

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 982/2021 (S.B.)

Kaushalyabai Motilal Uchade,
Aged about 73 years,
Occ. Housewife, R/o Vasant Nagar,
Pusad, Tah. Pusad,
Dist. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Additional Chief Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai- 400 032.
- 2) The Deputy Conservator of Forest,
Pusad Forest Division, Pusad,
Dist. Yavatmal.
- 3) The Principal Accountant General (A & E)-II,
Maharashtra, Civil Lines,
Nagpur.

Respondents

Shri S.N.Gaikwad, Id. Advocate for the applicant.

Shri A.P.Potnis, Id. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 04th March, 2024.

Judgment is pronounced on 06th March, 2024.

Heard Shri S.N.Gaikwad, Id. counsel for the applicant and Shri A.P.Potnis, Id. P.O. for the Respondents.

2. The applicant is second wife of Motilal who served as Forester and retired on 31.03.1998. Their marriage was performed on 05.04.1972 (A-2). Tulsabai who was his first wife died on 09.09.2005. Motilal had nominated both his wives to receive Death-Cum-Retirement Gratuity (A-1). He died on 15.01.2021 (A-5). Application dated 10.02.2021 made by the applicant for grant of family pension to her was forwarded with covering letter dated 10.03.2021 (A-6) by respondent no. 2 to respondent no. 3 which was rejected by the latter by the impugned communication dated 06.09.2021 (A-7) on the ground that the applicant was not a legally wedded wife. Hence, this Original Application.

3. Respondents 2 & 3 have supported the impugned order on the ground that the applicant who is admittedly second wife of Motilal cannot be said to be his legally wedded wife and hence, notwithstanding the facts that she was one of the nominees and is the sole surviving wife, family pension cannot be granted to her.

4. The applicant has relied on the judgment of this Bench dated 07.11.2023 in O.A. No. 833/2019. While delivering the judgment dated 07.11.2023 this Bench relied on the judgment of **Nagpur Bench of**

Hon'ble Bombay High Court dated 13.03.2023 in W.P. No. 4474/2022 in the case of Kamla Wd/o Vasant Yenke Vs. Principal Accountant General (A & E) II and Another wherein it was observed :-

6. It is not the case of the respondent that at the time of the death of the employee there were two surviving wives. We note from the affidavit in response filed on behalf of the respondent 1, that pension is refused only on the ground that in the record available the nominee is late Smt. Leelabai.

7. We are not required to delve deeper. It is trite law that neither the official record nor the nomination therein is conclusively determinative of the entitlement to pension. In view of the undisputed position on record that Smt. Leelabai died in 2016 much prior to the death of the employee Mr. Vasant Yenke in 2019, and the petitioner has been issued Succession Certificate, we see no difficulty in allowing the petition in terms of prayer clause (a) and (b).

Thus, in Kamla Yenke (Supra) the High Court considered two facts viz the petitioner was the sole surviving wife when her husband died, and succession certificate was issued in her favour. In the instant case the applicant does not dispute that she is second wife of Motilal. According to her, her marriage with Motilal was performed on 06.04.1972. She does not dispute that at this point of time Tulsabai, first wife of Motilal was alive. It can be gathered that when the applicant performed marriage with Motilal marital tie between him and Tulsabai was intact. Tulsabai died on 09.09.2005. Succession certificate has not been issued in the name of the applicant. This fact shows that case of

Kamla Yenke (Supra) is distinguishable. While rejecting contention of the applicant that she is entitled to get family pension, reliance may be placed on judgment of this Bench dated 22.02.2024 in O.A. No. 1077/2021 wherein it is observed:-

In the case of Kamalbai Venkatrao Nipanikar Vs. State of Maharashtra & Ors., 2019 (3) Mh.L.J., 921, the Full Bench of Hon'ble Bombay High Court, Bench at Aurangabad has held that only legally wedded wife is entitled to get family pension etc. Second wife, if not a legally wedded wife would not be entitled for family pension. However, if second wife is legally wedded wife, then she is entitled for the family pension.

5. In view of factual and legal position discussed above, **the O.A. is dismissed with no order as to costs.**

Member (J)

Dated :- 06/03/2024
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 : 06/03/2024
and pronounced on

Uploaded on : 07/03/2024