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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

926 WRIT PETITION NO. 8240 OF 2024

Farzana Tabssum w/o Late Mohammad Arif,
Age- 47 years, Occ. Household,
R/o. Khajababa Nagar, Near Bilal Masjid,
Degloor, Tq. Degloor, Dist. Nanded

....PETITIONER

VERSUS

1. The State of Maharashtra,
General Administration Department,
Mantralaya, Mumbai-32
Through its Secretary

2. The Chief Executive Officer,
Zilla Parishad, Beed,
Tq. & Dist. Beed

....RESPONDENTS

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Mr S. C. Yeramwar, Advocate for Petitioner
Mr B. M. Dhanure, A.G.P. for Respondent No.1
Mr S. R. Shirsath, Advocate for Respondent No.2

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 16th August, 2024

ORAL JUDGMENT (PER : Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the learned Advocates for the respective sides.

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2. The Petitioner is a widow, whose husband Late Mohammad Arif Ahmed Abdul Aziz. He was an employee of Respondent No.2/Zilla Parishad, Beed, having been appointed as a 'Junior Assistant', vide the order dated 20/09/1997. He was confirmed in service vide the order dated 30/01/1999 w.e.f. 07/10/1998. By the Government Circular dated 18/05/2013, the deceased was directed to submit his proposal for verification of the tribe claim.

3. The deceased employee approached this Court in Writ Petition No.2713/2014, seeking protection of his service with the statement that, he would never claim any benefits of reservation. This Court [Coram : S. V. Gangapurwala, J. (as His Lordship then was) and V. K. Jadhav, J.], delivered an order on 17/11/2014, thereby protecting the service of the deceased employee, on the condition that, he would not claim any benefits of reservation. On this condition, the Zilla Parishad was directed not to take adverse action against the deceased employee and an entry was directed to be recorded in the service book that the deceased employee would

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not be taking advantage of any reservation. The Writ Petition was disposed off.

4. The learned Advocate for Respondent No.2/Zilla Parishad, Beed, relies upon the judgment delivered by the Hon'ble Supreme Court in **Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others, (2017) 8 SCC 670**, to contend that the deceased has fraudulently entered the service on a post reserved for the Backward Class. When it came to proving his social status, he was asked to submit a validity certificate. He approached this Court and this Court protected him by treating him from the 'Open' category. However, this conclusion runs counter to the law laid down by the Hon'ble Supreme Court in **Chairman and Managing Director, Food Corporation of India** (supra).

5. It is true that the law laid down in **Chairman and Managing Director, Food Corporation of India** (supra), would indicate that, a person whose claim of belonging to the Backward Class, on the basis of which he has secured employment, if is not

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established, all the service benefits are directed to be taken away. However, in the peculiar facts of this case, since this Court delivered an order on 17/11/2014, in favour of the deceased employee, protecting his service on the ground that he would not be treated as belonging to the Backward Class, we cannot take a different view, since it would amount to reviewing the order passed by the earlier Bench of this Court. So also, the employee has now passed away.

6. Issue is of the family pension to the widow. This Court has delivered a judgment on 12/08/2010 in Writ Petition No.3718/1994, filed by **Prakash Fulchand Barwal, since deceased, through his L.Rs. Smt. Shobhabai Barwal and others Vs. State of Maharashtra and others**, wherein the claim of the bread earner was invalidated by the Committee and his service was terminated. He challenged his invalidation with an Appeal before the concerned Appellate Forum, which was dismissed.

7. This Court concluded in Paragraph Nos.4, 5 and 6 in **Prakash Fulchand Barwal (supra)** as under :-

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"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 18.07.1988. By virtue of interim order passed in the year 1994, the petitioner was directed to be reinstated. The original petitioner has died on 05.12.2003. Considering the date of appointment of the original petitioner to be 11/18.07.1988, 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. 05.12.2003. 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."

8. Based on the above conclusions, this Court held that the widow would be entitled for the family pension.

9. In view of the above, **this Writ Petition is partly allowed.** Respondent No.2/Chief Executive Officer, Zilla Parishad, Beed, shall process the pension papers of the Petitioner,

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as expeditiously as possible, for the purpose of releasing arrears of family pension and payment of regular monthly pension, within a period of 45 days from today. Insofar as the gratuity is concerned, Respondent No.2 shall make the calculations under the provisions of the Payment of Gratuity Act, 1972 and accordingly, release the gratuity to the Petitioner/widow on the basis of the last drawn salary of the deceased employee, who passed away on 06/03/2023, with statutory interest @ 10% p.a. considering the statutory provisions. Let such arrears and payment of gratuity along with interest, be paid to the Petitioner within a period of 45 days.

10. In the event of any dispute as regards the quantum of gratuity, the Petitioner would be at liberty to approach the appropriate Forum under the Payment of Gratuity Act, 1972 for the redressal of her grievance.

11. Needless to state, in case, any legal heirs of the Petitioner prays for compassionate appointment, he/she shall be duty bound to first produce the validity certificate of belonging to the 'Takankar' Scheduled Tribe category, in the light of the Full

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Bench Judgment of this Court delivered on 22/07/2022, in Writ Petition No.6750/2022 (**Om s/o Bhagwanrao Anjanwad Vs. State of Maharashtra and Another**) and a connected Writ Petition No.6771/2022, reported in **(2022) 4 Mh.L.J. 723**.

12. Rule is made absolute in the above terms.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

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