

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

WRIT PETITION No.803 OF 2016

Laxmibai Uttam Potdar,
Age : 55 years, Occ. Household,
r/o. Panchal Colony, Nanded Naka,
Udgir, Tq. Udgir, Dist. Latur ..Petitioner

Vs.

1. The State of Maharashtra,
Through its Secretary,
Agricultural, Animal Husbandry,
Dairy Development and Fisheries
Department, Mantralaya,
Mumbai – 32
2. The Regional Dairy Development
Officer, Aurangabad,
Tq. and Dist. Aurangabad
3. The General Manager,
Government Milk Scheme,
Parbhani ..Respondents

--

Mr.A.V.Patil (Indrale), Advocate for the
petitioner

Mr.A.V.Deshmukh, AGP for respondent nos.1 to 3

--

CORAM : S.S. SHINDE AND

SANGITRAO S. PATIL, JJ.

RESERVED ON : JULY 19, 2016

PRONOUNCED ON : AUGUST 08, 2016

JUDGMENT (PER SANGITRAO S. PATIL, J.) :

Heard.

2. Rule. Rule made returnable forthwith.

Heard finally with consent of the parties.

3. The husband of the petitioner namely, Uttam Dattatray Potdar (hereinafter referred to as "the deceased Uttam") came to be appointed as a Dairy Attendant (Class-IV) with respondent no.3 vide order dated 07.05.1975. He resumed his duties as such on 29.05.1975. He got promoted to the post of Junior Clerk (Class-III) vide order dated 08.05.1984 and actually resumed his duties as such on 14.05.1984. He was continuously serving with respondent no.3. He was suffering from Tuberculosis with Bronchitis and other associated ailments. Due to that, he could not remain present to perform his duties with effect from 28.10.1991 to 27.03.2008. He produced Medical Certificates

from time to time in respect of the ailments suffered by him, which compelled him to be absent from duties for recovery therefrom. Ultimately, he was found fit to resume duties and accordingly, he resumed duties on 28.03.2008. He retired on attaining the age of superannuation on 31.03.2008.

4. It is the case of the petitioner that respondent no.3 ought to have prepared pension papers of deceased Uttam well in advance prior to the date of his attaining the age of superannuation. However, respondent no.3 did not prepare the pension papers and on the contrary, avoided to do so, on one ground or another. The deceased Uttam was subjected to financial hardship and inconvenience. Even after his demise on 29.04.2015, respondent no.3 did not take steps to grant family pension to the petitioner. On the contrary, the claim of the petitioner for grant of family pension was tried to be ignored without

there being any satisfactory and justifiable reason.

5. The learned Counsel for the petitioner, on the strength of the contents of the petition as well as the documents produced on record, submits that the respondents are bound to take necessary steps to grant pension to the deceased Uttam and family pension to the petitioner as per the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 (for short "Pension Rules"). He, therefore, prays that the respondents may be directed to take necessary steps to grant pensionary benefits to the deceased Uttam and family pension to the petitioner and release the arrears of the pensionary benefits as well as family pension to the petitioner, at the earliest.

6. Respondent nos.1 to 3 filed reply and opposed the petition. Relying on the contents of

the said reply, the learned AGP submits that the deceased Uttam unauthorisedly remained absent from his duties continuously from 28.10.1991 to 27.03.2008 (for about 17 years). The Medical Certificates produced by him were required to be countersigned by the Civil Surgeon concerned. However, he did not get the said certificates countersigned by the Civil Surgeon concerned. Consequently, leave could not be sanctioned in his favour on the basis of those certificates. The period of absence of the deceased Uttam is required to be regularised by the Government. He submits that had the said Medical Certificates been countersigned by the Civil Surgeon, the claim of the petitioner for pensionary benefits as well as the family pension could have been forwarded to the Accountant General. He further submits that the name of the petitioner has not been mentioned as a nominee of the deceased Uttam in his Service Book. This, according to him, is

one of the hurdles in the way of the petitioner in getting family pension. He submits that after regularisation of the period of absence of deceased Uttam, his Service Book will have to be got verified from the Pay Verification Unit, Aurangabad and thereafter, the claim of the petitioner for pension/family pension can be forwarded to the Accountant General for sanction of the said benefits. He tried to demonstrate that it was because of the inaction on the part of the deceased Uttam and that of the petitioner in complying with the necessary requirements, that there has been delay in forwarding the pension papers of the deceased Uttam to the Accountant General, Nagpur. He, therefore, submits that the Writ Petition may be dismissed.

7. There is no dispute that the deceased Uttam joined the service of respondent no.3 as a Dairy Attendant on 29.05.1975. He got promoted to

the post of Junior Clerk with effect from 14.05.1984. He became permanent employee of respondent no.3. He remained absent from duties due to his illhealth. There is a Medical Certificate issued by the Medical Officer, District T.B. Centre, Bidar, which has been countersigned by the Civil Surgeon, wherein it is mentioned that the deceased Uttam was suffering from Tuberculosis, Bronchitis and the period of his absence from duties for 765 days with effect from 28.10.1991 to 30.11.1993 was absolutely necessary for recreation of his health. Thus, the said certificate makes it clear as to how, serious ailments were being suffered by the deceased Uttam. There are two more certificates produced on record, which were issued by Dr.Arun Daithankar, T.B. Expert and Dr.A.M.Khan, M.D. (Medicine), respectively, issued on 26.12.2007 and 27.03.2008, respectively, wherein also, there is specific mention of the serious ailments suffered

by the deceased Uttam, which compelled him to remain absent from the duties for recovery of his health. The said certificates pertain to the period from 09.06.1994 to 26.12.2007 and 27.12.2007 to 27.03.2008, respectively.

8. If the contents of the above-mentioned certificates are taken into consideration, it cannot be said that the deceased Uttam deliberately or intentionally remained absent from his duties without there being any compelling reason. As seen from the certificate issued by the Medical Officer, District T.B. Centre, Bidar, which was countersigned by the District T.B. Surgeon, Bidar, it is clear that the deceased Uttam was suffering from Tuberculosis. The said disease and other associated ailments have been referred to in the subsequent certificates issued by the private medical practitioners. Countersigning of the said Medical Certificates by

the Civil Surgeon of the District was essential for the purpose of verifying the genuineness of the ailments suffered by the deceased Uttam and to confirm that his absence from duties was, therefore, essential for his recovery from those ailments. It is a rule of caution to get the medical certificate countersigned from the Civil Surgeon so that a Government Servant would not proceed on leave without any ailment compelling him to remain absent from the duties and seek regularisation of his leave period on mere production of the Medical Certificate. In the Medical Certificate dated 26.12.2007, it was specifically mentioned that the deceased Uttam was suffering from Tuberculosis with Bronchitis. It was also mentioned that he was suffering from fever, tingling numbness in both legs, inability to walk with paraplegia etc. In the certificate dated 27.03.2008, it was mentioned that the deceased Uttam was suffering from hepatitis with

severe anemia with acute pains with fever and loss of appetite. The ailments suffered by deceased Uttam by themselves would have spoken for the circumstances compelling him to remain absent from the duties for recovery of his health. With such obvious and self-speaking features of physical inability of the deceased Uttam to attend the duties, in our view, it was not compulsory /necessary for respondent no.3 to ask the deceased Uttam to get the said Medical Certificates countersigned by the Civil Surgeon. There was no reason to doubt the genuineness of the contents of the said medical certificates considering the actual physical health of the deceased Uttam.

9. In view of the above referred certificates, it was not difficult for respondent no.3 to grant necessary leave to the deceased Uttam for the period from 28.10.1991 to 27.03.2008. The insistence on the part of

respondent no.3 for countersigning of the said medical certificates through the Civil Surgeon was not reasonable and justifiable in the circumstances of the present case.

10. As per Rule 120 of the Pension Rules, every Head of Office shall undertake the work of preparation of pension papers in Form 6 in respect of Non-gazetted Government servant as well as Gazetted Government servant, whose pay and allowances are drawn by him on establishment bills, two years before the date on which they are due to retire on superannuation; or on the date on which they proceed on leave preparatory to retirement, whichever is earlier. In the present case, respondent no.3 does not seem to have taken up this exercise of preparation of pension papers well in advance. It was necessary for respondent no.3 to prepare the pension papers in Form 6 in respect of the deceased Uttam so as to avoid delay

in releasing pensionary benefits to the deceased Uttam.

11. So far as the claim of the petitioner for family pension is concerned, her case would be governed by the Family Pension Scheme of 1964 as enumerated in Rule 116 of the Pension Rules. As per Rule 116(16)(b), the petitioner being the widow of the deceased Uttam, would fall within the definition of "Family" and would be entitled to get family pension since after the demise of the deceased Uttam. She is further entitled to get death gratuity also. The Service Book of the deceased Uttam shows that the petitioner has been named as "nominee" of the deceased Uttam for receiving benefits under the Government Employees' Group Insurance Scheme, 1982. No other relation of the deceased Uttam has made any claim for getting any retiral benefits, family pension, death gratuity etc. There is no dispute that the

petitioner being the widow of the deceased Uttam is entitled to get all the pensionary benefits which were payable to the deceased Uttam. Respondent no.3 was not justified in asking the petitioner to produce succession certificate for getting the retiral benefits of the deceased Uttam or for getting the family pension as well.

12. In the above circumstances, we are of the considered view that the respondents shall consider the medical certificates produced by the deceased Uttam and on the basis of those certificates, grant whatever leave that was admissible to the deceased Uttam and regularise the period of his absence from 28.10.1991 to 27.03.2008. If the need be, respondent nos.2 and 3 may move respondent no.1 for sanction of leave and regularisation of the period of absence of the deceased Uttam. The respondents shall further take necessary steps to get verified the Service Book

of the deceased Uttam from the Pay Verification Unit, at the earliest. The respondents shall take all necessary steps as expeditiously as possible to enable the petitioner to get the pensionary benefits payable to the deceased Uttam and also the family pension payable to her.

13. In the result, we pass the following order :-

(i) The Writ Petition is allowed.

(ii) Respondent nos.1 to 3 shall consider the Medical Certificates produced by deceased Uttam and take necessary steps to regularise or get regularised the absence of the deceased Uttam from duties from 28.10.1991 to 27.03.2008.

(iii) The respondents shall take all necessary steps as expeditiously as possible and within four months from today to enable the petitioner to

receive the pensionary benefits which were payable to the deceased Uttam and also to get the family pension since after his demise.

(iv) Rule is made absolute in the above terms.

(v) No costs.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

kbp