

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 3364 OF 2013

Smt. Muktabai Balaso Patil

... Petitioner

Vs

1 State of Maharashtra & Ors.

... Respondents

Mr. Vikas Kolekar for the Petitioner.

Ms. Lata Patne i/b Vinod Joshi for the Respondent No.1-
Accountant General.

Mr. S.S. Panchpor, AGP, for the Respondent Nos.2 to 3-State.

**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

WEDNESDAY, 20TH FEBRUARY, 2019

P.C. :

1 We have heard the petitioner's advocate and perused
with his assistance, the writ petition and its annexures.

2 Equally, we have, with the assistance of Mr. Panchpor,
perused the affidavit-in-reply.

3 The petitioner claims that the pension proposal be considered and a decision be taken to pay monthly family pension to the petitioner. The petitioner Muktabai claims to be widow of the deceased Balasaheb Patil. It is her claim that the respondent No.1, the Education Officer (Secondary) Zilla Parishad, Sangli, the Deputy Director of Education, Kolhapur Region, Kolhapur and the fourth and fifth respondents are all responsible for not releasing this family pension. It is claimed that the fourth respondent school receives one hundred percent grant-in-aid.

4 Her husband Balasaheb was a trained teacher and appointed in 1976. He was appointed from open category. He was qualified for the post of Assistant Teacher in a private school. Having been appointed as a full-time teacher and against a permanent vacancy by a valid appointment order, the petitioner's husband, on completion of his probationary period successfully, was teaching in the School. While in service, he had to apply for sick leave in the year 1990. There is a medical certificate, copy of which is at Exhibit-B which evidences the fact that her husband had taken ill. He had taken leave from 1st March, 1991 to 15th June, 1991 and again on medical grounds and which he went on

availing till 31st March, 1991. It is stated that he was a patient of tuberculosis. After submission of the medical leave application, the Management terminated his service by letter dated 10th June, 1993. She claims that the termination is without any show-cause notice being issued to the husband and also without any inquiry. The presumption that the husband abandoned the service could not have been said to be unrebutted because no notice was ever issued to the petitioner's husband. In fact, it was not a case of a termination, but leave or absence on medical grounds. The Appeal was also filed, but what the petitioner herself in paragraphs 14 and 15 says is that during the pendency of the appeal and an application seeking condonation of delay, her husband expired on 14th May, 2009. The petitioner gave a letter requesting for releasing the copy of the service book and thereupon she sought family pension by forwarding a proposal. It appears that the respondent No.1, by letter dated 15th March, 2012, informed the respondent No.3 to comply with the requirement of this letter. In paragraphs 15 and 16 of this petition, the petitioner states as under :

“15 The Petitioner states that the Petitioner has submitted the proposal to the Respondent No.3 and Respondent No.4 submitted

*the proposal to the Respondent No.1. Petitioner submits that the Respondent No.1 by its letter dated 15.03.2012 sent to Respondent No.3 and thereby informed to the Respondent No.3 to comply the requirements of the letter. Petitioner states that it was stated in para-2 that as per Rule 1 of Rule 46 of M.C.S. (Pension) Rules, 1982 resignation from a service or post entails forfeiture of past service. Thus such employee is not entitle for any pensionary benefits as per MCS (Pension) Rules, 1982. However, it has seen from noting on page No.13 of the Service Book that Shri Patil was absent from duties since 11.03.1990, hence on completion of 3 years on 10.03.1993, he was removed from service. The noting in service book contradicts the statement made in forwarding letter which is signed by the Education Officer. The Petitioner states that admittedly her husband was terminated from service by letter dated 10.06.1993 (Exhibit 'C') therefore the Petitioner is entitle for pensionary benefits. Hereto annexed and marked as **Exhibit "I"** is a copy of letter dated 15.03.2012 issued by Respondent No.1.*

16 The Petitioner states that the Respondent No.1 further in his notice stated that this pension file has been closed and that will not open unless and until the Respondent No.3 is complied

*with the requirements given in the letter. The Petitioner states that the Respondent No. 2 & 3 deliberately not complied with the letter issued by Respondent No.1. The Petitioner further stated that instead of complying the letter the Respondent Nos.3 has given letter to the Respondent No.5 thereby stating that as per Rule 45 of M.C.S. Rules, 1982 the Petitioner is not entitled for a pension benefits. A copy of the said letter was given to the Petitioner and is annexed hereto and marked as **Exhibit 'J'.***

5 With all this Mr. Kolekar would submit that the petitioner is entitled to family pension and that direction be issued to immediately process her proposal and communicate the decision thereon.

6 On the other hand, Mr. Panchpor would submit that the petition involves disputed questions of fact. During his lifetime, the petitioner's husband was informed that he cannot be availing of leave. He could not have been granted or sanctioned leave beyond the permissible limits. In fact, it is claimed that the petitioner's husband resigned from the post on 19th February, 1994, whereas in the service book, it is noted that her husband

was absent from duties since 11th March, 1990 and hence on completion of three years of service on 10th March, 1993, he was removed.

7 Mr. Panchpor would submit that either which way one looks at this matter, there is a factual dispute and which cannot be resolved in our limited jurisdiction. In the light of the factual dispute, but in the absence of any proof contravening the entries in the service book, it is clear that any direction to the authority will be futile. If the petitioner's husband has not retired with qualifying service, making him eligible to draw pension, then, there is no question of the petitioner being entitled or eligible to draw family pension. In such circumstances, he would submit that the writ petition be dismissed.

8 We have perused the petition and the annexures with the assistance of the advocates and equally the affidavit-in-reply. The averments in paragraph 15 of the writ petition are very guarded. Firstly it says that the petitioner was removed from service, but that is an endorsement in the service book. If the petitioner was provided with a copy of the service book and the

petitioner has perused it, as also the petitioner is aware of a letter of 15th March, 2012, and annexed a copy thereof to this writ petition, then, the petitioner could have also pointed out the entitlement of the husband to draw pension. She is aware of the fact that the office of the Accountant General (Accounts & Entitlements) - I, Mumbai, Maharashtra, has received the pension case through the Education Officer (Secondary) Zilla Parishad, Sangli. It is referring in paragraph 2 to the fact that there is an endorsement that Mr. Balasaheb Patil had served as a permanent teacher from 14th June, 1976 to 10th June, 1990 and he resigned from his post on 19th February, 1994. The attention of the Education Officer was invited to sub-rule (1) of Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982. If resignation from service or a post entails forfeiture of the past service, then, the petitioner rightly refers to this communication and the rule in the above reproduced paragraph. Then, there is a serious dispute about the entitlement of pension. Either which way one looks at it, the petitioner's husband has not rendered the qualifying service and was also removed is the other version equally coming from the petitioner, then, we do not think we should issue any direction to the authorities to process the

pension papers and grant family pension.

9 A direction of this nature, according to the petitioner may be very innocuous. We are day in and day out confronted with cases and petitions where the request is that they have dropped applications or proposals in the office of the statutory authority, no decision has been taken thereon and therefore, this Court should issue a writ, order or direction directing the statutory authority to process the papers, undertake a scrutiny and pass necessary orders in accordance with law which thereafter should be communicated to the applicant-petitioner. This cannot be said to be an innocuous relief. Such a relief and as claimed in cases of pension usually is fraught with serious consequences. Very often, those who are not entitled to any relief obtain such a direction and then request the statutory authority to dig out old papers and files and make a fishing inquiry and a fishing inquiry therein results in several orders being passed in favour of the persons, but after decades together, thereby jeopardizing the interest and career of several other in service. In service matters, long time back, the Hon'ble Supreme Court has clarified that merely because no relief can be granted relating

to the grievance under Article 226 of the Constitution of India, the Court must resist a temptation of passing an order to consider a pending representation or application of the litigant before it. In *C. Jacob vs. Director of Geology & Mining & Anr.* AIR 2009 SC 264, the Court observed thus :

“6 Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/ High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and

obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

7. *Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.*

8. *When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person*

directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of `acknowledgment of a jural relationship' to give rise to a fresh cause of action."

10 We are of the firm opinion that there is a definite potential of mischief in such litigation. At every cost we should avoid issuing directions and as prayed by the petitioner. More so, when the petitioner possesses no right nor has she established any pre-existing legal right or a corresponding public duty to claim a writ of mandamus. The petition is entirely misconceived and is dismissed. It is only because a lady has filed it, who is claiming to be a widow of the deceased, that we refrain from imposing costs.

M.S. KARNIK, J.

S.C. DHARMADHIKARI, J.