

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 1120 of 2023 (S.B.)**

Kuwarlal S/o Hiralal Wasnik,
Aged about 54 years, Occ-Service, R/o Plot No.50,
Surabhi Layout, Madhavi Vihar, Tapowan,
Amravati, Tahsil & District-Amravati-444602.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary, Department of Higher &
Technical Education, Mantralaya, Mumbai-32.
- 2) The Accountant General-II (A&E),
Pension Branch Office,
Office of the Principal Accountant General (A&E)-II,
Maharashtra, Old Building, In front of Ravi Bhawan,
Nagpur-440 001.
- 3) The District Treasury Office,
Nagpur, Collector Office Compound,
Civil Lines, Nagpur-440 001.
- 4) The Joint Director of Higher Education,
Amravati Division, Amravati.
- 5) The Director, Government Vidarbha Institute of Science &
Humanities, Amravati,
Katora Naka, Amravati.
- 6) Ranjit S/o Ambadas Hiwale,
Aged about 49 years, Occ-Business
- 7) Dharampal S/o Ambadas Hiwale,
Aged about 46 years, Occ-Service,

Both 6 & 7 R/o Village-Sakhali (Kh.),
Post-Pangri, Tahsil & District- Buldhana.
And
R/o Rajeshwar Nagar, Buldhana, Tahsil & District-Buldhana.

Respondents.

**Shri Madhur Deo, Advocate for the applicant.
Smt. A.D. Warjekar, learned P.O. for respondent nos.1 to 5.
S/Shri R.J. Mirza, Rahul Vyawahare, learned counsels for resp.
nos.6 & 7.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 07/10/2024.

J U D G M E N T

Heard Shri Madhur Deo, learned counsel for the applicant,
Mrs. A.D. Warjekar, learned P.O. for respondent nos.1 to 5 and none
for respondent nos.6 and 7.

2. The case of the applicant in short is as under –

Wife of applicant namely Dr. Alka Wasnik was working
with respondent no.5. She was working as Professor. Respondent
nos. 6 and 7 are nephews of the deceased wife of the applicant. The
applicant is husband of deceased. Deceased made nominees to
applicant nos. 6 and 7, therefore, the respondents are not paying the
pension and pensionary benefits to the applicant. The applicant being
a Class-I legal heir is entitled to get family pension as per the rules.
Hence, the applicant approached to this Tribunal by filing the present
O.A. for the following reliefs –

*“ (8) 8.1 Hold and declare that the applicant alone is entitled to receive
family pension on account of demise of his wife, Dr. Alka W/o
Kunwarlal Wasnik @ Alka D/o Kashiram Hiwale, alongwith amounts of*

provident fund, gratuity, group insurance scheme and other terminal/monetary benefits payable to her;

8.2) Direct the respondent authorities to release the applicant alone family pension on account of demise of his wife, Dr. Alka W/o Kunwarlal Wasnik @ Alka D/o Kashiram Hiwale;

8.3) Direct the respondent authorities to pay the applicant amounts of provident fund, gratuity, group insurance scheme and other terminal/monetary benefits payable on account of demise of wife of the applicant, Dr. Alka W/o Kunwarlal Wasnik @ Alka D/o Kashiram Hiwale;

(9) The applicant has made out excellent prima facie case and is likely to succeed in the present Original Application. It is submitted that the respondent authorities may release the amounts of provident fund, gratuity, group insurance scheme, family pension and other terminal/monetary benefits payable to Dr. Alka W/o Kunwarlal Wasnik @Alka D/o Kashiram Hiwale in favour of the respondent Nos. 6 and 7 at any point of time. The applicant, therefore, submits that interim relief as prayed may kindly be granted, failing which, the present application will be rendered infructuous. It will be impossible for the applicant to recover the amounts from the respondent Nos. 6 and 7. The respondent Nos. 6 and 7 are not entitled to receive any amount.

9.1) By passing suitable interim orders, direct the respondent authorities not to release the amounts of provident fund, gratuity, group insurance scheme, family pension and other terminal/monetary benefits payable on account of demise of Dr. Alka W/o Kunwarlal Wasnik @ Alka D/o Kashiram Hiwale to the respondent Nos. 6 and 7, pending the final disposal of the present application;

9.2) Grant ex-parte ad-interim relief in terms of Prayer Clause-(9.1) above.”

3. The O.A. is strongly opposed by the respondent nos.1,4 and 5. It is submitted that there is a dispute between applicant and respondent nos.6 and 7. Respondent nos.6 and 7 are the nominees of deceased Alka. Therefore, the applicant cannot get family pension. Hence, O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for applicant has pointed out the Judgment of Hon'ble Supreme Court in the case of ***Shipra Sengupta Vs. Mridul Sengupta & Ors. (2009) 10 SCC,680*** and the Judgment of the Hon'ble Bombay High Court in the case of ***Kanta Anant Dhayarkar Vs. State of Maharashtra through the Secretary, Higher and Technical Education Department, Mantralaya and Ors.*** in Writ Petition No.10745/2019, decided on 01/12/2021. Para-26 of the Judgment in the case of ***Kanta Anant Dhayarkar Vs. State of Maharashtra through the Secretary, Higher and Technical Education Department, Mantralaya and Ors.*** is reproduced below –

“26. No doubt the above Rule 117(7) (a) prescribes the procedure of nomination in order to enable the nominee(s) to claim pension upon the death of the person nominating but that is an arrangement in the interregnum and nominee holds in trust/custody for the rightful claimant. In this context, the decision of this Court in the case of Shakti Yezdani v. Jayanand Jayant Salgaonkar, (2017) 1 Bom CR 319 is relevant where it has been observed by this Court that the nominee does not get an absolute title to the property subject matter of

nomination and the nomination is only to ensure that the estate of the rights of the deceased subject matter of the nomination are protected till the legal representatives of the deceased take appropriate steps. It has also been held in the said decision that nomination does not override the law in relation to testamentary or intestate succession. Paragraph-42 of the said decision is apt and is quoted as under:-

42. The provisions relating to nominations under the various Enactments have been consistently interpreted by the Apex Court by holding that the nominee does not get absolute title to the property subject matter of the nomination. The reason is by its very nature, when a share holder or a deposit holder or an insurance policy holder or a member of a Cooperative Society makes a nomination during his life time, he does not transfer his interest in favour of the nominee. It is always held that the nomination does not override the law in relation to testamentary or intestate succession. The provisions regarding nomination are made with a view to ensure that the estate or the rights of the deceased subject matter of the nomination are protected till the legal representatives of the deceased take appropriate steps. None of the provisions of the aforesaid Statutes providing for nominations deal with the succession, testamentary or non-testamentary. As observed by the Apex Court, the legislative intention is not to provide a third kind of succession....."

5. The Hon'ble Bombay High Court has held that nominees are not entitled to get the properties of deceased, they are only trustee of the deceased. Only Class-I heir are entitled to get succession / property of the deceased. The applicant being the husband is a Class-I. Therefore, he is entitled to get family pension of his deceased

wife and amount of GPF, gratuity etc. None appeared for respondent nos.6 and 7. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to pay family pension to the applicant and other retiral / terminal benefits of his deceased wife Alka K. Wasnik within a period of four months from the date of receipt of this order.

(iii) No order as to costs.

Dated :- 07/10/2024.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 07/10/2024.