

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

WRIT PETITION NO. 4678 OF 2014

1. Smt. Saraswatibai Wd/o Babasaheb Bhandarge,
Age : 95 Years, Occu. : Nil,
R/o Dudhana Kalegaon,
Tq. & Dist. Jalna.
2. Rukminibai Wd/o Babasaheb Bhandarge,
Age : 85 Years, Occu. : Nil,
R/o Dudhana Kalegaon,
Tq. & Dist. Jalna. .. Petitioners

Versus

1. Union of India
Through Secretary
Home Affairs (Freedom Fighter Cell)
New Delhi - 3.
2. The Chief Controller of Accounts,
Ministry of Home Affairs
PAO (Pension & Misc.) Block No. 10,
Galli No. 1 & 2, Jamnagar House,
New Delhi 110 011.
3. The State Bank of India,
Through Chief Manager,
Centralized Pension Processing
Centre Vth Floor premises
No. 651-T-751, ITC Belapur
CBO Belapur Railway Station
Complex, New Mumbai - 400 614,
(Maharashtra)

4. The Branch Manager,
State Bank of India
Branch Jalna bearing
Code No. 07150.

5. The Treasury Officer, Jalna,
Treasury Office in the
Premises of Collector Office,
Jalna, Dist. Jalna.

.. Respondents

Shri V. D. Salunke, Advocate for Petitioners.

Shri S. B. Deshpande, A.S.G. for Respondent Nos. 1 and 2.

Shri P. B. Paithankar, Advocate for Respondent Nos. 3 and 4.

Mrs. A. V. Gondhalekar, Addl.G.P. for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
SUNIL K. KOTWAL, JJ.**

DATE : 20TH JUNE, 2018.

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

. We have heard Mr. Salunke, the learned counsel for petitioners, Mr. Paithankar, the learned counsel for respondent Nos. 3 and 4, the learned Assistant Solicitor General for respondent Nos. 1 and 2 and the learned Additional Government Pleader for the respondent No. 5.

2. The petitioners are assailing the communication dated 25.01.2014, whereby the recovery is claimed as wrong pension has been paid.

3. According to the petitioners, the husband of petitioners

namely Babasaheb was a freedom fighter and was given Sanmanpatra and the pension. The husband of petitioners was receiving pension and he died on 03.05.1998. The petitioners are dependents upon the pension and the petitioners were sanctioned pension to the extent of 50% each. The learned counsel further submits that, the petitioner No. 1 Saraswatibai died on 30th May, 2015 and now the pension is received only by the petitioner No. 2.

4. Mr. Paithankar, the learned counsel for respondent Nos. 3 and 4 submits that, in fact pension amount ought to have been paid 50% to each of the petitioner and not 100% each and that is why recovery was claimed. The petitioners were not entitled for such an amount.

5. We have considered the submissions canvassed by learned counsel for respective parties.

6. Now the petitioner No. 1 has died on 30th May, 2015. So after 30th May, 2015, the petitioner No. 2 only would be getting the pension and she would get full pension after 30th May, 2015. There is no question of dual payment of pension after the death of petitioner No. 1.

7. It would be seen that, the petitioner No. 1 on the date of filing of petition was aged 95 years and the petitioner No. 2 was

85 years of age. Even assuming that the pension amount was wrongly paid in excess at this stage, it would be inequitable and harsh to allow recovery of the amount. The petitioner No. 1 is also dead.

8. Considering the equities, the age of the petitioners and that it is recovery of pension amount, we quash the order of recovery. The petitioner No. 2 would get the pension amount legitimately due and payable henceforth.

9. The writ petition is allowed. Rule is accordingly made absolute in above terms. No costs.

Sd/-

[SUNIL K. KOTWAL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/June 18