

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

WRIT PETITION NO.6356 OF 2014

Satyabhamabai w/o Prabhunath Kale
Age : 60 years, Occ : Household,
R/o at post Satona (kh),
Taluka Partur, Dist. Jalna.

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Mantralaya, Mumbai.
2. The Accountant General
Indian Audit and Accounts Department,
Pension Wing, Old Building,
Civil Line, Nagpur.
3. The Accountant Officer,
Zilla Parishad, Jalna.
4. Joint Director (Higher Education),
Aurangabad Region, Aurangabad
5. The Principal,
Lal Bahadur Shastri Senior College,
Partur, Tq. Partur
District Jalna.

.. RESPONDENTS

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Shri Amol N. Kakade, advocate for petitioner
Shri P.K. Lakhotiya, A.G.P. for respondent/State.
Shri S.S. Tope, advocate for respondent no.3.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 13.02.2018
Pronounced on : 20.02.2018

JUDGMENT: (Per S.S.Shinde, J.):

Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, heard finally.

2. The petitioner is seeking directions to the respondent authorities to grant and release the family pension to the petitioner upon the death of her son namely Narayan Raghunath Kale in harness.

3. The son of the petitioner was serving as a Professor in Lal Bahadur Shastri Senior College, Partur, Tq. Partur, Dist. Jalna since 15th September, 1994. He was the permanent employee of respondent no.3 namely Zilla Parishad, Jalna. He died on 27th May, 2012 in harness. The petitioner is the only heir of her son. Accordingly she obtained heirship certificate from the Civil Court,

Partur on 21st November, 2012. After death of son of the petitioner, Respondent No.5 forwarded proposal to Respondent No.2 on 29th November, 2012 for grant of family pension, gratuity and other consequential benefits to the petitioner. On the basis of proposal, she was paid an amount of Rs.3,72,840/ towards gratuity vide order dated 7th May, 2013. Being the only legal heir of her deceased son and being wholly depending on him for livelihood, the petitioner claimed family pension. However, her claim for family pension is not yet decided by the Respondent Authorities.

4. The learned counsel for the petitioner submits that grant of family pension to the dependents of the deceased employee is an outcome of beneficial legislation. He submits that as per the Family Pension Scheme 1950 given in Rule 117,

in the absence of the members of the family of the deceased Government servant as described in clause (a) of sub-rule (6), the family pension may be granted to the father and if father is not alive then to the mother of the Government servant vide clause (b) of subrule (6). He further submits that as per the Extra Ordinary Family Pension Scheme enumerated in Appendix IV of the Pension Rules of 1982 in the absence of the members of the family of the Government servant as described in clauses (i) to (iv) of sub-rule (3) of Rule 4, family pension can be awarded to the mother depending upon the deceased Government servant for support. However, under the same circumstances as per the provisions of Family Pension Scheme of 1964 as contained in Rule 116 of the Pension Rules the mother of the deceased Government servant has been denied such a relief by not including her in the term 'family' as given

in clause (b) sub-rule (16). He submits that this amounts to discrimination under Article 14 of the Constitution of India.

5. The learned counsel for the petitioner cited the decision in the case of **Kunhami vs Union of India (Uoi) (2006 (2) KLT 661)**, based on Regulation 216 of the Army Regulations, which includes mother of the deceased employee in the definition of family. In that case, consequent upon remarriage of the widow of the deceased employee his mother was granted family pension.

6. The learned counsel further pointed out the Resolution, dated 22nd January, 2015 issued by the Government of Maharashtra, Department of Finance, whereby in the absence of the relations of the deceased employee having preferential right to get family

pension, the mother of such single Government employee, wholly depending on him, has been held to be eligible to get family pension under Rule 116 of the Pension Rules. He, submits that the deceased son of the petitioner died as a single Government servant, in the sense, he was the only surviving child of the petitioner and had no surviving spouse and children as clarified in the Government Resolution dated 22nd January, 2015. He, therefore, submits that the petitioner is entitled to receive family pension in view of this Government Resolution as well.

7. As against this, the learned Assistant Government Pleader relying on the reply filed by respondent no.2 and in view of the provisions of Rule 116 (16) of the Pension Rules submits that since the petitioner, who is the mother of the deceased

Narayan, does not fall within the definition of 'family', is not entitled to get family pension, though the deceased Narayan was the single Government servant and the petitioner is his only Class I legal heir.

8. The Division Bench (Coram : S.S. Shinde & Sangitrao S. Patil, JJ) in the case of **Smt. Vimalbai Supdu Patil V/s The State of Maharashtra and others** in Writ Petition No. 1884/2012, decided on 24th June, 2016, while considering and interpreting the provisions of Rules, 166, 62(8), and in particular, Rule 116 in paras 8 to 14 has held thus :-

"8. Indeed Rule 116 of the Pension Rules contains benevolent provisions framed with the object of extending financial assistance to the eligible member of the family of the deceased employee depending

on him, who is put to suffer a great hardship after the demise of the sole earning member of the family. Consequently such benevolent provisions have to be interpreted liberally so as to achieve the object behind framing such provisions.

9. As seen from Sub-rule (1) of Rule 117 the provisions of this Rule are applicable to a Government servant who was in service on 31st December, 1963 and had specifically opted for the scheme of Family Pension, 1950, admissible under the Revised Pension Rules, 1950 in Appendix XIV-C of the Bombay Civil Services Rules, 1959, Volume II, as amended from time to time.

10. Rule 62 (8) of the Pension Rules defines Extra Ordinary Family Pension which is granted to the family of the deceased Government servant under the

Rules contained in Appendix IV.

11. In both of these Schemes the term 'family' includes, amongst others, the mother of the deceased Government servant. She is entitled to get family pension in case she is wholly depending on the deceased Government servant for support and no other member of the family of the deceased Government servant, who is vested with a prior right to receive family pension than the mother, is surviving. However, 'mother' has been excluded from the definition of 'family' in the Family Pension Scheme, 1964 enumerated in Rule 116 of the Pension Rules.

12. There is absolutely no rationale or justification behind excluding the mother from the definition of 'family' in the Family Pension Scheme 1964. The mother of the deceased Government servant, who is otherwise entitled to receive family

pension under the Family Pension Scheme 1950 (Rule 117) or under Extra Ordinary Family Pension Scheme (Appendix IV), thus, has been discriminated by denying her the same right to receive family pension vide Rule 116 of the Pension Rules. In our view, this denial of right to the mother of the deceased Government servant to receive family pension under the Family Pension Scheme 1964 (Rule 116) amounts to discrimination and as such would infringe the fundamental right to equality as enshrined in Article 14 of the Constitution of India.

13. Here reference may be made to the Government Resolution No.PEN 2011/CR-54/Seva-4, dated 22nd January, 2015 published by the Government of Maharashtra, Finance Department, whereby mother of the deceased Government servant, who is wholly dependent on him, has been held to be entitled to get family pension if other family members of

the deceased Government servant, who have a prior right to receive family pension, are not surviving. This Government Resolution has been made applicable to the employees of the Maharashtra Zilla Parishads vide proviso to Section 248 of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961.

14. In the 'Introduction' part of the said Government Resolution it is mentioned that since the definition of the term 'family' under the existing Pension Rules does not cover parents of a Government servant, as a social security measure the scope of the term 'family' defined under Pension Rules has to be enlarged restrictively by amending the Rules suitably to include into its ambit the wholly dependent parents of a single Government servant. In clause (11) of the said Government Resolution it has been mentioned that a formal amendment to the

Maharashtra Civil Services (Pension) Rules, 1982 will be made in due course. This Government Resolution fortifies our view that there was no rationale or justification in excluding the parents of the deceased Government servant from the term 'family' as given in the Family Pension Scheme 1964 (Section 116). Therefore, the decision of the respondents in denying family pension to the petitioner, who is the only surviving family member of deceased Deelip, who is stated to be wholly dependent on him for livelihood, is not sustainable since it has the effect of discriminating the petitioner and depriving her of the fundamental right to equality as enshrined in Article 14 of the Constitution of India."

9. For the same discussion and reasons stated in the order dated 24th June, 2016 in Writ Petition No.1884 of 2012, in the present

case also, the respondents will have to be directed to consider the case of the petitioner for grant of family pension under Rule 116 of the Pension Rules of 1982 considering the object of the Pension Scheme, 1964. The respondents should take liberal approach and should not turn down the request of the petitioner for grant of family pension on technical grounds.

10. In the result, we pass the following order.

(i) The Writ Petition is allowed.

(ii) Respondent no.2 shall consider the proposal of the petitioner for grant of family pension on its own merits and take decision thereon within eight weeks, in view of the provisions of Rule 116 of the Family Pension Scheme, 1964 from the date of death

of her son Narayan i.e. 27th May, 2012 onwards. However, the said claim should not be rejected on the ground that she does not fall within the ambit of the term 'family' as contained in clause (b) sub-rule (16) of Rule 116 of the Pension Rules.

(iii) With these directions the Writ Petition is disposed of.

(iv) Rule is made absolute accordingly.

(v) No costs.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE

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