

4 . THE SENIOR DIVISIONAL
PERSONAL OFFICER,
BENGALURU DIVISION,
SOUTH WESTERN RAILWAY,
BENGALURU - 560 023.

... RESPONDENTS

(BY SRI MD. MUJASSIM, ADVOCATE FOR R1 TO R3;
SRI A.CHANDRA CHUD, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED.29.07.2022 PASSED BY THE VI ADDITIONAL PRINCIPAL JUDGE FAMILY COURT BENGALURU ON IA NO.II IN O.S.NO.162/2021 ON THE APPLICATION BEING MADE BY THE R-1 TO 3 UNDER ORDER XXXIX RULE 1 AND 2 READ WITH SECTION 151 OF CIVIL PROCEDURE CODE ANNEXURE-L.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 29-07-2022 passed by the VI Additional Principal Judge, Family Court, Bengaluru on I.A.No.II in O.S.No.162 of 2021

directing 50% of pension to be paid to the 1st respondent and her children while not answering the claim of the petitioner.

2. Heard Sri Madhukar Nadig, learned counsel appearing for the petitioner, Sri Mohammed Mujassim, learned counsel appearing for respondents 1 to 3 and Sri A.Chandrachud, learned counsel appearing for respondent No.4.

3. Brief facts that lead the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

One R.Ramesh Babu was an employee of the Indian Railways working in the South Western Railways at the office of the Senior Divisional Personnel Manager. During his life time, it appears that he had married the 1st respondent and from the wedlock three children are born – the second and third respondents who are unmarried and the married daughter is not before the Court.

4. It further transpires that on 09-12-1999 R.Ramesh Babu married the petitioner at Tirupathi and from this wedlock a child is born on 18-12-2000. The girl child is now 22 years old. Long after

the marriage with the petitioner, R.Ramesh Babu who was working as a Pointsman-I, Traffic Department, South Western Railway dies. He died in harness on 04-05-2021. On 17-05-2021 the 1st respondent claiming to be the wife of the deceased R.Ramesh Babu sought settlement of entire dues and family pension apart from seeking compassionate appointment to the 2nd respondent. The 4th respondent under whom the deceased was functioning communicates that settlement of benefits and family pension cannot be finalized on account of a claim by the petitioner who had claimed to be a legally wedded wife. It was advised that settlement can be made only on a declaratory decree from the hands of a competent Court about the status of the parties.

5. After the said communication, respondents 1 to 3 filed a suit for declaration in O.S.No.162 of 2021 before the VI Additional Principal Judge, Family Court at Bengaluru seeking a declaration that respondent No.1 is the legally wedded wife and respondents 2 and 3 are the children born from the wedlock and are the legal heirs of the deceased/employee. Further declaration was sought that family pension, gratuity and insurance also belong to

respondents 1 to 3 and one of them would be entitled to compassionate appointment. Respondents 1 to 3 filed an application before the concerned Court in the said proceedings for release of entire family pension in their favour. The petitioner then files a memo adopting the written statement already filed in the suit to be the objections to the application. The concerned Court by its order dated 29-07-2022, pending disposal of the interlocutory application itself, directs 50% of family pension to be paid to respondents 1 to 3. The petitioner aggrieved by the said order is knocking at the doors of this Court calling in question the order directing 50% of family pension to be paid to respondents 1 to 3, notwithstanding petitioner's objection.

6. The learned counsel appearing for the petitioner would vehemently contend that the petitioner alone is entitled to the entire family pension and ordering release of 50% of family pension in favour of respondents 1 to 3, without considering the right of the petitioner, is on the face of it erroneous.

7. On the other hand, the learned counsel representing respondents 1 to 3 would vehemently refute the submissions to contend that the petitioner is not a legally wedded wife as in terms of Hindu Marriage Act which governs relationship of parties, the petitioner cannot be termed to a legally wedded wife and family pension can be granted only to a legally wedded wife and her children. Therefore, no fault can be found with the order directing 50% of family pension to be released. He would term the petitioner to be a paramour at best and never a legally wedded wife. Therefore, he contends that the petition be dismissed.

8. The learned counsel representing the 4th respondent/ Railways would refute the submissions of respondents 1 to 3 to contend that pension is paid in terms of the Rules. The Rules empower payment of pension to both the petitioner and the 1st respondent in equal share. Therefore, no fault can be found with the claim of the petitioner for her share of family pension. But, he would submit that every other benefit would depend upon the Rules, Guidelines or the Circulars issued by the Railways from time to time.

9. The learned counsel for the petitioner would then seek to place reliance upon the judgment of the Division Bench of the High Court of Bombay in the case of **UNION OF INDIA AND ANOTHER v. SMT. JAYWANTABAI**¹ to buttress his submission *qua* his claim for 50% of family pension. The learned counsel for respondents 1 to 3 joining the issue seeks to place reliance upon certain judgments of several High Courts, which according to the learned counsel have declined to grant family pension on the ground that the 2nd wife is not a legally wedded wife. Any judgment that merits consideration will be noticed in the course of the order.

10. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the issue that falls for my consideration is,

"Whether the order directing 50% of family pension to respondents 1 to 3 is erroneous and whether the claim of the petitioner for family pension is tenable?"

¹ 2014 SCC OnLine Bom.3347

11. The afore-narrated facts, dates and link in the chain of events are not in dispute. The marriage between the petitioner and the deceased R.Ramesh Babu who was an employee in the cadre of Pointsman-I in the office of the 4th respondent is not in dispute. R.Ramesh Babu dies in harness and his death cropped up legal problems as there were two claimants to the retiral benefits of R.Ramesh Babu. The claimants were the petitioner and respondents 1 to 3. Respondent No.1 is the wife of R.Ramesh Babu married at an earlier point in time and respondents 2 and 3 are their children. The petitioner claims to be the second wife of R.Ramesh Babu. Though the factum of marriage is accepted by respondents 1 to 3 what is objected to is, the status being given to the petitioner as a legally wedded wife. According to the learned counsel for respondents 1 to 3, the petitioner is not a legally wedded wife as Hindu Marriage Act, 1955 prohibits a second marriage during the subsistence of the first marriage. The Hindu Marriage Act not only prohibits the second marriage but also makes it penal.

12. Be those submissions as they may. The issue in the *lis* is with regard to grant of family pension to the petitioner and respondents 1 to 3. The issue does not concern any other benefit. Therefore, the issue needs to be considered on the bedrock of the Rules that prevail in the Railways for the grant of pension/family pension to the employee and his family, particularly in the situation that the petitioner and respondents 1 to 3 are placed. The Rules that govern grant of pension to the Railway Employees is Railway Services (Pension) Rules, 1993. The said Rules undergo an amendment in the year 2016 and the amendment Rules are the Railway Services (Pension) Amendment Rules, 2016. These are the Rules that are applicable in the case at hand. Rule 75 deals with family pension under the Family Pension Scheme for Railway Servants, 1964. The relevant Rule reads as follows:

"75. Family Pension Scheme for railway servants, 1964:- (1) The provisions of this rule shall apply:-

(a) to a railway servant entering service in a pensionable establishment on or after the 1st January, 1964; and

(b) to a railway servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension

Scheme for railway employees, 1964, contained in the Railway Board's letter No.F(P) 63 PN-1/40, dated 2nd January, 1964 as in force immediately before the commencement of these rules.

Note: The provisions of this rule has also been extended from 22nd September, 1977, to railway servants on pensionable establishments who retired or died before the 31st December, 1963 and also to those who were alive on that date but had opted out of the 1964 Scheme.

(2) Without prejudice to the provisions contained in sub-rule (3), where a railway servant dies –

(a) after completion of one year of continuous service, or

(b) xxxxxx

(c) after retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter V, other than the pension referred to in rule 53;

.... ..

(7) (i) (a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(b) 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 share, or if there is only one such other widow, in full, to her.

(ii) Where the deceased railway servant or pensioner is survived by a widow but has left behind

eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the railway servant or pensioner:

Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares not lapse but shall be payable to the other widow or widows or the other child or children otherwise eligible in equal shares, or if there is only one widow or child, in full, to such widow or child."

(Emphasis is mine)

Rule 75(7)(i)(a) deals with the situation of the kind as in the *lis*. Where family pension is payable to more widows then the family pension should be paid to the widows in equal share. On the death of a widow, her share of family pension, shall be paid to her eligible child. The entire fulcrum of the present *lis* lies on interpretation of the aforesaid mandate of the statute. The said interpretation need not detain this Court for long or delve deep into the matter. A Division Bench of the Bombay High Court in **JAYWANTABAI** (*supra*) interpreting this very Rule has held as follows:

"6. *We have considered the submissions made by learned counsel for the petitioners carefully. We quote section 11 of the Hindu Marriage Act, 1955 which reads thus:*

"11. Void marriages. — Any marriage solemnized 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 of the conditions specified in clauses (i), (iv) and (v) of section 5."

7. Undoubtedly, it is clear from reading of the above provision that the Hindu Marriage Act treats the second marriage as void during subsistence of the first marriage. The contention raised by Mr. Lambat is attractive, but does not appeal to us.

8. We cannot be oblivious of what is going on in the society and a further fact that during subsistence of the first marriage, the husband performs the second marriage by practising fraud indulging in cheating with the second woman who, thus, falls an easy prey to such person for no fault of her. Such cases are myriad. But then, since the parties are Hindus, section 11 of the Hindu Marriage Act holds such marriages void. It is true that the Courts or the Tribunals should not enforce or make any order or decree contrary to law, and in this case, section 11 of the Act. But the next question is whether such a second wife/widow, after the death of her husband, in this case, the railway employee, should be left to starve by giving all the pensionary and terminal benefits of his service to first wife only? This question will have to be answered with all seriousness and in the light of the revolution for emancipation of women. We feel that though Hindu Personal Law may not be strictly interpreted on the anvil of the Constitution of India or the fundamental rights, and should not be denigrated by the Courts, fact remains that the constitutional provisions can be pressed into service for interpretation of laws/Rules for achieving the ultimate object of the constitutional goal.

9. Article 15 of the Constitution prohibits discrimination on the ground of sex, while Article 39(a) provides for securing adequate means of livelihood for men and women equally. Article 39(e) provides for ensuring health and strength for women. **Keeping in mind the "Laxman Rekha" in the**

matter of interpretation of provisions of Personal Laws-qua the Constitution, we find that the above constitutional provisions obligate the State for uplifting the women and secure descent living for them. What we find is that Rule 75 provides for grant of pension even to the second wife/widow of a deceased railway servant along with first wife. In our opinion, this provision of Rule 75 made by the Indian Railways cannot be held to be in conflict or interdiction with section 11 of the Hindu Marriage Act. On the contrary, in our opinion, for achieving the constitutional goal, as aforesaid, even for the unfortunate second wife/widow. Rule 75 provides for grant of pension to her for her survival in life. At any rate, it must be seen that by virtue of Rule 75, the payment of pension to the two widows is required to be made in equal share, which clearly shows that there is no burden on the treasury or the Indian Railways by inserting the said noble idea. There is no reason for us to hold that Rule 75 violates section 1 of the Hindu Marriage Act, or that it is contrary to the Hindu Marriage Act, since it does not even remotely provides for any contradiction or interdiction therewith. We, therefore, hold that Rule 75 has been brought in the Rule book by the Indian Railways fully in consonance with the aforesaid constitutional provision. In our opinion, Indian Railways must be complimented for making such a provision for such type of women-widows who unfortunately fall in the trap of males in performing with them what is called "illegal or void marriage" within the meaning of section 11 of the Hindu Marriage Act. The Indian Railways deserve applauds for incorporating such a rule which is seldom found in Service/Pension Rules of en number of Organizations and the Governments. In our opinion, the Central Administrative Tribunal has rightly found that the object of Rule 75 is nothing but to provide relief to such a woman who is ensnared in void marriage. We find that such an unfortunate woman is provided minimum food and shelter and that too not at the cost of Indian Railways or the taxpayers, but the pension is equally divided amongst the widows by virtue of the said Rule 75. To repeat, provision of Rule 75 is a step in furtherance of the revolution for emancipation of women.

10. Since we find that the Indian Railways have done a commendable job in framing rule like Rule 75, there is no reason why the model employers like the State and Central Government and all other instrumentalities should not adopt the same course of action, i.e., to provide for relief to a woman married with a Govt, servant, whose marriage becomes void as per section 11 of the Hindu Marriage Act.

11. To sum up, we do not think that Rule 75, in any way, is violative of section 11 of the Hindu Marriage Act, and, on the contrary, we find that it is in consonance with the constitutional obligations of the State, including the Chapter providing for 'Fundamental Rights' in the Constitution."

(Emphasis supplied)

The Division Bench after considering Section 11 of the Hindu Marriage Act which deals with void marriages has held that it was a great step by the Railways in amending the Rules and giving rights to the other widow of a deceased Railway servant. It is held that Section 11 of the Hindu Marriage Act does not even remotely contradict or interdict with the Railway Pension Rules. The Division Bench observes that in its opinion achieving the constitutional goal, it was a forward step of the Railways to grant pension even for the unfortunate second wife/widow. It further observes that it will not burden the treasury as they are granted equal share. The Union of India tossed the said judgment before the Apex Court which comes

to be dismissed by its order dated 08-05-2015 in S.L.P.No.11491 of 2015 by the following order:

"ORDER

We have perused this petition and heard learned counsel for the petitioner. It appears that the so called second wife – Smt. Jaywantabai has prayed for half pension since at the material time "the first wife – Saraswatibai" was still living. The impugned order finds no error in this request of "the Second wife – Smt Jaywantabai".

We are not inclined to interfere in the matter at all however it now appears that "the first wife – Saraswatibai" has passed away and from that matrimony no children are alive. In these circumstances "the Second Wife" – Smt. Jaywantabai" would prima facie be entitled to the entire pensionary benefits.

Special Leave Petition is dismissed with these observations leaving the question of law open as to whether a second wife can lay claim to the pensionary benefits or any part thereof, despite Rule 21 of the Railway Services (Conduct) Rules, 1966."

(Emphasis supplied)

The Apex Court upheld the decision of the Bombay High Court but kept the law open on the ground that the first wife therein during the pendency of the proceedings passed away. Therefore, the judgment of the Division Bench of the Bombay High Court is not overturned by the Apex Court. Interpreting this very Rule, the

Division Bench of High Court of Calcutta in the case of **UNION OF INDIA V. SUSHILA DEVI**² holds as follows:

"10. At the inception it needs to be stated that we do not agree with the finding of the learned Tribunal to the effect that under the Pension Rules there is no differentiation between a first wife and a second wife and that as such irrespective of validity of the matrimonial relationships, the settlement dues of the deceased employee would be payable to more widows than one surviving after the death of the concerned employee. In the event the presumption pertaining to a matrimonial relationship can be rebutted by conclusive evidence by either party thereto against the other party to the marriage, the second wife, with whom marriage was solemnized during the subsistence of the matrimonial relationship with the first wife, would certainly not be entitled to family pension. Furthermore, such an issue is not involved in the instant lis inasmuch as the first wife did not initiate any proceeding against the matrimonial relationship amongst Siyaram and Sushila and that the Court will not adjudicate issues which do not arise strictly on the facts presented before this Court. The judgments relied upon by the learned Tribunal pertaining to maintenance under Section 125 of the Code of Criminal Procedure are also not applicable to the facts of this case inasmuch as such provision towards maintenance has been enacted for social justice and specially to protect women and children as also old and infirm poor parents and falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. The provision gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves. Its provisions are applicable and enforceable whatever may be the personal law by which the persons concerned are governed.

² **2016 SCC OnLine Cal 5070**

11. Rule 75(7)(i)(b) of the Pension Rules provides that "on the death of a widow, her share of family pension, shall become payable to her eligible child". In the instant case the right to avail family pension did not even crystallize in favour of Putul since she expired prior to Siyaram's date of entry into service. The right of the children born out of the matrimonial relationship amongst Siyaram and Putul, however, stands protected since they are children born out of a valid matrimonial relationship and as such we do not find any error in the observation of the learned Tribunal to the effect that "the share of Putul Devi (the first wife) would bestow upon her children, if they were still eligible in terms of pension rules governing the employee, and as such they could very well share if with the present applicant in 50% share".

12. The judgment delivered in the case of Seema Chakraborty (supra) was delivered in the backdrop of a conflicting claim pertaining to family pension amongst the first wife and the second wife of the deceased employee. The said judgement is clearly distinguishable on facts inasmuch as in the same both the widows were alive on the date of death of the concerned employee but in the instant case the first wife expired prior to the date of the employee's entry into service. In the case of Niru Devi (supra) the claim of the second wife of the deceased employee towards compassionate appointment was decided taking into consideration the provisions of Section 494 IPC and not upon considering the presumption towards validity of a matrimonial relationship which occasions when a man and a woman lives as husband and wife for a long period and children are born from such relationship. In case of Niru Devi (supra) both the widows were alive on the date of death of the concerned employee and that as such the said judgement cannot be said to have been delivered in a fact situation identical to that of the instant case. A decision is not an authority for the proposition which was not argued [See the judgment delivered in the case of Mittal Engineering Works (P) Ltd. v. Collector of Central Excise, reported in (1997) 1 SCC 203]. It is also well known that even a slight distinction in fact or an additional fact may make a lot of

difference in the decision making process [See the judgments delivered in the case of Krishna Kumar v. Union of India, reported in AIR 1990 SC 1782, in the case of Commissioner of Income Tax v. Sun Engineering Co. Ltd., reported in AIR 1993 SC 43 and in the case of Municipal Corporation of Delhi v. Gurnam Kaur, reported in AIR 1989 SC 38].

13. *Indisputably, the first wife (Putul) of Siyaram expired on 4th January, 1979 and Siyaram married Sushila on 11th February, 1974 and Sushila gave birth to a female child on 4th February, 1976. Siyaram entered into service on 18th July, 1991 and expired on 13th September, 2012. On the date of death of Siyaram, Sushila was the sole surviving widow and the matrimonial relationship amongst Siyaram and Sushila was of about 38 years and such subsisting matrimonial relationship has also not been disputed by the petitioners. From the said facts, a presumption arises to the effect that there was a valid marriage amongst Siyaram and Sushila. Such presumption, however, is a rebuttable one. But the evidence required to rebut such presumption cannot be an evidence of mere probabilities but it should be an evidence to prove conclusively that the possibility of such valid marriage is completely ruled out. In the instant case the matrimonial relationship of Siyaram with Sushila was not challenged by Putul nor even any complaint was lodged by Putul for taking any disciplinary action against the deceased employee. The employer being a third party cannot initiate any proceeding seeking a declaration pertaining to validity of the matrimonial relationship amongst Siyaram and Sushila. The employer also did not penalise the deceased employee on the charge of bigamy though it was within the knowledge of the employer that Sushila was the second wife of Siyaram. Putul's son, namely, Sanjoy, has already been appointed on compassionate ground in place and stead of his deceased father. The very survival of Sushila is now at stake since she was totally dependent upon the income of Siyaram. It would thus be iniquitous to deprive Sushila of the settlement dues pertaining to the service of Siyaram. In this context it would be apt to refer to the judgment delivered by Justice Krishna Iyer in the case of Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal, reported in AIR 1978 SC 1807, wherein His*

Lordship observed that "the brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause-the cause of the derelicts".

14. For the reasons discussed above, we do not find any error in the directions issued by the learned Tribunal towards disbursement of the pensionary dues in favour of the second wife of the deceased employee, in accordance with Rule 75(7)(i)(a) & (b) of the Pension Rules, with arrears. However, since Sushila was the second wife of the deceased, the employer rightly conducted an enquiry to ascertain the veracity of her claim towards disbursement of the death-cum-retirement benefits and upon due enquiry an order was passed without any inordinate delay. The employer, thus, did not keep Sushila's claim in abeyance for an indefinite period and in such fact situation it cannot be said that the delay which occasioned is attributable to the employer and as such, in our opinion, the employer cannot be saddled with payment of interest. The time towards compliance of the directions contained in the order of the learned Tribunal is extended for a period of 10 weeks from date. It is, however, made clear that in the event such directions are not complied with within the period as directed, the petitioners would be liable to pay interest at the rate of 10% per annum."

(Emphasis supplied)

The Division Bench holds that the Rule permits disbursement of pensionary dues in favour of the second wife of the deceased employee. Rejects the appeal filed by the Union of India.

13. Learned Single Judge of the High Court of Madras, again interpreting the subject Rules, holds that the second wife is also entitled to family pension. The Madras High Court follows the judgment of the Division Bench of Calcutta High Court in the case of **SUSHILA DEVI** supra. The Madras High Court in the case of **D.KURUVAMMA V. SENIOR DIVISIONAL PERSONAL OFFICER**³ has held as follows:

"13. The only substantial question of law that arises for consideration in this appeal is;

Whether the appellant, the second wife of the deceased employee is entitled for Family Pension and other retirement benefits?

14. *Sub-rule (i) of Rule 75 of the Railway Services (Pension) Rules, 1983 reads as follows:—*

75. Family Pension Scheme for Railway Servants, 1964:—

The Provisions of this rule shall apply:—

... ..

(7)(i)(a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(b) On the death of a widow, her share of the family pension, shall become payable to her eligible child?

³ **2019 SCC OnLine Mad 12636**

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 share, or if there is only one such other widow, in full, to her.

... ..”

15. A bare reading of the above rules would make it clear that family pension is payable to more than one widow in equal share. Even under the proviso to the said Rule, if the widow is not survived by any child, her share of the family pension shall not lapse, but, the same shall be payable to the other widows in equal share or if there is only one such other widow, in full, to her. Even though the first wife died, her legal heirs are entitled entitled for family pension. Thus, as per proviso to the Rule 1st plaintiff is entitled for family pension. In a similar circumstance, in *Union of India v. Jaywantabai*, the Division Bench of High Court of Bombay has considered the scope of Section 11 of the Hindu Marriage Act and has held that rule 75 is independent of Section 11 of the Hindu Marriage Act and, therefore, under the rule, the second wife is also entitled for family pension. In para 9, the High Court of Bombay has held as follows:—

“9. What we find is that Rule 75 provides for grant of pension even to the second wife/widow of a deceased railway servant along with first wife. In our opinion, this provision of Rule 75 made by the Indian Railways cannot be held to be in conflict or interdiction with Section 11 of the Hindu Marriage Act. On the contrary, in our opinion, for achieving the constitutional goal, as aforesaid, even for the unfortunate second wife/widow, Rule 75 provides for grant of pension to her for her survival in life. At any rate, it must be seen that by virtue of Rule 75, the payment of pension to the two widows is required to be made in equal share, which clearly shows that there is no burden on the treasury or the Indian

Railways by inserting the said noble idea. There is no reason for us to hold that Rule 75 violates Section 11 of the Hindu Marriage Act, or that is contrary to the Hindu Marriage Act, since it does not even remotely provides for any contradiction or interdiction therewith. We, therefore, hold that Rule 75 has been brought in the Rule book by the Indian Railways fully in consonance with the aforesaid constitutional provision."

16. *In Union of India v. Sushila Devi, cited supra, the High Court of Calcutta has considered Rule 75 of the Rules and has held that the second wife is also entitled for family pension. But, the first appellate Judge has erroneously come to the conclusion that under Section 16 of the Hindu Marriage Act, the second marriage is void and hence, the first appellant is not entitled for family pension as held by the Division Bench of the High Court of Bombay, Rule 75 is independent of the Hindu Marriage Act and as Railway Services (Pension) Rules, itself provides for family pension for more than one widow, the first appellate Judge ought not to have rejected the claim of the appellant on the ground that the second marriage is a valid marriage. In the said circumstances, this court is of the view that the judgement and decree of the learned first appellate Judge is liable to be set aside and the 1st respondent should be directed to pay family pension to the appellant herein also."*

(Emphasis supplied)

14. It becomes apposite to refer to a judgment of the co-ordinate Bench of this Court in **SMT. SHANTA SADANI v.**

GENERAL MANAGER AND OTHERS⁴ considering this very Rule and the judgment of the Division Bench of the Bombay High Court. The co-ordinate Bench has held as follows:

“..... ..”

11. Having heard the learned counsel for the petitioner and respondents and having examined the material on record, this Court is of the view that the judgment relied on by learned counsel for petitioner in the case of **Union of India through General Manager, South East Centre Railway and another Vs. Jayawantabai** is applicable to the present case on hand. The judgments relied on by the learned counsel for the respondents cannot be considered to the present set of facts, in the light of latest judgment of Hon'ble Apex Court which is rendered in the year 2014 and same is the latest law in the point of time.

12. On perusal of material on record, it is forthcoming that the husband of the petitioner was given compulsory retirement for having violated the Railway Servants (Conduct) Rules, 1966. It is not in dispute that the husband of petitioner was receiving pension till his death. After the death of the pensioner the present petitioner claiming to be the widow has submitted a representation to the respondent-authorities. The petitioner has also placed on record, the order passed in M.C.No.18/2008, wherein the marriage of husband of petitioner and with first wife Arogyamerry @ Tavamani is dissolved by order dated 31.01.2009.

13. In the present case on hand, the contention of the respondents that the petitioner being the second wife is not entitled for family pension cannot be accepted and the same has to be rejected in the light of the amendment brought to Rule 75 of the Railway Services (Pension)

² Writ Petition No.111260 of 2017 decided on 01-07-2020

Rules, 1993. The relevant amendment for the purpose of better understanding is culled out hereunder:

"75(7)(i)(a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares."

14. The Division Bench of High Court of Bombay at Nagpur while interpreting the amended provisions to Rule 75 to the Railway Services (Pension) Rules, 1993 was of the view that the provisions of amended Rule 75 made by the Indian Railways is not in conflict or interdiction with Section 11 of the Hindu Marriage Act. The Division Bench expressed that respondents-railways for having brought in the amendment was of the view that this amendment would ultimately achieve the constitutional goal and would protect an unfortunate wife/widow and the amended provision would enable even the second wife to seek pension for survival. The Division Bench while examining the above said amendment also observed the payment of pension to two widows is required to be made in equal share and this would no way burden the treasury or the Indian Railways by inserting the said noble ideal. This judgment is confirmed by the Hon'ble Apex Court in Civil Appeal No.11491/2015 by judgment dated 08.05.2015. In this background, I am of the view that insofar as the second wife seeking pension in the light of the amendment to the Railway Services (Pension) Rules, 1993 has to be treated as a widow and thereby she is entitled for pension. Though scheme of pension rules in respect of employees did not permit a second wife from seeking family pension, but however, in the present case on hand since the petitioner's husband was an employee of respondent-railways, she has to be treated as widow, in the light of the amendment brought in by the respondent-railways to Rule 75 of the Railway Services (Pension) Rules, 1993.

15. Having examined the documents and rival contentions of the parties, this Court is of the view

that the respondents-Authorities are require to examine the petitioner's case for grant of family pension in terms of the amended provisions of Rule 75(7)(i)(a) of Railway Services (Pension) Rules, 1993 and also the judgment rendered by the Division Bench of High Court of Bombay at Nagapur in the case of Union of India through General Manager, South East Centre Railway and another Vs. Jayawantabai.

16. For the reasons stated supra, writ petition is allowed. Respondent Nos.3 to 5 are directed to consider the case of the petitioner for grant of family pension as per representations submitted as per Annexures-J & K by taking into note of the amended provision of Rule 75(7)(i)(a) of Railway Services (Pension) Rules, 1993 and also the judgment of the Division Bench of High Court of Bombay at Nagapur rendered in the case of Union of India through General Manager, South East Centre Railway and another Vs. Jayawantabai. This exercise shall be done by the respondents-authorities within a period of eight weeks from the date of receipt of copy of this Order."

(Emphasis supplied)

Both the judgments of the Division Bench and the co-ordinate Bench as quoted *supra* are followed by this Bench in a judgment rendered in **SMT. DAVALBI v. SMT. SHAMSHAD BEGUM AND OTHERS⁵** wherein it is held as follows:

"26. Thus, the Rules which gave equal share to both the wives, in the circumstances contemplated under the Rules, is now held to be valid in the afore-extracted judgments.

27. In terms of the afore-extracted Rules and its interpretation, if the facts of the subject lis are noticed, it

⁵ R.S.A.No.100321 of 2020 decided on 22-09-2020

becomes unmistakably clear that plaintiff and defendant No.1 who are wives of the deceased employee would be entitled to 50% share of the pension and other service benefits of the deceased employee. The trial Court has rightly held on the basis of cogent evidence and analysis of the same that the plaintiff is also entitled to a share in the pensionary benefits of the deceased employee.

28. The contention of the learned counsel for the appellant that, both the Court have concurrently erred in decreeing the suit and confirming the same, as it is contrary to Rule 74 of the said Rules, is unacceptable. Rule 74 deals with nominations, where nominations have to be made, forms in which nominations are to be made but does not deal with disbursement of family pension. Family pension for railway servants is dealt with under Rule 75 (supra), and Rule 75(7)(i)(a) clearly mandates that the family pension shall be paid to the wives in equal shares where pension becomes payable to the widows more than one.

29. In the case on hand, both the wives of the deceased employee are legally wedded wives. Though Rule 75 does not make a distinction between legally wedded wife or otherwise, both the claimants herein are legally wedded wives of the deceased employee.

30. I am also fortified by the judgment and of a co-ordinate Bench of this Court dated 1-07-2020 in W.P.NO.111260/2017 between Smt. Shanta Sadani v. General Manager, South Western Railway, Gadag, whereby this court by its erudite judgment, after considering the law laid down by the Apex Court, declared that second wife of the deceased employee has to be treated as a widow and would consequently be entitled to pension and other service benefits of the deceased employee, in terms of afore-extracted mandate of Rule 75 of the said Rules.

31. The trial Court and the first Appellate Court after considering the matter in great detail have held that both the plaintiff and defendant No.1 are to be entitled to pension and other service benefits of the deceased employee. I do not find

any error in the concurrent findings of both the trial Court and the first appellate Court."

(Emphasis supplied)

15. The learned counsel for respondents 1 to 3 seeks to place reliance upon a Full Bench judgment of the Bombay High Court in ***KAMALBAI v. STATE OF MAHARASHTRA AND OTHERS***⁶ to buttress his submission that the Bombay High Court has clearly held that the second wife is not entitled to family pension. The learned counsel also submits that the judgment in the case of ***JAYWANTABAI*** (*supra*) has been considered and distinguished in the said case. Therefore, it becomes necessary to notice what fell for interpretation before the Full Bench. The question referred to the Full Bench is noticed in paragraph 1 which reads as follows:

"The matter is placed before this Full Bench upon the directions of the Hon'ble the Chief Justice. The reference was made by the Division Bench of this Court referring the following issue to the full bench, "In cases to which, Maharashtra Civil Services (Pension) Rules, 1982, apply whether the second wife is entitled to claim family pension ?"

(Emphasis is mine)

⁶ 2019 SCC Online Bom. 2219

The propositions canvassed are as follows:

"4. *The learned counsel for petitioners canvassed following propositions:*

- A. *Rule 116 of the Maharashtra Civil Services (Pension) Rules, 1982 (for the sake of brevity hereinafter referred as to the "Pension Rules") provides for family pension. Rule 116(6)(a)(i) of the Pension Rules provides that, if there are widows (more than one), the family pension is to be distributed amongst the surviving widows. The plain interpretation of these rules suggest that, if there are two or more widows, they are entitled for equal pension. If one of them dies, then her share should be distributed equal amongst the surviving widows. The learned counsel relies on the judgment of this Court in a case of Laxmibai Shripat Kumar v. Chief Executive Officer, Zilla Parishad, reported in 2004 (4) Mh.L.J. 330 : 2004 (6) Bom.C.R. 774. So also relies on the judgment of the Division Bench of this Court in a case of Union of India through General Manager, South East Central Bilaspura v. Smt. Jaywantabai wd/o Ramrao Kewoo in Writ Petition No. 467 of 2014. In the said case pension rules applicable to the railway employees were interpreted and this Court has held that the Hindu Personal law may not be strictly interpreted on the anvil of the Constitution of India. In the said case, it was observed that, even though second marriage would be void as per section 11 of the Hindu Marriage Act, still that would not disable the widow out of the void marriage to be entitled for the family pension. The learned counsel also rely on the judgment of this Court in a case of Kantabai w/o Dhulaji Shriram v. Hausabai Dhulaji Shriram, reported in 2015 (3) Mh.L.J. 813 and submits that, the second wife after the death of her husband is entitled for pension. It is held that, Rule 116 and its sub clauses are drafted with a definite object. The judgment in the case of Kantabai w/o Dhulaji Shriram v. Hausabai Dhulaji Shriram (supra) is confirmed by the Apex Court. Relying on the judgment in a case of Kantabai w/o Dhulaji Shriram v. Hausabai Dhulaji Shriram (supra) this Court in a case of Smt. Shakuntala w/o Gulabrao Jagtap v. State of*

Maharashtra in Writ Petition No. 11839 of 2015 [2017 MhLJ Online 79] has also held that, the second wife would be entitled for the family pension under Rule 116 of the Pension Rules.

- B. *The learned counsel further submits that, if the appropriate legislature has passed an Act under Article 309 of the Constitution, the rules framed under the proviso will have effect subject to that Act. But in absence of any Act of the appropriate legislature on the matter, the rules made by the President or by such person as he may direct shall have effect. The rules must be in force. The learned counsel rely on the judgment of the Apex Court in a case of B.S. Vadera v. Union of India, reported in AIR 1969 SC 118.*
- C. *The learned counsel submits that, when the literal interpretation of the rule is clear no addition or substitution of words is permissible. The Court would not innovate and amend or alter the statutory provision when the language is clear. The intention of the legislature is to be gathered from the language used. A construction which requires for its support, addition or substitution of words or which results in rejection of words has to be avoided. The learned counsel relies on the judgment of the J.P. Bansal v. State of Rajasthan, reported in (2003) 5 SCC 134 : AIR 2003 SC 1405. Reliance is also placed on the judgment of the Apex Court in a case of Union of India v. Deoki Nandan Aggarwal, reported in 1992 Supp (1) SCC 323 : AIR 1992 SC 96.*
- D. *The learned counsel further submits that, if literal interpretation is not accepted that would amount to legislating and it would defeat the legislative provision and make it redundant. The same is not permissible. The literal construction without causing any variance to any provision of the rule is possible. The learned counsel rely on the judgment of the Apex Court in a case of Bajya v. Smt. Gopikahai, reported in (1978) 2 SCC 542 : AIR 1978 SC 793.*
- E. *The learned counsel submit that, in the present cases, there is no specific or general reference to the personal*

law. By incorporating the provisions of the Hindu Marriage Act more particularly Sec. 5, Rule 116(6) of the Pension Rules cannot be defeated. The rules are subject to constitutional provisions alone as per Article 309 of the Constitution and not to the personal law. It will not be possible to incorporate the provisions of personal law while interpreting the pension Rules. The learned counsel submit that, the personal laws are not the laws within the meaning of Article 13(1) of the Constitution. The personal law would not prevail over the Rules framed under Article 309 of the Constitution of India. The learned counsel also relies on the judgment of the Apex Court in a case of Parayankandiyal Eravath Kanapraavan Kalliani Amma v. K. Devi, reported in (1996) 4 SCC 76 and submits that, it is not that all consequences from void marriage are prohibited or are held to be declared illegal. The legitimacy is given to the children born out of void marriage by virtue of section 16 of the Hindu Marriage Act. In such circumstances, void marriages are prohibited, but if the employee has two or more wives and if there is death of such employee, there is specific provision made under Rule 116(6)(a) of the Pension Rules for pension to the widows. Legislative intent is clear that employee may have performed second marriage contrary to Sec. 5 of the Hindu Marriage Act, but after his death, widows cannot be prohibited from sharing the pension.

- F. *It is further submitted that, no rule or provision of any other act, which has bearing on the pension rules can be incorporated for interpretation of the pension rules. If incorporation by any law is made, the purpose of framing Rule 116 of the Pension Rules would be defeated and Rule 116(6) of the Pension Rules would become redundant. Such interpretation is not permissible. The purposive interpretation is required to be made along with literal interpretation so as to give full effect to Rule 116(6) of the Pension Rules.*
- G. *It is further submitted that, the Hindu Marriage Act was codified in the year 1955. The intention of the legislation is clear and, therefore, the provisions of family pension under Rule 116(6)(a)(i) of the Pension Rules is made available and payable to more widows than one. It is*

submitted that, unless a declaration is made about void marriage under section 11 of the Hindu Marriage Act by the competent Court, the woman with whom second marriage is solemnized continues to be the wife within the meaning of Sec. 494 of the Penal Code, 1860. The learned counsel rely on the judgment of the Apex Court in a case of Deoki Panjhiyara v. Shashi Bhushan Narayan Azad, reported in (2013) 2 SCC 137 : AIR 2013 SC 346.

- H. *It is further submitted that, under Article 15(3) of the Constitution of India the State is given wide powers to make special provisions for women's and children. The learned counsel also rely on Article 39 of the Constitution of India to submit that, the State has to frame a policy towards securing that every citizen, men and women equally have a right to an adequate means of livelihood. The second wife cannot be thrown out without benefit of family pension of deceased husband. The learned counsel rely on the judgment of the Apex Court in a case of Grasim Industries Ltd. v. Collector of Customs, Bombay, reported in (2002) 4 SCC 297, so also in a case of Abhiram Singh v. Commissioner, reported in 2017 MhLJ Online (S.C.) 50 : (2017) 2SCC 629 and submit that, while interpreting the provision of a statute, it is to be seen that the intention of legislature is not frustrated. The Courts will reject that construction, which will defeat the plain intention of the legislature even though there may be some in exactitude in the language used. Reliance is placed on the judgment of the Apex Court in a case of Balram Kumavat v. Union of India, reported in (2003) 7 SCC 628. Though some amendment has been made to pension Rules, however, Rule 116(6) of the Pension Rules has not been amended. This shows the intention of the legislature.*

5. *Mrs. Gondhalekar, the learned Additional Government Pleader for respondent/State submits that, Rule 116 of the Pension Rules deals with family pension. Rule 116(6)(a)(i) of the Pension Rules provides that where family pension is payable to more widows than one, then the family pension shall be paid to the widows in equal share. It is only if, "Where" the family pension is payable to more widows than one, then only it is to be distributed in equal share. For a widow at the first instance*

she should be legally wedded wife. The word, "where" has got its own importance. A second wife whose marriage is not legal cannot be said to be a widow so as to entitle her for family pension upon the death of the Government employee. The learned Addl. G.P. relies on the judgment of the Division Bench of this Court in a case of Chanda Hinglas Bharti v. State of Maharashtra, reported in 2015 MhLJ Online 102 : 2016 (2) Bom C.R. 623. The learned Addl. G.P. also relies on the judgment of the learned Single Judge of this Court in a case of Indubai Jaydeo Pawar v. Draupada @ Draupadi Jaydeo Pawar, reported in 2017 (6) Mh.L.J. 816. The learned Addl. G.P. also relies on the judgment of this Court in a case of Deelip Shrihari Gadewar v. Government of Maharashtra, reported in 2018 (5) Mh.LJ. 129.

The decision is as follows:

"44. *I concur with the view expressed by my esteemed brother Justice Gangapurwala concluding that a woman, other than the widow (legally wedded wife), would not be entitled for pension in any share and that her minor children would be entitled for her share subject to the prescription under Rule 116(6)(a)(i) and Rule 116(b) of the 1982 Pension Rules, owing to the amendment introduced on 18-1-2016 by which the word "wife" was replaced by the words "legally wedded wife". This amendment was introduced after I had delivered the judgment in Kantabai (supra).*

45. *Nevertheless, I hold the view that both the widows (or more) would be entitled to equal shares of pension from the introduction of the 1964 New Pension Scheme, till the introduction of the MCS (Pension) Rules, 1982, in view of Rule 4(vi) and Badshah (supra). Hence, the view taken in Kantabai (supra) can be said to be applicable till the introduction of the 1982 Rules in view of the amendment dated 18-1-2016 by which the word "wife" was replaced by the words "legally wedded wife". I, therefore, deem it appropriate to hold that if any widow or widows are already being paid pension in equal shares, owing to the judgments delivered by the High Court and the Honourable Supreme Court in Badshah (supra), they should not be deprived of such shares in view of this judgment.*

Per S.M. Gavhane, J.:

46. Perused the provisions and gone through the decisions relied upon by the parties which have been referred in detail in earlier portion of the judgment of my learned brother **Justice S. V. Gangapurwala**. I have read the judgment authored by learned brother Justice S.V. Gangapurwala, as well as learned brother **Justice Ravindra V. Ghuge** who concurred with the view expressed by learned brother **Justice S. V. Gangapurwala** concluding that a woman other than widow (legally wedded wife) would not be entitled for pension in equal share and that her minor children would be entitled for her share subject to the prescription under Rule 116(6)(a)(i) and Rule 116(6)(b) of the Pension Rules.

47. Considering relevant Pension Rules particularly Rules, 111, 112, 114, Clause (I) under Rule 111(5) amended on 18-1-2016 by which the word 'wife' was replaced by the word "legally wedded wife" and Rule 116(6)(a)(i) referred in earlier part of the judgment and decision of the Apex Court in the case of Rameshwari Devi v. State of Bihar (supra), wherein it was considered that the woman in void marriage is not a widow, I concur with the view expressed by my learned brother **Justice S.V. Gangapurwala** that the second wife in general parlance would not be entitled for family pension unless she is legally wedded wife. A second wife who is not legally wedded wife would not be entitled for family pension under Rule 116 of the Pension Rules. However, a second wife if is legally wedded wife would be entitled for family pension, Rule 116(6)(a)(i) of the Pension Rules cannot be read de hors the concept of legally wedded wife and that the view taken by the Division Bench in the case of Chanda Hinglas Bharti v. State of Maharashtra (supra), Ramabai Gulabrao Janmik (supra) and the view of the learned single Judge in the case of Indubai Jaydeo Pawar (supra) appears to be correct view.

Reference answered accordingly."

The Rule that fell for interpretation was whether the Maharashtra Civil Services (Pension) Rules, 1982 would entitle a second wife to

claim family pension. The propositions were advanced by the respective learned counsel therein contending that the Maharashtra Civil Services (Pension) Rules 1982 did not permit second wife to get family pension. While so considering, the judgment in the case of **JAYWANTABAI** was also considered. It is held that the Rules applicable to Railway employees were interpreted by the very Court which may not be strictly applicable to the Pension Rules that fell for interpretation of Maharashtra Civil Service. Therefore, what fell for consideration and what was considered were entirely different and not the Railway Services (Pension) Rules. There is no judgment placed on record by the learned counsel for respondents 1 to 3 that has distinguished or reversed the view taken by the Division Bench of the Bombay High Court in the case of **JAYWANTABAI**. All other judgments that are relied on by the learned counsel for respondents 1 to 3 were all concerning their respective pension Rules and not the Railway Pension Rules. Therefore, they need not bear any reference or consideration except the ones that are quoted hereinabove. The Railway Services (Pension) Rules, 1993 operate in a different scenario altogether. Therefore, all the judgments that

the learned counsel for respondents 1 to 3 has relied on are distinguishable without much *ado* on the score of their inapplicability to the fact situation.

16. Pension is, trite, paid in terms of the Rules. Whatever Rule that is applicable for grant of pension would be invoked for payment of pension or otherwise. Therefore, rights of the employees or their family will always depend on the Pension Rules. ***If there are no Rules, there is no pension. If there are Rules, pension will be paid in accordance with Rules.*** The Rules in the case on hand are the ones quoted hereinabove. The Rule clearly gives a right to one or more widow to claim family pension and that family pension is to be divided into equal share among the widows of the deceased employee. This would be in the event if there are more than one wife of the deceased Railway servant. These Rules come about by way of an amendment in the year 2016 and the Rules have been held to be in furtherance of the avowed objectives depicted in the Constitution of India.

17. Article 15 of the Constitution of India, the Division Bench of the High Court of Bombay holds, prohibits discrimination on the ground of sex, while Article 39(a) provides for securing adequate means of livelihood for men and women equally. Article 39(e) provides for ensuring health and strength for women, *a caveat*, this would be granted considering interpretation of the provisions of certain personal law or the Service Rules. The Pension Rules recognize equal share in family pension in such a situation. Therefore, the petitioner also becomes entitled to 50% of the family pension. A word of caution again is that the petitioner is held entitled only on the ground that the Rules give a right to the petitioner. If the Rules did not envisage a situation like this and did not provide for family pension, the petitioner would not be entitled for family pension.

18. Wherefore, the petitioner becomes entitled to succeed, for issuance of a direction holding that the petitioner is entitled to 50% of the family pension only in terms of the aforesaid Rules. The concerned Court fell in error in not directing 50% of pension to be paid to the petitioner. Except the family pension, as considered in

the course of the order, all other benefits that the rival claimants are claiming will be subject to the decision of the concerned Court in O.S.No.162 of 2021. The 4th respondent shall disburse 50% of the family pension in favour of the petitioner also.

19. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is allowed in part.
- (ii) There is no warrant to interfere with the order dated 29.07.2022 passed by the VI Additional Principal Judge, Family Court, Bengaluru on I.A.No.II in O.S.No.162 of 2021 in respect of 50% of family pension to be paid to respondents 1 to 3.
- (iii) The petitioner is held entitled to 50% of the family pension. The Railways are directed to disburse 50% of the family pension to the petitioner.
- (iv) All other claims between the respective parties except family pension shall be subject to the outcome of O.S.No.162 of 2021.

- (v) The pension so directed to be paid to the respective parties be disbursed by the 4th respondent/Railways in equal share within 2 weeks from the date of receipt of a copy of this order.

Consequently, I.A.No.1 of 2022 also stands disposed.

**Sd/-
JUDGE**

bkp
CT:SS