



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

WRIT PETITION NO.5752 OF 2022

Smt. Gulabbee wd/o Syed Pasha  
Age 61 years, Occu. Household,  
R/o Taru Pimpalwadi,  
Tq. Paithan, Dist. Aurangabad

... **PETITIONER**

**VERSUS**

1. The State of Maharashtra  
through its Principal Secretary,  
Rural Development Department,  
Mantralaya, Mumbai – 32
2. The Additional Chief Secretary,  
Finance Department,  
Mantralaya, Mumbai – 32
3. The Chief Executive Officer,  
Zilla Parishad, Aurangabad,  
District Aurangabad
4. The Chief Engineer,  
Public Works Department,  
Zilla Parishad, Aurangabad  
Tq. & Dist. Aurangabad
5. Deputy Chief Accounts and Finance  
Officer, Zilla Parishad, Aurangabad,  
Tq. & Dist. Aurangabad

... **RESPONDENTS**

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Mr. V.G. Salgare, Advocate for petitioner  
Mr. A.S. Shinde, A.G.P. for State  
Mr. Avinash S. Deshmukh, Advocate (as amicus curiae to  
assist Court)

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**CORAM : R.G. AVACHAT AND  
SANDIPKUMAR C. MORE, JJ.**

**Date of reserving judgment : 22nd April 2025.**

**Date of pronouncing judgment : 6th May, 2025**

**J U D G M E N T (PER R.G. AVACHAT, J.) :**

Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2. This petition under Article 226 of the Constitution of India, is filed for the following main relief :

“E-1) By writ, order or directions, the impugned letter dated 01/12/2021 issued by the respondent No.5 to the respondent No.4 and the impugned Government Circular dated 25/10/2011 issued by the respondent No.2 may kindly be quashed and set aside to the extent of the case of the petitioner and the respondent No.1 to 4 may kindly be directed to grant family pension, death gratuity and other pensionary benefits to the petitioner as per 6<sup>th</sup> Pay Commission as provided under G.R. dated 27/12/2018 considering the period of 300 days of earned leave, 73 days of commuted leave and 911 days of extra-ordinary leave on medical ground granted by the competent authority after the death of her husband as qualifying service for the purpose of pension, death gratuity, and other pensionary benefits in view of the provisions under Rule 35 of Maharashtra Civil Services (Pension) Rules, 1982 in the interest of justice.”

3. Facts, not in dispute, are as follows :-

Syed Pasha was the husband of the petitioner – Gulabbi. He was appointed on the post of Driver with the office of Zilla Parishad, Aurangabad on 10/8/1985. He (Syed Pasha) breathed his last on 30/4/2007. He was not keeping well. The details of leave availed by him immediately before his passing away are as under :

- 1) Medical Leave : 09/07/2001 to 29/07/2001  
12/11/2001 to 26/11/2001  
Total 38 days.
- 2) Earned Leave : 11/11/2002 to 06/09/2003  
Total 300 days.
- 3) Commuted leave : 07/09/2003 to 19/10/2003  
01/10/2004 to 20/10/2004  
Total 73 days.
- 4) Extra-ordinary Leave: 30/10/2004 to 29/04/2007  
(Medical) Total 911 days.

4. Syed Pasha had rendered total service of 21 years 8 months and 20 days. His widow, the petitioner, had been sanctioned family pension in terms of 5<sup>th</sup> Pay Commission recommendations on 16/8/2007.

5. Since Syed Pasha passed away post 6<sup>th</sup> Pay Commission recommendations made applicable, the petitioner applied for grant of family pension in terms of 6<sup>th</sup> Pay Commission recommendations. Her claim has been turned down relying on the Government Circular, under challenge, dated 25/10/2011, whereunder the employees on extraordinary leave since before 1/1/2006 and died thereafter were held to be not entitled to the benefits of the 6<sup>th</sup> Pay Commission recommendations.

6. Heard. At the outset, we acknowledge assistance rendered by learned counsel Mr. Avinash S. Deshmukh, appointed to assist us in the matter. He would submit that, the Maharashtra Civil Services (Pension) Rules, 1982 (M.C.S. Pay Rules) are in the nature of beneficial legislation. He adverted our attention to clause (2) of the Maharashtra Civil Services (Revised Pay) Rules, 2009 (M.C.S. Revised Pension Rules) to submit that, the employees on extraordinary leave without pay have not been excluded from applicability of the rules. He would support the petitioner's cause.

7. Learned counsel for the petitioner relied on Rule 35

of the M.C.S. Pension Rules to submit that, all leave excluding extraordinary leave during the period of continuous service shall count as qualifying service for pension. He would further submit that, the State Government cannot withdraw retrospectively the benefits which have already been accrued to the deceased and on his demise, to the petitioner.

8. The learned A.G.P. would, on the other hand, submit that, the relevant M.C.S. Pension Rules and the M.C.S. Revised Pay Rules have not been challenged. The Government Circular dated 25/10/2011 is in consonance with the M.C.S. Pension Rules and M.C.S. Revised Pay Rules. The M.C.S. Revised Pay Rules specifically empower the Governor to exclude certain category of employees from applicability of the said Rules. In exercise of the said powers, the Circular dated 25/10/2011 has been issued. The learned A.G.P. would, therefore, submit that the claim of the petitioner has rightly been turned down. He, therefore, urged for dismissal of the petition.

9. We have considered the submissions advanced. Perused the relevant rules under the M.C.S. Pension Rules,

MCS (Leave) Rules and the M.C.S. Revised Pay Rules besides the Circular dated 25/10/2011.

10. Chapter VI of the M.C.S. Pension Rules speaks of pensionable pay. Rule 60 thereof is relevant for the purpose. Rule 9(36) defines the term 'pay' to mean the amount drawn monthly by a Government servant. Clause (v) has been introduced therein vide amendment dated 18/1/2016 to include therein the following :

“(v) in the 6<sup>th</sup> Pay Commission, the pay drawn in the prescribed pay band plus applicable grade pay but does not include any other type of pay like special pay, which the Government servant was receiving immediately before his retirement or on the date of his death.”

11. We are not much concerned with the M.C.S. Pension Rules, 1982 since the claim in the Writ Petition is for revision of pay and pension in terms of 6<sup>th</sup> Pay Commission recommendations.

12. The 6<sup>th</sup> Pay Commission recommendations have been made applicable w.e.f. 1/1/2006. Extraordinary leave without pay is one of the leaves admissible to the Government

employee. True, in view of Rule 17(4) of the M.C.S. (Leave) Rules, 1981 a Government servant on extraordinary leave is not entitled to any leave salary.

13. For implementation of the 6<sup>th</sup> Pay Commission recommendations, the State Government, vide notification dated 22/4/2009, brought into force the M.C.S. Revised Pay Rules to be made applicable w.e.f. 1<sup>st</sup> day of January, 2006. Clause (h) of sub-rule (2) of Rule 2 of the M.C.S. Revised Pay Rules is heavily relied on by the learned A.G.P. The clause reads thus :

“(h) Government servants specifically excluded wholly or in part by the Governor of Maharashtra from the operation of these rules.”

14. True, the Circular dated 25/10/2011 is said to have been issued by the Governor in exercise of powers under clause (h) above. Clause (3) of the Circular reads thus :

"३. शासनाने यावर विचार केला असून, शासन आता असा खुलासा करीत आहे की, जे कर्मचारी दि. १ जानेवारी २००६ पूर्वीपासून असाधारण रजेवर किंवा निलंबनाखाली होते व जे प्रत्यक्षात दि. १ जानेवारी २००६ नंतर असाधारण रजेवर असतांना सेवानिवृत्त किंवा मृत्यू पावले असतील किंवा निलंबनाधीन असतांना सेवानिवृत्त झाले/ करण्यात आले असतील तर अशा कर्मचाऱ्यांना म.ना.से. (सु.वे.) नियम २००९ चा लाभ अनुज्ञेय नाही."

15. The petitioner obtained an extract of endorsement made in the Service Book of her deceased husband. The endorsement reads thus :-

"मा. मुख्य कार्यकारी अधिकारी, जिल्हा परिषद, औरंगाबाद यांचे आदेश क्र. जिपऔ/बांध/असा/शे/कावी/२००८ दि. १३/५/२००८ श्री सय्यद पाशा अब्दुल रहेमान वाहनचालक जिप(बां) उपविभाग, सिल्लोड यांची खालीलप्रमाणे रजा मंजूर करण्यात आली आहे.

|                                 |                       |
|---------------------------------|-----------------------|
| दिनांक ११/११/२००२ ते ६/९/२००३   | ३०० दिवस अर्जित रजा   |
| दिनांक ७/९/२००३ ते १९/१०/२००३   | ४३ दिवस परिवर्तित रजा |
| दिनांक ११/१०/२००४ ते ३०/१०/२००४ | ३० दिवस --"--         |
| दिनांक ३१/१०/२००४ ते २९/४/२००७  | ९११ दिवस असाधारण रजा  |

संबंधितांची एकूण १२८४ दिवसांची वरील प्रमाणे रजा मंजूर करण्यात येत आहे. संबंधित हे दिनांक ३०/४/२००७ रोजी मयत झाले आहेत."

16. The aforesaid record indicates that, late Syed Pasha was constrained to avail extraordinary leave, as he was not keeping good health. The period of leave indicates that his health condition must have been such which made him physically disabled to render the service. This is nothing short of a case of a person acquiring physical disability during service. Admittedly, he breathed his last due to ill health on

30/4/2007 i.e. after 6<sup>th</sup> Pay Commission recommendations made applicable. A reference to clause (iii) of Note (1) of M.C.S. Revised Pay Rules would not be out of place though not strictly applicable. Sub-clause (iii) reads thus :

“(iii) A Government servant who is on extraordinary leave for other than medical reasons prior to the 1<sup>st</sup> day of January 2016 and retired on or after the 1<sup>st</sup> day of January 2016 without resuming his office, shall not be entitled for the benefits of these rules, however, his pensionary benefits shall be granted as per the applicable rules in unrevised pay structure.”

17. This clause makes applicable 7<sup>th</sup> Pay Commission recommendations to the employees on extraordinary leave for medical reasons even from prior to 1<sup>st</sup> day of January 2016 and retired thereafter without resuming his office.

18. It is reiterated that, Syed Pasha was constrained to avail extraordinary leave without pay for medical reasons. When the M.C.S. Revised Pay Rules were notified on 22/4/2009, making them applicable w.e.f. 1/1/2006, the State Government/ Governor had not specifically excluded any Government servant from application of the M.C.S. Revised Pay Rules. The Rules were made applicable to all persons

who were under the Rule making control of the Government of Maharashtra, true, except certain categories of Government servants enumerated in sub-clause (2). It is reiterated that, on the day on which Syed Pasha passed away, he was not specifically excluded from applicability of the M.C.S. Revised Pay Rules. It is only two years after his demise, the Government Circular dated 25/10/2011 came into being, excluding the persons on extraordinary leave from applicability of the M.C.S. Revised Pay Rules.

19. In our view, when the benefit had already been accrued to Syed Pasha, and on his demise to the petitioner, the same ought not to have been withdrawn vide impugned Circular dated 25/10/2011. Right to receive retiral benefits is considered to be a right under Article 300A of the Constitution of India. With an executive fiat it cannot be withdrawn retrospectively. It is the delay caused by the employees of the concerned Department in not releasing the benefits in favour of the petitioner before 25/10/2011. Had the claim of the petitioner been processed immediately, the actual benefits would have been paid to the petitioner, but for the impugned

Circular. Had the benefits been actually received by the petitioner, those could not have been legally recoverable in the Courts of law, on the strength of the Circular dated 25/10/2011. We, therefore, set aside the said Circular dated 25/10/2011 to the extent of the petitioner's case and direct the respondent authorities to release in favour of the petitioner all the monetary benefits accrued in terms of 6<sup>th</sup> Pay Commission recommendations on account of her husband's death in harness. It is made clear that, the petitioner shall not be paid the actual monetary benefits during which late Syed Pasha was on extraordinary leave without pay.

20. Writ Petition is allowed accordingly. Rule made absolute in above terms.

**(SANDIPKUMAR C. MORE, J.)**

**(R.G. AVACHAT, J.)**

fmp/-