



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 7639 OF 2020

Smt. Prabhavati Ashokrao Bhambare .. Petitioner

versus

The State of Maharashtra & others .. Respondents

Mr. M. M. Bhokarika, Advocate for the Petitioner.

Mr. R. K. Ingole, AGP for Respondent Nos. 1 to 5.

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

RESERVED ON : 2nd MAY, 2024.

PRONOUNCED ON : 8th MAY, 2024.

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

1. The Petitioner has filed this Petition with following prayers :-

b) The petitioner may kindly be declared as entitled for pension and other pensionary benefits, after death of her husband. Late Ashok Yamaji Bhambre, which is from 10.1.2006.

c) The direction may kindly be given to respondents that they shall pay regular pension henceforth, arrears of pension, with all other pensionary benefits from 10.01.2006 for which petitioner is eligible under law, till filing of petition with interest as commercial rate.

d) The earlier decision, which are against petitioner and/or by Hin. Tribunal, Hon. Court, may kindly be quashed and set aside and be declared as not binding on the petitioner nor would affect her right of getting pension and pensionary benefits from respondents.

2. Ashok Yamaji Bhambre, the husband of the Petitioner, was appointed on 25.11.1983 on salary of Rs. 300/- per month in Public Works Department, Ambajogai. He worked continuously for more than 240 days and claimed to have become permanent employee. On 05.02.1987, to ensure that there is no continuous service, steps were taken by the Respondents against him. He, along with other employees, filed complaint ULP No. 39/1987 through Union, as Mustering Assistant and Mestri Sanghatana (Maharashtra). The learned Industrial Court granted interim protection on 26.02.1987 however, dismissed the Complaint on 22.12.1993. Ashok died on 10.01.2006. The Petitioner, therefore, filed Original Application No. 669/2006 which was dismissed by order dated 24.01.2007 concluding that since Ashok was absorbed in the service on 25.06.2004, the Petitioner is not entitled for pensionary benefits. She, however, claims that her son was

appointed on compassionate basis and joined the service on 11.07.2013.

3. On behalf of Respondent No. 4, Narayan Tatyrao Patil, Executive Engineer, Public Works Department, Ambajogai, filed affidavit-in-reply opposing the Petition. It is not disputed that the husband of the Petitioner was working as Mustering Assistant. From 25.11.1983 and pursuant to the policy of the State Government he was absorbed as clerk cum surveyor with the office of the Deputy Director of Land Records, Nashik. He was issued posting order on 17.01.2005. It is however, specifically stated that he did not join the said post and never worked on the absorbed post till his death. In support of the said statement, documents are placed on record.

4. A rejoinder-affidavit was filed by the Petitioner. It is claimed that she being illiterate the order of absorption in the office of Deputy Director of Land Records, Nashik, dated 17.01.2005 came to her notice for the first time in this proceeding. The Petitioner could not comment on the contents of the affidavit filed by the Respondent on the ground that she is not aware about the details thereof. She only claims that she was residing with her husband till

his death and she knows that he was continuously working in the Government office as the employee of the Government.

5. The learned Advocate for the Petitioner submits that the order passed by the Tribunal dated 24.01.2007 in Original Application No. 669/2006 is consequential to the judgments passed by the Hon'ble Supreme Court as well as this Court in number of cases. He made reference to Civil Appeal No. 6531-6533/2022 and order dated 07.09.2022 passed by the Hon'ble Supreme Court to submit that the date 31.03.1997 should be taken into account as notional date for determining the pensionary service and as such the findings recorded by the Tribunal that the husband of the Petitioner was granted absorption after 26.06.2004 is not relevant now. He also drew attention of the Court to the following judgments :-

- i) Shaikh Miya s/o Shaikh Chand vs. State of Maharashtra
Civil Appeal No. 6531-6533/2022 decided on 07.09.2022.
- ii) State of Maharashtra vs. Ramchandra Kondiba Mahajan
Special Leave to Appeal (Civil) no. CC 3641/2024
decided on 03.03.2014
- iii) The State of Maharashtra vs. Kishor Digmabar Gaikwad
Special Leave Petition (Civil) Diary No. 44716/2019
decided on 18.12.2019

- iv) Prem Singh vs. State of Uttar Pradesh
AIR 2019 SC 4390
- v) Shalik Wamanrao Ranavare vs. State of Maharashtra
Writ Petition No. 2236/1997 decided on 24.08.2012.
- vi) Dnyanu Pandurang Pingale vs. State of Maharashtra
Writ Petition No. 10321/2013 decided on 09.02.2021.
- vii) MahatmaPhule Krishi Vidyapeeth, Ahmednagar
vs. Ganpat Kisan Karle, 2016(3) ABR 697 (SJ)

6. The learned AGP opposed the said submission by referring to the documents on record and according to him, there is no dispute about the fact that the husband of the Petitioner has never accepted the order of absorption and hence the question of his absorption in service and consequential grant of pensionary benefits does not arise. To support his submission about Petitioner having no right to claim pension, he placed reliance on the judgment of this Court in Writ Petition No. 4864/2014 (Shaikh Mohammad Younus s/o Shah Mohammad vs. The State of Maharashtra) dated 03.04.2024.

7. Though we find that the Petitioner had preferred proceeding bearing Original Application No. 669/2006 before the

Tribunal and the said Application was rejected by order dated 24.01.2007 and no Petition was filed raising challenge to the said order til 2020, we however, do not wish to go into the technicality of the period of limitation for the challenge of the said order. We have taken this view considering the contentions of Petitioner about passing of subsequent orders by the Hon'ble Supreme Court and this Court in connection with other Mustering Assistants. The order of the Hon'ble Supreme Court in case of Shaikh Miya s/o Shaikh Chand (supra), no doubt holds that irrespective of the actual date of absorption of the Mustering Assistants, the notional date of absorption should be considered as 31.03.1997 for determining the pensionary benefits. Before us, however, the question arises as to whether the husband of the Petitioner was absorbed and he joined the absorbed post for the purpose of getting consequential benefit thereof.

8. Respondent No. 4, by filing affidavit-in-reply, has brought on record the absorption order issued to the husband of the Petitioner calling upon him to join the post as a clerk cum surveyor. Clause No. 13 of the said order indicates that if for any reason the employee refuses to accept the said absorption, he would not be

entitled for any benefit. There is a statement on oath that Petitioner's husband never joined the said post before his death in the year 2006. There is however, no rebuttal of the said factual aspect by the Petitioner in the affidavit-rejoinder. Moreover, the documents placed on record by the Petitioner indicate that from January to March 2006, her husband was paid salary by PWD, Ambajogai, meaning thereby inspite of issuance of order for absorption, the husband of the Petitioner did not join the said post. He, therefore, cannot be treated as absorbed in regular service.

9. The Government by passing Resolution on 21.04.1999 decided to absorb Mustering Assistants Class III and IV as per their educational qualification without applying the Maharashtra Civil Services Pay Rules. They were absorbed by creating super-numerary posts. The Hon'ble Supreme Court has held that since they were absorbed it would be appropriate to consider the notional date of absorption to be 31.03.1997 for determining the pensionary benefits. Needless to emphasis that the pre-requisite for getting the pensionary or any other benefits of absorption would be acceptance of such post by the Mustering Assistant. In the instant case, the husband of the Petitioner did not accept the said post. We are, therefore, unable to

accept the contention of the Petitioner that her husband was absorbed in service and therefore she is entitled for the pensionary benefits by treating the Notional date of absorption as 31.03.1997.

10. We find that the son of the Petitioner and deceased Ashok, is given compassionate appointment by the Government. The Petitioner's claim could have sustained only after her husband had accepted the post as per the order of absorption. Once the said absorption is not accepted by him, we do not find any reason or justification to cause interference in the impugned order passed by the Tribunal. Even otherwise, independently considering the factual aspect on record and material placed before us, we do not find Petitioner to be entitled for any benefit of absorption. The judgments (supra) would not support the case of the Petitioner for material difference in the facts of those cases and one in hand.

11. In view of the above, **the Writ Petition stands dismissed.**

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE