

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

**WRIT PETITION NO.10343 OF 2014**

Rafik Ahmed Abdul Majid Shaikh  
(Since deceased through legal heirs)  
Mehmooda Khatun Rafik Ahmeed Shaikh  
and others ..Petitioners  
Versus  
The Chief Executive Officer,  
Zilla Parishad, Solapur and others ..Respondents

**WITH  
WRIT PETITION NO.6568 OF 2015**

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(Since deceased through legal heirs)  
Mehmooda Khatun Rafik Ahmeed Shaikh  
and others ..Petitioners  
Versus  
The Chief Executive Officer,  
Zilla Parishad, Solapur and others ..Respondents

Mr. I. M. Khairdi, Advocate for the Petitioners.  
Mr. Anand S. Kulkarni, Advocate for Respondent Nos.1 & 2 in WP No.10343 of 2014 & for Respondent No.1 in WP No.6568 of 2015.  
Mr. K. S. Thorat, AGP for Respondent Nos.3 to 5 in WP No.10343 of 2014 & for Respondent Nos.2 & 3 in WP No.6568 of 2015.

**CORAM : PRADEEP NANDRAJOG, C.J. &  
N. M. JAMDAR, J.**

**DATE : 4<sup>th</sup> JULY, 2019**

**P.C.**

**1]** Heard learned counsel for the parties.

2] The deceased Rafik Ahmed Abdul Majid Shaikh was a permanent employee, working as Steno-cum-Typist under Zilla Parishad, Solapur.

3] His appointment was since 25.03.1985. In the year 2007, disciplinary proceedings were initiated against him. The charge was of dereliction in duty in maintaining and forwarding the confidential reports of the employees.

4] When the disciplinary proceedings were pending, he sought voluntary retirement by submitting an application on 15.06.2012. The application was processed. His request for voluntary retirement was accepted on 17.09.2012. Master servant relationship ceased. Late Rafik Ahmed Abdul Majid Shaikh acquired the status of an ex-employee.

5] The problem started on account of the reason the department overlooked the fact on 16.07.2012 the penalty of stoppage of two increments with cumulative effect had been inflicted upon him.

6] The dilemma which the employer faced was that having accepted his request for voluntary retirement, the penalty could not be give effect to.

7] Finding themselves tied in knots, the department did not process the papers of late Rafik Ahmed Abdul Majid Shaikh to

disburse the dues such as gratuity, leave encashment etc. including pension. A provisional pension in sum of ₹ 8,444/- was sanctioned with effect from 01.10.2012. Other dues were not paid.

8] Writ Petition No.10343 of 2014 was filed by Rafik Ahmed Abdul Majid Shaikh praying that being voluntarily retired should be paid, gratuity, leave encashment, benefit under GIS scheme and pension

9] Rafik Ahmed Abdul Majid Shaik was constrained to file Writ Petition No.6568 of 2015 on account of the fact that the department served upon him an order dated 20.05.2015 recording therein that he had taken appointment against a vacancy reserved for member of a Scheduled Tribe by claiming that he was a member of the Scheduled Tribe, 'Koya' and had failed to furnish a certificate establishing said claim.

10] The prayer made in the said Writ Petition is to quash the order on the plea that it was a ruse to overcome the knots in which the department found itself by accepting his offer seeking voluntary retirement in the teeth of the penalty levied on 16.07.2012.

11] To the afore-noted facts one more important and relevant fact needs to be noted. The same is that for the first time the Zilla Parishad required Rafik Ahmed Abdul Majid Shaikh to furnish a Caste Certificate on 09.01.2014 i.e. after he had retired.

**12]** It is obviously a case where desperate to find a way out to get rid of the problem self created by the Zilla Parishad it has resorted to a stratagem. The problem is that on 16.07.2012 a penalty of stoppage of two increments having cumulative effect was levied upon Rafik Ahmed Abdul Majid Shaikh and within two months thereafter he was permitted to proceed on voluntary retirement. Meaning thereby, penalty was incapable of being levied.

**13]** Having accepted the voluntary retirement application submitted by Rafik Ahmed Abdul Majid Shaikh, it is obvious that terminal dues would be paid as per last drawn salary and looked at from that angle one can say it hardly matters if the deceased, if he was in service, would not have earned two increments over the next two years.

**14]** Thus on the peculiar facts of the case, declaring that the penalty levied on 16.07.2012 is incapable of being given effect to, we dispose of Writ Petition No.6568 of 2015 holding that the act of the Zilla Parishad calling upon Rafik Ahmed Abdul Majid Shaikh to produce a Caste Certificate is malafide; it is colourable. It has been passed to overcome the problem created by the Zilla Parishad. The impugned order dated 20.05.2015 challenged in Writ Petition No.6568 of 2015 is quashed.

**15]** As regards Writ Petition No.10343 of 2014, mandamus is issued to determine the terminal dues payable to Rafik Ahmed Abdul

Majid Shaikh. After adjusting the amount paid to him by way of provision pension, the remainder shall be paid to the four legal heirs in the ratio of 50% to the wife and remaining 50% distributed equally to the three children. Rafik Ahmed Abdul Majid Shaikh having died on 12.02.2018, we direct family pension to be computed and paid to the wife of the deceased.

**16]** The family pension would be determined with effect from 13.02.2018. Pension payable to the deceased would be determined till 12.02.2018. Payments shall be made within twelve weeks from today, failing which the same shall be paid with simple interest at the rate of 8% reckoned twelve weeks hereafter till date of payment.

**N. M. JAMDAR, J**

**CHIEF JUSTICE**