

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 31 of 2016 (S.B.)

Mrs. Shalubai Wd/o Krushna Khumbalkar,
Aged about 50 years and resident of Sant Kabir Ward
(Hanuman Ward), near Raju Kurzekar Tailors Residence,
Bhandara-441 904.

Applicant.

Versus

- 1) State of Maharashtra through its
Secretary Department of Water Resources,
Hutatama Rajguru Square, Madam Cama Marg,
Secretariat Bombay-400 032.
- 2) Superintending Engineer,
Nagpur Irrigation Circle, Civil Lines,
Nagpur.
- 3) Executive Engineer,
Medium Irrigation Project,
Gondia.

Respondents

Shri Shashikant Boarkar, Advocate for the applicant.

Shri P.N. Warjurkar, learned P.O. for respondent no.1.

Shri P.V. Thakre, Id. counsel for respondent nos. 2&3.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 21st day of March,2018)

Heard Shri Shashikant Borkar, Id. counsel for the applicant, Shri P.N. Warjurkar, Id. P.O. for respondent no.1 and Shri P.V. Thakre, Id. counsel for respondent nos.2&3.

2. The applicant in this case Mrs. Shalubai Krushna Khumbalkar is the widow of deceased employee Shri Krushna L. Khumbalkar who was working as Peon in the office of respondents. From the facts as narrated, it seems that the applicant's husband joined in the service as Peon on 27/11/1981. During the period from 09/03/2001 to 23/04/2006 deceased Krushna L. Khumbalkar was absent from duty. However, no action has been taken against the applicant's husband for such alleged unauthorised absence and on the contrary he was allowed to join duty on 24/04/2006. Shri Krushna L. Khumbalkar died on 06/10/2013.

3. After the death of Shri Krushna L. Khumbalkar, his wife, i.e., the applicant filed an application for getting family pension. Her application was rejected vide impugned order dated 30/03/2015 (Annex-A-1) on the ground that the applicant's husband was absent unauthorizedly and therefore such absence period amounts to discontinuation of the service as per the Rule 47 (1) of the Maharashtra Civil Services (Pension) Rules,1982. It was also stated that the applicant's husband was not entitled to get any pay and

allowances during that period. It was further directed that the pay of the applicant's husband shall be fixed as per the 6th Pay Commission w.e.f. 24/04/2006 after he was reinstated. The applicant's claim for family pension was also rejected so also the other financial benefits.

4. Being aggrieved by the aforesaid letter dated 30/03/2015 (Annex-A-1), the applicant has filed this O.A. and prayed that the letter dated 30/03/2015 (Annex-A-1) be quashed and set aside and the absence period of applicant's husband from 09/03/2001 to 23/04/2006 be treated as duty period and family pension be granted to the applicant.

5. The learned counsel for the applicant submits that no departmental action was taken against the applicant's husband when he was in service. Even for argument sake, it is accepted that the applicant's husband was absent from 09/03/2001 to 23/04/2006 unauthorisedly, no departmental action was taken against him, even no show cause notice was issued to the applicant's husband and on the contrary the applicant's husband was allowed to join duty on 24/04/2006 after he was referred to medical board and the medical board found applicant's husband fit for joining duty.

6. The learned P.O. submits that the Sub Divisional Engineer who allowed the applicant's husband to join on duty was not authorised to allow such joining and therefore State has initiated the departmental enquiry against the Erring Officer. Whatever may the case, the fact remains that the applicant's husband was allowed to join duty on 24/04/2006 and since then till his death on 06/10/2013 neither any show cause notice was issued

to him nor any departmental enquiry was initiated and even his absence was not treated as unauthorised.

7. This Tribunal vide order dated 23/08/2017 was pleased to observe as under :-

“ Upon hearing both the sides, it appears that the impugned order (A-1) was passed by respondent no.1 without resorting to the provisions of sub-rule (2) of Rule 47 of the Maharashtra Civil Services (Pension) Rules,1982 (in short “Pension Rules”). It appears that no conscious decision has been taken regarding unauthorised absence of the applicant (it might be applicant’s husband) to find out as to whether he may be granted extraordinary leave. In the circumstances, respondent no.1. is directed to consider of the material on the record and to take a decision as per the provisions of sub-rule (2) of Rule 47 of the Pension Rules. Thereupon a copy of decision be filed on record.”

8. In view of the aforesaid order the respondent no.1 has taken a decision on 09/10/2017. The copy of the said decision is at P.B. page nos.31A to 31D (both inclusive). The respondent no.1 rejected the applicant’s claim by making following observations.

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9. The respondent nos. 2&3 has invited my attention to one recommendation submitted to the Government on 17/10/2015 by the Assistant Superintending Engineer, Nagpur Irrigation Circle, Nagpur. The copy of the said communication is at P.B. page nos. 29 to 31 (both inclusive). From the said communication it seems that the case

of the applicant for family pension was recommended to the Government vide this letter.

10. From whatever facts discussed in the forgoing paras, it will be clear that there is no doubt that the applicant's husband joined duty as Peon on 27/11/1981 and he continued to work on that post till he remained absent from 09/03/2001 to 23/04/2006. Admittedly, no action has been taken against the applicant's husband for unauthorized absence. There is no order on record to show that this absence period has been declared unauthorised. Unless such period is declared as unauthorised absence, the question of forfeiting the services of applicant's husband will not come into operation. Though the applicant's husband may not be entitled to get salary and other financial benefits for the absence period, which the applicant is also not claiming, this period was required to be regularised. The competent authorities have not taken any decision either to regularise this period during the lifetime of deceased employee nor they have taken any action against the deceased employee for such so called unauthorised absence. For the first time vide order dated 30/03/2015, the respondents are coming with a case that the employee was absent unauthorisedly and his earlier services prior to joining on 24/04/2006 have been forfeited. Such decision is absolutely illegal and should not have been taken without giving opportunity to the employee. Admittedly, the employee has expired in 2013 and he was

very much in the service from 24/04/2006 to 06/10/2013 and the respondents were not prevented for initiating any departmental action or declaring such absence as unauthorised during the service of the employee.

11. In view of aforesaid discussion, the impugned orders dated 30/03/2015 and 09/10/2017 are absolutely illegal. Hence ,the following order :-

ORDER

The impugned orders dated 30/03/2015 and 09/10/2017 are quashed and set aside. Considering the facts that the applicant's husband was very much in the service continuously from 27/11/1981 to 08/03/2001 and thereafter from 24/04/2006 to 06/10/2013, the respondents shall grant pension to the applicant's husband. The applicant will be entitled to family pension as admissible as per rules from the date of death of applicant. The requisite decision shall be taken in this regard within a period of two months from the date of this order. Since the applicant is not claiming salary for the absence period of the applicant's husband, it is needless to mention that she will not be entitled to claim such salary and arrears for such absence period. No order as to costs.

Dated :- 21/03/2018.

**(J.D. Kulkarni)
Vice-Chairman (J).**