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

**WRIT PETITION NO. 6218 OF 2021**

Seetabai Bhiku Umbare

... Petitioner

*Versus*

State of Maharashtra and Anr.

... Respondents

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Mr. V. S. Talkute for the Petitioner.

Mr. N. K. Rajpurohit, AGP for the Respondent Nos. 1 and 2.

Mr. Rajendra Anbhule for the Respondent No.3.

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**CORAM: R. D. DHANUKA AND  
ABHAY AHUJA, JJ.**

**DATE : 26<sup>th</sup> NOVEMBER, 2021.**

**P.C. :-**

. Rule. Mr. Rajpurohit, learned AGP waives service for respondent nos. 1 and 2. Mr. Anbhule, learned counsel waives service for respondent no.3. By consent of parties, the petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks an order and direction against the respondent nos. 1 and 2 to complete the formalities regarding grant of family pension to the petitioner and to grant such family pension to the petitioner who is widow of Bhiku Bhagu Umbare, who was working with respondent no.3 as Shipai and retired on 30<sup>th</sup> June, 2019 and subsequently expired on 10<sup>th</sup> May, 2021.

3. We have perused the averments made in the petition and have

heard the learned counsel appearing for the parties. The husband of the petitioner was appointed as Shipai 21<sup>st</sup> September, 1994 as a regular employee on probation on 16<sup>th</sup> September, 1994 and was confirmed as permanent w.e.f. 3<sup>rd</sup> August, 1999. The Joint Director of Education addressed a letter to the respondent no.2 on 19<sup>th</sup> December, 2013 requesting relaxation in respect of the objection of overage of the petitioner's husband and several others employees.

4. The respondent no.3 on 27<sup>th</sup> September, 2016 addressed a letter to the respondent no.2 pointing out the overage at the time of his initial appointment and requesting for age relaxation. On 30<sup>th</sup> June, 2019, the husband of the petitioner retired after completion of 24 years of service and several years in temporary service prior to 1994. He expired on 10<sup>th</sup> May, 2021. A perusal of the record indicates that the Joint Director of Education had already requested the respondent no.2 to relax the overage objection in respect of the large number of employees including the husband of the petitioner. Some of the employees sought reliefs by filing writ petition before this Court and have been granted reliefs.

5. This Court in catena of decisions and some of which are annexed as Exhibits 'G' to 'J' collectively has held that the State Government cannot refuse to pay pension on the ground of overage at the time of initial appointment. In our view, the said judgment delivered by this Court from time to time apply to the facts of this case. This Court has already granted such relief to some of the employees who were found in the list sent by the Joint Director of Education vide letter dated 19<sup>th</sup>

December, 2013 to the respondent no.2 for relaxation of the objection in respect of overage at the time of initial appointment.

6. Since, the husband of the petitioner expired on 10<sup>th</sup> May, 2021, the petitioner being widow of the said employee is entitled to family pension. Learned counsel for the respondent no.3 confirms the date of appointment of the husband of the petitioner and the retirement from service as Shipai with the respondent no.3 and on the entitlement of the pension of the husband of the petitioner.

7. In our view, the petitioner has thus made out a case for payment of family pension. The judgments delivered by this Court would apply to the facts of this case. We do not propose to take any different view in this matter.

8. We accordingly pass the following order :-

- (a) Respondent no.3 is directed to complete the formalities relating to pension payable to the deceased husband of petitioner within four weeks from today. The Management shall submit the requisite papers, if not sent to the respondent nos. 1 and 2 for releasing of pension.
- (b) Respondent Nos. 1 and 2 shall pass an appropriate order and shall release the pension as expeditiously as possible and in the event within period of four weeks from the date of receipt of the pension papers from the respondent no.3-University.
- (c) It is made clear that upon sanctioning the payment of pension due to the husband of the petitioner, the respondent nos. 1 and 2 simultaneously sanction the

payment of family pension to the petitioner. It is also made clear that if the pension due and payable to the husband of the petitioner is not released within the time prescribed, the respondent nos. 1 and 2 have to pay an interest @ 12% p.a. on the delayed payment of pension, till the date of payment.

- (d) Writ Petition is allowed in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.
- (e) Parties to act on an authenticated copy of this order.

**[ABHAY AHUJA, J.]**

**[R. D. DHANUKA, J.]**