

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI
BENCH AT AURANGABAD.

DIST.PARBHANI.

ORIGINAL APPLICATION NO. 169/2015.

(Subject : Family Pension)

Radhabai w/o Ranuji Muley,
Age 76 years, Occu. Household,
R/o Sarfaraj Nagar,
Parbhani.

-- **APPLICANT**

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.
(Copy to be served on C.P.O.
M.A.T. at Aurangabad)
2. Superintendent of Police, Parbhani
District Parbhani.
3. Accountant General-II,
Maharashtra State, Nagpur.

----- **RESPONDENTS.**

APPEARANCE : Shri A. D. Gadekar, learned Advocate for the
Applicant.

: Smt S.K. Ghate Deshmukh, learned Presenting
Officer for the Respondents.

CORAM : **Hon'ble Shri JD Kulkarni, Member (J).**

DATE : 30.11.2016.

JUDGMENT

(Delivered on this 30th day of November, 2016)

1. The applicant Radhabai Ranuji Muley is claiming to be a widow of deceased Ranuji Muley, who was in Govt. service of the Respondents as a Head Constable. Deceased Ranuji Muley joined the service on 30.7.1949 and got retired on superannuation on 31.8.1984 on completion of age of 58 years. Admittedly Ranuji married with one Anusayabai and her name was entered in the Service Book as wife. Since Anusayabai was unable to conceive a child Ranuji got married with applicant and out of said wedlock the applicant gave birth to two sons namely Gautam and Sanjay and their names are also taken in the Service book of Ranuji.

2. On 18.5.1998 Ranuji applied for nomination of applicant in place of his first wife Anusayabai since Anusayabai died. The Respondent no.3 asked Ranuji to submit the photograph and relevant documents and accordingly same were submitted. The respondent no.2 forwarded the proposal to A.G. Nagpur. The said nomination was however, not done. However, the proposal was forwarded by respondent no.2 to A.G. Nagpur as per Exh.A-2 and

requested A.G. Nagpur to record the name of the applicant as nominee so as to avoid family pension to her.

3. Ranuji Muley made another representation to respondent no.2 on 12.6.2001 along with prescribed proforma and detailed information and also the proof of second marriage. The Respondent no.2 again sent a proposal to respondent no.3 as per letter dated 21.1.1998 and 2.7.2001. Ranuji Muley again submitted details and submitted necessary documents on 16.2.2002 and 5.6.2003, but no action was taken and name of the applicant was not taken as nominee. Ultimately on 25.11.2006 Ranuji Muley died.

4. According to applicant, as per Rule 115 (5) of M.C.S. (Pension) Rules, 1982 an employee can cancel nomination at any time and as per Section 116 (6) (a) the applicant is eligible and entitled to get family pension. The respondents however, did not grant pension to the applicant and therefore, the applicant has filed this O.A. The applicant is claiming direction to respondent no.3 to grant family pension in her favour w.e.f. December, 2006 by treating the applicant as nominee of deceased Ranuji Muley.

5. The Respondents no.1 & 2 have resisted the claim and submitted that , the applicant is the second wife of Rajuji Muley and her marriage with Ranuji Muley was performed during the subsistence of first marriage. Said marriage is thus, illegal as per provisions of Section 16 of Hindu Marriage Act. However, the children born out of such marriage are eligible but since both the sons of Ranuji Muley out of wedlock with applicant are major, they are not entitled to claim family pension. The respondents further submitted that, the applicant feeling aggrieved by the act of the respondents of not included her name as nominee of Ranuji Muley filed O.A.No.169/2015 along with an application for condonation of delay bearing M.A.No.170/2015. The delay was condoned and then she filed M.A.No.136/2015 for amendment. Vide communication dated 21.5.2004 it was directed that the first wife of deceased Ranuji Muley was Anusayabai and she had expired on 20.1.1998, whereas the applicant got married with Ranuji Muley in the year 1968 and therefore, she is not entitled the family pension.

6. The Respondent no.3 A.G. Nagpur also filed reply affidavit and denied the applicant's claim.

7. Heard Shri A.D. Gadekar, learned Advocate for the applicant and Smt. S.K. Ghate Deshmukh, learned Presenting Officer for the respondents. I have also perused the application, affidavit, reply affidavits and various documents placed on record.

8. From the admitted facts it is clear that, the applicant got married with Ranuji Muley in 1968 when Ranuji Mujley was already having first wife Anusayabai alive. It is the case of Ranuji Muley that he got married with applicant since his first wife was unable to conceive a child. Admittedly the marriage of applicant with Ranuji Muley had taken place in the year 1968 as seems from the documents placed on record as well as the information submitted by Ranuji Muley to the respondents, and therefore, marriage had taken place after coming into force of Hindu Marriage Act, 1956.

9. From whatever documents placed on record it seems that, Ranuji Muley applied to the competent authority for nomination of his second wife i.e. applicant as his legal heir for receiving pension only after the death of Anusayabai, and he was directed to produce evidence as to whether he has performed marriage with applicant during the subsistence of his first marriage with Anusayabai and this can be seen from the communication Annexure A-1 at paper

book page no.9. It is clear that the first wife of Ranuji Muley i.e. Smt. Anusayabai died on 20.1.1998 and admittedly her name was in the nomination form as wife, but vide application dated 12.6.2001 Shri Ranuji Muley requested that, the name of applicant Radhabai be taken as his nominee and that after his death, pension be granted in favour of Smt. Radhabai.

10. In the communication dated 16.2.2002 the Superintendent of Police, Parbhani (Respondent no.2) wrote a letter to A.G. Nagpur. Copy of the said letter is at Annexure A-5 at paper book page no.17 and in the said letter it has been clearly mentioned that Ranuji Muley has got married with Radhabai (Applicant) during subsistence of marriage with Anusayabai and that the said marriage is (Gandharva Vivah).

11. Vide impugned communication dated 21.5.2004 the Senior Accounts Officer has intimated to S.P. Parbhani that Anusayabai died on 20.1.1998, whereas Ranuji married with Radhabai (applicant) in 1968 and therefore, she is not entitled to family pension. It is also mentioned that her two sons are entitled to claim family pension, but since they are major, they are also not eligible

for grant of pension. The said communication seems to be perfectly legal and proper.

12. The Hon'ble Apex Court in the case of RAMESHWARI DEVI Vs. STATE OF BIHAR AND OTHERS reported in AIR 2000 SUPREME COURT 735 has observed as under :-

“Under Section 16 of Hindu Marriage Act, children of void marriage are legitimate, under the Hindu Succession act, 1956 property of a male Hindu dying intestate devolve firstly on heirs in Clause (i) which include widow and son. Among the widow and son, they all get shares. The second wife taken by deceased Government employee during subsistence cannot be described a widow of deceased employee, their marriage void. Sons of the marriage between deceased employee and second wife being the legitimate sons of deceased would be entitled to the property of deceased employee in equal shares along with that of first wife and the sons born from the first marriage. That being the legal position when Hindu male dies intestate, the children of the deceased employee born out of the second wedlock would be entitled to share in the family pension and death-cum-retirement gratuity. The second wife was not entitled to any thing and family pension would be admissible to minor children only till they attained majority.”

13. In view of the aforesaid decision of the Hon'ble Apex Court it will be clear that applicant being second wife of deceased Ranuji

Muley and deceased Ranuji Muley married with her during the subsistence of first marriage with Anusayabai, the applicant can not be said to be legally wedded wife of Ranuji Muley and consequently a widow of Ranuji Muley and therefore, she is not entitled to claim family pension of Ranuji Muley.

14. The learned Advocate for the applicant submitted that, as per the provisions of Rule 116 (6) of the Maharashtra Civil Services (Pension) Rules, 1982 it is stated that, when there are more widows to the employee than one, the family pension shall be paid to the widows in equal shares. He further submitted that, the nomination for the pension can be changed at any time.

15. Rule 115 is the rule regarding nomination and it says that a Govt. servant shall, on his initial confirmation in a service or post, make a nomination in Form no.1 or Form No.2 as may be appropriate in the circumstances of the case, conferring one or more persons the right to receive the retirement gratuity / death cum gratuity payable under Rule 111. However, the proviso to said rule says that, if at the time of making nomination the Govt. servant has a family, the nomination shall not be in favour of any person or persons other than the member of his family. This clearly shows

that, the nomination must be amongst the member of family and the applicant not being legally wedded wife of Ranuji Muley can claim to be widow of deceased Ranuji Muley, and as such not a family member.

16. The learned Advocate for the applicant further invited my attention to Rule 115 (5), which says that, a Govt. servant may, at any time, cancel a nomination by sending a notice in writing to the head office and therefore, nomination can be changed at any time. However, proviso to said Rule 115 (5) makes it crystal clear that, the employee shall along with such notice send a fresh nomination made in accordance with this rule and as already stated Rule 115 (1) proviso makes it crystal clear that, nomination shall not be in favour of any person or persons other than the members of the family.

17. From the discussions in foregoing paragraphs it will be thus crystal clear that the applicant can not be said to be legally wedded wife of Ranuji Muley and as such she can not be said to be member of deceased's family so as to be eligible to gain family pension. I, therefore, do not find any merits in the original application. Hence the order.

ORDER.

The Original application stands dismissed with no order
as to costs.

MEMBER (J)

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