

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8139 OF 2016

Asha Vithal Bondalwad

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

Shri H. B. Nandgawale h/f Shri Vijay G. Sakolkar, Advocate for the Petitioner.

Shri S. G. Karlekar, A.G.P. for the Respondent No. 1.

Shri Nitin S. Kadam, Advocate for Respondent Nos. 2 and 3.

**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATE : 16th November, 2017

PER COURT :

1. Mr. Nandgawale, the learned counsel for the petitioner submits that the husband of the petitioner late Vitthal Govindrao Bondalwad was working as Gram Sevak in Zilla Parishad since 15.3.1990, while on duty he died on 5.5.2014 due to heart attack. At the relevant time he was working with Panchayat Samiti, Mahur. He had rendered total service of 24 years 1 month and 21 days.

2. The learned counsel submits that on or about 1.7.2013 the husband of the petitioner was placed under suspension on the charge of misappropriation of amount of grant of toilet to be paid

to the beneficiaries of below poverty line, so also, not doing work of anganwadi at Gram Panchayat, Madanapur, continuous absence from monthly and weekly meetings. The learned advocate submits that enquiry was inconclusive and before the enquiry could be completed the petitioner's husband died. Prior to his death the respondent No. 2 revoked the suspension of the husband of the petitioner on 25.11.2013 and he was reinstated. The learned counsel submits that the retiral benefits payable to the husband of the petitioner are not paid. The amount of gratuity is withheld. According to the learned advocate, the decision of the respondents of recovery is illegal. The respondents be directed to pay the entire pensionary benefits with interest.

3. Mr. Kadam, the learned advocate for the respondents submits that enquiry was initiated against the husband of the petitioner for grave charges of misappropriation. Unfortunately, before the completion of the enquiry husband of the petitioner died. There are government dues recoverable from the petitioner. The total dues recoverable are to the tune of Rs.5,91,601/-, the same is required to be recovered from the gratuity payable to the petitioner. The amount of gratuity payable to the petitioner is much less than the amount to be recovered by the department. The decision has been rightly taken by the respondents. The Extension Officer, Panchayat Samiti, Mahur has given the details. The panchnama shows the incomplete work.

4. We have considered the submission canvassed by the learned counsel for respective parties.

5. The factual matrix about the length of service rendered by the husband of the petitioner with the respondent is not disputed. Prior to the death of the husband of the petitioner, husband of the petitioner was reinstated in service on revocation of his suspension. The departmental enquiry initiated against the husband of the petitioner on the ground of misappropriation remained inconclusive.

6. It need to be considered that there is no adjudication of whatsoever nature thereby implying liability of an ascertained sum against the petitioner's husband. In case, the enquiry would have been concluded then the amount liable to be paid by the husband of the petitioner would have been ascertained. In absence of the incomplete enquiry there is no finding of misappropriation on the part of the husband of the petitioner. On death of an employee the enquiry cannot proceed further and the enquiry culminates.

7. In view of the aforesaid it cannot be said that the department has arrived at an ascertained sum to be claimed as 'Government dues' from the husband of the petitioner. Rule 132, 133, 141 and 142 of The Maharashtra Civil Services (Pension) Rules, 1982 (*hereinafter referred as 'M.C.S. (Pension) Rules, 1982'*), would not inure to the benefit of the respondents. The

phraseology 'Government dues' is defined in Rule 132 (3) of the M.C.S. (Pension) Rules, 1982, which reads thus:

"Rule 132

.....

(3) The expression 'Government dues' includes-

(a) dues pertaining to Government accommodation including arrears of license fee, if any;
(b) dues other than those pertaining to Government accommodation, namely balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income-tax deduction at source under the Income Tax Act, 1961 (43 of 1961)."

Rule 133 of the M.C.S. (Pension) Rules, 1982, deals with adjustment and recovery of dues pertaining to Government accommodation.

Rule 141 (3) gives powers to the Audit Officer to determine the amount of the balance of the gratuity after adjusting the amount, if any, outstanding against the deceased Government servant.

Rule 142 of the M.C.S. (Pension) Rules, 1982, deals with adjustment of Government dues.

8. In absence of any ascertained sum being due against the husband of the petitioner in view of the fact that the disciplinary proceedings remained inconclusive, it was not possible for the Audit Officer to ascertain any amount payable by the petitioner. The charges as against the petitioner of misappropriation in the

disciplinary enquiry are not proved as the disciplinary proceedings were never completed. In view of that, the respondents would not be in a position to recover the amount from gratuity payable to the deceased husband of the petitioner.

9. The learned counsel for the petitioner on instructions states that the computer / printer and camera if with the petitioner would be returned back or else the amount of Rs.44,130/- be debited from the amount payable to the husband of the petitioner *inter alia* the petitioner.

10. In light of the above, the impugned order directing recovery is quashed and set aside. The respondents shall process the amount payable to the petitioner as gratuity with other retiral benefits. The respondents shall process the papers for the payment of gratuity and the other retiral benefits expeditiously and preferably within one (1) month. As far as the dues of credit society are concerned they would not come within the ambit of 'Government dues'. It is for the credit society to take steps to recover it by the mode available to them. The claim for interest by the Petitioner is rejected on account of legitimate dispute between the parties.

11. The writ petition is accordingly disposed of. No costs.

[S. M. GAVHANE, J.]

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[S. V. GANGAPURWALA, J.]