

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.18230 OF 2024**

1. Vasantao Shamrao Deshmukh)
Aged : 75 years, Occu: Nil)
2. Snehalata Vasantao Deshmukh)
Aged : 75 years, Occu: Nil)
Both 1 and 2 residing at Gadge Maharaj)
Gorakshan Sanstha, Post Murtijapur,)
District Akola, Maharashtra – 444 107)Petitioners

Versus

1. State of Maharashtra)
Through its Secretary, Department of)
Finance, Mantralaya, Mumbai – 400 032)
2. The Accountant General,)
Indian Audit and Accounts Department,)
Pratishtha Bhavan, 101, Maharshi Karve)
Marg, Mumbai – 400 020)
3. The Project Officer,)
Integrated Tribal Development Project)
Office, Nashik, Maharashtra – 422 002)Respondents

Mr. Abhijeet Desai a/w. Mr. Karan Gajra, Mrs. Daksha Madhav,
Mr. Vijay Singh, Mr. Digvijay Kachare and Ms. Sanchita Sontakke
i/b. Ms. Mohini Rehpade for the Petitioners.
Mr. Abhishek Bhadang, AGP for Respondent No.1.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.
DATE : 25th APRIL, 2025**

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.) :

1. Leave to delete Respondent No.4, which is a formal party.
Deletion be carried out forthwith.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. The Petitioners are the parents of the deceased Mangesh. Both the Petitioners are more than 75 years of age. Mangesh was their unmarried biological son, who was working in a School since 15th June, 1999. Due to a snake bite on the premises of the School, Mangesh passed away on 3rd October, 2008. On 22nd September, 2010, the Petitioners approached Respondent No.3 for seeking pensionary benefits. By a communication dated 22nd November, 2010, the office of the Accountant General informed the Petitioners that the biological parents of a deceased employee of the State Government, are not eligible for family pension.

4. Hence, the Petitioners have put forth prayer clauses (a) and (b), as under :

a. That this Hon'ble Court may be pleased to issue Writ of Certiorari or Writ in the nature of Certiorari or any other Writ, order or directions to quash and set aside the impugned order dated 22.11.2010 and impugned order dated 12.12.2020, the same being violative of Clause 16 (b)(iv) of Rule 116 of the Maharashtra Civil Services (Pension) Rules as amended on 18.01.2016;

b. That this Hon'ble Court by way of an appropriate Writ of mandamus or Writ in the nature of Mandamus or any other Writ, Order or

Direction thereby declaring Petitioners to be eligible for grant of Family Pension from 03.10.2008 (date of the death of Petitioner's son Late Mangesh Vasantrao Deshmukh) in view of Clause 16 (b)(iv) of Rule 116 of the Maharashtra Civil Services (Pension) Rules as amended on 18.01.2016.

5. The State has vehemently opposed this Petition, contending that the Petitioners would not be entitled for pensionary benefits since the definition of family does not admit the biological parents of the deceased 'single' employee, under the MCS (Pension) Rules, 1982. The Senior Accounts Officer from the Indian Audit and Accounts Department, Mumbai, has informed the Project Officer, Integrated Tribal Development Project, Nashik, Respondent No.3 herein, that the office is unable to process the pension case since they need a clarification on the pay fixation as per the 5th Pay Commission recommendations and since family pension is not admissible to the parents.

6. The learned Advocate for the Petitioners has cited the Government Resolution dated 22nd January, 2015 issued by the Finance Department in relation to grant of family pension to the wholly dependent parents of a deceased 'single' Government servant. In the introduction part of the Government Resolution, it is mentioned that, when the parents of a 'single' Government servant

have no independent means of sustenance and were wholly dependent on him, were not held to be entitled to any family pension earlier because the definition of ‘family’ under Rule 116 (16)(b) of the MCS (Pension) Rules, 1982 did not include them. As a social security measure, the definition of ‘family’ is now enlarged under the Pension Rules in order to include the wholly dependent parents of a ‘single’ Government servant. Accordingly, the definition of ‘single’ Government servant has also been introduced in the Rules.

7. It is, thus, apparent that the State Government has taken the initiative and realising that wholly dependent parents of a ‘single’ Government servant would be rendered to starvation if the pension is not made available to them, the State Government, in order to achieve a laudable object and for sustaining the true spirit of social security legislation, has included the parents within the definition of ‘family’.

8. The learned AGP submits that the State Government has not taken any specific decision as to whether the Government Resolution, dated 22nd January, 2015 could be made applicable, retrospectively. According to him, if any retrospective effect is to be

granted to any such policy decision of the Government, reasons have to be assigned and a specific clause has to be introduced to make the Government Resolution/policy decision applicable with retrospective effect. As the State Government has not taken any decision of granting retrospective effect, he submits that the Government Resolution would not be applicable to the present case.

9. In *Vimalbai Supdu Patil v/s. State of Maharashtra*¹, the Division Bench of this Court dealt with the claim of a mother, who was denied pension on the ground that though her son (unmarried) passed away while in service and though she was his dependent, she was not covered by the definition of ‘family’ under Rule 116 (16)(b) of the MCS (Pension) Rules, 1982. The facts of the case in *Vimalbai Supdu Patil* (Supra) are practically identical to the present case. This Court concluded that denial of family pension to the mother of the deceased would amount to discrimination and infringement of her fundamental right under Article 14 of the Constitution of India. It was concluded that though belatedly, the State Government has taken a decision to include the biological parents in the definition of ‘family’ when the Government servant was ‘single’ at the time of his demise.

1 2016 (6) Mh.L.J. 191

10. In *State of Punjab and Anr. v/s. Kharak Singh Kang and Anr.*², the Division Bench noted that “*Next to God, thy parents, says the poet*”. A question was raised that “*Those who gave him birth and trained him up, have no right to be included in his family? It does not appeal to logic. We cannot say-Yes.*” This judgment is aptly applicable to the case in hands.

11. The aforesaid judgment indicates that the purpose of the Rules relating to family pension is to provide means of sustenance to the members of the family of the deceased employee. If the aged parents were dependent on their deceased son for their livelihood, the provision for family pension is made to help such dependents.

12. In *National Insurance Company Ltd. and Ors. v/s. Smt. Gurdev Kaur and Anr.*³, the Division Bench concluded that the rejection of the claim of a mother on the ground that she does not fall within the definition of ‘family’ of the deceased, is unsustainable. While deciding the said case, the High Court relied upon *State of Punjab and Anr. v/s. Devinder Kaur*⁴. The Hon’ble Supreme Court has recorded that parents were included in the

² 1998 (4) SLR 594

³ 2008 (8) SLR 646

⁴ J.T. 1999 (10) S.C. 549

definition of ‘family’ under the 1951 Pension Rules. With an amendment in 1962, the parents of the deceased employee were excluded, from the definition of ‘family’.

13. We find that in the light of the above, it was apparently beyond the knowledge of the Accountant General that in 2016, this Court had delivered the judgment in *Vimalbai Supdu Patil* (Supra) by which the Government Resolution was made applicable even to a case which was prior to the introduction of the Government Resolution. Had the Accountant General been aware of this fact, he would have dealt with the case of these Petitioners within the framework of the said view. Nevertheless, since the Government Resolution has been introduced with a purpose of giving a broader meaning to ensure that the very object of social security legislation is achieved by extending the benefits to the most deserving, that this Petition deserves to be accepted.

14. We sincerely believe that if dependent parents have to keep their ‘*mind, body and soul*’ together, law must ensure that they receive pension for sustenance. The right to life with dignity, guaranteed by Article 21, encompasses more than just the right to exist; it includes the right to live a meaningful and fulfilling life.

This right extends to ensuring the basic necessities, protection from exploitation and the right to make personal decisions about one's life. This right ensures access to means of sustenance and a decent and dignified standard of living which includes access to food, shelter and other essential needs. [*Peoples Union of Civil liberties v/s Union of India, AIR OnLine 2007 SC 1* and *Chameli Singh v/s State of UP, AIR 1996 SC 1051*]

15. Every executive action and in particular a legislative measure like a statutory Rule governing the grant of pensionary benefits, should meet the test of reasonableness as contemplated under Article 14 of the Constitution of India. Does the exclusion of the dependent parents from the definition of family, appeal to logic or reason? Would it justify rendering the dependent parents to starvation? Though belatedly, the State Government realised the imminent need of including the parents in the definition of family in relation to a 'single' deceased son/daughter, albeit, making the said GR dated 22.01.2015, applicable prospectively. In our view, the effect of the GR should be made applicable, at least to the dependent parent/s who is/are surviving as on the date of the said GR, notwithstanding, that the death of the 'single' son/daughter may have occurred prior to the date of the GR.

16. For all of the above reasons, in view of the cited reports, we are fully convinced that this is an appropriate case for applying the GR dated 22.01.2015, so as to make it applicable even to the case of a dependent parent who is surviving as on the date of the GR.

17. In view of the above, **this Petition is partly allowed in terms of prayer clause (a).** The impugned orders dated 22nd November, 2010 and 12th December, 2020 are quashed and set aside.

18. We direct that the proposal of these Petitioners shall be resubmitted by Respondent No.3 to Respondent No.2, within 21 days from today and the same shall be granted by Respondent No.2, 15 days thereafter, with effect from the date of the Government Resolution, i.e., 22nd January, 2015. The arrears of pension would be paid to Petitioner No.1 with simple interest @ 6% per annum, from the date of the filing of this Petition in 2024, within 60 days from today. Regular pension shall be paid from the month of July, 2025 or to the survivor of the parents until his/her life time.

19. **Rule is made partly absolute** in the above terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)