

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 567 OF 2017

(Subject:- Family Pension)

DISTRICT:-JALGAON

Bebabai Pundlik Koli (Sapkale)

Age 55 yrs, Occ. Nil.

r/o House No. 17, near Girna Tank,

Laxmi Nagar, Jalgaon,

Tq. and Dist. Jalgaon.

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)**APPLICANT**

V E R S U S

1. The State of Maharashtra

Through its Principal Secretary,

Home Department,

Mantralaya, Mumbai -32.

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2. The Dy. Commissioner of Police,

(HQ)-1, office of Commissioner of Police)

Pune City, Pune, Dist. Pune.

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3. The Senior Accounts Officer,

Office of Principal Accountant General,)

(Accounts and Entitlements),)

Maharashtra, Indian Audit and)

Account Department, IInd Floor,)

Pratishta Bhavan, New Marine lines,)

101, Maharshi Karve Road,)

Mumbai-400 020.

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)**RESPONDENTS**

APPEARANCE : Shri S.P. Dhobale, learned counsel
holding for Shri Vinod P. Patil, learned
counsel for the applicant.

: Smt. R.S. Deshmukh, learned
Presenting Officer for the respondent
authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 13.08.2024.

ORDER

Heard Shri S.P. Dhobale, learned counsel holding for Shri Vinod P. Patil, learned counsel for the applicant and Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities finally at the stage of admission hearing.

2. By filing this Original Application the applicant is seeking direction to the respondent Nos. 1 to 3 to grant the benefit of family pension scheme to the applicant with arrears and interest.

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

(i) Deceased Pundlik Zaga Koli was in service in Home Department as Sub-Inspector. He retired from the service on 31.03.198. After retirement, the deceased shifted to Jalgaon along with family and since the deceased was entitled for pension, the same was disbursed to him. Deceased Pundlik

died on 17.11.2008 due to illness. The copy of death certificate is annexed at Annexure 'A'.

(ii) The applicant-Bebabai Pundlik Koli and Kum. Sheetal Koli are the legal heirs of deceased Pundlik Zaga Koli. The applicant is wife and Kum. Sheetal is daughter of the deceased Pundlik Koli.

(iii) It is the further case of the applicant that the applicant had approached to respondent authorities by filing various communications claiming family pension. By communication dated 04.10.2016, the respondent No.3 has informed to the applicant that the applicant is second wife of deceased Pundlik and she is not eligible for family pension and thus turned down her claim. The said communication dated 04.10.2016 issued by the Senior Account Office, Indian Audit and Account Department is marked as Annexure 'D'.

(iv) The applicant further contends that the first wife of deceased Pundlik was Chandrabhagabai and since she was suffering from some health problem, there is no issue to her from the matrimonial relations. Thus the first wife Chandrabhagabai herself on her own by executing an agreement on stamp paper on 20.04.1993 permitted her

husband Pundlik Koli to perform second marriage. It is further stated in the said agreement that the applicant shall maintain the entire family during their life time and after their death, the applicant Bebabai will be the absolute owner of the entire property. The first wife Chandrabhagabai died on 24.03.2006. The copy of death certificate marked as Annexure 'E'.

(v) The applicant further submits that the husband of the applicant has also executed will deed in favour of the applicant and her daughter. According to the said will deed, the applicant and her daughter will be absolute owner of the property owned by the deceased. Thus the applicant is entitled for the family pension w.e.f. 18.11.2008 along with all the benefits after the death of her husband Pundlik Koli. After the death of husband, the applicant is not able to maintain herself and her 15 years school going daughter Kum. Sheetal. Hence, this Original Application.

4. Learned counsel for the applicant submits that in terms of Maharashtra Civil Services (Pension) Rules, 1982 particularly Rule 116 (6) (a) (ii) on account of death of widow survived by other widows, the share of the family pension

shall not lapse but it should be payable to other widows in equal shares or if there is one widow, in full to her. Learned counsel for the applicant submits that the approach of the respondents is illegal, incorrect and improper. Learned counsel for the applicant submits that the Original Application thus deserves to be allowed.

5. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent No.2 submits that the applicant is not legally wedded wife of the deceased Pundlik Zaga Koli and as such, she has no legal right to claim family pension. The applicant was residing with the deceased as a second wife in the lifetime of the first wife of the deceased Pundlik Zaga Koli when first marriage of the deceased Pundlik was subsisting. It is well settled that second marriage is not permissible when first marriage is in existence. Therefore, it cannot be accepted that the applicant No.1 is legally wedded wife and ultimately legal heir of the deceased Pundlik Koli. Learned P.O. submits that only on the basis of heirship certificate benefit of family pension cannot be extended to the applicant.

6. Learned Presenting Officer submits that there is no authenticity of the so called stamp paper which is said to have been executed by the first wife namely Chandrabhagabai. Even assuming that the said stamp paper is in existence, however, it does not create any legal right in favour of the applicant to hold that she is legally wedded wife. Learned P.O. submits that there is no substance in the Original Application and the same is liable to be dismissed.

7. Learned Presenting Officer in terms of affidavit in reply filed on behalf of respondent No.3 submits that as regards payment of family pension to the second wife, the Government of Maharashtra, Finance Department vide their Circular dated 03.11.2008 has clarified at Sr. No.9 that as per Rule 116 (16) (B) of the Maharashtra Civil Services (Pension) Rules, 1982 legal wife is eligible for family pension and the benefit of family pension should be allowed to the legally eligible member of the family. Since the second wife does not acquire a legal status, the family pension is not admissible to the second wife.

8. Learned Presenting Officer submits that the legality and admissibility of the family pension to the

applicant has been examined by the department. There is no substance in the Original Application and the same is liable to be dismissed.

9. Admittedly, the second wife of deceased employee Pundlik Koli is seeking direction to grant the family pension in view of legal heirship certificated issued to her by the Court. Thus the question arises as to whether the second wife is entitled to claim the family pension in terms of the provisions of Rules, 1982. However, this question is no more res- integra.

10. In a case of **Kamalbai W/o Venkatrao Nipanikar Vs. the State of Maharashtra & Ors.** in **Writ Petition No. 9933 of 2016** and other connected Writ Petitions, Full Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad on 31.01.2019 has answered the reference to the following issue, "In a cases to which, Maharashtra Civil Services (Pension) Rules, 1982, apply whether the second wife is entitled to claim family pension.?" Full Bench of High Court of Bombay, Bench at Aurangabad has referred the various provisions of the Rules, 1982 especially Rules, 111, 112, 113, 114, 115 and lastly Rule 116 in this regard and also referred

the various cases of which the compilation is placed on record by the learned counsel for the applicant at the request of the Tribunal. In paragraph No. 26, 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."

11. Full Bench while answering the reference in paragraph Nos. 13, 14, 15, 16, 17 and 21 has made the following observations:-

"13. In the present matters, we are concerned with the entitlement of the second wife to family pension upon the death of the Government employee. For the purpose of family pension the word 'family' will have to be interpreted. Sub Rule 5 of Rule 111 of the Pension Rules defines 'family' in relation to the Government servant. Rule 111(5)(i) initially read as 'wife or including judicially separated wife or wives in the case of male government servants'. Under notification dated 18.01.2016 clause (i) has been amended and the word 'wife' is substituted with the word, 'legally wedded wife'. The provision now is read as legally wedded wife or wives. Rule 111 deals with Retirement Gratuity/Death Gratuity. Rule 115 enables the Government servant to nominate one or more persons to receive the retirement gratuity/death gratuity. Proviso (I) to Sub Rule (I) of Rule 115 restricts the right of the Government servant to nominate any person other than a member of his family in case he has family. The provision would make it clear that unless wife is legally wedded wife as provided under Rule 111(5)(i) of the Pension Rules, the government servant has no right to nominate such a person. Rule 111(5) of the Pension Rules excludes a wife that is not a legally wedded wife from the definition of family. If the marriage is not legal and valid, the said woman would not be brought within contour of the definition 'Family'. Proviso (ii) to

Rule 115(I) enables the Government servant to nominate any other person if he has no family, but sub Rule 4 of Rule 115 of the Pension Rules further prescribes that if at the time the government servant had made nomination who had no "family" at the time of making it, same shall become invalid in the event of the government servant subsequently acquiring the "family". Reading Rules 111 and 115 of the Pension Rules conjointly the only irresistible conclusion that can be drawn is that a nomination can be made by a government servant only of a person who is member of the family, if the said Government servant has a family. The definition of family embodied in Rule 111(5)(i) specifically provides that legally wedded wife or wives only would be a member of the family. The one that is not a legally wedded wife is excluded from the definition of the term "family".

14. The family pension was initially governed by the Family Pension Scheme 1964 as contained in the Government Resolution dated 08th May, 1964. Same is incorporated in Rule 116. The nomenclature, "Family Pension" connotes payment of pension to the family, a woman who is not legally married cannot be included in the definition of family.

15. The definition of the term family enshrined under Rule 111(2) is for the purpose of the Rules 111, 112, 114 and 115 viz the payment of gratuity and the nomination to be made. The Government employee has a right to make a nomination in favour of a person to receive the family pension also. Form III is required to be filled in by the Government servant giving details of the members of the family. Under rule 116(6)(b), the phrase "family" has been defined.

16. The definition of the word "family" as contemplated under Rule 116 of the Pension Rules means wife in the case of male Government servant and husband in the case of female government servant. Wife is used in singular term in contradiction to the words used in Rule 111(5)(i) of the Pension Rules. Prior to amendment Rule 111(5)(i) included wife or wives including judicially separated wife or wives in the definition of family. However, under Rule 116(6)(b) the words wives is absent. The term 'wife' is used in singular sense, thereby leaving no scope for further interpretation. There cannot be any dispute with the proposition that where the words are clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to interfere or take upon itself the task of amending or altering the provision as is observed by the

Apex Court in a case of **J. P. Bansal Vs. State of Rajsthan and another** (supra).

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) 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 dehors 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.

21. The meaning of the term "wife" as used in Rule 116(6)(b) of the Pension Rules cannot be different than the one in Rule 111(5)(i) of the Pension Rules.

12. Full Bench in the aforesaid paragraphs has observed unequivocally that Rule 116 (6) (a) (I) of the Pension Rules 1982, "Where the family pension is 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. It cannot be different than one in Rule 111 (5) (i) of the Pension Rules, 1982 wherein it is defined for the purpose of Rule 112, 114 and 115 that the "Family", in relation to a Government servant means, (i) legally wedded wife or wives, including judicially separated wife or wives in the case of a male Government servant.

13. In the instant case there is no dispute that the provisions of Rules, 1982 are made applicable and in terms of the authoritative pronouncement while answering the reference by the Full Bench, the family pension can be claimed by the widow who was legally wedded wife of the deceased employee. Admittedly, the applicant is second wife and she is not the legally wedded wife of the deceased Pundlik

Koli. Thus the applicant is not entitled to claim the family pension. Hence, the following order:-

ORDER

- (A) The Original Application is hereby dismissed.
- (B) In the circumstances there shall be no order as to costs.
- (C) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 13.08.2024

SAS O.A. 567/2017 (S.B.) Family Pension