

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9954 OF 2024

Surgeon Captain Divya Shelly

...Petitioner

Versus

Union Of India

Through Secretary Ministry of Defence And Ors.

...Respondents

Angsuman Ojha i/b. Akshita Kohli, for the Petitioner.

Mr. Suresh Kumar a/w Smita Thakur, Commander Shivam from Navy Department present in Court.

PALLAVI
MAHENDRA
WARGAONKAR

Digitally signed by
PALLAVI MAHENDRA
WARGAONKAR
Date: 2025.03.05
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CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 3 MARCH 2025

P.C.:

1. We have heard learned counsel for the petitioner and the learned AGP for the respondent - State.
2. This petition under Article 226 of the Constitution of India is filed praying for the following relief:-

- a. That the Hon'ble Court may be pleased to issue a Writ of Certiorari and/or any other writ/order/direction in the nature of Certiorari and upon examining the legality, propriety and validity of the Impugned Order dated 01 May 2024 (Exhibit-A), be pleased to set aside the same.
- b. That the Hon'ble Court may be pleased to issue a Writ of Mandamus and/or any other writ/order/direction in the nature of Certiorari and upon examining the legality, propriety and validity of the Impugned Order, and be pleased to directing the Respondents to grant/award maintenance to Petitioner's Son retrospectively w.e.f. December 2018 upto 04 June 2024 and thereafter as per Rules, Regulation 4 and 8 of Navy Pension Regulation as per Section 27, 28 and 31 of Navy Act 1957.

- c. That the Hon'ble Court may be pleased to issue a Writ of Mandamus and/or any other writ/order/direction in the nature of Certiorari and upon examining the legality, propriety and validity of the Impugned Order, and be pleased to directing the Respondents to implement Order dated 01 May 2024 of Respondent No.3 (Exhibit – C) with regard to maintain Petitioner's Son by making suitable bank allotment per Rules, Regulation 4 and 8 of Navy Pension Regulation as per Section 27, 28 and 31 of Navy Act 1957.
- d. Ad interim Reliefs in terms of Prayer A, B & C above as well directing the Respondents No.2 & 3, acting through its servants/ agents/ subordinates to implement Order dated 01 May 2024 of Respondent No.3 (Exhibit-C) with regard to maintain Petitioner's Son by making suitable bank allotment per Rules, Regulation 4 and 8 of Navy Pension Regulation as per Section 27, 28 and 31 of Navy Act 1957."

3. Briefly, the facts are that the petitioner is in the service of Indian Navy and is working as a Surgeon. She has a matrimonial dispute with her husband, who was also a Surgeon Commander Y. Thirumala Rao, a Commissioned Officer of the Indian Navy and Armed Forces Medical Corps. He has already retired from the service of the Navy on 4 June 2024 which is stated to be a voluntary retirement. However, prior to his retirement, on the application as made by the petitioner, Shri Aditya Awasti, Commander Command Judge Advocate (AOL), for Flag Officer Commanding-in-Chief addressed a communication, dated 1 May 2024 to the Regional Director, ECHS, Mumbai in regard to the maintenance allowance which the petitioner's husband is required to pay to the petitioner as per the requirement of Section 31 of the Navy Act stated to be the legal and moral responsibility of the husband to maintain the wife and the child. In such letter he has also recorded that the petitioner's husband Y. Thirumala Rao be advised to meet his social and legal

obligation to maintain the child by making suitable bank allotment. The contents of the letter reads thus :-

“PERSONAL & CONFIDENTIAL

Headquarters
Western Naval Command
Mumbai 400001

01 May 24

JA/2010/OF/02/2024
The Commanding Officer
INHS Asvini
Colaba
Mumbai 400 005.

MAINTENANCE ALLOWANCE – SURG CAPT DIVYA SHELLEY
(76005N)

1. Refer to INHS Asvini letter S/109 dated 20 Mar 24 and letter D/(76005) Pers dated 18 Mar 24 submitted by Surg Capt Divya Shelly (76005N).
2. The request submitted by Surg Capt Divya Shelly for grant of maintenance allowance from the pay and allowances of her husband, i.e. Surg Cdr Y Thirumala Rao (756881), in respect of their child, has been investigated by Regional Director, ECHS (Mbi), in terms of NO (Str) 02/23. Regional Director ECHS (Mbi), has brought out that Surg Cdr Y Thirumala Rao had applied for premature retirement, which has been approved by the Competent Authority **and the officer is to be relieved of his duties latest by 04 Jun 24. As per Para 3 of NO (Str) 02/23, maintenance allowance iro wife and children under Section 31 of Navy Act, 1957 can only be effeted till the time the concerned person is subject to naval law. Since the officer is to be relieved of his duties by 04 Jun 24, the request of Surg Capt Divya Shelly for maintenance allowance under Sec 31 of the Navy Act, 1957, cannot be progressed.**
3. It is requested that the officer be informed accordingly.

(Aditya Awasthi)

Commander

Command Judge Advocate (AOL)
for Flag Officer Commanding-in-Chief

Copy to:-

The Chief of the Naval Staff
(for Directorate of Personnel Services)
Naval Headquarters
Ministry of Defence
New Delhi 110011”

(emphasis supplied)

4. Similar letter was addressed by Commander Aditya Awasti to the Commanding Officer INHS Asvini on the given date the contents of which are also required to be noted :-

“PERSONAL & CONFIDENTIAL

Headquarters
Western Naval Command
Mumbai 400001

Ja/2010/OF/02/2024(i)

01 May 24

The Regional Director
ECHS Mumbai
3rd Floor, Noorbhoy Building
SBS Road
Mumbai 400 001.

MAINTENANCE ALLOWANCE – SURG CAPT DIVYA SHELLY
(76005N)

1. Refer to INHS Asvini letter S/109 dated 20 Mar 24 and your letter 101/81/ECHS dated 19 Apr 24.
2. The request submitted by Surg Capt Divya Shelly for grant of maintenance allowance from the pay and allowances of her husband, i.e. Surg Cdr Y Thirumala Rao (756881), in respect of their child, is not being processed under Sec 31 of the Navy Act, 1957, view officer's release from service by 04 Jun 24. However, the same does not absolve the officer of his legal and moral responsibility to maintain his child.
3. In view of the above, it is requested that Surg Cdr Y Thirumala Rao be advised to meet his social and legal obligation to maintain his child by making suitable bank allotment.

(Aditya Awasthi)
Commander
Command Judge Advocate (AOL)
for Flag Officer Commanding-in-Chief

Copy to:-

The Commanding Officer
INHS Asvini
Colaba
Mumbai 400005”

5. It is clearly seen in paragraph 2 of the aforesaid letter that the Commander Aditya Awasti has set out that the obligation on the husband of the petitioner could be effected only till the time he was subject to Naval Law and in view of his retirement which was to take effect on 4 June 2024 and after such retirement, the petitioner's claim under Section 31 cannot be progressed.

6. Admittedly, the petitioner's husband Surgeon Commander Y. Thirumala Rao has retired w.e.f. 4 June 2024. After his retirement, he is no more a "Person subject to Naval Law" as defined in Section 2(1) of the Navy Act, 1957. Therefore, as rightly set out in the letter dated 1 May 2024 he would not be governed under the Navy Act as also the petitioner cannot enforce any plea under the Navy Act against her retired husband. If this be so, the petitioner would be required to take recourse to proceedings under general law by approaching the appropriate Court in regard to any matrimonial disputes and/or to claim the maintenance for himself and the son.

7. We may also observe that as a plea on medical treatment of the child is urged by the petitioner as pointed out to us the petitioner is very much in the service of Navy. She is herself a Surgeon. She is availing all benefits as a "Person subject to Naval Law", as extended by the Government of India and which are stated to be available at the INS Asivini at Mumbai, to which she and the child would be entitled to take medical benefits. In any

event, if there are other entitlements which the petitioner feels that they are due to the petitioner and the son, she is free to take recourse to appropriate proceedings as the law may provide.

8. She is also free to take recourse to appropriate proceedings in regard to her matrimonial dispute as above.

9. In this view of the matter, it is not possible for us to grant the reliefs as prayed for.

10. The Petition is accordingly dismissed, however, subject to above observations. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]