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

917 WRIT PETITION NO.617 OF 2021

KAUSHLYABAI UTTAMRAO GARJE
VERSUS
STATE OF MAHARASHTRA AND OTHERS

....

Mr G. J. Pahilwan, Advocate for petitioner;
Mr P. K. Lakhotiya, A.G.P. for respondent No.1
Mr S. R. Dheple, Advocate for respondent Nos.2 to 4

**CORAM : RAVINDRA V. GHUGE
AND
S. G. DIGE, JJ.**

DATE : 26th April, 2022

PER COURT:

1. On 09/03/2022, this Court had passed the following order :-

“ Learned counsel for the petitioner invited our attention to the certificate dated 29th August 2019 issued by the Second Joint Civil Judge, Junior Division, Paithan and submits that the said certificate issued by the learned Judge is heirship certificate and not succession certificate. He however submits that under the Family Pension Scheme, heirship certificate is sufficient.

2. The learned counsel for the respondent does not contest the statement made by the learned counsel for the petitioner.

3. The learned counsel for the petitioner states that he will produce the relevant provision under the Family Pension Rules which permits the payment of

(2)

such pension on production of heirship certificate. The learned A.G.P for the respondents agrees to produce the copy of the relevant provisions which makes mandatory to produce succession certificate for claiming Family Pension.

4. *Place the matter high on board on 21st March, 2022.”*

2. We have considered the strenuous submissions of the learned Advocates for the respective sides.
3. The widow, who is 72 years of age, is before this Court with prayer clauses (B) and (C) as under :-

“B] Be pleased to quash and set aside the Communication dated 4/3/2020 issued by the Education Officer Z.P. Aurangabad.

C] be pleased to direct the respondent no. 2 to 5 to declare petitioner is the nominee of late Uttamrao Rakhmaji Garje and grant pensionary benefits to the petitioner from the death of Late Uttamrao Rakhmaji Garje.”

4. There is no dispute that the petitioner is the sole wife of the deceased. She has actually tendered the succession certificate to the Education Officer. The Education Officer has claimed that an heirship certificate has been produced by the petitioner.

(3)

5. We find that the petitioner was before the learned 2nd Joint Civil Judge Junior Division, Paithan, for seeking a succession certificate. Erroneously, though the title of the proceedings in M.A.R.J.I. No.57/2019 correctly indicates that the petitioner had prayed for a succession certificate and though the order of the learned Judge, dated 29/08/2019 correctly mentions that a succession certificate is being issued to the petitioner, the Education Officer has harped upon the claim clause, which is purely a typographical mistake. This typographical mistake is in the order of the Court. There is no mistake in the claim application filed by the petitioner or the final order of the Court granting succession certificate.

6. It is, therefore, apparent that the Education Officer has adopted a hyper technical approach while passing the order dated 04/03/2020. It is more than three years from the demise of the husband of the petitioner on 29/03/2019, that, she is without family pension and practically has been made to beg for the pension on account of the conduct of the respondent No.3 – Education Officer (Primary), Zilla Parishad, Aurangabad.

7. In view of the above, this petition is allowed.

(4)

The impugned order dated 04/03/2020 is quashed and set aside. We direct respondent Nos.3 and 4 to ensure that the entire arrears of pension as well as regular pension, is paid to the petitioner, on or before 31/05/2022, failing which, we would consider the inaction on the part of these two respondents as being a deliberate act of disobeying the order of this Court.

8. Since we realized that the petitioner has been unnecessarily made to suffer the rigours of tardy litigation for three years from August 2019, when she received the succession certificate from the Court, this is a fit case for imposing costs of Rs.5,000/- (Rs. Five Thousand), which the Education Officer (Primary), Zilla Parishad, Aurangabad, shall pay from his salary account to the petitioner, on or before 31/05/2022. If the then Education Officer has retired from service, the said costs will be deducted in two equated monthly installments, commencing from salary payable to him from June 2022 and ending with the payment of salary for the month of July 2022 and the said amount shall be deposited in the account of the petitioner by respondent No.2 – Chief Executive Officer, Zilla Parishad, Aurangabad.

(S. G. DIGE, J.)

sjk

(RAVINDRA V. GHUGE, J.)