

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

WRIT PETITION NO.3660/2022

Indira Wd/o Arun Gajbhiye,
aged about 65 Yrs., Occ. Household,
R/o Kapil Nagar, NIT Quarter No.D19,
Nari Road, Post Uppalwadi, Nagpur. ... Petitioner

- Versus -

1. Secretary to Government of
Maharashtra, Water Supply and Sanitation
Department, Mantralaya, Bombay -32.
2. Chief Executive Officer,
Rural Water Supply Department,
Zilla Parishad Office (Z.P.),
Nagpur 440 001.
3. Executive Engineer,
Rural Water Supply Department,
Zilla Parishad Office (Z.P.), Nagpur 440 001.
4. Marriage Officer, Nagpur. ... Respondents

Mr. D.C. Chahande, counsel for the petitioner.
Mr. M.K. Pathan, Additional Government Pleader for respondents 1 and 4.
Mr. P.V. Bhoyar, counsel for respondents 2 and 3.

CORAM: ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 12.4.2023

ORAL JUDGMENT (Per Rohit B. Deo, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The petitioner Mrs. Indira Arun Gajbhiye is aggrieved by the communication cum office order dated 24.2.2021 issued by respondent 3 whereby her claim to family pension on account of the death of Mr. Arun Gajbhiye is rejected.

3. The rejection of the family pension claim is on the ground that there is no record showing the name of the petitioner as family member, particularly as wife of Mr. Arun Gajbhiye.

4. It is common ground that Mr. Arun Gajbhiye was working on the establishment of respondents 2 and 3 and he superannuated on 31.7.2016 as Sectional Engineer. Mr. Arun Gajbhiye expired on 24.10.2020.

5. The petitioner claims to be legally wedded wife of Mr. Arun Gajbhiye. She asserts that the marriage was solemnized on 2.1.1995 at Bouddha Prashikshan Sanstha, Buddha Bhoomi Mahavihar, Kamptee Road, Nagpur and as an abundant caution was registered with the office of the Marriage Officer, Nagpur on the same day. She has placed on record certificate of marriage dated 2.1.1995 (Annexure 3).

6. The petitioner further contends that from the wedlock between Mr. Arun Gajbhiye and Mrs. Malti, who expired on 19.8.1993, two sons Ankit and Akshay are born. She has placed on record the documentary material showing that Arun Gajbhiye was making the payment of the life insurance policy which was in the name of the petitioner. Petitioner has further placed on record the copy of the petition in proceedings which she preferred under the Special Marriage Act against Mr. Arun Gajbhiye seeking decree of restitution of conjugal rights. Petitioner emphasises that in the affidavit in response filed by Mr.

Arun Gajbhiye, the status of the petitioner as legally wedded wife is admitted.

7. In view of the stand of respondents 2 and 3 that there is no credible record available with the employer throwing light on the status of the petitioner, we passed the following order on 21.3.2023.

“1. We were initially inclined to direct the petitioner to obtain succession certificate particularly since, sons from the first marriage have already obtained succession certificate.

2. However, the learned counsel appearing for the petitioner states on the basis of instructions received, that the petitioner is not claiming any part of the estate of deceased Arun Lahanuji Gajbhiye except the family pension.

3. Learned counsel appearing for the petitioner has invited our attention to the certificate of marriage which is annexure-3 (Page 19) of the petition. Our attention is further drawn to the affidavit filed by Mr. Arun Lahanuji Gajbhiye in the proceedings under

the Special Marriage Act, 1954 initiated by the petitioner Mrs. Indira Arun Gajbhiye, in which there appears to be an admission of marriage.

4. According to the learned counsel appearing for the petitioner, first wife of Mr. Arun Lahanuji Gajbhiye, Mrs. Malti Arun Gajbhiye expired on 19/08/1993 and therefore, there is absolutely no question mark which can be raised on the marriage of the petitioner with Mr. Arun Lahanuji Gajbhiye.

5. In this view of the matter, we allow the oral motion moved by the learned counsel appearing for the petitioner and implead the marriage officer, Nagpur who has issued the certificate as respondent 4. Learned AGP waives service for the newly added respondent.

6. We direct the newly added respondent 4 to file an affidavit clarifying, whether the certificate which is annexed at page 19 is issued by him.

7. Stand over to 05.04.2023.”

8. Respondent 4 has filed affidavit dated 10.4.2023 confirming the authenticity of the marriage registration certificate.

9. In this view of the matter, we see no impediment in declaring that the petitioner is entitled to the family pension in view of the death of Mr. Arun Gajbhiye.

10. We allow the petition in terms of prayer clause (i) and (ii) which read thus:-

“i. Issue writ in the nature of mandamus or nay other appropriate writ or direction or order or declaration to the effect that the impugned office order No.490/2021 dated 24/02/2021 Annexure-1 by which legitimate claim of family pension of the petitioner was rejected by the respondent No.3 Rural Water Supply Department, Zilha Parishad Nagpur be declared as illegal as much as bad in law and as such liable to be quashed and set aside.

ii. Be further pleased to issue writ in the nature of mandamus or any other appropriate writ or direction or order or declare that as per provisions of Maharashtra Civil Services (Pension) Rules 1982 the petitioner being

widow of ex-employee Arun Gajbhiye is entitled to receive family pension and that statutory right cannot be taken away by any official laches.”

11. We direct respondents 2 and 3 to forward the pension proposal to the appropriate office / authority within the next two weeks. We further direct the appropriate authority, and we are informed that it is the office of Accountant General, to process the pension papers within six weeks from the date of receipt of the proposal. The endeavour shall be to ensure that the petitioner receives arrears and starts receiving the regular pension within eight weeks from the date this order is uploaded on the High Court website. The petition is allowed in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)