



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

WRIT PETITION NO. 4849 OF 2024

Smt. Lata wd/o. Gunwant Warthi
 age : 40 years, Occ : Housewife,
 R/o. Mallera, Tah.Mulchera,
 District – Gadchiroli

}

.. Petitioner

Versus

- 1) State of Maharashtra through its
 Secretary, Department of Rural
 Development, Mantralaya,
 Mumbai – 32
- 2) Zilla Parishad, Gadchiroli,
 through its Chief Executive Officer

}

.. Respondents

Mr. P.N. Shende, Advocate for the petitioner.
 Mr. A.S. Fulzele, Addl.G.P. for respondent No.1.
 Ms.M.P.Munshi, Advocate for respondent No.2.

CORAM : AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.

DATED : MAY 05, 2025

JUDGMENT (PER : ABHAY J. MANTRI, J.)

Heard. **Rule.** Heard finally with the consent of the learned
 counsel appearing for the parties.

(2) The petitioner seeks direction against respondent No.2,
 Chief Executive Officer, Zilla Parishad, Gadchiroli, to forthwith release

family pension and other pensionary benefits in her favour.

(3) It is pertinent to note that on 04/04/2025 this petition and Writ Petition No.4846/2024 came up for hearing, during the argument, learned counsel for the petitioner submitted that the petitioner in Writ Petition No.4846/2024 and husband of the petitioner in the present petition have completed qualifying service for getting pension, therefore, they are entitled to the pensionary benefits in view of the dictum laid down in Writ Petition No.2035/2022 (***Smt. Anjali wd/o. Madhukar Kando and another vs. State of Maharashtra and another decided on 03/04/2023***).

(4) It was also submitted that the issue involved in the present matter was covered by the judgment passed in ***Smt.Anjali Kando*** (supra), and pointed out para 5 therein. In response, learned counsel for the respondent No.2 did not dispute the facts, as well as the dictum laid down in the said writ petition. Learned counsel for the petitioner also pointed out the facts from Writ Petition No.4846/2024 and submitted that the petitioner had completed qualifying service; in view of the same, both the petitions were pronounced as allowed on that day. However, after going through the record of this petition, it is found, that an incorrect statement was made by the learned counsel of the petitioner, that the husband of the petitioner had completed the

qualifying service of 20 years. Therefore, the matter was kept for fresh consideration on 23/04/2025 and the learned counsel for the petitioner was asked to address the Court on the said issue. Thus, the matter was again listed before the Court.

(5) At this juncture, the learned counsel for the petitioner then resiled from his statement and contended that the husband of the petitioner had completed 18 years of qualifying service. Thereafter, he was terminated and died, and therefore, the petitioner (widow) is entitled to get family pension as per '*Rule 30*' of the Maharashtra Civil Services (Pension) Rules, 1982 (for short '***Rules of 1982***'). As the petitioner's husband has rendered temporary service for more than 10 years, the petitioner is entitled to a family pension.

(6) Alternatively, he submitted that as per '*Rule 116(2)*' of the Rules of 1982, the husband of the petitioner, after completion of one year of continuous service, had died and therefore, the petitioner is entitled to family pension as per said Rule.

(7) In order to substantiate his contention, he has relied upon the judgments dated 04/07/2019 in Writ Petition No.6143/2016 (***Umabai w/o Ramkrishna Deshmukh vs. The State of Maharashtra and others***) and ***Smt. Anjali Kando*** (supra) and canvassed that the

aforesaid judgments cover the issue in the case in hand and therefore, the petitioner is entitled to family pension. Hence, learned counsel urged for allowing the present petition.

(8) On the other hand, Ms. Munshi, learned counsel for respondent No.2, strenuously opposes the petition on the ground that the petitioner's husband has not completed the qualifying service of 20 years. Therefore, the petitioner is not entitled to family pension. She further canvassed that husband of the petitioner was not superannuated, but he was terminated before completion of 20 years services, so also he was not retired on being declared permanently incapacitated for further government service and therefore, the petitioner is not entitled to claim family pension on behalf of her husband under '*Rule 30*' of the Rules of 1982.

(9) She further submitted that since the petitioner's husband had not died during the service; the question of granting family pension after completing one year of continuous service as contemplated under '*Rule 116(2)*' of the Rules of 1982 did not arise, therefore, the petitioner was not entitled to claim the said relief. Lastly, she propounded that the facts in the above-cited judgments are different from the case in hand, and therefore, what has been held in the said judgments does not apply to the case in hand. Hence, she urged for the dismissal of the petition.

(10) We have considered the rival submissions canvassed by the learned counsel for the parties and perused the record.

(11) A short question that arises is "*whether the petitioner is entitled to get a family pension as claimed?*"

(12) While dealing with the fact in issue, it would be proper to reproduce undisputed facts of the case, which are as under: -

The petitioner's husband was appointed as "*Untrained Teacher*" vide order dated 22/12/2004 with a condition that he would complete his D.Ed. qualification within the stipulated time. He joined the service on 23/12/2004. However, he did not acquire the D.Ed. qualification till his termination. As per Government Resolutions (for short, **G.R.**) dated 05/02/1999, 24/05/2007, 02/11/2010 and 2/07/2012, it was stipulated that all "*Untrained Teachers*" will have to acquire the requisite D.Ed. qualification, and accordingly, all "*Untrained Teachers*" were granted sufficient opportunity to acquire the requisite qualification.

(13) Lastly, vide GR dated 09/02/2016, it was incumbent upon the "*Untrained Teachers*"/employees to acquire the requisite D.Ed. qualification by the cutoff date, i.e. 28/02/2019. In the said GR, it was clarified that no further opportunity shall be granted. Despite the GR,

the petitioner's husband did not acquire the requisite D.Ed. qualification till the cutoff date, i.e. 28/02/2019; therefore, a show cause notice was issued to him as to why his services shall not be terminated. Pursuant to the same, he was also given an opportunity of hearing. On 03/02/2020, during the hearing, he conceded that he had not acquired the requisite qualification, therefore, vide order dated 27/05/2020, his services were terminated.

(14) It is undisputed that the petitioner's husband was in service from 23/12/2004 till 27/05/2020, i.e., a total of approximately 15 years and 05 months. Thus, the petitioner did not complete 20 years of qualifying service as contemplated under '*Rule 30*' of the Rules of 1982. It is also not in dispute that after termination, the petitioner's husband died on 19/02/2021. It is not in dispute that the petitioner's husband did not challenge the said termination during his lifetime. Thus, the said termination order remains unchallenged.

(15) Learned counsel for the petitioner's argument was twofold. At the first instance, he argued that the petitioner's husband had completed more than 10 years of service and that, as per '*Rule 30*' of the Rules of 1982, the petitioner's husband would be entitled to a retiring/family pension after attaining the age of superannuation.

(16) While determining the controversy between the parties, we would like to reproduce '**Rule 30**' of the Rules of 1982, which reads thus:-

"30. Commencement of qualifying service :-

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that at the time of retirement, he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency.

[Provided further that, in cases where a temporary Government servant retires on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than 10 years, or voluntary after the completion of 20 year of qualifying service, shall be eligible for grant of superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Guaranty; and family Pension at the same scale as admissible to permanent Government servant.]

Exception -

*The rules regarding grant of terminal benefits to temporary Government servants *[except those mentioned in the second proviso] who retire being confirmed in any post in Government service are embodied in Appendix II."*

Note 1 :.....

Note 2 :.....

Note 3 :.....

(17) Bare perusal of "**Rule 30**" of the Rules of 1982 indicates that after completing 20 years qualifying service, the employee would be entitled to the regular/family pension. The proviso to said Rule would indicate that **if the Government servant retires on**

superannuation or on being declared permanently incapacitated for further Government service by an appropriate medical authority, then he would be eligible for regular/family pension after completion of 10 years of service. In the case in hand, the petitioner's husband was neither retired on superannuated during the service period nor declared permanently incapacitated for further Government service by the appropriate medical authority, but **he was terminated** before completion of his qualifying service period of 20 years. Therefore, in our view, the mandate in '*Rule 30*' does not apply to the petitioner's claim to grant a regular/family pension.

(18) Alternatively, learned counsel for the petitioner emphasises that as per '*Rule 116(2)*' of the Rules of 1982, the petitioner is entitled to get a family pension on account of the demise of her husband, who had completed one year of continuous service. As such, we would like to reproduce Rule 116 (2), which reads as under:-

116. Family Pension, 1964

(1) The provisions of this rule shall apply -

(a)

(b)

[Note -

*(2) Without prejudice to the provisions contained in sub-rule (4), **where a Government servant dies** -*

(a) after completion of one year of continuous service, or

(b) before completion of one year of continuous service, provided the

deceased Government servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for Government service; or

(c) after retirement from service and was in receipt of a pension on the date of death,

the family of the deceased shall be entitled to Family Pension.

Explanation – *The expression “continuous one year of service” wherever it occurs in this rule shall be construed to include less than one year of continuous service as defined in clause (b).*

(3)

(4)

(5)”

(19) A bare perusal of the above Rule would indicate that for the application of Rule 116(2), **the demise of the employee has to be while in service**. In such circumstances, after completion of one year of continuous service, his legal heirs would be entitled to family pension. Undisputedly, the husband of the petitioner was terminated before completion of 20 years qualifying service, and after his termination, he died. The fact itself denotes that the petitioner's husband was not in government service when he died. Moreover, the petitioner's husband did not challenge the said termination order during his lifetime. Therefore, in our opinion, the mandate of Rule 116 does not apply to the case at hand.

In **Umabai Deshmukh** (supra), all the petitioners therein retired upon attaining the age of superannuation, and they were denied

pensionary benefits on the grounds that they did not possess the qualification of "*Trained Teacher*". This Court after considering the same held that petitioners therein though did not possess requisite qualification of "*Trained Teacher*", but they were treated as regular employees working and on officiating, substantive vacant post till the age of their retirement and therefore, would be entitled for pension and pensionary benefits and had directed the respondents to consider case of the petitioners for grant of pensionary benefits.

(20) Similarly, in the case of **Anjali Kando** (supra), the husband of the petitioner therein had completed 28 years of service, therefore, this Court had held that husband of the petitioner had completed the qualifying service of 20 years and thus, the case was covered by the judgment in **Umabai Deshmukh**(supra) and therefore, directed the respondent No.2, Chief Executive Officer to forthwith release the family pension and other pensionary benefits in favour of the petitioner therein.

(21) However, in the case in hand, the petitioner's husband was neither superannuated while in service nor completed 20 years of qualifying service; therefore, the law laid down in the said judgments is hardly of any assistance to the petitioner in support of her claim.

(22) Considering the discussion above, it is evident that the petitioner's husband did not acquire the requisite qualification of D.Ed.; therefore, his services were terminated before completion of 20 years of qualifying service. It is not the case of the petitioner that her husband died during the employment, or he was declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than 10 years. Therefore, the petitioner would not be entitled to claim relief under 'Rule 30'. Similarly, it is also not the case of the petitioner that after completion of one year of continuous service, the petitioner's husband passed away while in service or during his employment, he died as a Government servant. Therefore, the mandate of Rule 116 does not apply to the case at hand.

(23) In the wake of the above, we do not find substance in the argument advanced by the learned counsel for the petitioner in that regard. Thus, the petition being bereft of merits, stands dismissed.

(24) Rule is discharged. No order as to costs.

[ABHAY J. MANTRI, J.]

[AVINASH G. GHAROTE, J.]