

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

WRIT PETITION NO. 9180 OF 2021

Bharti wd/o Gorakhnath Gaikwad, ... **Petitioner**
Age 61 years, Occu: Household
R/o Geeta Sadan, Prakash nagar,
Latur, Tq. & Dist. Latur

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Finance Department, Mantralaya,
Mumbai 400 032
2. The Accountant General (A &E)-II
Pension Wing, Old Building,
In front of Ravi Bhavan, Nagpur,
District Nagpur.
3. The Chief Executive Officer, ... **Respondents**
Zilla Parishad, Latur, Tq & Dist. Latur
4. The District Health Officer,
Zilla Paqrishad, Latur

Mr. Vijay V. Deshmukh, Advocate for the petitioner,
Mr. A. R. Kale, AGP for respondent No.1,
Mr. U. B. Bondar, Advocate for respondent Nos. 3 and 4

**CORAM : SMT. VIBHA KANKANWADI &
Y. G. KHOBRAGADE, JJ.**

DATE : 12th October, 2022

JUDGMENT (Per Y. G. Khobragade, J.):

1. Rule, made returnable forthwith. With consent of the parties, the petition is finally heard at the admission stage, as the petitioner only prayed for issuance of directions against respondent

No.4- District Health Officer, Zillla Parishad, Latur for forwarding proposal in regard to her family pension.

2. The petitioner has invoked jurisdiction of this Court under Articles 226 and 227 of the Constitution of India and claimed that she is widow of deceased Shri Gorakhnath Jalbaji Gaikwad who was working as District Extension & Media Officer with Respondent Nos. 3 and 4. Her husband superannuated on 28.02.1995 and died on 08.04.2019. However, her deceased husband had recorded name of his second wife namely Sudharna Gorakhnath Gaikwad being dependent in his service book. The second wife of her husband Sudharna expired on 14.08.2017. But name of the petitioner was not recorded in the service book by her husband being dependent. Therefore the petitioner filed Regular Civil Suit No. 76 of 2019 before the learned Civil Judge, Senior Division Latur and prayed for decree of declaration. However, during pendency of the said suit, her husband died and thereafter a compromise was entered into between her(the petitioner) and sons (from second wife) of her husband on 13.07.2019 (Exh D). In pursuance of the said compromise, on 13.07.2019, a compromise decree, was passed by the Lok Adalat in RCS No. 76/2019 wherein the plaintiff (petitioner herein) is held to be legal wife of late Shri Gorakhnath Jalbaji Gaikwad. Thereafter, on 04.11.2019, the petitioner submitted an application with Respondent

No.4-District Health Officer and prayed for inclusion of her name being widow of her husband late Shri Gorakhnath Jalbaji Gaikwad in his service record being a beneficiary of the family pension. However, on 04.06.2020, the Respondent No.2 intimated the petitioner that her proposal for pensionary benefit cannot be forwarded to the higher authority on the ground that during life time, the deceased employee-late Shri Gorakhnath Jalbaji Gaikwad did not enter name of the petitioner in his service record being his wife.

3. According to the petitioner, on 07.01.2021, Legal Heir Certificate was issued by the competent Court i.e. learned Civil Judge, Senior Division, Latur in her favour and, therefore, she is beneficiary of the family pension on account of death of husband. After getting legal heir certificate, again she submitted an application on 08.01.2021 with respondent no.4 and requested for inclusion of her name in the service record of her husband late Shri Gorakhnath Jalbaji Gaikwad for family pensionary benefits. However, again on 25.02.2021, the Respondent No.4 refused to forward the proposal of the petitioner for family pension to the higher authority. The petitioner further advert that she is legally wedded wife of late Shri Gorakhnath Jalbaji Gaikwad. Therefore, as per Rule 116 (6)(a)(i) of the Maharashtra Civil Services (Pension Rules, 1982, even if the government employee having more than one widow, the family pension equally to be paid.

Though Smt. Sudharna, second wife of the petitioner's husband, died, the petitioner being the first wife of deceased late Shri Gorakhnath Jalbaji Gaikwad, she is entitled for family pension in respect of her late husband. However, the Respondent No.4 arbitrarily refused to forward her proposal for pensionary benefits to the higher authority. Therefore, stating that the action on the part of the respondents is illegal, bad in law, the petitioner prayed for quashing and setting aside the impugned letters and for directions against the Respondent No.4 to forward her proposal for pensionary benefits to the higher authority/Respondent No.2.

4. The learned counsel for the petitioner has filed affidavit about service of notice in respect of the Respondent No.2- Accountant General along-with postal report dated 20.09.2022 and Online postal tracking consignment certificate which shows that on 20.09.2022 the notice through Speed Post was issued to the Respondent No.2 and on 22.09.2022 the said envelope was delivered to the Respondent No.2. But the respondent failed to appear in the matter.

5. Learned AGP appears for respondent No.1-State who is a formal party. Respondent Nos. 3 and 4 are duly served with notice and they appeared through Advocate Shri U. B. Bondar but did not file reply.

6. We have heard Shri Vijay Deshmukh, the learned counsel for the petitioner, Shri A.R. Kale, learned AGP for Respondent No.1-State and Shri U.B. Bondar, learned counsel appearing for Respondent Nos. 3 and 4 at length.

7. It is not in dispute that Shri Gorakhnath Jalbaji Gaikwad was working as District Extension and Media Officer with Respondent Nos. 3 and 4 and on attaining age of superannuation, he was superannuated on 28.02.1995. It is a matter of record that in the year 1976, the marriage of the petitioner was solemnized with late Shri Gorakhnath Jalbaji Gaikwad and during subsistence of his first marriage he married with one Sudharna @ Sudhatai d/o Ramrao Kevade but name of the present petitioner not been entered into by her husband in his service book. It is also a matter of record that, Sudharna, the second wife of late Shri Gorakhnath Jalbaji Gaikwad, died on 14.08.2017 and after her death, her sons filed M.A.(H) No. 415 of 2020 before the learned Civil Judge, Senior Division Latur under the Bombay Regulation VII of 1927 and prayed for issuance of heir-ship certificate. Accordingly, on 07.01.2021, the learned Civil Judge, Senior Division, Latur issued heir-ship certificate certifying that present petitioner-Bharti Gorakhnath Gaikwad, Shashank Gorakhnath Gaikwad, Prasenjeet Gorakhnath Gaikwad and Mahendra Gorakhnath Gaikwad are legal heirs of deceased Gorakhnath Jalbaji Gaikwad. Further, the

present petitioner also filed a Regular Civil Suit No. 76 of 2019 before the learned Civil Judge, Senior Division Latur and prayed for declaration that she is legally wedded wife of Shri Gorakhnath Jalbaji Gaikwad wherein (1) Gorakknath Jalbaji Gaikwad (husband), (2) Shashank Gorakhnath Gaikwad (2) Prasenjeet Gorakhnath Gaikwad and 4) Mahendra Gorakhnath Gaikwad were impleaded as defendants. During the pendency of the said suit, the present petitioner who was plaintiff and the defendants therein entered into compromise and in pursuance of the said compromise, on 13.07.2019, a compromise decree was passed before the Lok Adalat wherein the defendants therein admitted that, the plaintiff/present petitioner is the legally wedded wife of late Shri Gorakhnath Jalbaji Gaikwad. Therefore, it prima facie appears that the petitioner is legally wedded wife of late Shri Gorakhnath Jalbaji Gaikwad who was the retired employee of Respondent Nos. 3 and 4.

8. Rule 116(6)(q)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 provides that family pension is payable to more widows than one in equal shares. In the case of **Kantabai Dhulaji Shriram & others Vs. Hausabai Dhulaji Shriram & others**, 2015 (3) Mh.LJ 883, it has been held that family pension is to be payable to more than one widows in the event of there being such number of widows. Share of one widow on her death is to be passed on to her eligible child. If such

deceased's widow is not survived by any child, her share of family pension is not to lapse but be passed on to other widows in equal share and if there is only one surviving widow, in that circumstance full pensionary benefits are required to be paid the surviving widow.

9. In the case in hand, it appears that name of the petitioner being dependent was not entered in the service record of her deceased husband Shri Gorakhnath Jalbaji Gaikwad and after sad demise of her husband, she submitted an application with the Respondent No.4 on 04.11.2019 on the basis of compromise decree passed in RCS No. 76 of 2019. However, the Respondent No.4 issued letter dated 04.06.2020 and intimated that unless there being declaration of her right as wife of retired employee Gorakhnath Jalbaji Gaikwad her proposal for family pension would not be forwarded. Further, though the petitioner obtained legal heir certificate from by the competent Court and produced with the Respondent No.4 but again the Respondent No.4 failed to consider said legal heir certificate and declined to forward proposal of the petitioner for pensionary benefits to the competent authority i.e. Respondent No.2 which certainly appears malafide and without application of mind. Therefore, the letters dated 04.06.2020 and 20.05.2020 issued by the Respondent No 4 are required to be quashed and set aside and it is necessary to direct the Respondent No.4-District Health Officer, Zilla Parishad, Latur to forward proposal

of the petitioner in respect of her entitlement of pensionary benefits to the Respondent No.2- Accountant General.

10. In view of above discussion, we proceed to pass the following order:

O R D E R

- i. Writ petition is allowed.
- ii. Letters dated 04.06.2020 and 20.05.2020 issued by the respondent No 4 are hereby quashed and set aside
- iii. Respondent No.4- District Health Officer, Zilla Parishad, Latur is hereby directed to forward proposal of the petitioner for the benefit of family pension to respondent No.2 within four weeks from today.
- iv. Upon receipt of such proposal with regard to family pension of the petitioner, the Respondent No.2 is hereby directed to decide the same as early as possible, preferably within a period of six weeks from the date of receipt of receipt of the proposal.
- v. Rule is made absolute accordingly. No order as to costs.

(Y. G. KHOBRADE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan