

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 209 OF 2023

(Subject:- Family Pension)

DISTRICT:-AURANGABAD

Smt. Sabirabi w/o Harun Shaikh,)
Age 70 yrs. Occ. Household)
R/o. Swami Vivekanand Nagar,)
N-12, F-Sector, F/148, HUDCO)
Aurangabad)
Mob. 9421679770) **APPLICANT**

V E R S U S

1. **The Secretary,**)
Department of Home (Prison))
Mantralaya, Mumbai-32.)
 2. **The Superintendent**)
Central Prison, Harsool, Aurangabad.)
 3. **Tajuddin Harun Shaikh**)
Age 44 yrs. Occu. Business)
 4. **Jameer Harun Shaikh**)
Age 42 yrs. Occu. Business)
 5. **Sameer Harun Shaikh**)
Age 38 yrs. Occu. Business)
 6. **Tabassum w/o Payambar Kotwal**)
Age 38 yrs. Occu. Household)
C/o Tajuddin Harun Shaikh)
Above all from R-3 to 6)
R/o. H. No. 8/23/1113)
Behind Hudco Corner, Mujaffar Nagar,)
N-13, Hudco, Aurangabad-431 001.) **RESPONDENTS**
-

APPEARANCE : Shri D.R. Irale Patil, learned
counsel for the applicant.
: Shri N.U. Yadav, learned Presenting
Officer for the respondent authority.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

DATE : **21.02.2024.**

O R A L - O R D E R

Heard Shri D.R. Irale Patil, learned counsel for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondent authorities.

2. Leave to correct prayer clause 'B' to the extent of Maharashtra Civil Services (Pension) Rules, 1982 instead of 1964.

3. By this Original Application the applicant is seeking quashing and setting aside the order dated 23.02.2023 (Annexure A-10) passed by the respondent No.2 and further seeking direction to respondent to grant family pension to the applicant as is admissible under Rule 116 of Maharashtra Civil Services (Pension) Rules, 1982.

4. Brief facts giving rise to this Original Application are as follows:-

- (i) The applicant got married with the deceased Harun Gaffur Shaikh on 13.05.1965. The husband of the applicant was ex-military man and he was appointed as a Peon in the Central Prison Harsool, Aurangabad under the ex-serviceman category. The applicant is legally wedded wife of the said deceased Harun Shaikh. Initially she has got three daughters out of the said wedlock and however, after the birth of 3 daughters, deceased Harun Shaikh developed illicit relation with a lady namely Julekhabee and further married with her. Even thereafter, the applicant gave birth to 4th daughter. Even the said Julekhabee also gave birth to 4 children who are respondent Nos. 3 to 6 herein.
- (ii) It is the case of the applicant that the said Julekhabee was predeceased to deceased Harun Shaikh and she died on 25.09.2020. Shortly thereafter, on 09.10.2020 deceased Harun Shaikh was also died.

(iii) According to the applicant after death of her husband she has requested the respondent authorities to grant family pension in terms of provisions of Sub-Rule 6 of Rule 116 of Maharashtra Civil Services (Pension) Rules, 1982. However, by impugned order dated 23.02.2023, the respondent No.2 has rejected the said representation mainly on the ground that during lifetime deceased Harun Shaikh has nominated his wife Julekhabee conferring on her the entitlement of the pension and other pensionary benefits and also his elder son Tajuddin Harun Shaikh i.e. the respondent No.3 after her death and as such, there is no nomination in favour of the applicant and accordingly, the representation of the applicant is not considered. Hence, this Original Application.

5. Learned counsel for the applicant submits that the applicant is legally wedded wife of deceased Harun Shaikh. The original copy of Nikhanama in Urdu language and translation in Marathi language dated 13.05.1965 is placed on record at Annexure 'A-1' collectively. The applicant got married with deceased Harun Shaikh at village Kasba Kati,

Tal. Tuljapur, Dist. Osmanabad in presence of witnesses and kazi. Learned counsel for the applicant has also pointed out that the applicant has been issued voters identity card (Annexure 'A-2') and also Adhar Card wherein the name of her husband is shown as Harun Shaikh. Even the Adhar Card of the deceased Harun Shaikh is also placed on record. Learned counsel for the applicant submits that the Adhar Card of deceased Julekhabee is also placed on record which is marked as Annexure 'A-5' and her death certificate is marked as Annexure 'A-6'. As per the said death certificate, Julekhabee died on 25.09.2020. The death certificate of Harun Shaikh is marked as Annexure 'A-7'. The applicant submits that the Harun Shaikh died on 9.10.2020 and as such said Julekhabee was predeceased to him. Learned counsel for the applicant submits that within the short period of 15 days after the death of Julekhabee, Harun Shaikh died. Deceased Harun Shaikh was suffering from various ailments and as such, considering the said short period no time left to change the nomination. Learned counsel for the applicant submits that even though the respondent Nos. 3 to 6 who are children of deceased Harun Shaikh though duly served did not bother to appear before this Tribunal in this proceeding

and as such there is no denial about the status of the applicant being first wife of deceased Harun Shaikh. Even it is also not a stand of the department that the applicant is not legally wedded wife of deceased Harun Shaikh. The department has raised an objection that there is no nomination in favour of the applicant and as such, the applicant is not entitled to pension.

6. Learned counsel for the applicant submits that in terms of Rule 116, Sub Rule (6) (a) (i) when the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares. Learned counsel for the applicant submits that in the said case Julekhabee predeceased to Harun Shaikh and further the respondent Nos. 3 to 6 herein all are above the age of 38 years and as such, none of them is now entitled to share family pension along with the applicant. The applicant alone is entitled for the family pension. Learned counsel for the applicant submits that the applicant is at present 72 years of old and considering documentary evidence placed on record and since there is no denial from the respondents who are the children of 2nd wife of deceased Harun Shaikh, there is no reason to

obtain the succession certificate as insisted by department. Learned counsel for the applicant submits that this Original Application thus deserves to be allowed in terms of prayer clause.

7. Learned P.O. on the basis of affidavit in reply filed on behalf of respondent Nos. 1 & 2 submits that as per the available service record of deceased Harun Shaik, he has nominated his wife Julekhabee and elder son Tajoddin as a next nominee after the death of Harun Shaikh. Thus the applicant's case cannot be considered without any appropriate proof of legal heirship certificate obtained from Civil Court under the provisions of Bombay Regulation Act.

8. Learned P.O. submits that the applicant may be directed to submit the legal heirship certificate issued by the Civil Court under the provisions of Bombay Regulation Act and to file fresh representation to the office of respondent No. 2 and accordingly, the said representation will be forwarded by office of respondent No.2 to the office of Accountant General, Nagur for further directions in terms of the prayer made by the applicant and the representation, if filed.

9. Learned P.O. submits that in absence of same, there is no substance in the Original Application and the same is liable to be dismissed with costs.

10. In the documentary evidence placed on record such as Nikha Nama (Annexure 'A-1'), Voters identity Card issued by the Election Commission of India (Annexure 'A-2') and Adhar Card, the name of the applicant is shown as sabirabi Harun Shaikh. Learned counsel for the applicant has pointed out that at the relevant time the applicant was residing with her elder daughter at Aurangabad and even during his lifetime Harun Shaikh had joined her company at Aurangabad and died there only at Aurangabad.

11. Thus considering the provisions of Rule 115 of Pension Rules, 1982 since the deceased Julekhabee who was second wife of deceased Harun Shaikh was predeceased to her husband Harun Shaikh and the elder son of deceased Harun Shaikh from his second wife Julekhabee who is respondent No.3 herein namely Tajuddin Harun Shaikh and even other children born to deceased Harun Shaikh from second wife Julekhabee all are major children above the age of 38 years, neither the provisions pertaining nomination under Rule 115 of Pension Rules, 1982 can be made

applicable to the facts and circumstances to the present case. So far as Sub Rule 6 of Rule 116, is concerned, the family pension is payable to the applicant who is first wife of deceased Harun Shaikh and considering the age of heirs born to Harun Shaikh from Julekhabee, they are not entitled for the family pension. In view of same, it may not be appropriate at this stage when the sufficient documentary proofs are placed on record to establish that the applicant is legally wedded wife of deceased Harun Shaik to direct her to obtain the succession certificate under the provisions of Bombay Regulation Act and thereafter to submit representation for grant of family pension. The same is also important for the reason that the applicant is at present 72 years of old and she is almost at the fag end of her life.

12. In view of above, the impugned order is not sustainable. This Original Application deserves to be allowed by directing the respondent authorities to pay family pension to the applicant as per Rules. Hence, the following order:-

ORDER

- (A) The Original Application is allowed in terms of prayer clause 'B'.

- (B) The impugned order dated 23.02.2023 (Annexure A-10) passed by the respondent No.2 is hereby quashed and set aside.
- (C) Respondent No.2 is hereby directed to grant family pension to the applicant as is admissible under Rule 116 of Maharashtra Civil Services (Pension) Rules, 1982.
- (D) In the circumstances there shall be no order as to costs.
- (E) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad
Date : 21.02.2024
SAS O.A. 209/2023(S.B.) Family Pension