

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

Writ Petition No. 00705 of 2017

District : Parbhani

Tamijabee w/o. Mohd. Abdul Sattar,
Age : 71 years,
Occupation : Housewife,
R/o. Gadi Mohalla, Parbhani,
Taluka & Dist. Parbhani.

.. Petitioner

versus

1. The State of Maharashtra,
Through its Secretary
of Primary Health Department.
2. The District Malaria Officer,
Jalna,
District Jalna.
3. The Accountant General
(A & E)-II,
Maharashtra State,
Nagpur.
4. Tahesinbee w/o. Shaikh Shakeer,
Age : 37 years,
Occupation : Housewife,
R/o. Kala Bawar, Parbhani,
Taluka & Dist. Parbhani.
5. Abdul Jabbar s/o. Mohd. Abdul
Sattar,
Age : 48 years,
Occupation : Business.
6. Sayyad Turab s/o. Mohd. Abdul
Sattar,
Age : 37 years,
Occupation : Business.

Both above R/o. C/o.
Abdul Rashid Shaikh Mehboob,
Azad Corner, Gadi Mohalla,
Near Masjid, Parbhani,
Taluka & Dist. Parbhani.

.. Respondents

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Mr. A.G. Dalal, Advocate, for petitioner.

Mr. G.O. Wattamwar, Assistant Government Pleader, for respondents no.01, 02 and 03.

Mr. Sudhir K. Chavan, Advocate, for respondents no.04 to 06.

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**CORAM : SUNIL P. DESHMUKH &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 18TH NOVEMBER 2019

ORAL ORDER *[Per Sunil P. Deshmukh, J.] :*

Heard learned Counsel for parties.

02. Petitioner claims to be first wife of deceased Mohd. Abdul Sattar who had been working as Malaria Inspector. He died in 1988. He had nominated his wife Aashabee in the requisite record. Aashabee was to get full pension after death of Mohd. Abdul Sattar. Aashabee died in 2003. Thereafter petitioner has come forward stating that she happens to be first wife; however, in absence of nomination and required documents would not be impediment for claiming pension as per rules, particularly rule 115 of the Maharashtra Civil Services (Pension) Rules 1982. According to the petitioner, while she had approached the concerned office for pension, she had been advised to have heirship certificate and accordingly heirship certificate has been obtained. Petitioner had also obtained certificate about *Nikah* with Mohd. Abdul Sattar. Both

documents did not find favour by the Tribunal and were considered not sufficient and believable.

03. Mr. Dalal, learned Counsel for the petitioner, passionately submits that the other legal heirs left behind by Mohd. Abdul Sattar is progeny from Aashabee have no objection for granting of pension to petitioner and they are before this Court stating so. In the circumstances, her case may be considered. He alternatively submits that if these two documents are not found sufficient to overturn decision by the Tribunal, while the petitioner had tried to obtain the position, her efforts have been proved to be vain since the board is not responding. He further purports to contend that as far as nomination is concerned, it has no efficacy beyond the benefit of gratuity and would not affect entitlement to pension.

04. Learned Assistant Government Pleader submits that there is no authentic valuable record coming before the court, nor there is any contemporary evidence as to whether she had lived with Mohd. Abdul Sattar as wife during his lifetime. There is huge time lag between the death of Mohd. Abdul Sattar and claim made by the petitioner as wife. Apart from aforesaid, he submits that the documents were rightly doubted by the Tribunal and rejected from being considered and attempt to amend the position before this Court would be too tenure to sustain a claim for pension while

money would go from the public coffer.

05. Perusal of the order passed by the Tribunal would show that all relevant aspects have been duly considered by the Tribunal in paragraphs 08 to 15 of its judgment. The Tribunal has observed that there is no nomination on record by deceased Mohd. Abdul Sattar showing petitioner to be his wife and nomination had been in favour of Aashabee. The Tribunal has also referred to other aspects about other persons being shown as legal representatives on record of deceased Mohd. Abdul Sattar and that it does not bear any reference to petitioner. Petitioner had never claimed to be wife of Mohd. Abdul Sattar till death of Aashabee in 2003 and it is ten years down after death of Aashabee a claim of wife of Mohd. Abdul Sattar is made by the petitioner. The Tribunal in its discretion had not been in favour of the petitioner having regard to her conduct and had doubted genuineness of the claim. There is no other material worth credence put forth by the petitioner. The order passed by the Tribunal would not be said to be unreasonable and not in accordance with the record before it.

06. In the circumstances, we are disinclined to entertain the petition. The same is dismissed.

07. At this stage, Mr. Dalal, learned Counsel for the petitioner, submits that in order to substantiate the claim of the

petitioner being wife of Mohd. Abdul Sattar, she would adopt a proper remedial recourse. It is for the petitioner to decide on the same.

(Smt. Vibha Kankanwadi)
JUDGE

(Sunil P. Deshmukh)
JUDGE

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