

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

WRIT PETITION NO. 1494 OF 2005

Aruna W/o Dinkar Mane,
Age : 38 Years, Occu. : Service,
R/o Ban Karanja, Tq. Kaij,
Dist. Beed. .. Petitioner

Versus

1. The Chief Executive Officer,
Zilla Parishad, Beed.
2. Assistant Commissioner (Enquiry)
Commissioner Office,
Aurangabad.
3. State of Maharashtra,
Rural Development and Water
Conservation, Mantralaya,
Mumbai. .. Respondents

Mrs. Kalplata Patil Bharaswadkar, Advocate for the Petitioner.
Shri U. B. Bondar, Advocate for the Respondent No. 1.
Mrs. M. A. Deshpande, A. G. P. for Respondent Nos. 2 and 3.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 30TH NOVEMBER, 2016.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The departmental enquiry was initiated against the husband of the petitioner. Before the said departmental enquiry

could be concluded, husband of the petitioner died. The disciplinary authority though observed that, the proceeding stands closed, directed recovery of amount from the retiral benefits. The said order is assailed in the present writ petition.

2. Mrs. Bharaswadkar Patil, the learned counsel for the petitioner submits that, the husband of the petitioner died on 05th February, 2002. Till that time the enquiry proceedings were not concluded, as such no order could have been passed imposing punishment upon the husband of the petitioner for recovery of any amount. The said order is illegal. The learned counsel relies on the judgment of the Division Bench of this Court in a case of Hirabai Bhikanrao Deshmukh Vs. State of Maharashtra and others reported in (1985) *ILLJ* 459 Bom.

3. Mr. Bondar, the learned counsel for the respondent No. 1/Zilla Parishad submits that, the husband of the petitioner was placed under suspension in the year 1992. The enquiry commenced against the husband of the petitioner in the year 1992. The husband of the petitioner did not co-operate in the said enquiry and remained absent. In June 2002 enquiry report was submitted by the enquiry officer. However before the submission of the enquiry report, the husband of the petitioner died. The proceedings were closed. The establishment is entitled to recover amount of which loss is sustained. The learned

counsel relies on Rule 72 (2) of the Maharashtra Civil Services (Joining Time, Foreign Service, Payment During Suspension, Dismissal and Removal) Rules 1981 (for short "Rules of 1981). The learned counsel also places reliance on Rule 65 of the Rules of 1981. According to the learned counsel, the show cause notice with memorandum of article of charges was served upon the delinquent i. e. husband of the petitioner with regard to misappropriation of Rs. 8,11,898/-. The deceased husband of the petitioner did not even file reply to the said show cause notice, nor attended various dates. The order of recovery of misappropriated amount from the family pension and other retiral benefits of the deceased husband of the petitioner has been rightly ordered by the respondent authorities.

4. We have also heard the learned Additional Government Pleader for respondent Nos. 2 and 3.

5. The factum of the departmental enquiry being initiated against husband of the petitioner and that before conclusion of the departmental enquiry, the husband of the petitioner having died is not disputed. The order impugned itself states that, the disciplinary proceedings were closed on account of death of the husband of the petitioner on 05.02.2002. Rule 72(2) of the Rules of 1981 relied by the learned counsel for the respondent No. 1 would not come to the aid of the respondents. But on the other

hand would assist the petitioner. Rule 72(2) of the Rules of 1981 reads as under :

The Maharashtra Civil Services (Joining Time, Foreign Service, Payment During Suspension, Dismissal and Removal) Rules 1981

72 Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc. and treatment of period as spent on duty.

1.

2. Notwithstanding anything contained in rule 68, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not suspended, subject to adjustment in respect of subsistence allowance already paid.

6. Reading the said rule, it is manifest that, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family be paid full pay and allowances for that period to which he would have been entitled had he not suspended. The said provisions would enure to the benefit of the petitioner.

7. The Division Bench of this Court in a case of Hirabai Bhikanrao Deshmukh Vs. State of Maharashtra and others referred to supra has considered *parimateria* provision of the Bombay Civil Services Rules and held that, members of the family of deceased are entitled as of right to have full pay and allowances which were payable to the deceased.

8. As the disciplinary proceedings were not concluded, the respondents could not have imposed penalty upon the deceased husband of the petitioner inter alia of recovering any amount in absence of any civil or other proceedings filed for adjudicating the claim.

9. In the light of the above, the impugned order is quashed and set aside. The respondents shall refund the amount deducted from the family pension, gratuity, general provident fund pursuant to the impugned order if any within a period of six (06) months from today, failing which the respondents will be liable to pay interest on the said amount at the rate of 9% per annum.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[K. L. WADANE, J.]

bsb/Nov. 16

Sd/-

[S. V. GANGAPURWALA, J.]