

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 8760 OF 2014

RADHABAI SHIVAJI WAGH (BHAG)
VERSUS
THE UNION OF INDIA AND OTHERS

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Advocate for Petitioner : Mr. Chavan Sanjaykumar B.
ASG for Respondents : Mr. Deshpande Sanjeev B.

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CORAM : **S. V. GANGAPURWALA and
V.L. ACHLIYA, JJ.**

DATE : 12th January, 2015.

P.C.:

1 Mr.Chavan, learned counsel submits that the Petitioner is entitled for the family pension. The Petitioner had joined in the Indian Army as Sepoy on 19th July, 1979. According to the learned counsel, the husband of the Petitioner died in the year 1993. The Petitioner is entitled for the family pension. According to the learned counsel, the Petitioner died when in service. The learned counsel submits that the Armed Forces Tribunal, Divisional Bench at Aurangabad, has wrongly considered the case of the Petitioner.

2 The learned counsel relies on the judgment of the Apex Court in the case of **Union of India & Ors. Vs. Jujhar Singh**, reported in, **[2011(4) ALL MR 918 (S.C.)]**.

3 Mr.Deshpande, learned ASG submits that the Petitioner was in service only upto 2nd March, 1984. Thereafter, he deserted the Army in the year 1984 itself and he was dismissed. He was declared deserter. As the minimum service required for being qualified for pension is 15 years. The Petitioner had not completed 15 years of service.

4 It is not disputed that the Petitioner's husband had joined the services in the year 1979. It has also being stated on affidavit that the Petitioner's husband was vide order dated 19th October, 1983, awarded 12 days pay fine for the offence under the Army Act Section 39(b) "without sufficient cause overstaying leave granted to him". The Petitioner's husband was granted 47 days balance of annual leave w.e.f. 16th January, 1984 to 2nd March, 1984, and thereafter he did not rejoin the duties on expiry of the above balance of annual leave. He again committed offence under Section 39(b) of the Army Act. It is further being averred in the affidavit that the Petitioner's husband did not rejoin voluntarily nor the civil police could apprehend him. He was declared as deserter and struck off active strength of Army w.e.f. 3rd March, 1984 under above provisions by constituting Court of Inquiry held on 13th April, 1984 at the filed. As such, he did not rejoin the services after 1984.

5 Considering the aforesaid aspects of the matter, the Petitioner's husband was not entitled for the benefit of the pension as he has not completed qualifying years of service. Even the original application filed

in the Armed Forces Tribunal was in the year 2014. The husband of the Petitioner had died in the year 1993. No explanation is forthcoming for not claiming any relief for the long slumber of 20 years.

6 Considering all aforesaid aspects of the matter, the writ petition cannot be entertained. The writ petition is disposed of. No costs.

[V.L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]

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