

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

ORIGINAL APPLICATION NO. 709 OF 2024

DISTRICT : PARBHANI

Dwarkabai W/o. Prabhakar Ramteke,)
Age : 52 years, Occupation : Household,)
R/o. Mujiboddin Kazi Galli, Jintoor,)
Dist. Parbhani.)

.... **APPLICANT**

V E R S U S

01. **The State of Maharashtra,**)
(through Secretary, Revenue Department,))
Mantralaya, Mumbai))

02. **The Collector,**)
Parbhani.)

03. **The Tahsildar,**)
Jintoor.)

04. **The Accountant General (A & E) II,**)
Maharashtra State, Nagpur.)

... **RESPONDENTS**

APPEARANCE : Shri A.G. Dalal, Counsel for the Applicant.

: Smt. Resha Deshmukh, Presenting Officer for
respondent authorities.

CORAM : **Shri A.N. Karmarkar, Member (J)**

RESERVED ON : **27.01.2025**

PRONOUNCED ON : **31.01.2025**

O R D E R

1. By filing the present Original Application, this applicant is seeking directions to the respondents to grant her benefit of family pension along with arrears and interest thereon.

2. The applicant's husband viz. Prabhakar s/o Wanganuji Ramteke was serving as Clerk in the service of Tahsil Office, Jintoor. He was appointed on 23.01.1968. He died on 30.06.1985 in harness. The applicant got married to deceased Prabhakar in the year 1984. She is the second wife of deceased Prabhakar. First wife of deceased Prabhakar was Rukhminibai @ Kamlabai Ramteke, who died on 04.07.1984. Thereafter, the applicant was married to deceased Prabhakar. The applicant is legally wedded wife of deceased. She has applied for family pension. She has forwarded representations during the period from 2000 to 2004 to the Collector, Parbhani, but those were not considered.

3. Earlier the present applicant had filed another O.A. No. 1154/2005. Respondent-Collector has filed affidavit in reply that one Shri Dadaji Wangnu Ramteke brother of deceased Prabhakar has filed one Misc. C.A. No. 7/1985 before the Civil Judge, Junior Division, Jinoor and obtained succession certificate, on which basis the concerned authority has paid pending claim of deceased Prabhakar to said Dadaji Ramteke. Therefore, the earlier O.A. of the applicant was dismissed also by observing that the application pending for revocation of this applicant is immaterial. Consequently, the present applicant has

filed M.A. (R.J.E.) No. 2/2006 for revocation of succession certificate dated 17.04.1986. The earlier succession certificate was revoked by the Joint Civil Judge, Junior Division, Jintur on 13.07.2007. Then the present applicant has obtained heir-ship certificate. On forwarding the heir-ship certificate also the respondent No. 2 did not take action for grant of family pension.

4. Only respondent No. 4 has filed affidavit in reply. According to him, role of this respondent is limited to scrutiny of proposals received from head of the department of the Government of Maharashtra. He does not act on its own volition, but authorizes pensionary benefits only on receipt of proper pension papers. This respondent submits that he has not received family pension proposal from the pension sanctioning authority i.e. respondent No. 3. So he is not in a position to take action.

5. I have heard Shri A.G. Dalal, learned counsel for the applicant and Smt. Resha Deshmukh, learned Presenting Officer for the respondents authorities. Both are submitted as per their respective contentions.

6. Learned counsel for the applicant submits that the applicant has stated on oath that she got married to deceased

Prabhakar after death of first wife of deceased. The date of death of first wife of deceased Prabhakar is 04.07.1984. According to the applicant she has also got heir-ship certificate. So she is entitled to get family pension. She has also submitted that the earlier O.A. was dismissed as the brother of deceased Prabhakar has received pensionary benefits of deceased on the basis of succession certificate, but this applicant has filed petition for revocation of that succession certificate and it was allowed.

Learned Presenting Officer submits that date of second marriage of deceased Prabhakar with the present applicant is not mentioned. So it is not clear that the applicant got married to deceased Prabhakar after death of first wife of deceased. The applicant has also not shown that the deceased Prabhakar recorded the name of the applicant in the service book in the family details. It is submitted that since the applicant cannot be said to be legally wedded second wife, she cannot be said to be entitled for the reliefs as claimed in the present Original Application.

7. It is undisputed fact that husband of the applicant viz. Prabhakar Ramteke was serving in Tahsil office, Jintur, who died on 30.06.1985. The applicant is claiming to be the second

wife of deceased Prabhakar. According to her, the first wife of deceased viz. Rukhminibai @ Kamlabai Ramteke died on 04.07.1984. Then this applicant got married to deceased Prabhakar.

8. After raising query in respect of date of second marriage of deceased Prabhakar, the applicant has placed on record a copy of her affidavit, election card, death Certificate of Rukhminibai @ Kamlabai Ramteke and undertaking before Notary. It is to be seen as to whether the applicant being a second wife of deceased Prabhakar is entitled to get relief of family pension?

9. It is necessary to refer the judgment of Hon'ble High Court of Bombay, Bench at Aurangabad in a case of **Kamlabai W/o Venkatrao Nipanikar Vs. The State of Maharashtra and Ors. in W.P. No. 9933/2016** and other connected W.Ps. in which following question was referred to the Larger Bench for determination :-

“In cases to which, Maharashtra Civil Services (Pension) Rules, 1982, apply whether the second wife is entitled to claim family pension?”

The Full Bench of Hon'ble High Court of Bombay, Bench at Aurangabad by judgment dated 31.01.2019, 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.”

Now it is the duty of this applicant to establish that she was the legally wedded wife of deceased Prabhakar. It is pertinent to note here that the applicant has not made clear in respect of exact date of her married with deceased Prabhakar.

10. Learned counsel for the applicant has submitted that the applicant has stated on affidavit that she got married to Prabhakar after death of his first wife. Merely on the basis of this contentions in the O.A. supported by affidavit, it will be difficult to accept that the applicant is legally wedded second wife of deceased Prabhakar. She has also placed on record a copy of affidavit, which was prepared on 17.12.2024 mentioning her marriage with Prabhakar Ramteke on 10.10.1984. So the

applicant has tried to create document about the date of her marriage after about 35-40 years.

Subsequently, the applicant has also placed on record few documents including application of this applicant to Municipal Council, Jintur for transfer of house property, which was in the name of Prabhakar Ramteke and applicant's own affidavit dated 18.05.1989. An opportunity was available to the applicant at that time to mention the exact date of her marriage with Prabhakar in the said affidavit, but the applicant has not clearly mentioned about her date of marriage. She has just referred Shri Prabhakar Ramteke as her husband. She has also mentioned that she is residing in the same house No. 103 even since prior to death of Prabhakar Ramteke. This affidavit also cannot be said to be helpful to the applicant to establish that she is legally wedded second wife of deceased Prabhakar. It is also noted that at the time of preparation of first affidavit dated 18.05.1989, she has shown her age as 24 years, while in the subsequent affidavit dated 17.12.2024 she has shown her age as 68 years. Therefore, it is difficult to accept that there are bonafides on the part of the applicant. It cannot be said that the applicant has come with clean hands before this Tribunal. So the

material on record is not sufficient to hold that the applicant is legally wedded second wife of deceased Prabhakar.

11. The applicant has also contended in the present Original Application that earlier she had filed O.A. for the same relief, which was dismissed by the Tribunal by observing that one Dadaji Ramteke i.e. brother of deceased Prabhakar has obtained succession certificate and pensionary benefits were received by him. Copy of the order passed in the said O.A. No. 1154/2005 is also placed on record at Annexure R-2 (page Nos. 9 to 13). During pendency of the said O.A., the applicant had filed petition for revocation of succession certificate obtained by brother of deceased Prabhakar. It is also submitted that after dismissal of earlier O.A., her request for revocation of succession certificate dated 17.04.1986 obtained by brother of deceased Prabhakar was revoked by the Joint Civil Judge, Junior Division, Jintur on 13.07.2007. It is already discussed in the order dated 23.11.2006 in O.A. No. 1154/2005 that fact of pendency of application filed by the applicant for revocation of succession certificate in the competent Court is immaterial.

It is also submitted by learned counsel for the applicant that she has obtained heir-ship certificate dated 17.02.2010 and it is filed at page Nos. 26 and 27 of paper book.

This applicant has knowledge that the brother of deceased Prabhakar has received pensionary benefits on the basis of succession certificate. But this applicant has conveniently avoided to add the brothers and sisters of deceased Prabhakar as party respondents in M.A. No. 10/2009, which was filed for grant of heir-ship certificate. Nobody was shown as respondents in that M.A. Secondly, it is clear from the provisions of Bombay Regulation VIII of 1827 that such certificate does not confer any right to the property.

Even right to receive the pension cannot be treated as a 'property' as held by the Hon'ble High Court of Bombay in a case of **Draupada @ Draupadi Jaydeo Pawar and Others Vs. Indubai Kashinath Shivram Chava and Anr. in First Appeal No. 577/2015 with Civil Application No. 1770/2015**, wherein in para No. 23 The Hon'ble High Court has held as under :-

*“23. Thus, the payment of pension is strictly governed by the service rules and, therefore, it cannot be an 'estate' disposable by will. Though the Government employee has right to receive the pension, it cannot be treated as 'property'. On this point, I rely on the case of **Jodh Singh** (supra).”*

It has to be noted that the applicant has not challenged the earlier order passed by this Tribunal in O.A. No. 1154/2005.

12. For the reasons stated above, I find that the applicant cannot be said to be entitled for the reliefs as claimed in the present Original Application. Hence, I proceed to pass the following order :-

ORDER

The Original Application stands dismissed. There shall be no order as to costs.

(A.N. Karmarkar)
Member (J)

PLACE : Aurangabad
DATE : 31.01.2025

KPB S.B. O.A. No. 586 of 2024 VKJ Voluntary Retirement