

(1)

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

**CIVIL APPLICATION NO.9916 OF 2018
IN/WITH
WRIT PETITION NO.7838 OF 2017**

Sujata w/o Shivanand Gudgunti,
Age: 47 years, Occu: Household,
(wife of retired late Shivanand
Chidramayya Gudgunti, Ex-Jr.
Engineer (Civil) under Mahtma Phule
Krishi Vidyapeet, Rahuri,
Dist. Ahmednagar)
R/o Plot No.4, Saidarshan Apartment,
Rajarampuri, 10th Lane, Kolhapur

..APPLICANT/PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Agriculture and Animal Husbandry,
Dairy Development & Fisheries Dept.,
Mantralaya, Mumbai-32
2. The Principal Secretary,
Finance Department,
Mantralaya, Mumbai – 32
3. The Director General,
Maharashtra Agriculture Educational
and Research Council, Pune
4. The Vice Chancellor,
Mahatma Fule Krishi Vidyapith,
Post Vidyapith Tq. Rahuri,
Dist. Ahmednagar
5. The Deputy Chief Auditor,
Local Fund Audit,
Lekha Kosh Bhavan,
Third Floor, Collector Office Building,
Nashik Division, Nashik

..RESPONDENTS

(2)

Mr Shrikant K. Patil, Advocate for applicant/petitioner;
Mr G. O. Wattamwar, A.G.P. for respondent Nos.1 to 3;
Mr M. N. Navandar, Advocate for respondent No.4

**CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.**

DATE : 28th September, 2018

ORAL ORDER:

Heard Mr Patil, learned Counsel appearing on behalf of applicant.

2. By way of present application, the applicant/petitioner prays for placing on record certain documents, namely, copy of the application moved by husband of the petitioner for seeking caste validity certificate; a copy of the caste certificate issued to the petitioner's husband on 26th July, 1979 and a copy of decision of the caste scrutiny committee, Latur, dated 3rd July, 2015. Civil Application is allowed and the petitioner is allowed to place on record the aforesaid documents.

3. The petition is taken up for hearing with the consent of learned Counsel for the respective parties.

4. The grievance of the petitioner is that her husband, who was working with the respondents authorities and more particularly with respondent No.4 – Mahatma Phule Krishi Vidyapith, was deprived of benefits of his service, such as, pension, etc.

(3)

5. Perusal of the documents placed on record clearly show that the service of the husband of the petitioner was terminated and challenge was raised to the termination by way of Writ Petition No.10154 of 2012. The Division Bench of this Court observed that it was the failure of the petitioner's husband to submit validity certificate and considering this fact, the Division Bench, by an order dated 4th March, 2016, disposed of the said writ petition.

6. Then a document is also placed on record which clearly shows that the husband of the petitioner was engaged by the respondent University on work charged establishment. The affidavit-in-reply filed by respondent No.4 – University gives us details of the relevant provisions of the Maharashtra Agricultural Universities (Krishi Vidyapeeth) Act, 1983 and Statutes, 1990 thereof. It is stated that even the submission of the husband of the petitioner is entitled for certain pensionary benefits cannot be accepted in view of the Statutes and the Rules i.e. the Maharashtra Civil Services Rules and more particularly Maharashtra Civil Service Pension Rules, 1982. It is stated in para 10 of the affidavit-in-reply that the total period put in by the petitioner's husband in service as a Jr. Engineer comes to 8 years, 11 months and 9 days. As per the Maharashtra Civil Services Pension Rules, 1982, for getting pension, at least 10 years service on regular establishment is must. Then there is reference made to Rule 45 and Rule

(4)

57 of the Pension Rules. The University, in its affidavit-in-reply also stated that no discriminatory treatment is given to the husband of the petitioner though it was submitted in the petition that the University gave discriminatory treatment by referring to the certain other employees. This contention is specifically denied in para 10 and 11 of the said reply.

7. Mr Patil, learned Counsel for the petitioner then submits that the scrutiny committee passed the order thereby closing file of the husband of the petitioner without considering the factual aspects. We are unable to accept the submissions of the learned Counsel for the petitioner on the basis of the record. The order of the scrutiny committee, dated 3rd July, 2015 is placed on record which clearly shows that one other petition was also filed by the husband of the petitioner, namely, Writ Petition No.10154 of 2012. The Division Bench of the High Court directed the petitioner to remain present before the Committee on 18th March, 2013 and this was the order dated 7th March, 2013. In spite of such permission granted to the husband of the petitioner to remain present on a particular date, he failed to remain present on that date i.e. on 18th March, 2013. Again, to give one more opportunity to the husband of the petitioner, the scrutiny committee issued notice to the husband of the petitioner on 30th September, 2014. Even to this notice, there was no reply from the petitioner's husband, as such, the committee by its order dated 5th November, 2014 called upon the husband of the petitioner to remain present before it on 13th November, 2014. On that

(5)

day also, the husband of the petitioner was not present and as such, a last opportunity was granted by a communication dated 21st May, 2015. The petitioner herself approached the committee and submitted that her husband has expired on 26th January, 2015 and there is death certificate issued by the competent authority of the Kolhapur Corporation, dated 20th May, 2015.

8. Though Mr Patil, learned Counsel for the petitioner orally submitted before this Court that husband of the petitioner could not remain present before the committee for the reasons beyond his control. We are unable to accept this submission for the reason that there is no material to show that the husband of the petitioner was unable to attend before the committee due to some unavoidable circumstances. On the contrary, at the cost of repetition, there was series of opportunities granted to the husband of the petitioner to remain present before the committee prior to his death i.e. before 26th January, 2015 and these dates are 13th November, 2015 and 27th November, 2014. As the petitioner could not remain present before the committee on these dates, the committee was left with no choice but to pass the order on 3rd July, 2015, thereby closing file of the claim raised by the husband of the petitioner.

9. Taking into consideration all these facts, we are of the clear opinion that the petition is meritorious and we are unable to entertain the same.

(6)

10. Learned Counsel for the petitioner then placed heavy reliance on the judgment of the this Court in the matter of **Anna Deoram Londhe deceased thr. his L.Rs. Smt. Indirabai w/o Anna Londhe vs. State of Maharashtra**, reported in **1998 (4) Bom.C.R. 772**. Perusal of the said judgment clearly shows that the same is of no help to the petitioner as the facts thereof are clearly distinguishable. There is a reference to Rule 101 of the Maharashtra Civil Services (Pension) Rules, 1982 for grant of compassionate pension.

11. Mr Patil, learned Counsel for the petitioner invites our attention to the powers to grant compassionate pension and submits that the petitioner be permitted to approach the State government by submitting application/representation. It may be useful for our purposes to quote Rule 101 of the Maharashtra Civil Services (Pension) rules, 1982 and the same reads thus:

“Rule 101 which deals with compassionate pension, inter alia, provides as under:

"Grant of Compassionate Pension in deserving cases by Government"

i) When a Government servant is removed or required to retire from Government service for misconduct or insolvency or is removed or required to retire from Government service on grounds of inefficiency before he is eligible for a retiring or superannuation pension, Government may, if the case is

(7)

considered deserving of special treatment, sanction the grant to him of a compassionate pension not exceeding two thirds of the invalid pension which would have been admissible to him if he would have been retired:

ii) The pension under the proviso shall not be less than the minimum pension :

iii) A dismissed Government servant is not eligible for compassionate pension."

12. In view of the above referred facts, the petition is dismissed with liberty to the petitioner to approach the State Government by way of application / representation seeking certain monetary claims. If such application or representation is submitted before the State Government, the authorities of the State Government to take a decision on the application/representation as expeditiously as possible, considering the advanced age of the petitioner and needless to state that such application/representation be considered on its own merits.

(MANISH PITALE, J.)

(PRASANNA B. VARALE, J.)

sjk