

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

WRIT PETITION NO.6485 OF 2020

Sunita w/o Late Pradip Thakar,
Age : 45 years, Occ : Household,
original resident of A/p Bavi,
Tq.Washi, Dist.Osmanabad.
Presently residing at
A/3, Pranayraj Garden, Gokulnagar,
Dhanori, Pune, Tq. & Dist.Pune.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
General Administration Department,
Mantralaya, Mumbai-32.
Through its Secretary.
2. Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad Division,
Aurangabad.
Through it's Member Secretary.
3. The Manager,
Government Photozincographic Press
and Photographic Expert to Government,
Maharashtra State, 5, Photozinco Path,
Pune-411001, Tq. & Dist. Pune.

...RESPONDENTS

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Advocate for the Petitioner : Shri Yeramwar Sushant C.
AGP for the Respondents 1 to 3 / State : Shri S.K. Tambe
...

**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 20th July, 2021

Oral Judgment (Per Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.
2. The petitioner is the widow of an employee, namely,

Pradip Thakar, who belonged to “Thakar”, Scheduled Tribe community. He was issued with the tribe certificate by the Executive Magistrate, Kallam. On 01.03.1982, he was appointed as “Chaukidar”, a post reserved for the Scheduled Tribe category with respondent No.3. He was promoted as “Supervisor” in 2009. He moved his application for seeking validation of his tribe claim through the respondent No.3/Employer to respondent No.2/Committee, on 04.07.2013. Before the Committee could decide his claim, he passed away on 06.11.2019, while being in employment.

3. In the above backdrop, the petitioner widow moved applications dated 24.12.2019, 02.03.2020 and 24.08.2020 to the respondent authorities seeking release of the family pension and payment of all retiral benefits like provident fund, gratuity, leave encashment, medical reimbursement, overtime, etc.. It is contended by the petitioner that respondent No.3 orally intimated her that as her husband was appointed on a post reserved for the Scheduled Tribe category and since he did not submit his validity certificate, steps to grant family pension cannot be taken until such validity certificate is produced. The petitioner then made request applications to respondent No.2/ Committee on 08.07.2020 and 27.07.2020, seeking a decision on her late husband’s pending claim. On 05.08.2020, respondent No.2/ Committee closed the file of the petitioner’s husband since he had passed away.

4. It is further contended in the petition that the petitioner’s daughter, namely, Shweta had made an application on

08.07.2020 to respondent No.3, praying for compassionate appointment. By the communication dated 10.08.2020, respondent No.3 informed her that as her father had not tendered the validity certificate of belonging to Thakar tribe, her application for compassionate appointment needs to be kept pending in view of the Government Resolution dated 15.06.2020.

5. The learned AGP submits that this petition is not an adversarial litigation to the Government. As the husband of the petitioner did not tender the validity certificate, the respondent authorities are helpless.

6. This Court had issued notice on 22.09.2020. On 17.02.2021, this Court, recording the contentions of the petitioner, had directed the respondents to process the papers for grant of provisional pension as the claim of the petitioner for family pension could not be ignored.

7. We find that this Court has delivered a judgment at Aurangabad on 12.08.2010 in Writ Petition No.3718/1994 filed by ***Prakash Fulchand Barwal since deceased through his Legal Heirs Smt.Shobhabai Barwal and others vs. The State of Maharashtra and others***. In the said judgment, this Court noted that the petitioner was appointed as a Peon against the post reserved for the Scheduled Tribe category. The Committee had invalidated the claim of the petitioner by order dated 30.09.1989. On account of such invalidation, the service of the deceased petitioner was terminated vide order dated 10.12.1989. The petitioner preferred an appeal

against the order of invalidation, which was dismissed by the concerned appellate authority on 27.10.1993. Thereafter, the deceased petitioner had preferred Writ Petition before this Court.

8. While dealing with the claim of **Prakash Barwal (supra)**, this Court recorded in paragraphs 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 18.07.1988. By virtue of interim order passed in the year 1994, the petitioner was directed to be reinstated. The original petitioner has died on 05.12.2003. Considering the date of appointment of the original petitioner to be 11/18.07.1988, 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. 05.12.2003. 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.”*

9. In the case in hand, there is no dispute that the deceased Pradip Thakar had joined duties on 01.03.1982 and he had passed away on 06.11.2019 after putting in 37 years in employment. His widow would, therefore, be entitled for family pension.

10. In the light of the above, this Writ Petition is partly allowed as under:-

(a) Respondent No.3 would process the pension papers for grant of family pension to the petitioner and the arrears of family pension shall be paid and payment of regular monthly pension shall commence, on or before 30.10.2021.

(b) Insofar as the provident fund payments are concerned, the petitioner will have to approach the Provident Fund authorities for release of such funds and in the event of there being no other legal impediment, the Provident Fund authorities would also do the needful, on or before 30.10.2021.

(c) Insofar as the gratuity, leave encashment, medical reimbursement and overtime bills are concerned, respondent No.3 shall do the needful and clear such dues as per rules. In the event of there being any dispute with regard to either of these payments, the petitioner would be at liberty to approach the statutory authorities or avail of a remedy as may be prescribed in law.

(d) Considering our conclusion and the decision of this Court in the matter of *Prakash Barwal (supra)*, the application of the daughter of the deceased, namely, Shweta seeking compensation appointment, shall be considered by the respondent authorities as per the procedure laid down in law.

11. Rule is made partly absolute in the above terms.