

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1090 OF 2016

Smt. Pushpa w/o. Balasaheb Murkute ..Petitioner

versus

The State of Maharashtra
and ors.

..Respondents

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Mr.Abhishek Deshpande, advocate i/b.
Mr.S.B.Sontakke, advocate for petitioner

Mr.V.S.Badakh, AGP for respondent nos.1 to 3 -
State

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**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
DATE : MARCH 29, 2016**

PER COURT :

Heard learned counsel appearing for the
petitioner and learned AGP for respondents -
State.

2] Learned counsel for the petitioner has invited
our attention to the prayer clauses in Original
Application No.499 of 2001 and submitted that

there was no prayer for grant of pension in the said Original Application. He further submitted that said Original Application was filed seeking directions to the respondents to appoint the petitioner/applicant on compassionate ground in a Class-III or Class-IV post. Therefore, according to the learned counsel for the petitioner, Original Application No.309 of 2012 filed by the petitioner praying therein for grant of pension, should not have been rejected on the ground that said claim was hit by principles of *res-judicata* since the claim was considered in Original Application No.499 of 2001.

3] Learned counsel for the petitioner further submitted that while deciding Original Application No.499 of 2001, the Maharashtra Administrative Tribunal travelled beyond the pleadings and prayers made in the application and held that the petitioner/applicant was not entitled for grant of

pension. He submitted that the petitioner may be granted liberty to amend this petition so as to take exception to the order dated 9th November, 2001 passed by the Maharashtra Administrative Tribunal in Original Application No.499 of 2001.

4] Learned AGP relying on the reasons assigned by the Maharashtra Administrative Tribunal in the order dated 9th November, 2001, submitted that the Tribunal has already held that the petitioner is not entitled for grant of pension. He submitted that the said order passed by the Maharashtra Administrative Tribunal is a reasoned order and the findings recorded in the said order remained unchallenged. He therefore submitted that it is not open for the petitioner to take exception to the said order in the present petition. He submits that the reasons given by the Maharashtra Administrative Tribunal while rejecting M.A. No.95

of 2012 in Original Application (St.) No.309 of 2012 needs no interference by this Court.

5] We have given careful consideration to the submissions advanced by learned counsel for the petitioner and learned AGP for respondent – State. With their able assistance, we have perused the pleadings in the petition, annexures thereto and in particular, the order dated 9th November, 2001 passed by the Maharashtra Administrative Tribunal in Original Application No.499 of 2001. In the said order, the Maharashtra Administrative Tribunal has observed, thus :-

“2. Admittedly the husband of the applicant while in service, was convicted for offence u/s. 85 of the Bombay Prevention Act. The said conviction was confirmed by the High Court. The employee died during pendency of the Criminal Appeal before High Court. The said employee never retired from service.

Applicant being a widow of the said employee is claiming pension on compassionate ground. No pension is permissible/admissible for a person or dependents of a person who never retired from service or died in service. In fact, the employee in the instant case was liable for dismissal from service. The question of granting pension does not arise. Petition is meritless. Dismissed."

6] Upon perusal of the observations/findings recorded by the Maharashtra Administrative Tribunal, it is abundantly clear that the question of grant of pension has gone into by the Maharashtra Administrative Tribunal on merit and it was held that, the petitioner was not entitled for grant of pension. Admittedly, the findings recorded by the Tribunal has attained finality in as much as the petitioner has not taken exception to the said order. In that view of the matter, we are unable to persuade ourselves to grant any

relief in the present petition since the issue raised in the petition is set at rest by the Maharashtra Administrative Tribunal in Original Application No.499 of 2001.

7] For the aforesaid reasons, we do not find any substance in the present Writ Petition. Hence, the Writ Petition is dismissed.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

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