

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**Review Petition St. No. 208/2017 in O.A. No. 169/2015
[Smt. Radhabai w/o Ranuji Muley Vs. The State of Mah. & Ors.]**

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

DATE : 15.02.2017

ORAL ORDER

Heard Shri A.D. Gadekar, learned Advocate for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondents.

2. In O.A. No. 169/2015 the judgment has been delivered on 30.11.2016, in which the applicant's claim for pension was dismissed. At the time of argument, the judgment delivered by the Hon'ble High Court, Bench at Nagpur decided on 20.11.2014 in W.P. No. 4467/2014 (Union of India & Another Vs. Smt. Jaywantabai wd/o Ramrao Kawoo) as well as judgment delivered by the Hon'ble High Court, Bench at Aurangabad in Civil Revision Application No. 72/2013 (Kantabai Dhulaji Shriram & Ors. Vs. Hausabai Dhulaji Shriram) as well as judgment delivered by the Hon'ble Apex Court in the case of Rameshchandra Daga Vs. Rameshwari Daga reported in AIR 2005 SC page 422 were not placed on record when the matter was decided finally by this Tribunal.

3. The learned Advocate for the applicant submits that the judgment delivered in O.A. No. 169/2015 is required to be reviewed in view of the recent judgment delivered by this Tribunal in O.A. No. 250/2016 on 30.01.2017.

4. Perusal of the judgment delivered in O.A. No. 250/2016, copy of which is placed on record at paper book page nos.15 to 25 (both inclusive) clearly shows that the Hon'ble High Court has observed that the second widow has a right to claim pension in respect of deceased employee. In the said judgment, the various legal aspects have been considered.

5. In O.A. No. 250/2016, this Tribunal has observed in paragraph nos. 8 to 13 as under:-

“8. In view of above observations, the application of the second widow was rejected by this Tribunal. The learned P.O., therefore, submits that the applicant's claim in the present matter also be rejected in view of above judgment of this Tribunal.

*9. The learned Advocate for the applicant, however, placed reliance on the recent judgment of Hon'ble Bombay High Court, Bench at Aurangabad in **Civil Revision Application no. 72 of 2013 [Kantabai Dhulaji Shriram & Ors. Vs. Hausabai Dhulaji Shriram]** delivered on*

25.10.2013. In the said judgment, the judgment of Hon'ble Supreme Court in the case of **RAMESHWARI DEVI VS. STATE OF BIHAR [AIR 2000 SC 785]** as cited supra along with various rules have been considered and Hon'ble High Court has also referred to the case of **RAMESHCHANDRA DAGA VS. RAMESHWARI DAGA [AIR 2005 SC 422]**. The relevant observations are as under :-

“24. In Rameshchandra Daga v. Rameshwari Daga (AIR 2005 SC 422), the right of a nother woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not ‘immoral’ and hence a financially dependent woman cannot be denied maintenance on this ground.

25. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon's Case [(1854)3 C.Rep. 7a, 7b] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction *utres magisvaleat quam pereat*, in such

cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Cr.P.C., such a woman is to be treated as the legally wedded wife.

28. Lastly, the Hon'ble Apex Court has concluded in para no.27 in *Badshah's Case (supra)* as follows :

27 In taking the aforesaid view, we are also encouraged by the following observations of this Court in *Capt. Ramesh Chander Kaushal vs. Veena Kaushal* [(1978) 4 SCC 70] :

“The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause the cause of the derelicts.”

29. The husband of these two widows has died in 1998. Both the widows are leaning towards old age. The issue of family pension has been pending for years. In light of the facts and law discussed above and the view of the Hon’ble Apex Court in the Badshah’s case (supra), I conclude that the case of the petitioners is squarely covered by Rule 116 at issue. The impugned judgments dated 09/03/2012 and 13/12/2012 are hereby quashed and set aside. The petitioner No.1 is held to be entitled for an equal share of family pension alongwith respondent No.1. Civil Revision Application is thus allowed with no order as to costs.”

10. The above judgment of Hon’ble High Court, Aurangabad Bench was not referred in the earlier judgment delivered by this Tribunal in O.A. no. 169/2015 [Radhabai w/o Ranuji Muley Vs. the State of Maharashtra & Ors.] on

30.11.2016 and, therefore, the same was not considered by the Tribunal at that time.

11. The learned Advocate for the applicant has also placed reliance on another judgment delivered by Hon'ble Bombay High Court, Bench at Nagpur on 20.11.2014 in **writ petition No. 4467/2014 [Union of India & Another Vs. Smt. Jaywantabai wd/o Ramrao Kewoo]**. In the said judgment Hon'ble High Court has observed in para 8 as under :-

“8. We cannot be oblivious of what is going on in the society and a further fact that during subsistence of the first marriage, the husband performs the second marriage by practicing fraud indulging in cheating with the second woman who , thus, falls an easy prey to such person for no fault of her. Such cases are myriad. But then, since the parties are Hindus, Section 11 of the Hindu Marriage Act holds such marriages void. It is true that the Courts or the Tribunals should not enforce or make any order or decree contrary to law, and in this case, Section 11 of the Act. But the next question is whether such a second wife/ widow, after the death of her husband, in this case, the railway employee, should be left to starve by giving all the pensionary and terminal benefits of his service to first wife only? This question will have to be answered with all seriousness and in the light of the revolution for emancipation of

women. We feel that though Hindu Personal Law may not be strictly interpreted on the anvil of the Constitution of India or the fundamental rights, and should not be denigrated by the Courts, fact remains that the constitutional provisions can be pressed into service for interpretation of laws/ Rules for achieving the ultimate object of the constitutional goal.”

12. It is material to note that, this judgment was assailed by the Union of India before Hon'ble Supreme Court in Special Leave to Appeal (C) No (s). 11491/2015 and vide judgment dated 8.5.2015, Hon'ble Supreme Court was pleased to dismiss the said special leave petition, though the question of law as to whether the second wife can claim the pensionary benefits or any part thereof, despite rule 21 of the Railway Services (Conduct) Rules, 1966 has been kept open.

13. In view of the discussion in foregoing paragraphs and the observations of Hon'ble High Court, various citations referred hereinabove and in view of the order of Hon'ble Supreme Court as referred hereinabove, I am satisfied that the applicant Smt. Ashabai Kulkarni is entitled to equal share in the family pension of the deceased Kishanrao Kulkarni along with the res. no. 4 Smt. Radhabai Kulkarni. Hence, I pass the following order :-

ORDER

- (i) *The original application is partly allowed.*
- (ii) *The impugned order dated 12.1.2016 issued by the res. no. 2 is quashed and set aside. The res. nos. 1 to 3 are directed to sanction / grant ½ share of family pension to the applicant Smt. Ashabai Kulkarni from the date on which her daughter Renuka was held disentitled to the pension due to her marriage.*
- (iii) *The res. nos. 1 to 3 are also directed to disburse pension to the applicant Smt. Ashabai Wd/o Kishanrao Kulkarni & res. no. 4 Smt. Radhabai Wd/o Kishanrao Kulkarni in equal share until the lifetime of both the waives and also in case of death of either of them, the surviving party shall be entitled to full part of the family pension.*

There shall be no order as to costs.”

6. In view of the aforesaid observations, it is material to note that while delivering the judgment in O.A. No. 169/2015, the judgment delivered in Civil Revision Application No. 72/2013 and various judgments referred in the aforesaid paragraphs including one in W.P. No. 4467/2014 were not placed before this Tribunal and therefore, the judgment in O.A. No. 169/2015 is required to be reviewed, in view of the aforesaid legal aspects.

7. In the present case, the applicant Smt. Radhabai Ranuji Muley is the second widow of deceased Shri Ranuji Muley.

Shri Ranuji Muley has retired on superannuation on 31.08.1984. At the time of his death, the name of his first wife Smt. Anusayabai was entered in the service book as wife but said Smt. Anusayabai died and therefore, on 18.05.1998 Shri Ranuji Muley applied for nomination of applicant i.e. Smt. Radhabai as his widow and the same was rejected on the ground that she was not legally wedded wife of Shri Ranuji Muley. Admittedly, Smt. Radhabai married with Shri Ranuji during the subsistence of first marriage with Smt. Anusayabai and the said marriage continued for a prolong period and till the death of Shri Ranuji.

8. The applicant Smt. Radhabai is aged about 76 years and Shri Ranuji's first wife Smt. Anusayabai has expired in the year 1998. From 1968, the applicant Smt. Radhabai was cohabiting with deceased Shri Ranuji as his wife till the time of his death. Considering all these circumstances and in view of the judgment delivered in O.A. No. 250/2016 in which the various citations of Hon'ble High Court and Hon'ble Apex Court were placed before the Tribunal, I feel that, it is a fit case, where the judgment in O.A. No. 169/2015 delivered on 30.01.2016 is required to be reviewed and hence, I pass following order:-

ORDER

1. The Review Petition St. No. 208/2017 in O.A. no. 169/2015 is allowed.

2. The respondent no. 3 is directed to grant family pension in favour of the applicant w.e.f. December 2006 by treating her as nominee of deceased Ranuji Masaji Muley being widow.
3. Communication vide letter dated 21.05.2004 (Annexure A-8) is quashed and set aside.
4. Considering the fact that the applicant is approximately aged about 78 years old, the respondent no. 3 is directed to grant family pension and pensionary benefits to the applicant within three months from the date of this order.

There shall be no order as to costs.

MEMBER (J)

KPB/ Review St. 208 of 2017 in O.A. No. 169 of 2015 JDK