



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 7986 OF 2020

Saraswati W/o Nagnath Mupde,  
Age: 44 years, Occu: House wife,  
R/o - Jagganth Nagar, Partur,  
Tq. partur, Dist Jalna.

...Petitioner

**VERSUS**

1. The State of Maharashtra,  
Through its secretary,  
Sports and Education Department,  
Mantralaya, Mumbai – 20.
  2. Deputy Director of Education,  
Bhadkal Gate Circle, Naralibag,  
Aurangabad.
  3. Headmaster,  
Primary school at Kokate Hadgaon,  
Tq. Partur, Dist Jalna.
  4. Education Officer, (Primary)  
Zilla Parishad, Jalna.
  5. Joint Commissioner,  
Scheduled Tribe Certificate  
Scrutiny committee,  
Scheduled tribe certificate  
verification committee, Aurangabad
- ...Respondents

...

Mr. Abhijit More h/f Mr. K. T. Taur, Advocate for the  
Petitioner

Mr. V. M. Kagne, AGP for Respondent Nos. 1, 2 and 5

Mr. V. P. Narwade, Advocate for Respondent No. 4

...

CORAM : RAVINDRA V. GHUGE &  
R. M. JOSHI, JJ

DATE : MAY 02, 2024

**ORAL JUDGMENT**

1.           **Rule.** Rule made returnable forthwith and heard finally by the consent of the parties.

2.           The Petitioner has put-forth prayer clauses A and B as under:

*A.       By issuing writ of Certiorari or any other writ, order or directions in the like nature, this Hon'ble Court may be pleased allow the petition and safeguard the fundamental right and may kindly be direct the respondents to issue full pension.*

*B.       By issuing writ of Certiorari or any other writ, order or directions in the like nature, this Hon'ble Court may be pleased to allow the provisional pension till final order of this Hon'ble Court.*

3.           We have considered the strenuous submissions of the learned Advocates for the respective sides. There is no dispute that the husband of the Petitioner was working as a Primary Teacher and he was selected and appointed to a post reserved for the Scheduled Tribe Category. He claimed to be belonging to the Mannervarlu ST category. His biological brother Maroti Gangadhar Mupade has been granted validity certificate of Mannervarlu Scheduled Tribe Category.

4. A similar fact situation was before this court in *Prakash S/o Fulchand Barwal and Others Vs. The State of Maharashtra and Others, Writ Petition No. 3718/1994.* By judgment dated 12.08.2010, this Court concluded in paragraphs 4, 5 and 6 as under:

*4] During pendency of the writ petition, the original petitioner has died and his legal heirs are brought on record. Since the original petitioner has already died, the question regarding his claim of belonging to scheduled tribe does not arise. The legal heirs of the original petitioner have restricted the claim in the present petition only for grant of family pension.*

*5] The petitioner was originally appointed on 18.7.1988. By virtue of interim order passed in the year 1994, the petitioner was directed to be reinstated. The original petitioner has died on 5.12.2003. Considering the date of appointment of the original petitioner to be 11/18.7.1988, the original petitioner has rendered the service of more than 15 years. As such the petitioner's widow would be entitled to the family pension. We accordingly extend the benefit of family pension to the widow of the original petitioner i.e. present petitioner no.1 – Smt. Shobhabai w/o Prakash Barwal.*

*6] We, therefore, dispose of the writ petition by directing the respondents to give the benefits of family pension to the*

*widow of the original petitioner from the date of his death i.e. 5.12.2003. The said benefit be extended to the widow of the petitioner namely Smt. Shobhabai w/o Prakash Barwal within a period of six months from today along with the arrears. No order as to costs.*

5. It was held in Prakash Barwal (supra), that the LR's were entitled for the pensionary benefits since the bread earner had passed away while in service. Family pension was, therefore, directed to be paid to the widow from the date of his death. In **Sunita W/o Late Pradip Thakar Vs. The State of Maharashtra and Others, 2022 (1) Mh.L.J. 219,** this Court dealt with the claim of a widow and following the law laid down in Prakash Barwal (supra), this Court also granted the pensionary benefits. The Petitioner's case is practically identical to both reported judgments.

6. We are informed that the Petitioner was receiving provisional pension, which was subsequently discontinued.

7. In view of the above, **this Writ Petition is partly allowed** with the following directions:

A) Respondent No. 3/Headmaster would forward

the proposal of the Petitioner, as a widow, for receiving the pension, to Respondent No. 4/Education Officer (Primary), within 30 days from today.

- B) the said proposal would be dealt with by the appropriate Authorities and considering the order of this Court in Prakash Barwal (supra) and Sunita Thakur (supra), the Petitioner shall be entitled for pension from the date of the demise of her husband.
- C) The arrears be calculated and be paid to the Petitioner on or before 30.11.2024, if not already paid, and the commencement of payment of pension shall be from the month of June, 2024. In the meanwhile, the provisional pension shall continue and such amounts received by way of provisional pension would be adjusted as against the arrears of pension.
- D) Rule is made partly absolute in above terms.

(R. M. JOSHI, J)  
Malani

(RAVINDRA V. GHUGE, J)