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

WRIT PETITION NO.4089 OF 2016

1. Laxmibai Nivarti Bhande,
Age : 55 Years, Occu. H.H. & Agril.,
R/o Saubhagya Nagar, Latur,
Tq. & Dist. Latur
2. Prakash Nivarti Bhande,
Age : 32 Years, Occu. Education,
R/o Saubhagya Nagar, Latur,
Tq. & Dist. Latur
3. Arti Nivarti Bhande,
Age : 27 Years, Occu. Education,
R/o Devibag Mandir, Hyderabad,
(Telangana State)
4. Sopan Nivarti Bhande,
Age : 26 Years, Occu. Education,
R/o Saubhagya Nagar, Latur,
Tq. & Dist. Latur
5. Jyoti Prashant Igave,
Age : 33 Years, Occu. H.H.
R/o Saubhagya Nagar, Latur,
Tq. & Dist. Latur
6. Sau. Swati W/o Venkat Igave,
Age : 29 Years, Occu. H.H.,
R/o Dalimb, Tq. Omerga,
Dist. Osmanabad
7. Kranti W/o Digambar Shinde,
Age : 28 Years, Occu. H.H.,
R/o Saubhagya Nagar, Latur,
Tq. & Dist. Latur

..PETITIONERS

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VERSUS

1. The State of Maharashtra,
Through Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32
2. The Chief Executive Officer,
Zilla Parishad, Beed,
Tq. & Dist. Beed
3. The Child Development Project Officer,
Panchayat Samiti, Kaij,
Tq. Kaij, Dist. Beed
4. The Accountant General
Maharashtra-II, Nagpur,
Tq. & Dist. Nagpur

..RESPONDENTS

Mr. H.V. Patil, Advocate for petitioners;
Mr. S.P. Tiwari, A.G.P. for respondent nos.1 & 4;
Mr. P.D. Suryawanshi, Advocate for respondent nos.2 & 3

**CORAM : R.D. DHANUKA
AND
S. G. MEHARE, JJ.**

DATE : 31st March, 2022

ORAL JUDGMENT (Per R.D. Dhanuka, J.)

1. Rule. Learned A.G.P. waives service for respondent nos.1 and
4. Learned Counsel Mr. Suryawanshi waives service for respondent
nos.2 and 3.
2. Rule is made returnable forthwith.

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3. By this petition filed under Article 226 of the Constitution of India, the petitioners seek a writ of mandamus or order, or direction to respondent nos.2 and 3 to forward proposal for grant of family pension and other pensionary benefits to the petitioners, to the office of respondent no.4 in respect of service benefits of missing Nivarti Sopanrao Bhande, the then Child Development Project Officer, Kaij, Taluka Kaij, District Beed and for a direction to respondent no.4 to grant family pension and other pensionary benefits to the petitioners and for other reliefs.

4. The husband of petitioner no.1 and father of respondent nos.2 to 7 was appointed as Senior Assistant in Zilla Parishad, Osmanabad in the year 1980 and was promoted from time to time. Lastly, he was working as Child Development Project Officer with Kaij Panchayat Samiti under respondent no.2.

5. It is the case of the petitioners that since September, 2003, after availing medical leave, Nivarti Bhande, husband of petitioner no.1 had been missing and his whereabouts were not known to the petitioners, in spite of making his search at various places. On 3rd December, 2003, petitioner no.1 filed a complaint with Shivaji Nagar Police Station, Latur. The concerned Police Station did not take any

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action on the said complaint filed by petitioner no.1.

6. Petitioners, thereafter, instituted a suit bearing Regular Civil Suit No.18 of 2011, for declaration that Nivarti Bhande was missing and was not heard and thus he be declared as dead under Section 108 of the Indian Evidence Act, before the Court of learned Civil Judge Senior Division, Latur.

7. On 7th January, 2015, learned 2nd Joint Civil Judge Senior Division, Latur passed a decree in favour of the petitioners and declared that in capacity of legal heirs of missing Nivarti, petitioners herein are entitled to succeed, receive and utilize the suit properties.

8. Petitioners, thereafter, applied for grant of family pension to respondent no.2 by letter dated 9th March, 2015. On 22nd May, 2015, Deputy Chief Executive Officer, Zilla Parishad, Beed, directed respondent no.3 to submit the proposal for pensionary benefits in proper format for further action.

9. It is the case of the petitioners that no action, however, is taken by respondent no.3 on the said letter dated 22nd May, 2015. The petitioners, therefore, have filed this petition.

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10. Learned Counsel appearing on behalf of the petitioners invited our attention to various correspondence annexed to the writ petition and also the findings rendered by the learned 2nd Joint Civil Judge Senior Division, Latur in Regular Civil Suit No.18 of 2011. He submits that the Chief Executive Officer, Zilla Parishad, Latur and Chief Executive Officer, Zilla Parishad, Beed as well as the Treasury Officer, Latur were parties to the said suit.

11. Learned Counsel for the petitioners also invited our attention to the Government Resolutions dated 5th July, 1991 and 7th October, 1993 in support of the submission that since the husband of petitioner no.1 was unheard for more than seven years, he was presumed to be dead in view of provisions of Section 108 of the Evidence Act and thus, the petitioner no,1 being widow is entitled to the family pension.

12. Learned Counsel for the Zilla Parishad, on the other hand, invited our attention to the letter dated 29th September, 2003, annexed at page 39 of the petition and would submit that the husband of petitioner no.1 had applied for medical leave. By letters dated 1.1.2004 and 23.2.2004, he again applied for extension of

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medical leave. Learned Counsel for the Zilla Parishad submits that the Zilla Parishad had issued a show cause notice against husband of petitioner no.1 on 15th March, 2004 and after following the requisite procedure and after conducting the inquiry against the husband of petitioner no.1, the services of the husband of petitioner no.1 were terminated on 26th July, 2007. He also invited our attention to the legal notice issued by the petitioners on 18th October, 2010 and the reply of the Zilla Parishad to the said notice and would submit that the petitioners were fully aware of the fact that the services of the husband of petitioner no.1 were terminated by Zilla Parishad and only thereafter they instituted a declaratory suit and more particularly for a prayer that the husband of petitioner no.1 was unheard for more than seven years and thus, he be declared as dead.

13. Learned A.G.P. also supported the case of the Zilla Parishad and would submit that since the services of the husband of petitioner no.1 were already terminated, there is no question of any payment of family pension to the petitioners.

14. Perusal of the record indicates that it is an undisputed fact that the husband of petitioner no.1 was working with Zilla Parishad and

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was lastly working as Child Development Project Officer with Panchayat Samiti, Kaij under respondent no.2. Petitioner no.1 had filed a complaint with the local Police Station in September, 2003 to the effect that her husband was missing. There was no action taken by the concerned Police Station on the said complaint filed by petitioner no.1. The petitioners, therefore, instituted a Civil Suit bearing No.18 of 2011 in the Court of 2nd Joint Civil Judge Senior Division, Latur. The State of Maharashtra as well as the Zilla Parishad, Latur and Beed were parties to the said suit. Defendants no.2 to 5 did not appear in the said suit. The said suit was decreed after recording the evidence of petitioner no.1.

15. The learned Civil Court recorded a finding after considering the oral evidence of petitioner no.1, her witnesses that the witnesses had established all the necessary facts required to raise the presumption under Section 108 of the Indian Evidence Act. It was thus necessary for the defendants to prove the contrary because by statutory implication of Section 108 burden had shifted upon the defendants. It is admitted position that the State Government had contested the said suit before the Civil Court. The Zilla Parishad did not contest the suit though served. The Civil Court, therefore, recorded a finding

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that the plaintiffs being Class-I heirs of missing Nivarti are entitled to succeed to his properties. None of the defendants has challenged the said decree passed by the Civil Court recording the said findings, more particularly that the husband of petitioner no.1 was declared to be dead under Section 108 of the Evidence Act.

16. The respondents, however, urged before this Court that the husband of petitioner no.1 had applied for medical leave on two occasions and since he did not attend the duties, a show cause notice was issued against him. It is also vehemently urged by the learned Counsel for the respondents that after conducting an inquiry, the services of the husband of respondent no.1 were terminated and thus, there is no question of payment of family pension to the petitioners.

17. The record indicates that the so called steps by the respondents, by issuing a show cause notice and the public notice in the newspaper before conducting the so called inquiry, were initiated after the husband of petitioner no.1 was already missing in respect of which a police complaint was already made by the petitioners.

18. On a query being made by the Court, learned Counsel appearing for the petitioners submitted that petitioner nos.2 and 4 are

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sons, whereas petitioner nos.3 and 5 to 7 are unmarried and married daughters, respectively of petitioner no.1. Thus, petitioner no.1 alone would be entitled to the family pension, whereas the other pensionary benefits, as admissible in law and under the relevant Rules would be payable to the other petitioners.

19. In view of the fact that the findings rendered by the Civil Court that the husband of petitioner no.1 was declared as dead under Section 108 of the Evidence Act, the respondents cannot be allowed to urge that the services of the husband of petitioner no.1 were terminated and thus no pension is payable to the petitioners. In our view, the findings rendered by the Civil Court have attained finality and were binding upon the respondents herein, who were parties to the said suit. The Government Resolutions dated 5th July, 1991 and 7th October, 1993, pressed in service by the learned Counsel for the petitioners, would apply to the facts of this case and are binding on the respondents.

20. In our view, the petitioners have thus made out a case for the relief in terms of prayer clause (B) and (C). Respondent nos.2 and 3 are directed to forward a proposal for grant of family pension and

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other pensionary benefits to the office of respondent no.4 in respect of service benefits of the husband of petitioner no.1 and the father of petitioner nos.2 to 7, within four weeks from today. Upon receipt of such proposal from the respondent nos.2 and 3, respondent no.4 shall release the arrears of family pension to petitioner no.1, within four weeks from the date of receipt of such proposal and shall continue to release the other pensionary benefits, from time to time, in accordance with the time prescribed under the Pension Rules, regularly.

21. Rule is made absolute in aforesaid terms. No order as to costs.

22. Parties to act upon authenticated copy of this judgment.

(S. G. MEHARE, J.)

(R.D. DHANUKA, J.)

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