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

910 WRIT PETITION NO.1116 OF 2020

PRATIBHA RAJENDRA WAGH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr V. U. Jadhav, Advocate for petitioner;
Mr P. S. Patil, A.G.P. for respondent Nos.1 & 2;
Mr D. B. Pawar, Advocate for respondent Nos.3 to 5

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.
DATE : 10th August, 2021**

PER COURT:

1. We have considered the submissions of the learned Advocates for the respective parties.

2. This Court had issued notice on 16/01/2020. All the respondents were served. Respondent Nos.3 to 5 i.e. the Chief Executive Officer, Zilla Parishad, Aurangabad; the Education Officer (Primary), Zilla Parishad, Aurangabad and the Deputy Chief Accounts and Finance Officer, Zilla Parishad, Aurangabad, did not cause an appearance and did not respond to the notice of this Court. Therefore, this Court had issued notice for final disposal on 27/02/2020, with a rider that if these respondents do not appear, the Court will have to issue a warrant against them. It is only thereafter, that respondent Nos.3 to 5 have appeared in this

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matter. We would deal with their conduct at the end of this judgment.

3. The petitioner is a widow, who has untimely lost her husband, who was an employee as an 'Assistant Teacher' with the Zilla Parishad School, Aurangabad. He had joined on 16/06/1995. He was selected on a post reserved for the Scheduled Tribe category. His proposal for validation of his tribe claim was forwarded by the Zilla Parishad to the Competent Committee on 21/08/2009. His cousin sister had already been granted a tribe validity certificate.

4. The petitioner's husband died on 12/06/2018 while in service with the Zilla Parishad Primary School, Sonwadi, Tq. Kannad, Dist. Aurangabad.

5. On 22/05/2012, the Committee confiscated the tribe certificate of the deceased husband of the petitioner on the ground that it was not issued by a Competent Authority in a proper format. Liberty was granted to the deceased to obtain a fresh certificate from a Competent Authority and submit a proposal for validation. The petitioner-widow submits that her deceased husband did not have the knowledge of this order.

6. The learned Advocate for respondent Nos.3 to 5 relies upon a communication dated 01/04/2019, issued by respondent No.5 , addressed to respondent No.4, listing out certain deficiencies as a reason for not clearing the pension papers and, therefore, the payment of pension has been deferred. The deceased, belonging to 'Hindu Mahadeo Koli' tribe, had not submitted his tribe validity certificate, is a ground at Sr. No.2.

7. In the matter of **Prakash Fulchand Barwal, since deceased, through his legal heirs Smt. Shobhabai Prakash Barwal and others versus the State of Maharashtra and others**, Writ Petition No.3718/1994, this Court delivered an order on 12/08/2010. It has been noted in paragraph Nos. 4, 5 and 6 as under :

“4] During pendency of the writ petition, the original petitioner has died and his legal heirs are brought on record. Since the original petitioner has already died, the question regarding his claim of belonging to scheduled tribe does not arise. The legal heirs of the original petitioner have restricted the claim in the present petition only for grant of family pension.

5] The petitioner was originally appointed on 18.7.1988. By virtue of interim order passed in the year 1994, the petitioner was directed to be reinstated. The

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original petitioner has died on 5.12.2003. Considering the date of appointment of the original petitioner to be 11/18.7.1988, the original petitioner has rendered the service of more than 15 years. As such the petitioner's widow would be entitled to the family pension. We accordingly extend the benefit of family pension to the widow of the original petitioner i.e. present petitioner no.1 – Smt.Shobhabai w/o Prakash Barwal.

6] We, therefore, dispose of the writ petition by directing the respondents to give the benefits of family pension to the widow of the original petitioner from the date of his death i.e. 5.12.2003. The said benefit be extended to the widow of the petitioner namely Smt.Shobhabai w/o Prakash Barwal within a period of six months from today along with the arrears. No order as to costs.”

8. We find it quite tragic that the husband of the petitioner had died on 12/06/2018 and it is a period of more than three years that the family is running from pillar to post for receiving pension. The petitioner is a house-maker and lives in Taluka Chalisgaon, Dist. Jalgaon. She had to file this petition for seeking retiral benefits which have not been paid to her. It is ironical that respondent No.5 has addressed respondent No.4, listing out several deficiencies as grounds for not processing the pension papers. Both these officers belong to the same department. Though respondent No.4 has received the letter on 01/04/2019, there has been no progress on the same.

9. We have carefully gone through the said communication dated 01/04/2019. Ground No.2 pertains to the validity certificate, which is taken care of by the judgment delivered by this Court in Prakash Fulchand Barwal (supra) and the said ground no longer remains an obstacle for the grant of pension to the petitioner. Similarly, ground No.3 is an objection as regards the deceased, having not passed his computer examination within a prescribed time limit and hence, the increment that he obtained on 01/01/2008 till 28/07/2010 is sought to be recovered. The petitioner is unaware as to whether any specific order for recovery, has been issued. Nevertheless, keeping in view the law laid down by the Hon'ble Apex Court in the matters of **the State of Punjab & ors. Vs. Rafiq Masih (White Washer), (2015) 4 SCC 334** and **Syed Abdul Qadir Vs. State of Bihar, (2009) 3 SCC 475**, an employer cannot recover the said amount from an employee who is not in service or debit the said amount to the retiral benefits account. The said ground Nos.2 and 3 set out in the letter dated 01/04/2019, therefore, stand quashed.

10. In view of the above, this petition is partly allowed. We direct respondent Nos.4 and 5 to ensure that the deficiencies listed out in the letter dated 01/04/2019, which are to be removed by

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respondent No.4, shall be so done expeditiously and in any case, on or before 31/08/2021. Consequentially, the communication dated 31/03/2019, addressed by respondent No.4 to respondent No.2 – Committee, would also stand quashed. The objections at ground Nos.1 and 4 to 10 shall be cured by respondent No.2, as expeditiously as possible and in any case, on or before 30/09/2021. Thereafter, the pension papers would be processed and respondent Nos.3 to 5 shall ensure that the payment of pension to the petitioner along with arrears of unpaid pension amount and all other retiral benefits are paid, on or before 30/10/2021.

11. If any of the above directions are not complied with, we would hold respondent Nos.3 to 5 personally responsible for the disobedience of the order of this Court.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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