



[This Judgment is modified as per order dated 29th November, 2024 passed in Review Application No.59 of 2024.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11133 OF 2023

- 1) Amrapali wd/o Nagorao Waghmare,
Age-41 years, Occu:Service,
R/o- at Malegaon, Taluka-Loha,
District-Nanded,
- 2) Suyash Nagorao Waghmare,
Age-16 years, Occu:Student,
R/o- at Malegaon, Taluka-Loha,
District-Nanded,
- 3) Prapati Nagorao Waghmare,
Age-11 years, Minor U/g of Petitioner No.1,
R/o- at Malegaon, Taluka-Loha,
District-Nanded,
- 4) Trupti Nagorao Waghmare,
Age-11 years, Minor U./g of Petitioner No.1,
R/o- at Malegaon, Taluka-Loha,
District-Nanded.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
School and Education Department,
Mantralaya, Mantralayas Extension
Building, Bombay – 400 032,
- 2) The Deputy Director of Education,
Latur Division, Latur,
Near Gandhi Chowk,
Taluka and District-Latur,

- 3) The Education Officer (Sec.),
Zilla Parishad, Latur,
- 4) The Secretary,
Gramin Shikshan Prasarak Mandal
At Walandi, Taluka-Deoni,
District-Latur,
- 5) The Head Master,
Shri Nursinha Secondary and Higher
Secondary Vidyalaya at Ankulga (Rani.),
Taluka-Shirur Anantpal,
District-Latur.

...RESPONDENTS

...
Mr. T.M. Venjane Advocate for Petitioners.
Mr. P.S. Patil, Additional G.P. for Respondent Nos. 1 to 3.
Mr. V.B. Jadhav Advocate for Respondent Nos. 4 and 5.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 18th MARCH, 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.
2. Present Petition has been filed for following reliefs:-

“(B) By appropriate writ or direction like nature, the Respondents No. 2 to 5, may kindly be directed to grant the family pension to the Petitioner under old pension scheme as per the Maharashtra Civil Services (Pension) Rules 1982, the Maharashtra Civil Services (Computation of Pension) Rules 1984 and The General Provident Scheme along with consequential benefits w.e.f. 1st May 2021 along with 12% interest.

(C) By appropriate Writ or direction like nature the Respondent No. 2 to 5 may kindly be directed to pay unpaid salary of the Husband of the Petitioner No. 1 for the period 23rd November 2020 to 31st January 2021 and the amount of Leave encashment with 12% interest.”

3. The present petitioners are the legal representatives of deceased Nagorao Malhari Waghmare, who was the permanent employee of respondent Nos. 4 and 5. Nagorao worked as an assistant teacher from 15th November 2001 on 100% aided school of respondent No.4. Nagorao expired on 30th April 2021, due to Covid-19, during service. The petitioners have taken heirship certificate from the learned Civil Judge, Junior Division, Loha, District-Nanded, which is dated 8th September 2021. According to the petitioners, petitioner No.1 is entitled for the family pension as per the provisions of Maharashtra Civil Service Rules, however the proposal was not forwarded by respondent

Nos. 4 and 5. So also the salary of Nagorao from 23rd November 2020 to 31st January 2021 and the amount of leave encashment has not been paid. Hence the present Petition, with the aforesaid prayers.

4. Learned AGP, on instructions, placed on record the communication dated 18th March 2024 by the Deputy Director of Education, Latur Division, Latur stating that the family pension has been granted. The said communication is taken on record and marked as Exhibit "X". Pension payment order has been issued in the name of petitioner No.1, copy of which is attached to Exhibit "X", and the same is dated 10th February 2024. Under the said circumstance, the part of the prayer clause "(B)" appears to have been taken care of. However, the learned Advocate for the petitioners submits that the interest should be given with effect from 1st May 2021, as the petitioner No.1 was entitled for the family pension as per the rules. Learned Advocate of the petitioners also advocates for unpaid salary and leave encashment of deceased Nagorao.

5. It has been stated by the learned Advocate for respondent

Nos. 4 and 5 that by communication dated 17th March 2022 the bill has been submitted to the Superintendent, Pay Unit of Education Officer (Secondary), Zilla Parishad, Latur, which is in respect of outstanding salary of deceased Nagorao for the period from December 2020 to January 2021 and the said bill is still pending.

6. Taking into consideration the undisputed facts and the progress that has been made, we need not go into the merits of the case. However, It is to be noted that as respondent Nos. 4 and 5 have not forwarded the pension proposal within reasonable time, ultimately the Divisional Deputy Director of Education, Latur Division, Latur was required to interfere by letter dated 10th July 2023 and it appears that around 30th July 2023 the further process of forwarding the pension proposal has been done. Therefore, the Petition can be disposed of with following reliefs:-

ORDER

(I) The Writ Petition stands partly allowed.

[II] The arrears of family pension granted in view of communication dated 10.02.2024 be paid to the petitioner No.1 forthwith.

(III) Respondent Nos. 2 and 3 to see that the bill submitted by respondent Nos. 4 and 5 on 17th March 2022 is cleared, which is in respect of outstanding salary from December 2020 to January 2021. In respect of said arrears of salary also respondent Nos. 4 and 5 to pay interest at the rate of 6% per annum from 30th April 2021 till actual realization of the said payment.

(IV) Respondent Nos. 4 and 5 are directed to place proposal for leave encashment in consonance with the service book of deceased Nagorao to the appropriate authority within a period of one month from today, failing which the said amount would carry interest at the rate of 9% per annum till actual realization of the said amount.

(V) Rule made absolute in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAR24