

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

WRIT PETITION NO.2495 OF 2023

Dina Arun Patel

....Petitioner

Versus

The State of Maharashtra & Ors.

....Respondents

Appearances :

Mr. Shashikant Gaikwad, i/b. T. M. Venjane for Petitioner.

Mr. N. K. Rajpurohit, AGP for State.

**CORAM : DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.**

DATE : 03 JULY 2023.

ORDER: (*Per – Sandeep V. Marne, J.*) :

Petitioner has filed this petition for payment of family pension and pensionary benefits in respect of her deceased husband.

2. Petitioner's husband Arun Maganlal Patel was appointed in the office of Directorate of Rural Sounding Department, Government of Maharashtra on the post of Technician on 12 April 1985. He was promoted from time to time and his services were subsequently absorbed in the Late Narayan Meghaji Lokhande Maharashtra Institute of Labour Studies on the

post of Superintendent in the year 2007. Petitioner's husband was initially appointed on the strength of tribe certificate of the tribe 'Dubla' against vacancy reserved for ST category.

3. The proposal was submitted for verifying Petitioner's tribe claim before Scheduled Tribe Certificate Scrutiny Committee, Kokan Vibhag, Thane but the same was returned for conducting online scrutiny on 19 January 2020 with a direction to the Petitioner's husband to submit the same afresh. The Petitioner's husband retired from services on attaining age of superannuation on 31 May 2019. Before the Petitioner's husband resubmit the proposal before the Committee, he unfortunately expired on 15 May 2021.

4. The Petitioner made representation for payment of pension and pensionary benefits. However by communication dated 18 October 2022 the Respondent-Institute rejected the request on account of non-submission of validity certificate. The Petitioner has accordingly filed the present petition for grant of pension and pensionary benefits. The learned counsel appearing for Petitioner has relied upon judgment and order of this court in **Sunita w/o. Late Pradip Thakar Vs. The State of Maharashtra & Ors.**, Writ Petition No.6485 of 2020 decided on 20 July 2021.

5. The learned AGP has opposed the petition submitting that in absence of submission of validity certificate, Petitioner's wife cannot be paid family pension. That validity of caste claim is a mandatory condition for payment of pension.

6. We have considered the submissions. The Petitioner's husband has retired from services on 31 May 2019. It appears that during his service tenure, no effort was made by the employer to get his tribe claim verified. Though the Petitioner submitted proposal for validity of the tribe claim with the Committee in the year 2020, the same was returned for online scrutiny with liberty to file fresh one. Before Petitioner's husband to file fresh proposal, he unfortunately died on 15 May 2021.

7. Though, in ordinary course, submission of validity certificate would be an essential requirement for recognising services of the government servant who appointed on reserved post, however in the present case the employee is no more. It would be so harsh now to expect the widow to run the pillars and posts to obtain necessary documents for submitting the tribe claim. The employer could have sent proposal for scrutiny of Petitioner's caste certificate within a reasonable time. However it appears that Petitioner's husband was allowed to serve and retire on 31 May 2019. In such circumstances the widow cannot now be expected to pursue the proposal for validity certificate as pre-condition for payment of pension and pensionary benefits.

8. In **Sunita Pradip Thakar** (supra) the employee therein had died during pendency of proposal before the Scrutiny Committee. He would yet to retire from services at the time of his death. The Division Bench of this Court however allowed the claim of widow to family pension. This court relied upon it's earlier decision in **Prakash Fulchand Barwal since deceased through his Legal Heirs Smt. Shobhabai Barwal & Ors. Vs. State of Maharashtra and Ors.,**

Writ Petition No.3718 of 1994 decided on 12 August 2010. In that case the caste certificate of employee was invalidated and appeal against order was also rejected. They have preferred Writ Petition challenging order of Committee and Appellate Authority and during pendency of the Petition, the employee had died. Even in this circumstance, this court granted family pension to the widow.

9. Present case stands on higher footing than that of *Sunita Thakar* and *Prakash Barwal*. The Petitioner's husband was allowed to complete entire tenure of his service and retire on 31 May 2019. In such circumstances his wife to be entitled to pay family pension and other pensionary benefits.

10. We accordingly proceed to pass following order.

- i) Petitioner is eligible for payment of pension and pensionary benefits in respect of her deceased husband. Amount in this regard be paid to her within a period of 8 weeks from today.
- ii) The Petitioner and her other legal heirs shall not take benefit of the tribe 'Dubla' without independently obtaining validity certificate from competent authority.

11. With the above directions Writ Petition is partly allowed. There shall be no order as to costs.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.