

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2949 OF 2019

Smt. Shamal Mahadeo Tate
Age : 58 years, Occu. Household,
R/at Umanagari, TP - 4, Final Plot No. 117,
Block No. 166, Murarji Peth, Solapur - 413001. .. Petitioner

Versus

1. The District Collector,
Solapur, Zilla Parishad Compound,
Solapur.
2. State of Maharashtra
Through the Secretary Revenue and Forest
Department, Mantralaya, Mumbai.
3. The Principal Secretary,
Department of Finance,
Government of Maharashtra,
Mantralaya, Mumbai. .. Respondents

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- Mr. Ashok B. Tajane, Advocate for the Petitioner.
 - Mr. S.S. Panchpor, AGP for the State.
 - Mr. Drupad S. Patil, Amicus Curiae present.

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**CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

**RESERVED ON : FEBRUARY 08, 2022.
PRONOUNCED ON : FEBRUARY 16, 2022.**

JUDGMENT : (S. J. KATHAWALLA & MILIND N. JADHAV, JJ.)

1 . By the present petition, the Petitioner has prayed for the following reliefs:

"b) The impugned order dated 12.04.2017 passed by Respondent No. 3 being Exhibit M to the present Writ

Petition and the impugned order passed by Respondent No. 2 dated 27.06.2017 being Exhibit Q to the present Writ Petition be quashed and set aside.

c) The Application of the Petitioner for grant of Family Pension dated 16.05.2008, 19.03.2013, 11.04.2014 and 07.01.2015 be allowed and the Petitioner be granted the Family Pension alongwith the arrears from 15.12.2005."

2 . Petitioner claims to be the second wife of one Shri. Mahadeo Narayan Tate (hereinafter referred to as "**the deceased**"), who was working as a peon in the office of the District Collector, Solapur. The deceased had married Smt. Parvatibai (hereinafter referred to as "**the first wife**") on 13.06.1962. The Petitioner claims that since the deceased had no children with his first wife, the deceased married the Petitioner on 17.05.1974. Admittedly, the deceased and the Petitioner lived together from April 1974 onwards till the deceased's death and were known to the public at large in the society as husband and wife. The Petitioner gave birth to a son on 24.08.1976 and two daughters on 12.04.1978 and 06.10.1980 respectively. The deceased died on 09.12.1996, while in service.

3 . Before we advert to the submissions made by the learned counsel appearing for the respective parties, it would be apposite to briefly refer to the facts relevant to the present case.

3.1 On 30.07.1987, the deceased endorsed the name of his putative second wife (Petitioner) in his service records to

receive family pension upon his death.

3.2 On 23.06.1997, the second wife (Petitioner) and her three children filed Civil Miscellaneous Application No. 165 of 1997 in the Court of the Civil Judge, Senior Division, Solapur, seeking a succession certificate under the Indian Succession Act, 1925. In this proceeding, the first wife was impleaded as an opponent. The two parties arrived at a settlement and filed a compromise *pursis* in the said proceedings. The terms of the settlement were as under:

- i. The deceased was entitled to retirement benefits in the nature of gratuity, group insurance and leave salary totaling Rs. 1,21,931/-. Out of this, Rs. 10,000/- would be received by the first wife and Rs. 1,11,931.00 would be received by the putative second wife (Petitioner);
- ii. The first wife would be entitled to family pension, and the putative second wife (Petitioner) and her three children would not have any right to claim the family pension or any part thereof. A succession certificate in this regard was to be issued to the first wife;
- iii. The first wife would relinquish her right to claim employment in place of the deceased on compassionate grounds and it is the son of the putative second wife

(Petitioner) who would be entitled to do so instead;

- iv. The first wife would relinquish her right in land admeasuring 6 acres which was purchased by the deceased in the name of his son from his second marriage;
- v. The first wife would relinquish her right in the residential house occupied by the putative second wife (Petitioner) and her three children.

3.3 On 17.04.1998, the Civil Court granted the succession certificate in respect of the estate of the deceased to the first wife on the terms outlined above. The first wife received pension with effect from the date of the death of the deceased i.e., 19.12.1996.

3.4 On 14.12.2005, the first wife expired due to cancer. She had been receiving family pension until her death.

3.5 The putative second wife (Petitioner) had made an Application on 16.05.2008 to the Respondent No. 1 – District Collector, Solapur – seeking the family pension to be paid to her. This was the **first application** made by the Petitioner in this regard.

3.5.1 On 06.03.2007, the Respondent No. 1 submitted a proposal in this regard to the Auditor General, Mumbai.

3.5.2 On 28.01.2008, the Auditor General, Mumbai, rejected the proposal and informed the putative second wife (Petitioner) that she is not eligible to receive family pension. A reference to this rejection can be found in the putative second wife's (Petitioner's) second application dated 16.05.2008 made to the Secretary (Revenue and Forest Department, Mumbai), which is annexed at page no. 48 of the Writ Petition.

3.6 On 16.05.2008, the putative second wife (Petitioner) made a fresh application to the Secretary (Revenue and Forest Department, Mumbai), seeking family pension. This was the Petitioner's **second application** in this regard.

3.6.1 On 18.06.2008, the Secretary (Revenue and Forest Department, Mumbai) sought a report from the Respondent No. 1 on the above.

3.6.2 On 29.09.2008, the Additional Collector, Solapur, submitted a report *inter alia* stating that an opinion of the Law and Judiciary Department, Mumbai, be obtained as

to whether the putative second wife's (Petitioner's) application can be considered on humanitarian grounds.

3.7 Between 2008 and 2014, it appears that nothing has transpired in regard to the second application made by the putative second wife (Petitioner).

3.8 On 11.04.2014, the putative second wife (Petitioner) made a yet another fresh application to the Revenue and Forest Department, Mumbai, seeking family pension. This was the Petitioner's **third application** in this regard.

3.8.1 On 13.06.2014, a report was once again called for from the Respondent No. 1.

3.8.2 On 14.07.2014, the Respondent No. 1 submitted his report *inter alia* stating that the first wife was the recipient of family pension from 20.12.1996 to 14.12.2005, and upon her death, the pension is not to be paid to anyone.

3.8.3 In August 2014, the Revenue and Forest Department, Mumbai, sought an opinion from the Finance Department, Mumbai. Thereafter, the Finance Department, Mumbai, sought an opinion of the Law and

Judiciary Department, Mumbai.

3.8.4 On 16.09.2014, the Undersecretary (Law and Judiciary Department, Mumbai) opined that the Petitioner appears to be the wife of the deceased but her status is not that of a legally wedded wife; as such, her case does not fall within the ambit of Rule 116 (6)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as “**the Pension Rules**”).

3.8.5 On the basis of the above opinion, on 21.11.2014, the Revenue and Forest Department, Mumbai, informed the Respondent No. 1 that the Petitioner is not eligible to receive family pension.

3.9 On 07.01.2015, the putative second wife (Petitioner) made a yet another fresh application to the Revenue and Forest Department, Mumbai, seeking family pension on the basis of the judgement in the case of *Union of India vs. Jaywantabai*.¹ This was the Petitioner’s **fourth application** in this regard.

3.9.1 In June 2015, the Revenue and Forest Department, Mumbai, once again sought an opinion of the Law and Judiciary Department, Mumbai, in this regard.

¹ Writ Petition No. 4467 of 2014

3.9.2 On 07.08.2015, the Deputy Legal Advisor cum Deputy Secretary (Law and Judiciary Department, Mumbai) opined *inter alia* that Rule 116 (6)(a)(i) of the Pension Rules is *pari materia* with Rule 75 (7)(i)(a)(b) of The Railway Services (Pension) Rules, 1993; that being the case, the Department ought to take appropriate action in light of the observations of the High Court in the *Jaywantabai* case (*supra*), which dealt with Rule 75 (7)(i)(a) & 75 (7)(i)(b) of The Railway Services (Pension) Rules, 1993. After analyzing all relevant judgements passed by the Supreme Court and this Court, the Deputy Legal Advisor cum Deputy Secretary (Law and Judiciary Department, Mumbai) gave his *prima facie* opinion that the putative second wife (Petitioner) is entitled to all pensionary benefits.

3.9.3 In September 2015, the Revenue and Forest Department, Mumbai, sought the opinion of the Finance Department, Mumbai, in the matter.

3.9.4 On 12.04.2017, a joint meeting was held between the Principal Secretary (Finance), Additional Secretary (Law and Judiciary) and Additional Secretary (Revenue). In the meeting, a decision was taken to the effect that the putative second wife (Petitioner) was not entitled to

family pension.

3.9.5 On 26.07.2017, the Revenue Department communicated the rejection letter to the fourth application of the Petitioner.

4 . The Petitioner challenges the decision dated 12.04.2017 taken in the joint meeting and the communication dated 26.07.2017 informing the Petitioner about the rejection of her fourth application. That apart, the Petitioner seeks her applications dated 16.05.2008, 19.03.2013, 11.04.2014 and 07.01.2015 be granted. However, it is pertinent to note that the orders rejecting her three preceding applications have not been challenged in the present petition.

5 . By order dated 25.05.2022, we appointed Shri. Drupad Patil as *amicus curiae* to assist the Court in the present case.

6 . At this juncture, it would be appropriate to refer to the statutory provisions relevant to the present case and relied upon by the respective parties.

6.1 Section 5 (i) and Section 11 of the Hindu Marriage Act, 1955 (for short, "**HMA**") are relevant and read as under:

"5. Conditions for a Hindu marriage. A marriage may be solemnized between any two Hindus, if the

following conditions are fulfilled, namely:

- (i) neither party has a spouse living at the time of the marriage;
.....”

“11. **Void marriages.** Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.”

6.2 Section 16 of the HMA is also relevant and reads as under:

"16. Legitimacy of children of void and voidable marriages.

(1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."

6.3 Rule 26 of the Maharashtra Civil Services (Conduct)

Rules, 1979 is also relevant and reads as under:

"26. Contracting of 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."

6.4 Rule 111 (5)(i) and 116 (6)(a)(i) of the Pension Rules are

also critical to the present case and read as under:

"111. [Retirement Gratuity/Death Gratuity]

(5) For the purpose of this rule and rules 112,114 and 115 "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,

"116. Family Pension, 1964

.....

(6) (a) (i) Where the Family Pension is payable to more widows than one, the Family

Pension shall be paid to the widows in equal shares;

(ii)”

7 . Shri. Ashok Tajane, learned Advocate appearing for the **putative second wife (Petitioner)**, makes the following submissions:

- i. That the Petitioner is entitled to family pension from the date of the death of the first wife within the meaning of the bare provisions of Rule 116 (6)(a)(i) of the Pension Rules. As such, the Respondents are not justified in rejecting the Petitioner’s applications for family pension;
- ii. That Rule 116 (6)(a)(i) of the Pension Rules allows family pension to be paid to a second wife. Hence, the Respondents are not justified in denying family pension to the Petitioner on the ground that she is not a legally wedded wife of the deceased;
- iii. That the ratio in the *Jaywantabai* case (*supra*) in regard to Rule 75 (7)(i)(a) of The Railway Services (Pension) Rules, 1993 will also apply to Rule 116 (6)(a)(i) of the Pension Rules as the two are *pari materia*;
- iv. That once the Deputy Legal Advisor cum Deputy Secretary (Law and Judiciary Department, Mumbai) opined that the Petitioner is entitled to the entire pensionary benefit, it is improper and illegal for the Petitioner’s application to have

been rejected at the joint meeting held on 12.04.2017;

- v. That Rule 111 (5)(i) of the Pension Rules was amended on 11.08.2016 to read as “[*legally wedded wife*] or wives including *judicially-separated wife or wives in the case of a male Government servant.*” Thus, the bare provisions of Rule 111 (5)(i) of the Pension Rules also entitle the Petitioner to the family pension;
- vi. That in the compromise *pursis* decreed in Civil Miscellaneous Application No. 165 of 1997, it is nowhere agreed upon that the Petitioner will not claim family pension upon the death of the first wife; the Petitioner had not relinquished her right to claim family pension after the death of the first wife;
- vii. That in the case of one Smt. Vimal Mohibe, which is identical to the present case, the Respondent-State has granted pension to the second wife. Thus, the Petitioner’s case cannot be discriminated against;
- viii. That the fact that the deceased has entered the name of the Petitioner into his service record for the Petitioner to be entitled to family pension cannot be disregarded;
- ix. In support of his submissions outlined above, Shri. Ashok Tajane has relied upon the following judgements:

a. Laxmibai Shripad Kumar vs. Chief Executive Officer,

Zilla Parishad & Ors.²;

b. Union of India vs. Jaywantabai (supra)

c. Mangalabai Nivruttirao Khandagiri vs. State of Maharashtra & Ors.³

8 . *PER CONTRA*, Shri. S. S. Panchpor, learned Additional Government Pleader appearing on behalf of the Respondent-State, draws our attention to the affidavit-in-reply dated 01.11.2018 filed by Shri. Sanjay Baburao Teli, Resident Deputy Collector, Solapur. Shri. Panchpor has contended as follows:

- i. That in the compromise *pursis* decreed in Civil Miscellaneous Application No. 165 of 1997, the Petitioner and her three children (applicants therein) have relinquished all their rights to the family pension and in lieu thereof accepted approximately 92% of the retirement benefits and other rights as have been outlined hereinabove;
- ii. That under the provisions of Rules 115 and 116 of the Pension Rules, only a legally wedded wife is entitled for family pension and therefore the Petitioner, owing to her not being a legally wedded wife within the meaning of the Pension Rules, is disentitled from claiming family pension;

² 2004 (4) Mh.L.J. 330

³ Order dated 05.10.2015 in Writ Petition No. 8101 of 2015 (Aurangabad Bench of this Court)

- iii. That Rule 116 (6)(a)(i) provides that where there are more than one widows, the family pension is held to be entitled to both the widows in equal proportion; however, that does not implicitly exclude the requirement that the marital status of the widows should be legal, especially in view of the amendment of Rule 115 (5)(i) of the Pension Rules in 2016;
- iv. That under Section 5 read with Section 11 of the HMA, the marriage of the Petitioner to the deceased is void as the same took place while (a) the first wife of the deceased was alive; and (b) the marriage between the first wife and the deceased was subsisting. As such, by reason of the Petitioner's marriage to the deceased being void, the Petitioner is not entitled to family pension.

9 . Shri. Drupad Patil, learned *amicus curiae* appointed by this Court, has filed a comprehensive and detailed list of dates and events along with the relevant case laws, and has made the following submissions:

- i.* That the marriage between the Petitioner and the deceased is void in view of Section 5 (i) of the HMA. As such, if the Petitioner's claim for family pension is accepted despite her marriage to the deceased being void, it would render the statutory provisions of the HMA nugatory;

- ii.* That Rule 26 of the Maharashtra Civil Services (Conduct) Rules, 1979 prohibits a government employee from entering into a marriage while his or her spouse is alive. According to the proviso to Rule 26, such a marriage, can be entered into only with the prior permission of the Government and only if such marriage is permissible under the personal law governing the government employee or there are other legal and valid grounds for doing so. None of these requirements are satisfied in the present case as the deceased had not obtained the permission of the Government for his marriage to the Petitioner, which, in any case, was prohibited under the HMA;
- iii.* That the benefit of family pension can only be provided to a widower / widow whose marriage is lawful. In cases where the husband belongs to the Muslim community or to a community where a second marriage is permissible as per their personal laws, the second wife / widows can be granted family pension. However, in the present case, family pension cannot be granted to the Petitioner whose marriage to her deceased husband is demonstrably and admittedly void under the HMA;
- iv.* That the view adopted by this Court in the *Jaywantabai* case (*supra*), which the Petitioner has relied upon heavily, has

been clearly distinguished in the following judgements:

- a. *Chanda Hinglas Bharati vs. State of Maharashtra*⁴ (Coordinate Bench of this Court);
 - b. *Rameshwari Devi vs. State of Bihar*⁵ (Supreme Court);
 - c. *Kamalbai (widow of Venkatarao Nipanikar) vs. State of Maharashtra*⁶ (Full Judge Bench of this Court);
 - d. *Draupada @ Draupadi Jaydev Pawar & Ors. vs. Indubai*;⁷
 - e. *Union of India & Anr. vs. Ganeshibai @ Sunderibai (widow of late Ghashiram)*.⁸
- v. That the *Jaywantabai* case (*supra*) relied upon by the Petitioner cannot be said to cover the field in the present case as the Supreme Court in the said case granted pensionary benefits to the second wife on humanitarian grounds, it has however expressly kept open the question of law as to whether a second wife can lay claim to pensionary benefits or any part thereof notwithstanding Rule 21 of the Railway Services (Conduct) Rules, 1966 (which is *pari materia* with Rule 26 of the Pension Rules);

4 2015 SCC Online Bom 6679

5 4 (2000) 2 SCC 431

6 2019 SCC OnLine Bom 2219 : (2019) 3 Mah LJ 921 (FB)

7 2016 SCC OnLine Bom 95 : (2016) 3 Mah LJ 836

8 2020 (5) Mh.L.J. 41

vi. That the decision of the Full Bench of this Court in the *Kamalbai* case (*supra*), has expressly overruled the findings of the Division Bench in the *Jaywantabai* case (*supra*) in view of the decision of the Supreme Court in the *Rameshwari Devi* case (*supra*).

10 . We have heard the submissions made by the learned counsel for the respective parties as well as the learned *amicus curiae*, perused the material on record and considered the judgements relied upon by the respective advocates.

11 . We may state that the issue at the core of the present case is whether the Petitioner, being a putative second wife of the deceased, is entitled to family pension after the demise of the first wife, when essentially the first wife was receiving family pension from 20.12.1996 till her death on 14.12.2005.

12 . In our considered opinion, the substantial issue elucidated hereinabove stands squarely answered by the Supreme Court in a catena of judgements and the position of law in this regard stands more than well-settled.

12.1 The Supreme Court, in *Rameshwari Devi* case (*supra*), has

clearly opined that the putative second wife cannot be described as the widow of the deceased government employee. The Supreme Court applied the statutory provisions under Section 5 (i) read with Section 11 of the HMA and held that the marriage of the deceased employee to the putative second wife is void as, at the time of such marriage, his first wife was alive and his marriage with her was still subsisting. That being the case, the Supreme Court ruled that the second wife in such cases is not entitled to family pension.

12.2 The Supreme Court in the case of *Raj Kumari vs. Krishna*⁹ similarly opined that normally, family pension is given to the legally wedded wife of a deceased government employee. In the aforesaid case, the deceased government employee had married the plaintiff therein while the former's first wife was alive and his marriage with her was still subsisting. As such, the Supreme Court held that the plaintiff could by no stretch of imagination be described as the legally wedded wife of the deceased government employee.

12.3 A view similar to the above has also been adopted by this Court in *Draupada @ Draupadi Jaydev Pawar & Ors. vs. Indubai (supra)*. The learned Single Judge has, with authority,

9 2015 (14) SCC 511

referred to the judgements passed in the *Chanda Hinglas Bharati (supra)* and *Rameshwari Devi (supra)*. The relevant excerpts are Paragraphs 35 to 37 and are reproduced hereinbelow:

"35. During the course of arguments of Chanda Hinglas Bharati (supra) in November, 2015 the counsel of second wife placed heavy reliance on the earlier judgment of the Division Bench in the case of Jaywantabai. The judgment of learned Single Judge in the case of "Kantabai" was not placed before the Division Bench. The learned Judges of the Division Bench in the case of Chanda Hinglas Bharati have considered number of judgments. The ratio laid down by the Division Bench is specific and clears all the doubts in respect of interpretation of Rule 116(6)(a)(i) of Maharashtra Civil Services (Pension) Rules and Rule 26 of Maharashtra Civil Services (Conduct) Rules. The Division Bench has referred and relied the cases of Rameshwari Devi (supra) and Vidyadhari v. Sukhrana Bai, reported in (2008) 2 SCC 238. The Division Bench has held thus:

"The Maharashtra Civil Services (Pension) Rules were brought into force in the year 1982. Rule 116 (6)(a)(i) opens with the clause, "Where the Family Pension is payable to more widows than one". The provisions of Sub-Rule 6(a) (i) of Rule 116 of the Rules would apply only in a case where the family pension is payable to more widows than one. The primary question would be, whether the family pension is payable to more widows than one. When would a second widow or more than one widows be entitled to pension. In our considered view, more widows than one would be entitled to pension only if the Hindu employee has married the woman (widow) before the coming into force of the Hindu Marriage Act on 18.5.1955 and in case of employees where such marriage is permissible under the personal law applicable to the said employee or Government servant and the other party to the marriage. It appears from the provisions of Maharashtra Civil Services (Conduct) Rules that the marriage during the life time of a spouse could be accepted only if the marriage is permissible under the person law applicable to both the parties to the marriage."

36. In the said judgment, the Division Bench has rightly linked up meaning of widow to the status of wife who

is a legally wedded wife. It considered section 5 which speaks about 'Conditions of Valid Marriage and section 11 on 'Void marriages and section 17 wherein 'Punishment for bigamy' is stated. It also took into account provisions of sections 494 and 495 of the Penal Code, 1860 pertaining to bigamy and also relied on Rule 26 of the Maharashtra Civil Services (Conduct) Rules, 1979, which states thus:

“26. Contracting of 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.”

37. The reasoning given by the Division Bench is consistent with the other provisions of law as mentioned above wherein the second marriage is held void. The Indian legal system has adopted monogamy as a legal structure of the marriage institution and, therefore, occasional fractures of second marriage in subsistence of first marriage are held void in law. The second woman cannot be given a status of a legally wedded wife and, as rightly observed by the Division bench, she is not a widow in true and legal sense. A wrong may exist in the Society on a large scale, however it cannot be justified as a righteous custom because of its magnitude. In order to buttress this point, it will not be out of place to give example of give and take of dowry which throws light on the wide gap between the legality and the reality. To take lenient view towards the wrong doers is contrary to law laid down by the legislature. Thus, gap should not be widened by the decision of the Court but it is to be bridged. It is mandatory for the Court to interpret a law which gives true effect to the legislative intent. The Division Bench in the case of Chanda Hinglas Bharati has referred to the relevant provisions under different

acts regarding the consequences of second marriage and the status of second woman.” [emphasis supplied]

12.4 We may state that the decision in the *Jaywantabai* case (*supra*) has been expressly overruled by a Full Judge Bench of this Court in the *Kamalbai* case (*supra*) in view of the decisions of the Supreme Court in the *Rameshwari Devi* case (*supra*) and the *Raj Kumari* case (*supra*). We may usefully refer to Paragraphs 13 and 14 of the said decision, which read thus:

“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. Subrule (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 18-1-2016 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(1) 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.” [emphasis supplied]

12.5 Thus, in light of the judicial decisions as outlined hereinabove, the Petitioner in the present case would not be entitled to family pension under the Pension Rules notwithstanding the death of the first wife as the Petitioner’s marriage to the deceased itself is void under the HMA.

13 . We may state that in view of the legislative connotations of Rule 26 of the Maharashtra Civil Services (Conduct) Rules, 1979, read with Section 5 and 11 of the HMA, Rule 116 (6)(a)(i) of the Pension Rules cannot be interpreted to mean that a wife of a government employee whose marriage to the government employee was unlawful is also entitled to pensionary benefits.

14 . There is another dimension that needs to be addressed in the present case. The Petitioner has placed on record the compromise *pursis* decreed in Civil Miscellaneous Application No. 165 of 1997, the terms of which have been outlined hereinabove. It is pertinent to note that the Petitioner has categorically relinquished her right to claim the family pension of the deceased and has consented to the same being granted to the first wife. The Petitioner has given an undertaking that she and her three children shall not have any right to claim the family pension of the deceased. In view thereof, the Petitioner is now estopped from filing a claim for family pension given, that she has waived her right to the same.

15 . That apart, in our view the Petitioner has not approached this Court with clean hands. It is clear from the evidence on record that there were four separate applications seeking family pension that the Petitioner had made to the competent authority. However, the Petitioner has conveniently omitted to mention the rejection of the first three application in her petition. The Petitioner has disclosed and challenged only the rejection of the fourth application that she had made to the competent authority.

16 . The Petitioner has also claimed that her case is identical to that of Smt. Vimal Mohibe, wherein the State Government had granted

pension to Smt. Vimal Mohibe despite her being a putative second wife of a deceased government employee. It is submitted that the only difference between the facts in Smt. Vimal Mohibe's case and those in the present case is that in the former, the first wife had predeceased the government employee. It is also submitted that it is pertinent to note that the government employee had married Smt. Vimal Mohibe while his first wife was alive and his marriage to her was still subsisting. In our view the decision of the State Government to give family pension to Smt. Vimal Mohibe is contrary to the statutory provisions, particularly those under Rule 26 of the Maharashtra Civil Services (Conduct) Rules, 1979, read with Section 5 and 11 of the HMA. Thus, in the case of Smt. Vimal Mohibe, the benefit was wrongly extended to her by the State Government. As such, the Petitioner's case cannot be decided based on the decision of the State Government in Smt. Vimal Mohibe's case.

16.1 The Petitioner's argument that the import of the legislative intent behind Section 16 (1) of the HMA should also be applied to the Petitioner's marriage with the deceased and she should therefore be entitled to family pension, notwithstanding the fact that the Petitioner's marriage with the deceased is void under Section 11 of the HMA cannot be accepted.

17 . In view of the above discussion and findings, the Writ Petition stands dismissed. However there shall be no order as to costs.

18 . We appreciate and express our gratitude to the learned Amicus Curiae for his able and valuable assistance to the Court in this case.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]

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