



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4022 OF 2017

Shaheen Begum w/o Shaikh Yusuf .. Petitioner

versus

Lt. Col. Chief Officer & others .. Respondents

Mr. A. G. Dalal, Advocate for the Petitioner.

Mr. A. B. Gatne, Amicus curiae.

Mr. S. B. Narwade, AGP for the State.

Mr. R. R. Bangar, Advocate for Respondent Nos. 1 to 4.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

RESERVED ON : 18th APRIL, 2024.
PRONOUNCED ON : 7th MAY, 2024.

PER COURT : (Per R. M. Joshi, J.)

1. This Petition is filed by Shaheen Begum w/o Shaikh Yusuf for seeking grant of family pension to her brother Shaikh Sajed on death of her parents.

2. It is the case of the Petitioner that her father Shaikh Hamid was working as a 'Sepoy' in Indian Army and after his retirement he was getting regular monthly pension till his death on 2nd January, 1995. After the death of Shaikh Hamid, his wife Tahera Begum started getting pension vide Pension Order No.

F/NA/3806/95. Tahera Begum died on 1st January, 2003. The Petitioner is married and aged about 45 years and hence she is not entitled to get family pension of her deceased father. It is her contention that her brother Shaikh Sajed is mentally retarded since birth and after death of her parents, he is entitled to receive family pension of his deceased father. The Petitioner also claims that she is not employed and dependent upon her husband but is still taking care of her brother. An application therefore was filed before the concerned authority for seeking pension through Zilla Sainik Welfare Office. By communication dated 30th August, 2011, the respondent authorities responded to the claim and called upon to submit necessary documents. Another communication was made by the Petitioner through Zilla Sainik Welfare Office and compliance was done of the requisitioned documents. In spite of lapse of 3 months thereafter no action was taken by the concerned authorities and hence Petition came to be filed.

3. The Petitioner, in support of her submissions, has placed reliance on the following documents :-

- (a) Copy of pension certificate of Petitioner's deceased father.
- (b) Copy of Death Certificate of Petitioner's father.

- (c) Copy of Death Certificate of Petitioner's mother.
- (d) Copy of letter dated 30.08.2011 issued by the Respondents.
- (e) Copy of letter dated 24.11.2016, written by the Petitioner.
- (f) Copies of necessary documents asked by the Respondents.
- (g) Certificate of disability dated 26.04.2022.

4. The Respondents opposed the Petition by filing an affidavit-in-reply of Captain H.S. Kapoor. There is no dispute made about the fact that Shaikh Hameed was enrolled in Army Ordnance Corps on 10th July, 1960 and was discharged from service on 31st July, 1978. After his retirement he was entitled and accordingly received pension till his death. Thereafter his wife Tahera Begum started getting family pension during her life time. It is claimed that Sheikh Aved s/o of late Shaikh Hamid approached the Army Ordnance Corps Records through Zilla Sainik Welfare Office vide letter dated 2nd July, 2011 along with documents claiming family pension in the name of Sheikh Sajeed. The Army Ordnance Corps Records vide letter No. 6871208/Shaiikh Hamid/Pen/FP-3 dated 30th August, 2011, intimated the Zilla Sainik Welfare Section, Hingoli to advise Shaikh Sazad s/o Late Shaikh Hamid to submit the documents such as Medical Certificate from Medical Board,

Guardianship issued by competent Court of law, Full family details of late Shaikh Hamid duly signed by Tehsildar after due verification, in original for further action. It is further claimed that the provisions contained in Government of India, Ministry Defence Letter Nos. A/49601/AG/PS-4(e)/3363/B/D(Pens/Sers) dated 27th August, 1987 and A/49601/AG/PS-4(e)/1719/B/D(Pens/Sers) dated 21st December, 1989, enabled the handicapped/disabled children of the Armed Forces Personnel to be entitled for dependent family pension. No dispute is made by the Respondents with regard to the fact that the disabled son of Shaikh Hamid and Tahera Begum would be entitled for dependent family pension. It is however claimed that as per the records held by Army Ordnance Corps Records, the name in respect of Shaikh Sajeed as mentioned in the disability certificate has not been found recorded. As per the records, the following children are born out of the wedlock between Shaikh Hamid and Tahera Begum :

Sr. No.	Name	Relationship	Date of Birth
A	Javeed	Son	01 Jul 1957
B	Shnshah Begum	Daughter	01 Feb 1960
C	Sheikh Sazad	Son	07 Jul 1963
D	Sheikh Aved	Son	12 Aug 1965
E	Freen	Daughter	29 Jul 1967

In such circumstances, the Petitioner was called upon to produce documents as mentioned in Paragraph No. 7 of the reply.

5. In response thereto, an affidavit-in-rejoinder came to be filed by the Petitioner claiming that the name of her brother as appearing on Adhar Card, Ration Card and Medical Disability Certificate is 'Shaikh Sajed' because as per Petitioner's knowledge from her childhood, she is under impression of name of her brother likewise. While registering name of her mentally disabled brother for issuance of Adhar Card, date of birth is recorded as 10th June, 1961 under her wrong belief. It is also claimed that discrepancy in the name has occurred while spelling his name in English. It is further stated by the Petitioner that her brother was born at home and not at hospital and as such there is no birth record available. Since he was never admitted to the school, the school record is also absent. She claims that she has sworn an affidavit before the Notary stating that "Shaikh Sazad" and "Shaikh Sajed" is one and the same person who is mentally disabled brother of the Petitioner. The Petitioner has also claimed that an application was filed before the District Court under the provisions of Mental Health Act, 1987 for seeking appointment as guardian of mentally disabled person. However, the said application

is dismissed by order dated 4th September, 2019 passed in Civil Miscellaneous Application No. 2/2019. The said dismissal is effected for the reason that on the date of filing of the application, Mental Health Act, 1987 as repealed with introduction of Mental Health Care Act, 2017 (for short "Health Care Act"). Relevant provisions of the Health Care Act and Right of Persons with Disability Act, 2016 (for short "Disabilities Act") make a provision for appointment of nominee/guardian.

6. Since the issue of entitlement of a person claiming himself to be the person with mental disability, we had requested learned Advocate Mr. Gatne to assist the Court on the issue. He ably assisted the Court by drawing attention of the Court to the various provisions of the Health Care Act and Disabilities Act. According to him, a person with disability has been defined in Section 2(s) of the Disabilities Act as under :-

2(s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others."

According to him, the term 'high support' is also specified therein under Section 2(l) which reads as under :-

2(l) "high support" means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy."

By referring to Section 2(t), it is contended that a person with disability having high support means a person with benchmark disability as certified under Section 58 of the Disabilities Act. Section 57 of the Disabilities Act provides for designation of certifying authorities as the appropriate Government shall designate a person, having requisite qualifications and experience, as certifying authorities, who shall be competent to issue the certificate of disability. The procedure has been laid down under Section 58 of the Disabilities Act for issuance of such certificate. Thus, according to him, a certificate issued by the authority under Section 57 is sufficient evidence in order to hold that any person is suffering disability requiring high support. He further drew attention of the

court to disability certificate issued by the Medical Authority, Hingoli, to state that Authority under Act has issued it.

7. A bare perusal of the said certificate indicates that the same has been issued by the Committee of Medical Officers as appointed by the department of Empowerment of Persons with Disability, Ministry of Social Justice and Empowerment, Government of India. It is certified that Sajed Hamid Shaikh is a case of Intellectual Disability and has 60% permanent disability in relation to his brain, mental illness, mental retardation as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person including under RRWD Act, 2016 notified by Government of India vide S.O. 76(E) dated 04/01/2018). The said evidence proves that the person to whom the said certificate has been issued is a case of intellectual disability with 60% permanent disability. He, therefore, needs to be treated as a person with disability requiring high support needs.

8. Principally, there is no dispute made by the Respondents with regard to the entitlement of son/daughter of deceased employee having intellectual disability with 60% permanent disability for

pensionary benefits. The objection is sought to be raised with regard to the discrepancies in the record of the Respondents indicating the names of the children of the deceased. In this regard, perusal of the affidavit-in-reply indicates that the name of one of the sons of deceased Shaikh Hamid has been recorded as “Sheikh Sazad”, whereas the Petitioner claims that the name of the son of the deceased as “Shaikh Sajed”. The documents placed on record indicate that there was a paper publication made with regard to the correct name of the son of the deceased and brother of the Petitioner. Even otherwise, it is clear that a mistake seems to have been committed while spelling the name of the son of the deceased as “Sazad” instead of “Sajed”. We, therefore, do not find any ambiguity, much less, any doubt with regard to Sheikh Sajed being son of Hamid, the employee of the Respondents.

9. The learned amicus curiae, by referring to the provisions of Health Care Act has drawn attention of the Court to provisions of Section 14 of the Act, which provides for appointment and revocation of nominated representative. It lays down procedure for appointment of a nominated representative for the person suffering mental illness as defined under Section 2(s) of the Health Care Act. Various other

provisions are made therein with regard to the right of the person with mental illness. We, therefore, find that Shaikh Sajed, son of Shaikh Hamid would be entitled for receiving the pensionary benefits.

10. Since Shaikh Sajed is mentally challenged and would be unable to maintain himself, we have to decide as to who can be appointed as a guardian to take his care. Record indicates that in the application filed before the Civil Court for obtaining guardianship certificate, it is specifically averred by the Petitioner that after the death of her mother, Shaikh Sajed is staying with her and she is taking care of him. The copy of ration card indicates the name of Shaikh Sajed to be the family member of the Petitioner. Moreover, record indicates that she had applied for her appointment as guardian of Shaikh Sajed and an application was filed before the District Court, Hingoli. The said application was however, rejected by the Court on the ground that after coming into force the Health Care Act, such application is not tenable. This indicates that the Petitioner had taken steps in order to espouse the cause of Shaikh Sajed by seeking appointment of her as his guardian. Perusal of the affidavit-in-reply of the Respondent shows that the application was

moved by Shaikh Aved, another son of Shaikh Hamid on behalf of Shaikh Sajed. We, therefore, made query to the learned Advocate for the Petitioner as to why said Shaikh Aved has not pursued the cause of Shaikh Sajed. The learned Advocate for the Petitioner on instructions made solemn statement that Shaikh Aved is now deceased. We have no reason to disbelieve the said statement made by the Advocate on instructions and as such we accept the said statement.

11. The Petitioner has also filed affidavit in order to indicate that she is the one who takes care of her brother Shaikh Sajed. Considering the fact that since 2003 i.e. after death of Tahira Begum, widow of Shaikh Hamid and mother of the Petitioner and Shaikh Sajed, no family pension has been received by a person with mental disability, we are not inclined to call upon the Petitioner to approach to the concerned Committee under the Health Care Act for seeking her nomination in respect of her brother Shaikh Sajed. In exercise of our extra-ordinary powers, we deem it appropriate to appoint the Petitioner as the guardian of Shaikh Sajed.

12. In view of the above, **the Writ Petition is allowed** in terms of **prayer clause 'B'**. Respondents are directed to process and pay family pension to 'Shaikh Sajed' along with arrears within 90 days from the date of this order. Smt. Shaheen Begum, Petitioner, is appointed as guardian of 'Sheikh Sajed' for the purpose of managing the family pension amount. A separate joint account be opened in any Nationalised Bank in the name of Shaikh Sajed and the Petitioner, with permission to the Petitioner to operate the said account. The Petitioner is directed to submit the account of the expenses made for maintaining Shaikh Sajed before the Registrar of this Court, twice in a year, along with an affidavit, on or before the 15th day in June and in December, of each year.

13. Before parting, we record our appreciation to Advocate Mr. Gatne for his able assistance to the Court.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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