

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 301 OF 2019

DISTRICT : MUMBAI

Late Smt Kalawati Dhanraj Likhari,)
Through Legal heir, Shri Dhanraj)
Damodar Likhari, age 62,)
Occ: Retd Govt. servant,)
Flat no. 1006, Society no. 5/A,)
Versova Heights C.H.S, New MHADA)
Colony, Andheri [W], Mumbai 400 053.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Secretary,)
Higher & Technical Education,)
4th floor, Mantralaya,)
Mumbai 400 032.)
2. The Director,)
Directorate of Technical Education)
3, Mahapalika Marg, Post Box. No.1967)
Mumbai 400 001.)
3. The Principal,)
Institute of Printing Technology,)
J.J School of Arts Campus,)
Mumbai 400 001.)...**Respondents**

Shri C.T Chandratre, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : **Shri P.N Dixit (Vice-Chairman) (A)**

DATE : **11.10.2019**

ORDER

1. Heard Shri C.T Chandratre, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the husband of the retired Government servant with following prayer:-

“9(a) The Hon. Tribunal be pleased to call for the record and proceedings of the impugned dated 30.11.2018 issued by Respondent no. 2 and after examining its legality and validity the Hon. Tribunal be pleased to hold and declare that the said letter is bad in law and by suitable order the same may be quashed and set aside.

(b) The Hon. Tribunal further be pleased to direct the Respondents to fix the pension of late Smt Kalawati and the family pension of the applicant by considering the last pay drawn by Smt. Kalawati in the post of Superintendent, i.e. the post legally held by her, by releasing all increments till the date of her retirement and to release all consequential benefit, viz. pay the arrears of difference in amount of pension, family pension, gratuity, encashment leave etc within the period of 3 months from the date of the order passed by this Hon. Tribunal.”

(Quoted from page 8 of the O.A)

3. Brief facts of the case:-

The wife of the applicant was working as Superintendent in the officer of Respondent no. 3 (Principal, Institute of Printing Technology, J.J School of Arts Campus, Mumbai). She was working as Superintendent in the pay scale of Rs. 9300-34800 plus Grade Pay of Rs. 4300/-. On 21.11.2003, she was given ad hoc promotion on the post of Registrar, Group-B, having pay scale of Rs. 9300-34800 plus Grade Pay of Rs. 4400/-. The wife of the applicant superannuated on 30.6.2010. However, as the proposal to make her regular in the pay scale of the post of Registrar did not receive approval from Respondent

no. 1 (State Government), the Respondent no. 2 (Director) communicated on 18.4.2006 that the increments give to her in the senior pay scale of the post of Registrar should not be released. However, efforts to regularize the promotion are in correspondence.

4. Accordingly, on 25.6.2010, Respondent no. 3 (Principal), cancelled the increments and effected recovery of the increments paid earlier of the post of Registrar given to the wife of the applicant. Meanwhile, the wife of the applicant expired on 19.11.2012 and the applicant started receiving family pension, proportionate to the pension sanctioned to late Smt Kalawati, wife of the applicant. The wife of the applicant was getting pension on the basis of last pay drawn, i.e. Rs. 13580/- + Rs. 4400/- in the scale of Registrar.

5. The applicant contends that as the wife of the applicant did not receive her promotion in the pay scale of the post of Registrar, she was notionally working in the lower grade of Superintendent on regular basis, and therefore, she was entitled for getting annual increments in the pay scale of the post of Superintendent till her retirement. However, the same has been rejected. According to the applicant, getting increments for the work done during the year, the wife of the applicant was entitled for increment as per Rule 36 of the Maharashtra Civil Services (Pay) Rules, 1992. The relevant rule reads as below:-

“36. Increment to be drawn as a matter of course:- An increment shall ordinarily be drawn as a matter of course unless it is withheld as a penalty under the relevant provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.....”

6. The Respondents have filed their affidavit in reply justifying the impugned order at page no. 48, (A-10 of the O.A). According to the Respondents, the wife of the applicant during her service as well as after her retirement did not ask for increment in the pay scale of the post of Superintendent. The Respondents also submit that there is inordinate delay of 8 years after the retirement and six years after the death of wife of the applicant, and as the delay has not been condoned, O.A is not

admissible. According to the Respondents, there is no provision to sanction pension to a retired Government employee in the lower grade than the post which he held at the time of retirement.

7. Today, during the hearing, learned Presenting Officer submitted that Respondent no. 3 (Principal of the Institute), where the wife of the applicant was working has submitted a proposal on 29.7.2019, relevant portion of which reads as under:-

विषय : श्रीमती के.डी. लिखार, माजी प्रबंधक यांची अधिदक्षक पदावरील वेतन निश्चिती करून सुधारीत विवरणपत्र सादर करणेबाबत.
संदर्भ : आज दिनांक २९.०७.२०१९ रोजी आलेला दुरध्वनी संदेश

मा. महोदय,

उपरोक्त संदर्भाकीत विषयांस अनुसरून आपणास सविनय कळविण्यांत येते की, या कार्यालयांतील तत्कालीन कार्यरत अधिकारी श्रीमती के.डी. लिखार, माजी प्रबंधक यांच्या अधिदक्षक पदावरील सुधारीत वेतन निश्चिती करून त्यानुसार त्यांना देय होणारे वेतन भ-ते यांचे विवरणपत्र सादर करणेबाबत कळविण्यांत आलेले होते. त्यानुसार दिनांक ०१.१२.२००३ ते ३०.०६.२०१० या कालावधीतील वेतन व भ-ते यांचे विवरणपत्र सादर करण्यांत येत आहे.

प्रबंधक या पदावरील त्यांना सध्या अंतिम वेतन रक्कम रु. १३५८० + ४४०० = १७९८० (Sanction Pension Rs.8990) या प्रमाणे अदा करण्यांत येत आहे. परंतू अधिदक्षक या पदावर वेतन वाढी दिल्याने अंतिम वेतन खालीलप्रमाणे होते.

मुळ वेतन १५०१० + ग्रेड वेतन ४३०० = १९३१० (Proposed pension Rs.9655)
(Quoted from letter dated 29.7.2019)

8. Findings and Observations:-

It is true that there is no provision to sanction pension to a Government servant in the lower grade than the grade in which the Government servant retired. It is also true that there is a delay of six years after the death of the wife of the applicant. Learned advocate for the applicant submits that the delay was due to the round of litigations pending before this Tribunal and Hon'ble High Court. It is also true that Respondent no. 3 were in correspondence with Respondent no. 2 in regularizing the promotion of the wife of the applicant to the post of Registrar. However, the same did not come till the time of retirement of the applicant. Therefore, the wife of the applicant cannot be held accountable for non-receipt of the final outcome of the correspondence. It is a fact that wife of the applicant occupied the post of Superintendent in a substantive manner. It is also true that she did not get any

increment in the pay scale of the post of Registrar even though she had worked on the said post. It will be unjustified to consider that she is not entitled to get increment even in the pay scale of the post of Superintendent. Advocate for the applicant, submits applicant is ready to forego any financial benefits received, such as additional grade pay, in the scale of Registrar.

9. In view of the foregoing, it would be appropriate if Respondent no. 2 (Director), should look into all these facts mentioned above and take suitable steps regarding the communication from Respondent no. 3 on 29.7.2019. I, therefore, direct Respondent no. 2 (Director) to take decision as per merits on the communication dated 29.7.2019 within a period of two months and communicate the same to the applicant within a period of two week thereafter.

10. With the above directions, Original Application stands disposed of. No order as to costs.

Sd/-
(P.N Dixit)
Vice-Chairman (A)

Place : Mumbai
Date : 11.10.2019
Dictation taken by : A.K. Nair.