Sopan Mule,  
Age - 14 years, Occupation – Student

All R/o Near Vikas Vidyalaya,  
Pipala (Dakbangala) Tah. Saoner,  
District Nagpur.

**Applicants.**

**Versus**

- 1) The State of Maharashtra,  
through Accountant General (A&E)-II,  
Maharashtra, Nagpur.

**Respondent**

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**Smt. G.D.Mankar, Id. Advocate for the applicants.**

**Shri V.A.Kulkarni, Id. P.O. for the Respondent.**

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

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**JUDGMENT**

**Judgment is reserved on 10<sup>th</sup> Feb., 2023.**

**Judgment is pronounced on 15<sup>th</sup> Feb., 2023.**

Heard Smt. G.D.Mankar, Id. counsel for the applicants and Shri V.A.Kulkarni, Id. P.O. for the Respondent.

2. Facts leading to this original application are as follows. Soman Mule was working in the respondent department. From his first wife he had no issue. With her consent he performed second marriage with applicant no. 1 (Annexure-A). From this marriage applicants 2 & 3 are born on 11.09.2002 (Annexure-B) and 10.11.2005 (Annexure-C), respectively. The first wife of Soman died on 13.05.2005. Soman died in harness on 05.06.2008 (Annexure-D). The applicants obtained succession certificate (Annexure-F) and heirship certificate (Annexure-G). Service benefits of deceased Soman amounting of Rs. 4,81,081/- have

been received by the applicants. The applicants are also entitled to received all pensionary benefits including family pension. Hence, this original application for releasing these benefits in favour of the applicants.

3. The applicants have given up claim for appointment on compassionate ground.

4. With his reply (at PP. 33 to 36) respondent no. 2 has filed communication dated 21.05.2019 (A-R-2-1) made by him to the Accountant General which states :-

“दिवंगत पोलीस नायक/१२२९ सोपान रामकृष्ण मुळे यांचे मृत्यु नंतर कुमारी रिचल मुळे वय १७ वर्ष व चि. रॉकी सचिन मुळे वय १३ वर्ष असे दोन अपत्ये आहे. उपरोक्त दोन्ही अपत्ये अज्ञान असल्याने त्यांचा सांभाळ मृतकाची दुसरी पत्नी श्रीमती यमुना सोपान मुळे (अज्ञान मुलांची आई) करित आहे. त्यामुळे दोन्ही अज्ञान मुलांचे वतीने कुटुंबनिवृत्ती वेतनाचे रकमेची मागणी करण्याबाबत महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील नियम क्रमांक ११६ (९) नुसार श्रीमती यमुना सोपान मुळे यांनी कुमारी रिचल सोपान मुळे वय १७ वर्ष व चि. रॉकी सोपान मुळे वय १३ वर्ष याचे पालकत्व स्विकारले असून तसे प्रतिज्ञापत्र नमुना २९ मध्ये भरून दिलेले आहे. व रु. १००/- च्या स्टॅम्पपेपरवर लिहून दिलेले आहे.

महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील नियम क्रमांक ११६ (७)(३) नुसार कुटुंब निवृत्ती वेतन अपत्यांना त्यांच्या जन्मानुसार प्रदेय असल्याने कुमारी रिचल

सोपान मुळे यांचे वतीने श्रीमती यमुना सोपान मुळे यांचे नावे महालेखाकार द्वितीय नागपूर यांना सादर करण्याचा प्रस्ताव सोबत सादर असून मान्य असल्यास सदर प्रस्ताव स्वाक्षरीस तथा आदेशार्थ सादर.....”

5. Respondent no. 2 has also placed on record at P. 39 communication dated 13.09.2019 which refers to G.R. dated 03.11.2018 issued by Finance Department of Government of Maharashtra. As per this communication, in view of G.R. dated 03.11.2018, second wife whose marriage is illegal, and their children were not entitled to get family pension.

6. In view of rival contentions the only point which falls for determination is whether the applicants are entitled to get pensionary benefits including family pension which have become payable on account of death of Sopan.

7. Following facts are not in dispute. First wife of Sopan died issueless on 13.05.2005. During subsistence of this marriage Sopan performed second marriage with applicant no. 1. From this, second marriage applicants 2 & 3 are born. Sopan died in harness on 05.06.2008.

8. The applicants have relied on **C. Sarojini Devi Vs. The Director of Local Fund Audits, Chennai & 2 Ors. (Judgment of Hon'ble Madras High Court dated 23.01.2020 in W.P. No.**

**34952/2019)** to contend that applicant no. 1, though second wife of the deceased, cannot be deprived of family pension. This submission cannot be accepted in view of binding precedent of the **Hon'ble Bombay High Court relied upon by the respondents i.e. Ramabai Gulabrao Jamnik Vs. State of Maharashtra & Ors., 2018 (3) ALL MR 580** wherein it is held that second wife whose marriage is void cannot be said to be a widow within the meaning of Rule 116 (6) (a) (i) of the Maharashtra Civil Services (Pension) Rules, 1982, and hence she is not entitled to get any share in family pension. In this case it is observed:-

*"17. The facts in Rameshwari Devi V. State of Bihar and others reveal that the learned Single Judge of the Patna High Court held that the second wife of the Hindu Government employee one Yogmayadevi was not entitled to share the Family Pension and Death-Cum-Retirement Gratuity since her marriage on 10-4-1963 was void since marriage was solemnized during the life time of wife of the Hindu Government employee. The learned Single Judge, however, held that while the second wife would not be entitled to any share in the Family Pension, the children born from the wedlock would be entitled to share notwithstanding that the wedlock was void. The said judgment was assailed before the Division Bench which dismissed the appeal. The Hon'ble Supreme Court did not find any error in*

*the view taken by the learned Single Judge and the Division Bench of Patna High Court.”*

In view of this legal and factual position, **I hold that applicant no. 1 being the second wife is not entitled to get family pension but her children viz applicants 2 & 3 being legitimate children as per Section 16 of Hindu Marriage Act are entitled to get family pension.** The respondent department shall extend these benefits as per Rule 116 (7) of Maharashtra Civil Services (Pension) Rules, 1982. **The O.A. is allowed in these terms with no order as to costs.**

**(Shri M.A.Lovekar)**  
**Member (J)**

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 : 15/02/2023.  
and pronounced on

Uploaded on : 16/02/2023.