

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

WRIT PETITION No. 2412 OF 2018.

Kavita w/o Anna Pendam,
Aged about 33 years, Occupation
Service, resident of c/o. Nitin Kadu
Wadala Paiku, Near Hanuman
Mandir, Chimur, Tahsil Chimur,
District Chandrapur.

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PETITIONER.

VERSUS

1.Zilla Parishad, through
Chief Executive officer,
Chandrapur.

2.Senior Audit Officer,
Zilla Parishad, Chandrapur,
Chandrapur.

3.District Agriculture Development
Officer, Zilla Parishad, Chandrapur,
Chandrapur.

4.Block Development Officer,
Panchayat Samiti, Bhadrawati,
District Chandrapur.

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RESPONDENTS.

Mrs. S.P. Giratkar, Advocate for the Petitioner.
Shri A.P. Thakre, Advocate for Respondents.

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**CORAM : DIPANKAR DATTA, CJ,
& VINAY JOSHI, JJ.**

DATE : DECEMBER 10, 2021.

ORAL JUDGMENT (PER DIPANKAR DATTA, CJ.) :

The petitioner is the widow of Anna Pendam [since deceased]. He was an employee of the Zilla Parishad, Chandrapur (hereafter “the Parishad”, for short) who died in harness on 08.06.2007.

2. On the allegation that the petitioner’s husband had failed to conform to the high standards required to be maintained by those in public employment and that he had failed to deposit Rs.15,38,928/- in the account of the Parishad upon collection of such amount from farmers, an intimation dated 09.02.2009 was issued to the petitioner by the District Agriculture Officer of the Parishad. She was informed thereby that an enquiry was in progress and till such time such enquiry is concluded, family pension would not be paid to her. Upon receipt of such intimation, the petitioner by a representation dated 23.09.2009 requested the District Agriculture Officer to provisionally release family pension in her favour to survive. Close on the heels of such request, by an order dated 30.10.2009, the petitioner was informed that a sum of Rs.12,67,422/- not deposited by her late

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husband in the account of the Parishad would be deducted in monthly installments from the family pension that would be paid to her.

3. It is not clear from the pleaded case as regards the precise date on and from which the petitioner started receiving family pension upon deduction and what is the quantum thereof, consequent upon the decision of the Parishad to recover the amount of Rs.12,67,422/- from such pension in installments.

4. Be that as it may, the petitioner sent a notice through her lawyer on 05.05.2015 to the Chief Executive Officer of the Parishad as well as to other officers, objecting to the action of recovery from her family pension, particularly when no enquiry was conducted during the life time of her late husband. According to her, the process of recovery was contrary to the relevant rules. Since the legal notice was not responded favourably, this writ petition was instituted before this Court on 10.04.2018.

5. Appearing in support of the petitioner, Mrs. Giratkar, learned advocate submits that there is no provision in law which empowers the Parishad to proceed for recovery of alleged undeposited amount by her late husband from the family pension

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payable to her. Reliance is placed by Mrs. Giratkar on the Division Bench decision of this Court, Bench at Nagpur, in **Hirabai Bhikanrao Deshmukh and another vs. State of Maharashtra and others**, reported in 1985 Mh. L.J. 73 and a decision of a learned Single Judge of the Allahabad High Court in **Smt. Rajeshwari Devi .vrs. State of Uttar Pradesh and others**, reported in 2011 SCC Online All 42, in support of the contention that there can be no proceeding against a public employee who is no more. She, accordingly, prays for relief as claimed in the writ petition.

6. Shri Thakre, learned advocate appearing for the Parishad invites our attention to the reply-affidavit dated 05.08.2019. Referring to its contents, it has been submitted that after the death of the petitioner's husband, no departmental enquiry was conducted, but, having regard to the circumstances that an inventory of the godown was taken, whereupon a panchnama was prepared, the Parishad was of the opinion that an amount of Rs.15,39,928/- was required to be deposited by the petitioner's husband on account of agricultural equipment supplied to farmers, but, he deposited only part of such amount, resulting in Rs.12,95,291/- remaining outstanding. Since the petitioner's husband had a duty to deposit such amount but deliberately did not do so resulting in

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misappropriation of public money, it was considered necessary to recover the same from the family pension payable to the petitioner. Shri Thakre also refers to the provisions of Rule 134A of the Maharashtra Civil Services (Pension) Rules, 1982 (hereafter “the Pension Rules”, for short) to contend that such provision is the source of power for the Parishad to proceed for recovery of the undeposited amount from the family pension payable to the petitioner. He, accordingly, submits that the Parishad has not acted contrary to law and the writ petition ought to be dismissed.

7. We have heard learned advocates appearing for the parties, perused the material on record and read the decisions that have been cited by Mrs. Giratkar.

8. Admittedly, while the petitioner’s husband was alive and the relationship of employer-employee subsisted between the Parishad and the petitioner’s husband, no departmental proceeding was initiated to recover the alleged misappropriated amount from him. Once the relationship ceased to exist, it is necessary to find out with reference to the Pension Rules as to whether any power is conferred on the employer to proceed for recovery; and if yes, whether the procedure prescribed has been followed or not. Since our attention has been drawn only to Rule 134A of the Pension Rules

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by Shri Thakre, we propose to consider the same. For facility of convenience, Rule 134A of the Pension Rules is quoted hereunder :

“Rule 134-A - Recovery and adjustment of excess amount paid – If in the case of a Government servant, who has retired or has been allowed to retire, it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including service rendered upon re-employment after retirement or any amount is found to be payable by the pensioner during such period and which has not been paid by, or recovered from him, then the excess amount so paid or the amount so found payable shall be recovered from the amount of pension sanctioned to him :

Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him :

Provided further that, the amount found due may be recovered from the pensioner in instalments so that the amount of pension is not reduced below the minimum fixed by Government.”

9. The opening words of Rule 134-A would reveal that it is attracted when a Government servant has retired or has been allowed to retire. Thereafter, the rule provides for three contingencies on the fulfillment whereof excess amount so paid,

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amount so found payable or recoverable, shall be recovered from the amount of pension sanctioned to him. Here the pronoun 'him' in the singular would refer to the Government servant referred to at the beginning of the rule, who has either retired or has been allowed to retire and from whom excess amount that has been paid, or any amount that he is liable to pay or may be recoverable from him, can be recovered from the amount of pension sanctioned to him.

10. On and from 09.06.2007, the relationship of employer-employee between the Parishad and the petitioner's husband ceased to exist. There was, therefore, no question of the petitioner's husband retiring from service or being allowed to retire. We hold, on the basis of our reading and understanding of Rule 134A of the Pension Rules, that the same would be applicable only to a retired Government servant to whom pension is payable and that any amount recoverable from such Government servant cannot be recovered, except in accordance therewith. On a plain and simple construction of Rule 134A of the Pension Rules, we see no reason to hold that the same confers power on the Parishad to recover any amount from the family pension that is payable to the widow of a deceased Government servant who had died-in-harness.

11. In view of our aforesaid conclusion, we are of the opinion

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that the action of the Parishad to recover the amount of Rs.12,95,291/- from the family pension payable to the petitioner is unauthorized, illegal and *ultra vires*. The order dated 30.10.2009 stands set aside. It is held that no amount can be recovered from the family pension payable to the petitioner, which could have been recovered from the salary of the petitioner's late husband while he was in service. The Parishad is granted three months' time to re-calculate the amount payable to the petitioner on account of family pension, as if the order dated 30.09.2009 had not been passed. Within a month from the date of such calculation, the amounts which have since been recovered, shall be paid to the petitioner. Since the petitioner has approached this Court almost 8 (eight) years from the date of the impugned order, we do not propose to saddle the Parishad with interest; however, in the event, the amount due and payable to the petitioner in terms of this order within the period prescribed remains unpaid, the same shall carry interest @ 12% per annum till actual payment of such amount.

12. The writ petition stands allowed. No costs.

(VINAY JOSHI, J)

(CHIEF JUSTICE)

Rgd.

RAKESH GANESHLAL DHURIYA

15.12.2021 15:52