



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 502 OF 2018

Tulsabai Munjaji Netke

VERSUS

The Chief Officer Municipal Council
Jintur And Others

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

Mr. M. P. Tripathi, Advocate for Respondent No. 1

Mr. D. R. Korde, AGP for Respondent Nos. 2 to 4

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

DATE : MARCH 20, 2024

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J)

1. Rule. Rule made returnable forthwith and heard finally by the consent of parties. This is a suo-moto special drive for deciding pending old pension matters.

2. This Petition is filed by the widow of an employee. The employee Munjaji Netke was appointed as a Kamathi in the Municipal Council, Jintur on 08.04.1949. Admittedly, Munjaji Netke was retired from service on 01.01.1967 purely on medical grounds, since he was suffering from Bone T.B. The copy of the service book placed before us also indicates that he was retired on medical ground since he was suffering from Bone T.B.

3. The deceased Munjaji Netke was before this Court in Writ Petition No. 864/2001. By judgment dated 07.11.2006, this Court concluded in paragraph nos. 4 and 5 as under:

4. Since admittedly on account of non removal of the deficiencies in the papers relating to pension, the Petitioner has been deprived of the pension. The Petitioner is already aged 70 years and is still awaiting pension.

5. We therefore allow the Petition and make rule absolute by directing Respondent no. 1 to remove all the deficiencies as has been noted and adverted to above and forward the proposal to the appropriate authorities within a period of six weeks from today. The Respondent no.1 should also ensure that there are no other shortcomings in the proposal. We also direct Respondent no. 4 to decide the proposal, if submitted by the Respondent no. 1, in accordance with law as expeditiously as possible. In the circumstances there will be no order as to costs.

4. The learned Advocate for the Municipal Council draws our attention to the communication dated 30.11.2006 addressed to the Auditor, Nagar Parishad, Jintur wherein it has been stated as under:

विषय:- पेंशन कॉट्रीब्यूशन भरणा करणे बाबत

उपरोक्त विषयी आपणांस धनाकर्ष देण्यात येतो की, मा. मुंबई उच्च न्यायालयाचे खंडपीठ औरंगाबाद येथील याचिका क्र.864/2001 मधील निर्णयानुसार न.प. आस्थापनेवरील कर्मचारी श्री. मुंजाजी चिमनाजी नेटके (कामाठी) यांचे पेंशन कॉट्रीब्यूशन मधून रु.1119=00 शासकीय कोषागारात भरणे आवश्यक आहे. सदर रक्कमेचा भरणा तात्काळ करावा. करिता धनाकर्ष देण्यात येत आहे.

5. The learned Advocate further submits that since the Accountant General, Nagpur has raised an objection with regard to the medical certificate, the pension was not paid to the deceased.

6. We have no doubt that such medical certificates are necessary and the same are to be taken into account while granting pensionary benefits. However, the obstacles before the Petitioner are that, (a) The husband of the Petitioner has passed away, (b) the Petitioner does not have a copy of the medical certificate and (c) the retirement on medical grounds of the deceased dates back to 01.01.1967.

7. Considering the peculiar facts of this case, we are of the view that, if the ends of justice are to be met and miscarriage of justice is to be avoided, we direct the authorities to rely on the following

documents :-

(a) The judgment dated 07.11.2006 (supra), which indicates that the deceased was eligible for pension, but for the medical certificate.

(b) Page 38, which is a part of the service book, that indicates that the Petitioner was medically examined and after it was confirmed that he was suffering from Bone T.B., he has been retired from service purely on medical grounds.

(c) The Municipal Council has deposited the pension contribution vide communication dated 30.11.2006.

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

(A) The Municipal Council shall forward the pension proposal of the deceased to the District Collector, Parbhani, Respondent No. 2 herein, within 30 days.

(B) Since we have relied upon the above documents and we have concluded that the Petitioner's case rests on the fact that he was medically examined and suffering from Bone T.B., the District Collector would consider this order as a basis and forward the proposal to the Respondent No. 3 — Accountant General, Nagpur, within 15 days.

(C) We direct the Accountant General, Nagpur not to insist on the production of the

medical certificate in the light of the above and clear the pension papers for the payment of pensionary benefits, within 30 days and shall direct payment of arrears as well as the regular monthly pension to the Petitioner.

(D) Considering the delay caused, the arrears of pension shall be calculated from the month of December, 2000 when the Petitioner (deceased Petitioner Munjaji had preferred Writ Petition No. 864/2001) and this Court delivered a judgment on 07.11.2006 concluding that he was entitled for pension. No interest shall be payable on the arrears.

(E) The arrears shall be calculated and shall be paid within a period of 120 days from today.

9. Rule is made partly absolute in the above terms.

(R. M. JOSHI, J)
Malani

(RAVINDRA V. GHUGE, J)