

((1))

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

WRIT PETITION NO.9928 OF 2017

Shaikh Banubi w/o Shaikh Nizam ... PETITIONER

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....

Dr. Swapnil Tawshikar, Advocate for petitioner
Mrs. A.V. Gondhalekar, A.G.P. for State
Mr. V.D. Salunke, advocate for respondents No.5 and 6
Mr. K.A. Jahagirdar, Advocate holding for
Mr. M.M. Joshi, Advocate for respondent No.7.

.....

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

DATED : 5th SEPTEMBER, 2018.

ORAL ORDER :

1. By way of present petition, the petitioner Smt. Shaikh Banubi w/o Shaikh Nizam is before this Court praying for directions to respondent No.2 to 6 to consider and decide the representation dated 25.5.2017 filed by the petitioner. The learned counsel appearing for the petitioner invited our attention to certain documents placed on record. It is the case of the

petitioner that the husband of the petitioner was working in the respondent No.5 institute's school i.e. respondent No.6 Rashtriya Vidyalaya, Udgir. It is then stated that, Shri Nizam Shaikh, husband of the petitioner left his house in the month of April 2015 and on 4.4.2015 though he reached Ghatkopar Railway Station, his whereabouts were not known since 4.4.2015. A missing report was lodged and the copy of the missing report is placed on record at Exhibit B. The description of the missing person i.e. the husband of petitioner along with identity marks and reference to the apparels wore by the missing person also finds place in the said missing report. The police station authority namely Senior Police Inspector, Kurla Railway Police Station issued certificate on 14.1.2017, stating therein that though the missing report is lodged, in spite of an extensive search, the missing person could not be traced out till date of issuing the certificate.

2. The learned counsel then submitted that, a representation was submitted to the Head Master of the school on 25.5.2017. The factual aspects were made known to the Head Master namely missing of the husband and lodgment of the missing report. Then there are other details such as the family was wholly dependent on the earning of the missing person i.e. Shri Shaikh Nizam. The couple was blessed with three issues,

but none of the issue was earning. It is stated in the representation that, as per the Bank details, Shri Shaikh Nizam obtained some loan from the Bank and though certain installments were paid, there are some arrears against the loan amount. It is then stated that, as the salary is stopped and no monetary benefits against the service of Shri Shaikh Nizam are disbursed, the family is in the distress.

3. The learned counsel then invited our attention to the Government Resolution dated 5.7.1991. The learned counsel orally prayed for amendment to the petition for placing this Government Resolution on record. He submits that, at the time of filing of the petition, the counsel could not lay his hands on the resolution, but as the counsel could get the copy of the resolution, and the resolution furthers the case of the petitioner, the petitioner be permitted to place on record this Government Resolution. The oral prayer is allowed. The counsel is permitted to amend the petition by placing the copy of resolution on record forthwith.

4. Now perusal of the Government Resolution dated 5.7.1991 shows that the Government took stock of situation and with a laudable object the resolution is passed and that is dealing with such cases wherein the earning family member is missing

for a considerable long period, but is unable to take benefit of the service rendered by the missing person on the ground that requirement of law is of completing period of seven years to grant certain benefits. Dealing with this peculiar situation and the circumstances, the State Government floated this policy by way of Government Resolution dated 5.7.1991 and granted certain benefits to the family members of the employee who is missing for a period of more than one year. Clause (2) and clause (3) would be relevant for our purposes.

5. As it is stated in the Government Resolution that the date of disappearance of the Government servant will be reckoned from the date of First Information Report lodged with the police authorities and the period of one year after which benefits of family pension and gratuity will be sanctioned will also be reckoned from this date, and in view of this position, if the facts of the present matter are taken into consideration, the missing report was lodged at the Railway Police Station on 1.7.2015. As such, period of more than one year is lapsed from the date of lodgment of the missing report.

6. The learned counsel invited our attention to the judgment of this Court in **Writ Petition No.3803/2001 (Pramila Pandit Sagat Vs. State of Maharashtra & ors.)** It

will be useful to refer para No.7 of the order of this Court and the same reads thus :

"7. Mrs. Ansari drew our attention to Maharashtra Civil Services (Pension) Rules, 1982. Rule 62 defines different classes of pensions and Sub-rule (7) is regarding family pension and Sub-rule (8) is regarding extraordinary family pension. As per Sub-rule (8) extraordinary family pension is one which is granted to the family of deceased Government servant under rules in Appendix IV. As per the Appendix IV, paragraph 2, family of a Government servant who is killed or who dies of injuries received or disease contracted in the circumstances described in Rules 89 and 90, if the deceased Government servant had not opted for the Family Pension, 1964, is entitled to such extraordinary family pension. In other words, as per the Rules existing earlier, a Government servant must have been killed or he must have died of injuries received or he must have died of disease contracted in the circumstances described in Rules 89 and 90. However, Mrs. Ansari brought to our notice Government Resolution No.PEN-1089/491/SER-4, issued by Finance Department on 5th July 1991. The headline of the Government Resolution itself shows that by said Government Resolution of grant of family pension and gratuity was provided to the families of Government servants/ pensioners who disappear suddenly and whose whereabouts are not known. Said Government Resolution is squarely applicable to the present case in hand and it is clear that the family pension and gratuity will have to be awarded

to the present petitioner and, therefore, we are of the opinion that the petitioner must succeed as she is entitled to family pension and gratuity as laid down in the said Government Resolution. Accordingly we allow this petition and direct that the respondents shall pay the petitioner family pension and gratuity and all other legally permissible retiral benefits in view of the above quoted Government Resolution of 5th July 1991. We further direct that the order of payment of family pension and gratuity be passed within four months from this order and in case of failure, the petitioner would be entitled to interest at the rate of 7.5% p.a. per annum thereafter till actual payment. Rule is made absolute on above terms. No order as to costs."

7. Considering all these facts, we are of the opinion that the learned counsel made out a case for directions as prayed in prayer clause (B). We further permit the petitioner to submit a representation to the Education Officer (Secondary), Zilla Parishad, Latur apart from the representation submitted to the Head Master, dated 25.5.2017. Such representation to the Education Officer (Secondary), Zilla Parishad be submitted within two weeks from today. We direct the respondent No.5 and 6 to immediately forward the representation along with all the necessary papers to respondent No.4 Education Officer (Secondary), Zilla Parishad not later than two weeks from the date of order of this Court. The Education Officer (Secondary), Zilla Parishad, on receipt of the representation and the necessary

((7))

papers, to forward it to his superior officer within two weeks. If the Education Officer requires certain documents, he may directly establish contact with the Head Master i.e. respondent No.6 and call for those documents. The Education Officer (Secondary), then to submit the proposal to respondent No.2 and 3 and the respondent No.2 and 3 to take appropriate decision on such representation received by them within six weeks from the date of receipt of such representation.

8. The petition is accordingly disposed of with above directions.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-