

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 495 OF 2023
(Subject :- Family Pension)**

DISTRICT:- NANDED

Raziabee W/o Shaikh Mohameed)
Age : Major, Occupation: Household,)
R/o. C/o. India Automobiles,)
Near Paltan Masjid, Hingoli.)
... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through Secretary,)
Water Resources Department,)
Mantralaya, Mumbai.)

2. The Executive Engineer,)
Mechanical Division,)
Upper Penganga Project Office,)
Nanded.)

3. The Accountant General (A & E) II,)
Maharashtra State,)
Nagpur 440001.)
.... **RESPONDENTS**

APPEARANCE : Shri Sudhir Patil, learned counsel
for the applicant.

: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**
RESERVED ON : **06.08.2024.**
PRONOUNCED ON : **13.09.2024.**

ORDER

Heard Shri Sudhir Patil, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities finally with consent at admission stage.

2. By filing this Original Application the applicant is seeking direction to the respondents to grant the benefit of family pension with arrears and 18% of interest on it till realization of the amount.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The applicant's husband namely Shaikh Mohammed Shaikh Hussain was a Driver in the office of respondent No.2. He retired from service and was getting pension. He had performed two marriages. The first wife namely Mehmooda Sk. Mohammed died on 13.08.2002 and the applicant's husband died on 22.11.2015.

(ii) The applicant further contends that she has submitted application for grant of family pension along

with all the relevant documents including the marriage certificate, legal heirship certificate granted by the Court and also filed the several representations to pursue the said application.

(iii) The applicant further contends that the Deputy Executive Engineer, Mechanical Division, UPP, Nanded informed the applicant vide letter dated 17.07.2018 that she being a second wife not entitled to the family pension. The applicant thereafter approached the respondent No.2 i.e. the Executive Engineer, Nanded contending therein that considering the Muslim Personal law read along with Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "Pension Rules of 1982"), she is entitled to the family pension. However, the applicant has not been granted the family pension. Hence, this Original Application.

4. Learned counsel for the applicant submits that as per the Mahomedan Law, a Mahomedan may have as many as four wives at the same time but not more. The applicant is legally wedded wife of deceased Government employee Shaikh Mohammed Shaikh Hussain and as such, she is entitled for

family pension. It is well settled that the pension is not a bounty or a gift depending upon the sweet will and pleasure of the Government. On the other hand, the right to receive pension is a valuable right vesting in Government servant. The applicant is a very poor old widow having no source of livelihood. She is suffering grave hardship. Therefore, she made continuous representations to the respondents, but in vain. Since her husband has received the pension, she being a widow is legally entitled for the family pension.

5. Learned counsel for the applicant submits that in a case of **Kamalbai W/o Venkatrao Nipanikar Vs. the State of Maharashtra & Ors. (Writ Petition No. 9933 of 2016)** and other connected Writ Petitions, the Full Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad has decided the referral issue i.e. "In cases to which, Maharashtra Civil Services (Pension) Rules, 1982, apply whether the second wife is entitled to claim family pension?" and observed that in such a cases, mahomedan second wife is also entitled for the family pension. In a case of **Noorunnisa Begum W/o Abdul Rehman Vs. the State of Maharashtra & Ors. (O.A.No. 598/2025)** this Tribunal has dealt with the similar issue by

referring the ratio laid down by the Hon'ble High Court of Bombay, Bench at Aurangabad in the matter of **Kamalbai Vs. State of Maharashtra** (supra) and further held that the applicant is entitled to get the family pension being legally wedded second wife and directed the respondents to consider the claim of the applicant for family pension together with admissible interest within the period of three months. Learned counsel for the applicant submits that this Original Application deserves to be allowed.

6. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 and 2 submits that the deceased Shaikh Mohd. Shaikh Hussain was a Driver in the office of respondent No.2. He had retired from service and was getting pension. Learned P.O. submits that the applicant had submitted an application dated 17.10.2017 and the respondent No.2 had taken the decision on the said application on 17.07.2018 as per rules.

7. Learned Presenting Officer submits that the Government of Maharashtra, Finance Department has issued circular dated 03.11.2008 in respect of granting the pension to the pensioners and dependent family members. As per this

circular dated 03.11.2008, particularly clause No.9, the family pension is admissible to the legal wedded wife. In the instant case the deceased Shaikh Mohammed Shaikh Hussain was firstly married with Mehemooda Shaikh Mohammed, who died on 13.08.2002. In the nomination form the name of the first wife namely Mehemooda Shaikh Mohammed was recorded as a nominee for family pension. Deceased Shaikh Mohd. Shaikh Hussain get married with the applicant on 05.05.1987 and as per said circular dated 03.11.2008, clause No.9, the family pension is admissible to the legally wedded wife. The applicant is second wife of the deceased Shaikh Mohd. Shaikh Hussain and therefore, she is not entitled for the family pension. Learned P.O. submits that there is no substance in the Original Application and the same is liable to be dismissed.

8. In a case of **Kamalbai Vs. State of Maharashtra** (supra) the reference was made by the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad and upon directions of the Hon'ble Chief Justice, the following issue was referred to the Full Bench i.e. "In cases to which, Maharashtra Civil Services (Pension) Rules, 1982, apply

whether the second wife is entitled to claim family pension?”.

In paragraph No. 26 of the judgment, the full bench has answered the reference as under:-

“ 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.”

9. In paragraph No. 17 of the judgment, the Full Bench has observed that the concept and institution of marriage is governed by personal law. There may be instances where the second marriage may be legal and valid in that case two widows may be entitled for pension. It is also observed that if according to personal law, second marriage is permissible, then the second wife would come within the definition of widow on the death of a Government Servant. The paragraph No. 17 of the judgment is reproduced herein below:-

“17. The definition of the phrase "family" as appearing in Rule 116(16)(b) will have to be interpreted considering Rule 116(16)(a) (i) of the Pension Rules. Rule 116(16)(b)(a)(i) of the Pension Rules will have to be interpreted referring to the context, "where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal share." This sub rule will have to be interpreted as that "where" two or more widows are entitled for the family pension. For a lady to be widow at the first instance she has to be legally married woman. The concept and institution of

marriage is governed by personal law. There may be instances where the second marriage may be legal and valid in that case two widows may be entitled for pension. While interpreting Rule 116(6)(a)(i) of the Pension Rules, we need not import personal law, however, while considering the word "widow", it will be necessary that for a woman to be a "widow", she has to be at the first instance a legally married woman as per the law applicable to the parties. Rule 26 of the Maharashtra Civil Services (Conduct) Rules prohibits a Government servant from entering into or contracting a marriage with any person during the subsistence of his marriage. Proviso to Rule 26(2) of the M. C. S. (Conduct) Rules enables the Government to permit a Government servant to enter into or contract any such marriage as is referred in Clause (i) or Clause (ii), if it is satisfied that such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage and (b) 41 up 9933.16 there are other grounds for so doing or if according to personal law, if second marriage is permissible, then the second wife would come within the definition of widow on death of a Government Servant. The second wife in general parlance would not be entitled for family pension, unless she is a legally wedded wife. A second wife, who is not a legally wedded wife would not be entitled for family pension under Rule 116 of the Pension Rules. However a second wife if is a legally wedded wife would be entitled for the family pension. It is in this context Rule 116(6)(a)(i) of the Pension Rules, "where the family pension payable to more widows, than one" shall have to be read and interpreted Rule 116(6)(a)(i) of the Pension Rules cannot be read de hors the concept of legally wedded wife. The same also can be found credence in the definition of family as appearing in Rule 111(5)(i) of the Pension Rules."

10. In terms of Rule 26 of Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as "Rules of 1979") no Government servant, having a spouse living, shall enter into, or contract, a marriage with any person provided that the Government may permit a Government servant to enter into, or contract, any such marriage as it referred to in

clause (1) or clause (2), if it is satisfied that such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage. Rule 26 of Maharashtra Civil Services (Conduct) Rules, 1979 is reproduced herein below:-

“26. Contracting the marriages.-(1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No Government servant, having a spouse living, shall enter into, or contract, a marriage with any person:

Provided that the Government may permit a Government servant to enter into, or contract, any such marriage as it referred to in clause (1) or clause (2), if it is satisfied that-

(a) Such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A Government servant who has married or marries a person other than of Indian Nationality shall forthwith intimate the fact to the Government.”

11. In Mahomedan Law, a Mahomedan may have as many as four wives at the same time. It is thus clear that the provisions of Mahomedan Law are applicable to deceased husband of the applicant and also to the applicant. Therefore, the deceased employee Shaikh Mohammed Shaikh Hussain's marriage with the applicant though having a first spouse living is permissible under the personal law applicable

to the deceased husband of the applicant and the applicant both. So far as the permission of the Government as contemplated under Section 26 (2) of Rules of 1979 is concerned, the provision is directory in nature and not mandatory since the applicant and her deceased husband both are governed by the Mahomedan Law.

12. Learned Presenting Officer has pointed out the Government circular dated 03.11.2008 which is an explanatory circular issued by the Government. In terms of clause No. 9 of the said circular, the legally wedded wife in terms of the provisions of Rule 116 (16) (b) of Pension Rules of 1982 is entitled for the family pension. However, the said clause No. 9 of the circular dated 03.11.2008 is required to be considered in terms of observations made by the Full Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in paragraph No. 17 in a case **Kamalbai Vs. State of Maharashtra** (supra) which is reproduced herein above. It will be necessary that for a woman to be a "widow", she has to be at the first instance a legally wedded woman as per the law applicable to the parties. In view of the provisions of Mahomedan Law, the applicant though a second wife is

legally wedded wife of the deceased Government employee Shaikh Mohammed Shaikh Hussain and as such entitled for the family pension.

13. In terms of Rule 116 (6) (a) (i) of the Pension Rules of 1982 where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares and in terms of Rule 116 (6) (a) (ii), on the death of a widow, her share of the family pension shall become payable to her eligible child provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widows, in full, to her.

14. The applicant's husband deceased Shaikh Mohammed Shaikh Hussain died on 22.11.2015. His first wife namely Mehmooda Sk. Mohammed died on 13.08.2002. In view of same, the applicant being the only survived widow is entitled for the full share of the family pension. So far as Rule 116 (6) (a) (ii) of the Pension Rules of 1982 is concerned, the children born to deceased Government employee Shaikh Mohammed Shaikh Hussain from his first wife all of above

the age of 33 years and as such, not eligible for the family pension to the extent of family pension payable to their mother being a first wife of deceased employee. Moreover, they have also filed a specific consent that they have no objection if the entire amount of family pension is paid to the applicant being a second wife of their deceased father.

15. In a case of **Noorunnisa Begum W/o Abdul Rehman Vs. the State of Maharashtra & Ors. (O.A.No. 598/2015)** this Tribunal has dealt with the similar issue by referring the decision rendered by the Full Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in a case of **Kamalbai Vs. State of Maharashtra**(supra). In view of above, this Original Application deserves to be allowed. Hence, the following order:-

ORDER

- (i) The Original Application No. 495 of 2023 is hereby allowed.
- (ii) The communication dated 17.07.2018 issued by the Deputy Executive Engineer, Mechanical Division, UPP, Nanded is hereby quashed and set aside.
- (iii) It is declared that the applicant is entitled for the family pension being a legally wedded second wife of deceased

Shaikh Mohammed Shaikh Hussain and thus the respondents are hereby directed to grant the family pension to the applicant in accordance with law along with arrears together with admissible interest within the period of three months from the date of this order.

- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 06.08.2024

SAS O.A. 495/2023 (S.B.) Pension