

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 1078/2021(S.B.)**

- 1) Smt. Tarabai Wd/Mangal @  
Mangalsing Khandate,  
Aged about 61 years,  
Occupation : Labour.  
(Wife),R/o. 18 Bhuj Ganesh Mandir,  
Jaiprakash Ward, Ramtek,  
Dist. Nagpur.
- 2) Sau. Pratibha Kailash Uikey,  
Aged about 38 years, Occu : Labour  
(Daughter), R/o. Ajani Primary School,  
Tq. Kamthee, Dist. Nagpur.
- 3) Sau. Sujata Digambar Uikey,  
Aged about 36 years, Occu : Labour,  
(Daughter) R/o. 18 Bhuj Ganesh Mandir,  
Jaiprakash Ward, Ramtek,  
Dist. Nagpur.
- 4) Narendra Managalsing Khandate,  
Aged about 34 years, Occu : Private,  
(Son),R/o. 18 Bhuj Ganesh Mandir,  
Jaiprakash Ward, Ramtek,  
Dist. Nagpur.
- 5) Sau. Amruta Pradip Salame,  
Aged about 32 years, Occu : Service,  
R/o. Ward No.6, Harihar Nagar,  
Near Shriram Gate, Wardha, Tq. & Dist.  
Wardha (Daughter)

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary,  
Forest Department,  
Mantralaya, Mumbai-32.
- 2) The Deputy Conservator of Forest,  
Forest Division, Nagpur.  
B.S.N.L. Laxmi Sanchar Building,  
In-front of Kasturchand park,  
Nagpur : 440001
- 3) Accountant General-II  
Maharashtra, Civil Lines, Nagpur.
- 4) Smt. Leelabai Mangal @  
Mangalsing Khandate,  
Aged about 58 years, Occupation :  
Household work, R/o. Swami  
Vivekanand Ward Ramtek,  
District Nagpur.

**Respondents**

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Shri D.M.Surjuse, Ld. counsel for the applicant.  
Shri M.I.Khan, Ld. P.O. for the respondents 1 to 3.  
Respondent no.4 absent though served.

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

**Dated: - 06 July 2022.**

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**JUDGMENT**

**Judgment is reserved on 27<sup>nd</sup> June, 2022.**

**Judgment is pronounced on 06<sup>th</sup> July, 2022.**

Heard Shri D.M.Surjuse, learned counsel for the applicants and

Shri M.I.Khan, learned P.O. for the Respondents 1 to 3.

2. In this application following reliefs are sought.

*a] direct the respondent nos.2 & 3 to grant family pension and pensionary benefits along with all ancillary benefits to the applicant no.1 as per the provisions of section 116 (6)(a)(1) of Maharashtra Civil Services (Pension) Rules 1981, in the interest of justice and equity;*

*b] restrain the respondent no.4 from getting family pension and pensionary benefits as per the provisions of section 11 and 16 of Hindu marriage Act, 1955 being a second wife of Mangal @ Mangalsing Khandate;*

3. Case of the applicants is as follows.

Mangal Khandate was appointed as a Forest Guard. Marriage between him and applicant no.1 was solemnized on 16.05.1982 as per Hindu rites and customs. Applicants 2 to 5 are born from this wedlock. Mangal Khandate performed second marriage with respondent no.4 in the year 1989. This marriage was performed during subsistence of marital tie between Mangal Khandate and applicant no.1. Mangal Khandate nominated both his wives viz. Applicant no.1 and respondent no.4 to receive GPF (Annexure A-4). Mangal Khandate retired on superannuation 30.09.2011. He died on 27.06.2018 (Annexure A-6). The applicants came to know that in pension papers (Annexure A-5) respondent no.4 was nominated by

Mangal Khandate to receive family pension. Applicant no.1 being the only legally wedded wife of Mangal Khandate, was entitled to receive family pension under Rule 116 (6) (a)(1) of the MCS (Pension) Rules, 1982. Respondents 2 and 3 while sanctioning, authorising and disbursing amount of family pension to respondent no.4 ought not to have lost sight of this legal position. Hence, this application for the aforesaid reliefs.

4. It is a matter of record that representation dated 23.11.2021 (Annexure A-7) made by the applicant was rejected by respondent no.2 by communication dated 22.02.2022 (Annexure R-1).

5. It is also a matter of record that initially Mangal Khandate named both his wives applicant no.1 as well as respondent no.4, as nominees (Annexure A-4) but later on he nominated respondent no.4, applicant no.4 and his another son Mahendra while submitting papers (Annexure A-5). Thus, there appears to be no dispute regarding applicant no.1 and respondent no.4 both being the wives of deceased Mangal Khandate.

6. It is the contention of the applicants that applicant no.1 being the first (and hence the only) legally wedded wife of the deceased, only she was, and is, entitled to get family pension in view of **Rule 116 (6)(a)(1) of the MCS (Pension) Rules, 1982.**

7. In support of aforesaid contention reliance is placed on following rulings of the Bombay High Court.

1) *Ramabai Gulabrao Jamnik Vs. State of Maharashtra & Ors. 2018 (3) ALL MR 580.*

2) *Kamalbai Venkatrao Nipanikar Vs The State of Maharashtra (and other connected matters) (Judgment dated 31.01.2019 delivered by full Bench)*

3) *Nirmala Shankarrao Solanke Vs State of Maharashtra and three others (Judgment dated 06.03.2020 delivered by Bombay High Court in Writ Petition No.1983/2018.)*

4) *Shrimatee Chanda Hinglas Bharati Vs State of Maharashtra and three others (Judgment dated 26.11.2015 delivered by Bombay High Court in Writ Petition No.1251/2015.)*

Ruling at Sr.No.2 mentioned above is of full Bench of the Bombay High Court in which it is held-

***“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.*”**

In this case it is further held in para 44 –

*A woman, other than the widow (legally wedded wife), would not be entitled for pension in any share and that her minor children would be entitled for her share subject to the prescription under Rule 116(6)(a)(i) and Rule 116(b) of the 1982 pension rules, owing to the amendment introduced on 08.01.2016 by which the word “wife” was replaced by the words “legally wedded wife”. This amendment was introduced after I had delivered the judgment in Kantabai (supra).*

8. It is the contention of respondent no.2-

*Mangalsing Khandate had submitted form No.5 under Rules 121 (1)(c) & 123 (1) of the MCS (Pension) Rules, 1982, where he himself nominated name of Leelabai Khandate as a nominee for family pension. After retirement of the Mangalsing Khandate, as a due procedure answering Respondent has forwarded details of nomination of retired to Treasury Officer, Nagpur.*

Further contention of respondent no.2 is-

*At present the transfer of name of a nominee is not in the hands of Respondent No.2. The file of Mangalsing Khandate has already been forwarded to Accountant General Office, Nagpur and as such the*

***Respondent No.2 is not answerable for any change of name of nominee.***

9. According to respondent no.3 said office only authorises pensionary benefits on receipt of properly processed pension papers duly attested by the Office Head/PSA of State Government, and on the basis of supporting form no.3 (Family Details) containing name of respondent 4 as wife, it was incorporated in element of family pension, pension case was processed and pensionary benefits were released in favour of respondent no.4.

10. Reply of respondent no.3 also contains the following details-

***However, this Respondent office vide letter No.PR-I/R-5/1011073564/CC/1287 dated 29.12.2021 has sought the necessary specific decision of the Pension Sanctioning Authority/Department i.e. the Deputy Conservator of Forest, Nagpur Forest Division, Nagpur, with regard to the claim of the Applicant for family pension on the ground that she is the first legally wedded wife of the deceased employee.***

***The compliance sought regarding correct marital status of the deceased Government servant is still awaited from the pension sanctioning authority.***

11. Assertion of applicant no.1 is that she is the only legally wedded wife of deceased Mangal Khandate, respondent no.4 (being the second wife) does not have such status and in view of settled

legal position (set out as above) prayer clauses A & B will have to be allowed.

12. I have quoted the legal position laid down in Kamalbai "(supra) as well as other rulings of the Bombay High Court. The question, however, which goes to the root of the matter is whether there is enough material before the Tribunal to accept case of the applicant no.1 that she is the only legally wedded wife of deceased Mangal Khandate. She does not dispute status of respondent no.4 as wife of Mangal Khandate. It is her contention that respondent no.4 performed marriage with Mangal Khandate when marital tie between her, applicant no.1, and Mangal Khandate was intact and hence, she, respondent no.4, cannot be said to be legally wedded wife of deceased Mangal Khandate. Thus, the question is one of Civil Status. It is a matter of record that respondent no.4 was served with notice of this proceeding but she did not join and contest the same. Thus, contention of the applicant no.1 with regard to her status as the only legally wedded wife of the deceased, as well as status of respondent no.4 as the second wife ( who cannot, therefore, be called legally wedded wife ) has gone unchallenged. However, since the issue pertains to Civil status of the parties, merely on account of failure of respondent no.4 to traverse pleading of the applicant, status of



applicant no.1 as the only legally wedded wife of deceased Mangal Khandate cannot be said to have been satisfactorily established.

13. The matter could have been decided had there been conclusive material about applicant no.1 being the only legally wedded wife of deceased Mangal Khandate, and subsequent marriage between respondent no.4 and the deceased being void on account of the same having taken place during subsistence of valid marriage between applicant no.1 and the deceased. But such is not the case.

14. For the reasons discussed hereinabove I hold that no relief can be granted to the applicant no.1 in the absence of declaration from competent Court that she alone is the legally wedded wife of the deceased. It would be open to applicant no.1 to avail proper legal remedy for redressal of her grievance. The O.A. stands dismissed with no order as to costs.

(M.A.Lovekar)  
Member (J)

Dated - 06/07/2022

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 Member (J) .  
Judgment signed on : 06/07/2022.  
and pronounced on  
Uploaded on : 06/07/2022.