

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

WRIT PETITION NO. 145 OF 2013

Shakuntala sd/o Yuvraj Patil
Age : 50 years, occu.: household
R/o Borkhed (Pirache),
Tal. Chalisgaon, Dist. Jalgaon.

Petitioner.

Versus

1. The State of Maharashtra
Through The Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The Chief Executive Officer,
Zilla Parishad, Jalgaon,
District Jalgaon..
3. The Education Officer (Primary),
Zilla Parishad, Jalgaon,
District Jalgaon.
4. The Block Development Officer,
Panchayat Samiti, Chalisgaon,
District Jalgaon.

Respondents.

Mr. V.B. Jadhav, Advocate holding for
Mr. A.V. Hon, Advocate for the petitioner.
Mr.M.M. Nerlikar, A.G.P. for State/Respondent No.1.
Mr.Maheshkumar S. Sonawane, Advocate for respondent Nos.2 to 4.

**CORAM : T.V. NALAWADE &
SUNIL K.KOTWAL,JJ.**

DATED : 24 February, 2018.

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. Rule. Rule made returnable forthwith. Heard finally with consent of both the parties.

2. By filing this Writ Petition under Article 226 of the Constitution of India, the petitioner who is the widow of late Yuvraj Bhika Patil-an ex-employee of Zilla Parishad, Jalgaon as Primary Teacher, has sought relief of family pension to her by setting aside the order of dismissal of her husband passed by respondent No.2- Chief Executive Officer, Zilla Parishad, Jalgaon dated 14.03.2004.

3. Petitioner is widow of Late Yuvraj Bhika Patil who used to work as Primary Teacher in Zilla Parishad, Jalgaon and who had put in 29 years 2 months and 11 days pensionable service before his dismissal. Yuvraj Patil was absconding and not traceable from 12.09.2000 till 23.05.2003. Even petitioner informed the police about her missing husband. Even Education Department of Zilla Parishad, Jalgaon published notice in the newspaper. On 14.02.2003 the Education Department informed the petitioner to submit papers for grant of family pension. Accordingly, on 26.02.2003 petitioner submitted the pension papers with the relevant documents showing that husband of the petitioner was absconding. However, on 23.05.2003 Yuvraj Bhika Patil suddenly appeared at Mehunbara Police Station, Taluka Chalisgaon.

Knowing this occurrence, show-cause notice was issued to Yuvraj Bhika Patil by Education Officer, which was replied by him with medical certificate assigning his reasons for prolong absence. However, Departmental Enquiry was initiated against the husband of petitioner and on 05.12.2003 final show-cause notice for dismissal of husband of petitioner was served upon him and ultimately on 16.03.2004 husband of the petitioner was dismissed from the service.

4. After prolong ailment the husband of the petitioner died on 30.12.2011.

5. As the petitioner has no source of income, she submitted an application for grant of family pension as her husband had put in service of 29 years 2 months and 11 days with Zilla Parishad, Jalgaon. The Block Education Officer recommended the case of petitioner for grant of family pension, however, that was not considered by respondent No.2. Therefore, again on 18.07.2012 petitioner submitted fresh proposal for family pension benefits. That proposal was processed. However, on 05.09.2012 the Education Officer (Primary) informed the petitioner that as her husband was dismissed from service, in view of Rule 101 of Maharashtra Civil Services (Pension) Rules, 1982, she is not entitled to get family pension. Therefore, the petitioner was constrained to file this Writ

Petition.

6. During pendency of the Writ Petition, with the leave of this Court, petitioner submitted Administrative Appeal to Additional Commissioner, Nashik Division, Nashik. However, Appeal No.5/2015 was dismissed on 10.11.2016 and the dismissal of Yuvraj Patil was confirmed. That order is also challenge in the present Writ Petition with consequential relief of granting family pension to the petitioner.

7. Heard strenuous arguments of learned Counsel for the petitioner and learned Counsel for respondents.

8. Learned Counsel for the petitioner submitted that the past record of the husband of the petitioner was unblemished and he had put in more than 29 years service which is pensionable. According to learned Counsel for the petitioner, as prior to 12.09.2000 the husband of petitioner was not a case of habitual absenteeism, the punishment of dismissal, passed by respondent No.2 and upheld by Additional Commissioner, is certainly disproportionate and shocking to the conscious of the Court, which calls for interference by this Court. He placed reliance on **"Jagjitsingh Versus Punjab Engineering College"** reported in **[2009 (7) SCC 301]**.

9. In reply, learned Counsel for respondent No.2 vehemently opposed this petition by submitting that during the entire Departmental Enquiry husband of petitioner did not assign any reasonable cause for his prolonged absence since 12.09.2000. Therefore, the punishment of dismissal imposed by respondent No.2 which was confirmed in Administrative Appeal, is just and reasonable and cannot be termed as "disproportionate".

10. The next limb of the argument of learned Counsel for respondent No. 2 is that under Rule 101 of Maharashtra Civil Services (Pension) Rules 1982, pension cannot be awarded to the employee who is dismissed from the service, and therefore, this petition deserves to be dismissed in toto.

11. We have perused the order of dismissal dated 14.03.2004 passed by respondent No.2 and order passed by Additional Commissioner, Nashik Division in Z.P. Employee Appeal No. 5/2015 dated 10.11.2016. Undisputedly, since 13.09.2000 the husband of petitioner was found absconding and he was absent from duty. Later on, on 23.05.2003 he suddenly appeared before Police Station Officer, Mehunbare. For this prolonged absence he was charge-sheeted and ultimately order of dismissal was passed by respondent No.2 which was upheld even by Appellant Authority.

12. In the case at hand, important fact to be noticed is that,

husband of the petitioner was appointed as Primary Teacher on 01.07.1971. Thus, till 2000 he had put in total service of more than 29 years which is pensionable service. From the order of respondent No.2 dated 14.03.2004 it reveals that the Department has no complaint regarding punctuality of husband of petitioner prior to 2000. Only it is noted by respondent No. 2 that the husband of petitioner was absent from 01.04.2000 to 18.08.2000 even before prolonged absence since 13.09.2000. However, it does not mean that at least prior to 2000 the husband of petitioner was the case of habitual absenteeism. Considering this circumstance that the husband of petitioner had put in more than 29 years long unblemished service, which is pensionable service, the punishment of dismissal certainly shocks the conscience of this Court as it is shockingly disproportionate. No doubt, the misconduct that is alleged, in our view, would definitely amount to violation of discipline i.e. expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. If this was the case of habitual absenteeism, certainly we would not have ventured to entertain this petition. Even Apex Court in the case of **Jagjitsingh Vs Punjab Engineering College** (cited supra) held that, where it is not case of habitual absenteeism, punishment of dismissal for remaining absent is shockingly disproportionate and in that case the punishment of dismissal was modified to that of

stoppage of two increments in the circumstances of that case.

13. In the case at hand, as the husband of petitioner had put in pensionable service of more than 29 years, instead of punishment of dismissal, the appropriate punishment is penalty of compulsory retirement without awarding pension from the date of penalty till the date of death of Yuvraj Bhika Patil. In such event, petitioner is certainly entitled to family pension from the date of death of Yuvraj Patil. We hold that considering overall circumstances of this case and the shockingly disproportionate punishment imposed by respondent No.2, this Petition deserves to be partly allowed.

14. We, therefore, pass the following order.

ORDER

1. Writ Petition No.145 of 2013 is partly allowed.
2. The decision of the Disciplinary Authority and the Appellate Authority of dismissal from service of the husband of petitioner namely Yuvraj Bhika Patil is hereby set aside. The penalty is modified to make it the penalty of compulsory retirement.
3. Though the order of penalty is modified, there will be no entitlement to the pension from the date of penalty till the date of death of Yuvraj.

But there will be entitlement of family pension from the date of death of Yuvraj in favour of the petitioner.

4. The respondents are to prepare papers for family pension accordingly, within three months from today.
5. Rule made absolute in aforesaid terms.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

vdd/