



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11613 OF 2019

1. Vaishali w/o Vijay Burande,
Age : 42 years, Occu : Service,
R/o Freedom Fighter Colony,
Near Dargah, Chanai Road,
Ambajogai, Tal. Ambajogai,
District Beed.
2. Kshitij s/o Vijay Burande,
Age : 24 years, Occu : Student
3. Prachit s/o Vijay Burande,
Age : 16 years, Occu : Student,
Under Guardianship of Petitioner No.1
All R/o. Freedom Fighter Colony,
Channai Road, Ambajogai,
Tal. Ambajogai, Dist. Beed.

...Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai.
2. The Accountant General,
Maharashtra State, Nagpur.
3. The Director of Medical Education
And Research, Mumbai.
4. The Dean, Swami Ramanand Teerth
Government Medical College,
Ambajogai, Tal. Ambajogai,
District Beed.
5. Mahananda w/o Gangadharappa Burande,
Age : 77 years, Occu : Household,

R/o Municipal House No.9-92 (Old 9-78)
Bansilal Nagar, Ambejogai,
District Beed.

6. Adv. Ajay s/o Gangadharappa Burande,
Age : 44 years, R/o. Anand Nagar,
Near Gathal press, Ambajogai,
Tal. Ambajogai, District Beed.
Maharashtra Pin Code 431517

...Respondents

- Mr. Yashodeep Deshmukh i/b Mr. Anand D. Kawre, for Petitioners.
- Mr. A. R. Kale, Addl. GP for Respondent Nos.1 to 4.
- Mr. Kedar Warad a/w Mr. Sunil Warad, for Respondent Nos.5 and 6.

CORAM : MANISH PITALE AND
Y. G. KHOBRAGADE, JJ.
RESERVED ON : 12th SEPTEMBER 2025.
PRONOUNCED ON : 26th SEPTEMBER 2025.

JUDGMENT (PER – MANISH PITALE, J.) :

1. **Rule.** Rule made returnable forthwith. With the consent of learned counsel for the parties, heard finally at the stage of admission.

2. The widow and the sons of a deceased employee of the State Government on the one hand and his mother and brother on the other, are locked in a battle in this case in the context of pensionary and terminal benefits payable as per the relevant rules, Government Resolutions and Government Circular. It is the interpretation of the said documents that would decide the fate of the case. In such cases, the Court veers towards the interpretation that is beneficial for the persons who deserve to be beneficiaries in the interest of justice.

3. The husband of petitioner No.1 was appointed on regular basis in Government service on 08th July 2009, on the post of Associate Professor at Swami Ramanand Teerth Rural Medical College, Ambejogai. The petitioner No.1 and her husband i.e. deceased employee of the State Government were married since 1997. Petitioner No.2 was born on 11th March 1998, and petitioner No.3 was born on 23rd November 2005, to the petitioner No.1 and her husband.

4. Since the husband of the petitioner No.1 was appointed after 01st November 2005, as per Government Resolution dated 31st October 2005, he was covered under the Defined Contributory Pension Scheme (DCPS).

5. On 15th January 2011, the husband of petitioner No.1 initiated Divorce proceedings against her, which remained pending. In the backdrop of the matrimonial discord between the petitioner No.1 and her husband, he unilaterally changed the details of nominees in form 3 submitted to the employer i.e. the respondent No.4 – College, replacing the name of petitioner No.1 i.e. his wife with that of his brother as a nominee, while retaining the names of his two sons i.e. the petitioner Nos.2 and 3 as his other nominees, with regard to the

benefits that would accrue to him, in the event of his demise. It is relevant to note here that under the DCPS, there is no provision for family pension and a lump-sum amount is due and payable to the nominees of the deceased employee.

6. On 26th September 2018, the husband of petitioner No.1 died, having suffered a heart-attack. On 15th October 2018, petitioner No.1 submitted an application before respondent No.4 – College for release of pensionary and other benefits in her favour. On 19th October 2018, the respondent No.4 – College forwarded the application of the petitioner No.1 to the Director of Medical Education and Research at Mumbai. As petitioner Nos.2 and 3 were undertaking education and there was dire need of finances, the petitioner No.1 continued to pursue her application for release of pensionary and other benefits. In that light, she along with her sons on 29th February 2019, submitted an application before respondent No.4 – College for release of provisional pension with immediate effect. On 11th March 2019, the respondent No.4 – College sent a communication to the petitioner No.1 in respect of release of provisional pension, calling upon her to submit legal heir certificate for processing her application.

7. In the meanwhile, on 29th September 2018, the respondent

– State issued a Government Resolution in respect of releasing gratuity and other benefits of a deceased employee of the State, specifying that those who expired prior to completing 10 years of service, as in the present case, the amount would be released in favour of the nominees specified by the deceased employee and if there was no nomination, the amount would be disbursed to the legal heirs.

8. Since respondent Nos.1 to 4 failed to release the pension and other amounts to the petitioners, in September 2019, the petitioner No.1 was constrained to file the present writ petition, praying for a direction to respondent No.4 to forward proposal for family pension and a further direction to respondent No.2 to release such benefits in favour of petitioner No.1 and her sons. Subsequently, petitioner Nos.2 and 3 i.e. sons of petitioner No.1 were added as petitioners in the writ petition. Respondent No.5 i.e. the mother of the deceased employee and respondent No.6, his brother, were both added as respondents in the petition. Reply affidavits were filed on behalf of respondent Nos.1 to 4 as also respondent Nos.5 and 6, opposing the prayers made in the writ petition.

9. During the pendency of the writ petition, on 24th April 2023, a legal heirship certificate was issued by the Competent Court in

favour of the petitioners. A copy of the same was placed on record before this Court along with rejoinder affidavit.

10. On 31st March 2023, the respondent – State issued a further Government Resolution, elaborating upon the manner in which dues and benefits would be payable to the persons entitled for such benefits upon the death of an employee of the State Government. In the said Government Resolution, it was specified that if the employee died between 01st November 2005, and the date of the said Government Resolution dated 31st March 2023, family pension would be payable under the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as “MCSR 1982”). It was also specified that form 3 appended to Government Resolution would have to be filled by the employee / person entitled for family pension. On 09th June 2023, the petitioner No.1 submitted a proposal under the said Government Resolution dated 31st March 2023, to the respondent No.4, as per format, for releasing of family pension.

11. On 24th August 2023, State Government issued a Circular, stating that it was the right of the employee to give the option during his lifetime as to whether he/she would want to be covered for grant of family pension to those eligible after his death under the MCSR

1982 or to continue with DCPS. It was also specified that once such an option was given by the employee, after his death, the family members would not be able to change the option under any circumstances.

12. The pleadings in the petition were completed and it was taken up for hearing.

13. Mr. Yashodeep Deshmukh, learned counsel appearing for the petitioners submitted that a proper reading of the Government Resolutions dated 29th September 2018, and 31st March 2023, as also Government Circular dated 24th August 2023, would show that in the facts and circumstances of the present case, only the petitioners are entitled to family pension under MCSR 1982.

14. It was submitted that although there was a divorce petition pending between the parties, wherein the husband of the Petitioner No.1 had made allegation of adultery against her, the said petition did not reach any conclusion, as the husband of petitioner No.1 died on 26th September 2018. It was submitted that although the Government Resolution dated 29th September 2018, specified that in cases where the State Government employee expired before completing 10 years of service as per DCPS, terminal benefits would be payable to the persons

nominated by the deceased employee, in the absence of any nomination under the said Government Resolution, the benefits would be disbursed in favour of the legal heirs of the deceased employee.

15. It was submitted that while the claim of the petitioners remained pending, the aforementioned Government Resolution dated 31st March 2023, was issued, which took into consideration the question of entitlement of family pension of the family members of the deceased employee of State Government in the light of the fact that the Central Government had adopted a policy to grant such family pension under the Old Pension Scheme, despite the fact that the deceased employee was appointed under the National Pension System, equivalent to the DCPS. The said Government Resolution specified that in cases where the employee expired between 01st November 2005 and the date of the said Government Resolution, family pension would be payable under the MCSR 1982, if the employee or after him the persons entitled for family pension submitted option as per form 3. It was also laid down that *ex-gratia* benefits under the DCPS would be adjusted and thereupon the family pension would be released.

16. It was emphasized that the case of the petitioners was clearly covered under the said Government Resolution. It was

submitted that the subsequent Government Circular dated 24th August 2023, in no manner adversely affected the benefits granted to the petitioners under the Government Resolution dated 31st March 2023, and on this basis, it was submitted that the petition deserved to be allowed.

17. It was further submitted that the change of option made by the deceased husband of petitioner No.1 during his lifetime, replacing petitioner No.1 with his brother, was of no avail, for the reason that such option was purportedly submitted under the MCSR 1982, when the DCPS applied and the subsequent clarificatory Government Resolutions were yet to be issued. In any case, subsequent Government Resolutions accrued to the benefit of the petitioners and hence, the petition deserved to be allowed.

18. The learned counsel for the petitioners relied upon Rules 115 and 116 of the MCSR 1982, to contend that the definition of family covered only the petitioners, to the exclusion of respondent Nos.5 and 6. It was further contended that the nomination made in favour of respondent No.5 cannot result in the benefit accruing to him as the settled position of law in terms of judgments of the Hon'ble Supreme Court in the case of *Smt. Sarbati Devi and another Vs. Smt.*

Usha Devi¹ and Jodh Singh Vs. Union of India and another², as also judgments of this Court in the case of *Smt. Bharati wd/o Rameshrao Atole and others Vs. Smt. Bebitai Punjabrao Atole and others* (judgment and order dated 16th October 2019 passed in Second Appeal No.299 of 2018) and *Laxmikant Gopalkrishna Shivhare and another Vs. Shriram Gopalkrishna Shivhare and another* (judgment and order dated 11th February 2025 passed in Civil Revision Application No.80 of 2023). On this basis, it was submitted that the petition ought to be allowed.

19. On the other hand, Mr. Kedar Warad, learned counsel appearing for respondent Nos.5 and 6 submitted that since the deceased husband of petitioner No.1 admittedly entered into employment after 01st November 2005, the Old Pension Scheme was no longer available and he and his nominees / heirs were entitled for benefit only under DCPS. Since the concept of family pension is completely alien to the DCPS, there is no substance in the contentions raised on behalf of the petitioners. It was emphasized that Government Resolution dated 29th September 2018, specifically laid down that the benefits of DCPS after the death of the employee, who

1 (1984) 1 SCC 424

2 (1980) 4 SCC 306

died within 10 years of joining service are payable only to the nominees that are specified by the employee and in absence of nomination, to the surviving legal heirs. In this context, learned counsel for the respondent Nos.5 and 6 relied upon the nomination form submitted by the deceased employee on 04th June 2014, wherein he replaced petitioner No.1 with respondent No.6, while retaining petitioner Nos.2 and 3 as his nominees. It was submitted that the said nomination form submitted by the deceased employee has to be honoured by applying Government Resolution dated 29th September 2018, and, therefore, the benefits under the DCPS must accrue only to the nominees i.e. respondent No.6 and petitioner Nos.2 and 3. Alternatively, it was submitted that if the nomination form was to be ignored or held to be untenable for any reason, the benefits under the DCPS must be disbursed to all the surviving legal heirs of the deceased employee, which include respondent Nos.5 and 6 as the mother and brother of the deceased employee.

20. It was submitted that the subsequent Government Resolution dated 31st March 2023, has to be read with Government Circular dated 24th August 2023, which does not change the position in any manner and that therefore, the writ petition ought to be dismissed.

As regards reliance upon the aforementioned judgments of the Hon'ble Supreme Court and this Court, it was submitted that there could be no quarrel with the principle laid down therein, but the same does not apply to the facts of the present case. It was specifically submitted that since the Government Resolution dated 29th September 2018, clearly lays down that the benefits under the DCPS are to be paid only to the nominees of the deceased employee, there is no question of the respondent No.6, as one of the nominees holding that amount in trust for the legal heirs of the deceased employee.

21. It was submitted that in the facts and circumstances of the present case, MCSR 1982, would not apply and therefore, there is no point in debating about the interpretation and application of Rules 115 and 116 of the MCSR 1982, to the facts of the present case. On this basis, it was submitted that the writ petition deserved to be dismissed.

22. Mr. A. R. Kale, learned Addl. GP appearing for respondent Nos.1 to 4 submitted that since the DCPS was clearly applicable to the facts of the present case, MCSR 1982 cannot apply. It was submitted that the present case is governed by Government Resolution 29th September 2018 and hence, the writ petition deserves to be dismissed. It was submitted that the subsequent Government Resolution dated

31st March 2023, and Government Circular dated 24th August 2023, do not change the position in any manner and hence, no indulgence can be shown to the petitioners.

23. This Court has considered the rival submissions in the light of the admitted position on facts. There is no dispute about the fact that the husband of the petitioner No.1 was employed in the State Government service after 01st November 2005. As per the said policy, the Old Pension Scheme does not apply to the persons employed with the State Government after 01st November 2005 and only the DCPS applies. In the DCPS, there is no concept of family pension and lump-sum amount is payable to the beneficiaries after the death of the employee of the State Government. The Government Resolutions dated 29th September 2018, 31st March 2023 and Government Circular dated 24th August 2023, will have to be applied to the facts of the present case to reach the conclusion as to whether the claim made by the petitioners can be granted.

24. The documents on record show that during his lifetime, although initially the husband of petitioner No.1 i.e. the deceased employee of the State Government had nominated the three petitioners as his nominees for benefits payable upon his death, in the

backdrop of the matrimonial discord between the petitioner No.1 and her husband, on 04th June 2014, he replaced the petitioner No.1 i.e. his wife with his own brother i.e. respondent No.6 as a nominee, while retaining both his sons i.e. petitioner Nos.2 and 3 as the other nominees. A perusal of the nomination form submitted on 04th June 2014, shows that the deceased employee had submitted the same under MCSR 1982. Since he was employed after 01st November 2005 and MCSR 1982 did not apply for pensionary benefits, this Court finds that the nomination made by the deceased employee cannot be considered as one made under the DCPS or the post 01st November 2005 scenario.

25. The Government Resolution dated 29th September 2018, issued by the State Government specifically laid down that when an employee of the State Government, who put in less than 10 years of service dies, the benefits under DCPS would be payable to the persons nominated by such a deceased employee and in the absence of the nomination, the same would accrue to the legal heirs. The husband of petitioner No.1 i.e. the employee of the State Government in the present case had died on 26th September 2018.

26. The subsequent Government Resolution dated 31st March

2023, shows that the respondent – State Government adopted a policy to grant family pension under the MCSR 1982 in favour of the beneficiaries, even in the case of employees of the State Government, who were employed after 01st November 2005. The said Government Resolution was issued in the light of such a policy adopted by the Central Government in respect of those employees who had been employed after the year 2005, and to whom the National Pension System, similar to the DCPS of the State Government, was applicable. Paragraph No.3 of the Government Resolution dated 31st March 2023, is crucial as it records that in cases where the State Government employee expired between 01st November 2005, till the issuance of the said Government Resolution dated 31st March 2023, family pension would be payable to the eligible persons upon option being filled as per form 3 appended to the said Government Resolution either by the employee or after his death, by those eligible for family pension. This has to be read necessarily in the context of MCSR 1982, as family pension available to the beneficiaries under MCSR 1982 was specifically made applicable under the said Government Resolution dated 31st March 2023. It is relevant to note that the petitioner No.1 applied for granting family pension in terms of the said Government Resolution dated 31st March 2023, by her letter dated 09th June 2023

submitted to the respondent No.4 – College.

27. The aforementioned paragraph No.3 of the Government Resolution dated 31st March 2023, also laid down that family pension would be paid after adjusting benefits received under the DCPS, thereby indicating that the State Government was alive to the fact that in some cases benefits would have been disbursed as per DCPS till issuance of the Government Resolution dated 31st March 2023.

28. As regards Government Circular dated 24th August 2023, it cannot be said that it takes a divergent path from the Government Resolution dated 31st March 2023. The said Government Circular merely states that when the employee during his lifetime has submitted option under form 2 appended to the Government Resolution dated 31st March 2023, to either opt for family pension under MCSR 1982 or the benefits of DCPS, only the option specified by the employee during his lifetime would apply and it would not be open for the family members of the deceased employee to change the option after his death. The said stipulation in the Government Circular dated 24th August 2023, in our opinion, cannot be read against the petitioners in the facts and circumstances of the present case.

29. In this regard, the emphasis placed by the learned counsel appearing for respondent Nos.5 and 6 on the nomination made by the deceased employee on 04th June 2014, is misplaced, for the reason that it is not a form divulging the desire of the deceased employee regarding exercising option of either family pension under the MCSR 1982 or the benefits of DCPS. Even otherwise, it is a nomination form purportedly submitted under the MCSR 1982, nominating respondent No.6 i.e. his brother and his two sons i.e. petitioner Nos.2 and 3 for benefit of family pension. Therefore, it can also be read to mean that the deceased employee opted for family pension under the MCSR 1982. If that be so, the disbursal of family pension has to be in terms of MCSR 1982 and not otherwise.

30. It is in this context that the relevant Rules of MCSR 1982 assume significance. Rule 115 pertains to nominations and proviso (i) to Sub Rule (1) thereof, states that when the government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family. In this context family is defined under Rule 116 (16)(b) of the MCSR 1982, which reads as follows :

“116 (16)

(b) “Family”, in relation to a Government servant means

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- (i) *wife in the case of a male Government servant, or husband in the case of a female Government servant;*
- (ii) *a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery;*
- (iii) *son who has not attained the age of twenty-one years and unmarried daughter who has not attained the age of twenty-four years, including such son and daughter adopted legally before retirement.*
- (iv) *dependent mother and father, in the order of that preference, having no independent means or source of economic sustenance, in the case of a 'single' Government servant as declared by him in the Form-3A.*

Explanation 1. – For the purpose of this clause, a 'single' Government servant means, a Government servant, who is the only surviving child of his parents and is unmarried, if married, has no surviving spouse and children.

Explanation 2. – The entitlement to Family pension under this sub-rule shall be admissible, if his family as defined under sub-clause (i), (ii) and (iii) of clause (b) of Rule 116, ceases to exist.”

31. A perusal of the above quoted definition of family in MCSR 1982 shows that there is substance in the contention raised on behalf

of the petitioners that neither respondent No.5 i.e. the mother nor the respondent No.6 i.e. the brother are covered under the definition of family. Although an attempt was made on behalf of respondent Nos.5 and 6 to contend that since the deceased employee had made allegation of adultery against his wife i.e. the petitioner No.1, she ought not to be covered under the definition of family, but a proper reading of the above quoted definition shows that the petitioner No.1 could be denied benefits only if she was judicially separated from the deceased employee i.e. her husband on the ground of adultery or that she was held guilty of committing adultery. The facts of the present case show that only an allegation was made against petitioner No.1 in the pending matrimonial proceeding, but before the proceeding could reach finality, the employee i.e. the husband of the petitioner No.1 died and there is no finding of any Competent Judicial Authority regarding the allegation of adultery levelled against petitioner No.1.

32. Therefore, even if the theory propounded by respondent Nos.5 and 6 that the deceased employee made nomination in favour of respondent No.6 i.e. the brother of the deceased employee is to be taken into consideration, it is hit by the proviso (I) to Rule 115 (1) read with Rule 116 (16)(b) of the MCSR 1982.

33. It is crucial to note that after Government Resolution dated 31st March 2023 was issued specifically laying down that the family pension under MCSR 1982 would be payable in respect of such employees, the petitioner No.1 had applied for relief under the Government Resolution as per letter dated 09th June 2023, addressed to respondent No.4 – College. Thus, the petitioner No.1 as a person entitled to family pension opted for such family pension under MCSR 1982 and her case is covered as per paragraph No.3 of the Government Resolution dated 31st March 2023. In fact, petitioner Nos.2 and 3 are also found entitled for such relief till they attained the age of 21 years, considering the definition of family under Rule 116(16)(b) of the MCSR 1982. It is by the operation of the aforementioned Government Resolution, read with MCSR 1982 that only the petitioners covered under the definition of family, are found to be entitled for relief in the present petition. The Government Resolutions dated 29th September 2018, 31st March 2023 read with Government Circular dated 24th August 2023, have to be interpreted to further the policy of the respondent – State Government manifested by the language of the said documents, which emphasizes on grant of family pension under the MCSR 1982, upon the employee during his lifetime or those entitled to

family pension under MCSR 1982, after his death, opting for family pension. In the present case, the petitioners clearly opted for the benefit of family pension under the MCSR 1982 and in the light of the said policy discernible from the aforementioned Government Resolutions and Government Circular, the petitioners deserve to be granted relief.

34. The contention raised on behalf of the respondent Nos.5 and 6 that before Government Resolution dated 31st March 2023 was issued, there would have been cases where benefit under DCPS was already disbursed to the nominees as per the nomination made by the deceased employee during his lifetime, fails to take into account the stipulation in paragraph No.3 of the Government Resolution dated 31st March 2023, which specifies that family pension shall be disbursed after taking into account benefits given under DCPS, thereby indicating that family pension would still be payable if the requirements of MCSR 1982 are satisfied.

35. Thus, respondent Nos.5 and 6 have not be able to make out their case for denying family pension to the petitioners. Considering the issues that have arisen in this case and the law governing grant of family pension under the MCSR 1982 to the family

of the deceased employee, coupled with the fact that the nomination changed by the deceased employee on 04th June 2014 can be of no consequence, discussion on the law regarding a person nominated holding the estate in trust for delivering the same to legal heirs of the deceased, is not necessary. There can be no quarrel with the proposition as the same is authoritatively laid down in the aforementioned judgments of the Hon'ble Supreme Court and this Court. We find that the respondent Nos.5 and 6 are not justified in reading Government Resolution dated 29th September 2018 in isolation and a proper interpretation of the same, read with subsequent Government Resolution dated 31st March 2023 and Government Circular dated 24th August 2023, shows that the petitioners are entitled to family pension, as per MCSR 1982.

36. In view of the above, the petition is allowed. The respondent Nos.1 to 4 are directed to take immediate steps for releasing benefits of family pension and other entitlements under the MCSR 1982 in favour of the petitioners. The petitioner Nos.2 and 3 would be entitled for such benefits from the date of demise of their father i.e. 26th September 2018, till they attained majority, while petitioner No.1 is entitled for family pension as the wife of the

deceased employee under the MCSR 1982.

37. The amount payable to the petitioners shall be calculated by the respondents and the amounts towards arrears shall be disbursed within eight (08) weeks from today, failing which, the amounts shall carry interest @ 9% per annum. The monthly family pension payable to the petitioner No.1 shall commence immediately upon such calculations being determined and in any case immediately upon expiry of the aforesaid period of eight weeks.

38. Rule is made absolute in above terms.

39. Pending applications, if any, also stand disposed of.

(Y. G. KHOBRAGADE, J.)

(MANISH PITALE, J.)