

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

WRIT PETITION NO. 1884 OF 2012

Smt. Vimalbai Supdu Patil,
 age 70 years, occ. Household,
 R/o 36 Rooms, Shivaji Nagar,
 Amalner, Taluka Amalner,
 District Jalgaon

...Petitioner

VERSUS

1. The State of Maharashtra,
 through the Ministry of
 Village Development,
 Mantralaya, Mumbai,
 2. The Zilla Parishad, Jalgaon,
 Jilla Parishad Bhavan, Jalgaon
 (Notice may kindly be served on
 the Chief Executive Officer,
 Zilla Parishad, Jalgaon),
 3. The Panchayat Samiti, Amalner,
 Panchayat Samiti Office, Amalner
 (Notice may kindly be served on
 the Block Development Officer,
 Amalner)
- ...Respondents

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Shri M.M.Bhokariker, advocate for petitioner
 Shri A.G.Magare, A.G.P. for respondent no.1
 Shri M.S.Sonwane, advocate for respondent nos. 2 and 3

.....

CORAM : S.S.SHINDE

AND

SANGITRAO S.PATIL, JJ.

DATE OF RESERVING

THE JUDGMENT

: 16.6.2016

DATE OF PRONOUNCING

THE JUDGMENT

: 24.6.2016

JUDGMENT (Per Santigrao S.Patil, J.)

Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.

2. The petitioner has challenged the validity of rejection of her claim for family pension made upon the death of her son namely Deelip Supdu Patil in harness.

3. The son of the petitioner was serving as a Gram Sevak since 3rd April, 1984. He was the permanent employee of respondent nos. 2 and 3 namely Zilla Parishad, Jalgaon and Panchayat Samiti, Amalner, respectively. He died on 29th January, 2007 in harness. The petitioner is the only Class I legal heir of her son. Accordingly she obtained heirship certificate from the Tahsildar on 21st March, 2007. On the basis of that certificate she was paid an amount of Rs.1,41,450/- towards gratuity vide order dated

30th September, 2008. Being the only legal heir of her deceased son and being wholly depending on him for livelihood, the petitioner claimed family pension. However, her claim for family pension came to be rejected on the sole ground that she does not come within the definition of 'family' as given in clause (b) of sub-rule (16) of Rule 116 of the Maharashtra Civil Services (Pension) Rules, 1982 ('the Pension Rules' for short).

4. The learned counsel for the petitioner submits that grant of family pension to the dependents of the deceased employee is an outcome of beneficial legislation. He submits that as per the Family Pension Scheme 1950 given in Rule 117, in the absence of the members of the family of the deceased Government servant as described in clause (a) of sub-rule (6), the family pension may be granted to the father and if father is not alive then to the mother of the Government servant vide clause (b) of sub-rule (6). He further submits that as per the Extra Ordinary Family Pension

Scheme enumerated in Appendix IV of the Pension Rules of 1982 in the absence of the members of the family of the Government servant as described in clauses (i) to (iv) of sub-rule (3) of Rule 4, family pension can be awarded to the mother depending upon the deceased Government servant for support. However, under the same circumstances as per the provisions of Family Pension Scheme of 1964 as contained in Rule 116 of the Pension Rules the mother of the deceased Government servant has been denied such a relief by not including her in the term 'family' as given in clause (b) sub-rule (16). He submits that this amounts to discrimination under Article 14 of the Constitution of India.

5. The learned counsel for the petitioner cited the decision in the case of **Kunhami vs Union of India (Uoi) (2006 (2) KLT 661)**, based on Regulation 216 of the Army Regulations, which includes mother of the deceased employee in the definition of family. In that case, consequent

upon remarriage of the widow of the deceased employee his mother was granted family pension.

6. The learned counsel further pointed out the Resolution, dated 22nd January, 2015 passed by the Government of Maharashtra, Department of Finance, whereby in the absence of the relations of the deceased employee having preferential right to get family pension, the mother of such single Government employee, wholly depending on him, has been held to be eligible to get family pension under Rule 116 of the Pension Rules. He, submits that the deceased son of the petitioner died as a single Government servant, in the sense, he was the only surviving child of the petitioner and had no surviving spouse and children as clarified in the Government Resolution dated 22nd January, 2015. He, therefore, submits that the petitioner cannot be subjected to discrimination by refusing to grant family pension in view of this Government Resolution as well.

7. As against this, the learned Assistant Government Pleader relying on the reply filed by respondent no.3 and in view of the provisions of Rule 116 (16) of the Pension Rules submits that since the petitioner, who is the mother of the deceased Deelip, does not fall within the definition of 'family', is not entitled to get family pension, though the deceased Deelip was the single Government servant and the petitioner is his only Class I legal heir.

8. Indeed Rule 116 of the Pension Rules contains benevolent provisions framed with the object of extending financial assistance to the eligible member of the family of the deceased employee depending on him, who is put to suffer a great hardship after the demise of the sole earning member of the family. Consequently such benevolent provisions have to be interpreted liberally so as to achieve the object behind framing such provisions.

9. As seen from Sub-rule (1) of Rule 117 the provisions of this Rule are applicable to a Government servant who was in service on 31st December, 1963 and had specifically opted for the scheme of Family Pension, 1950, admissible under the Revised Pension Rules, 1950 in Appendix XIV-C of the Bombay Civil Services Rules, 1959, Volume II, as amended from time to time.

10. Rule 62 (8) of the Pension Rules defines Extra Ordinary Family Pension which is granted to the family of the deceased Government servant under the Rules contained in Appendix IV.

11. In both of these Schemes the term 'family' includes, amongst others, the mother of the deceased Government servant. She is entitled to get family pension in case she is wholly depending on the deceased Government servant for support and no other member of the family of the deceased Government servant, who is vested with a prior right to receive family pension than the mother,

is surviving. However, 'mother' has been excluded from the definition of 'family' in the Family Pension Scheme, 1964 enumerated in Rule 116 of the Pension Rules.

12. There is absolutely no rationale or justification behind excluding the mother from the definition of 'family' in the Family Pension Scheme 1964. The mother of the deceased Government servant, who is otherwise entitled to receive family pension under the Family Pension Scheme 1950 (Rule 117) or under Extra Ordinary Family Pension Scheme (Appendix IV), thus, has been discriminated by denying her the same right to receive family pension vide Rule 116 of the Pension Rules. In our view, this denial of right to the mother of the deceased Government servant to receive family pension under the Family Pension Scheme 1964 (Rule 116) amounts to discrimination and as such would infringe the fundamental right to equality as enshrined in Article 14 of the Constitution of India.

13. Here reference may be made to the Government Resolution No.PEN 2011/CR-54/Seva-4, dated 22nd January, 2015 published by the Government of Maharashtra, Finance Department, whereby mother of the deceased Government servant, who is wholly dependent on him, has been held to be entitled to get family pension if other family members of the deceased Government servant, who have a prior right to receive family pension, are not surviving. This Government Resolution has been made applicable to the employees of the Maharashtra Zilla Parishads vide proviso to Section 248 of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961.

14. In the 'Introduction' part of the said Government Resolution it is mentioned that since the definition of the term 'family' under the existing Pension Rules does not cover parents of a Government servant, as a social security measure the scope of the term 'family' defined under Pension Rules has to be enlarged restrictively by

amending the Rules suitably to include into its ambit the wholly dependent parents of a single Government servant. In clause (11) of the said Government Resolution it has been mentioned that a formal amendment to the Maharashtra Civil Services (Pension) Rules, 1982 will be made in due course. This Government Resolution fortifies our view that there was no rationale or justification in excluding the parents of the deceased Government servant from the term 'family' as given in the Family Pension Scheme 1964 (Section 116). Therefore, the decision of the respondents in denying family pension to the petitioner, who is the only surviving family member of deceased Deelip, who is stated to be wholly dependent on him for livelihood, is not sustainable since it has the effect of discriminating the petitioner and depriving her of the fundamental right to equality as enshrined in Article 14 of the Constitution of India.

15. In the above circumstances, the respondents will have to be directed to reconsider the case of the petitioner for grant of family pension under Rule 116 of the Pension Rules of 1982 considering the object of the Pension Scheme, 1964. The respondents should take liberal approach and should not turn down the request of the petitioner for grant of family pension on technical grounds.

16. In the result, we pass the following order.

(i) The Writ Petition is allowed.

(ii) The petitioner shall submit a fresh proposal for family pension before respondent no.3 within two weeks from today.

(iii) Respondent no.3 shall send the necessary proposal of the petitioner for family pension to respondent no.2 within four weeks from receiving the same from the petitioner. On receiving the said

proposal, respondent no.2 shall consider the claim of the petitioner for grant of family pension on its own merits and take decision thereon within four weeks, in view of the provisions of Rule 116 of the Family Pension Scheme, 1964 from the date of death of her son Deelip i.e. 29th January, 2007 onwards. However, the said claim should not be rejected on the ground that she does not fall within the ambit of the term 'family' as contained in clause (b) sub-rule (16) of Rule 116 of the Pension Rules.

(iv) With these directions the Writ Petition is disposed of.

(v) Rule is made absolute accordingly.

(vi) No costs.

(SANGITRAO S. PATIL)
JUDGE

(S.S.SHINDE)
JUDGE