



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.8157/2023
Farhat Fatema D/o Mirza Amir Ullah Baig
...Versus...

The State of Maharashtra, through its Secretary, General Administration
Department, Mantralaya, Mumbai – 32 and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. D.V. Mahajan, Advocate for petitioner
Mr. H.R. Dhumale, AGP for respondent nos.1 and 2
Mr. A.S. Deshpande, Advocate for respondent nos.3 and 4

CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.

DATE : 27/08/2024

1. It is not disputed that the provisions of Rule 116 Sub Rule 5 of the Maharashtra Civil Services (Pension) Rules, 1982 have been amended by the Gazette Notification dated 08/02/2024, which inserts Condition Nos.(vi) and (vii) in the proviso to Clause (iii) of Sub Rule 5 of Rule 116, which are as follows :-

“(vi) the disability existed before the death of Government servant or pensioner and his or her spouse;

(vii) where a deceased Government servant or pensioner is not survived by a widow or widower or son or daughter eligible for family pension under clause (i) or clause (ii) or clause (iii) or if a widow or widower or son or daughter eligible for family pension under clause (i) or clause (ii) or clause (iii) dies or ceases to fulfill the eligibility conditions for family pension prescribed in those clauses, the family pension

shall be granted or continued to be payable to an unmarried or widowed or divorced daughter beyond the age of twenty-four years for life or until she gets married or remarried or until she starts earning her livelihood, whichever is the earliest, subject to the following conditions, namely :—

(a) the family pension shall be initially payable to the children in the order set out in paragraphs (ii) to (iv) until the last child attains the prescribed age;

(b) there is no disabled child eligible to receive family pension in accordance with paragraphs (i) and (ii);

(c) the unmarried or widowed or divorced daughter was dependent on her parent or parents when he or she or they were alive;

(d) where a deceased Government servant or pensioner leaves behind more than one unmarried or widowed or divorced daughter beyond the age of twenty-four years, family pension shall first be payable to such daughter, who fulfill the eligibility conditions for grant of family pension under this sub-rule, in the order of their birth;

(e) the elder daughter shall be entitled to the family pension till she has got married or remarried or has started earning her livelihood, whichever is earlier and the younger of the daughters will be eligible for family pension after the elder next above her has got married or remarried or has started earning his or her livelihood or has died;

(f) in the case of widowed daughter, death of her husband and in the case of divorced daughter, her divorce took place during the lifetime of the Government servant or pensioner or his or her spouse:

Provided that, the family pension shall be payable to a divorced daughter from the date of divorce if the divorce proceedings were filed in a competent court during the life time of the Government

servant or pensioner or his or her spouse but the divorce took place after their death:

Provided further that, if, consequent on the death of the Government servant or pensioner and his or her spouse, the family pension to any other eligible member of the family has become payable before the date of divorce of daughter, the family pension to such divorced daughter shall not commence before the aforesaid member of the family ceases to be eligible for family pension or dies.”

2. In this view of the matter, the entitlement of the petitioner, who is an unmarried daughter, will have to be considered in light of the aforesaid proviso, for which an enquiry as contemplated by Condition no.(vii), as inserted in the proviso to Clause (iii) of Sub Rule 5 of Rule 116 of the Maharashtra Civil Services (Pension) Rules, 1982 will have to be conducted.

3. Since the representation of the petitioner in that regard dated 01/04/2022 is already pending before respondent No.5, the writ petition is disposed of by directing respondent No.5 to consider the representation of the petitioner, dated 01/04/2022, in light of the aforesaid amended proviso. The petitioner shall appear before respondent No.5 on 09/09/2024, who shall decide the representation within a period of three weeks therefrom. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)