

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 1010 OF 2022

DIST. : PARBHANI

Khurshid Begum w/o Mohd. Moosa,)
 Age 90 years, Occ. Household,)
 R/o C/o Mughal Darbar Hotel,)
 Near New Mondha, Hingoli,)
 Tq. & Dist. Hingoli.) .. **APPLICANT**

V E R S U S

1) The District Collector,)
 Parbhani, Dist. Parbhani.)

2) Accountant General (A and E)-II,))
 Maharashtra State, Nagpur.)

3) The State of Maharashtra,)
 Through the Secretary,)
 Department of Revenue and Forest,))
 Mantralaya, Mumbai – 400 032.)

4) The Establishment Officer,)
 Revenue and Forest Department,)
 Mantralaya, Fort, Mumbai – 32.) .. **RESPONDENTS**

APPEARANCE :- Shri A.G. Dalal, learned counsel for
 the applicant.

: Smt. Resha S. Deshmukh, learned
 Presenting Officer for the respondent
 authorities.

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

RESERVED ON : 10.10.2024
PRONOUNCED ON : 11.11.2024

ORDER

1. Shri A.G. Dalal, learned counsel for the applicant and Smt. Resha S. Deshmukh, learned Presenting Officer for respondent authorities.

2. The matter is finally heard with consent of both the sides at the admission stage.

3. By filing this Original Application, the applicant is seeking quashing and setting aside the impugned order dated 25.08.2006 passed by the respondent no. 04 and further seeking directions to respondent nos. 01 to 04 to start paying to the applicant her regular monthly family pension from the date 01.01.1984 along with reasonable rate of interest on the arrears. The applicant is also seeking directions to the respondent authorities to pay to the applicant the amount of arrears of her deceased husband's pension.

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

(i) The applicant is the widow of late Mohd. Moosa s/o Sk. Hussain. The applicant's husband was in service of Customs Department as 'Jawan' in the Ex-Hyderabad State. He was discharged on 31.03.1955, due to abolition

of Customs Department. He died on 14.01.1989. There was no pension scheme and therefore he could not get pensionary benefits. The Government of Maharashtra passed Resolution providing pension to the Government servants, who retired prior to year 1964. The said scheme was modified time to time to grant pension to such employees. The applicant is claiming that since her husband was working for Customs Department of the former Princely State of Hyderabad – Deccan, she is entitled to get family pension as per G.R. dated 16.04.1964.

(ii) It is the contention of the applicant that the applicant filed Original Application No. 212/2003 before this Bench of the Tribunal to grant and pay her the family pension along with arrears as per the provisions of the said G.R. Though both the contesting respondents i.e. the District Collector, Parbhani and the Accountant General (A&E)-II, Nagpur did not deny specifically the claim and/or right of the applicant on merit, however, both the respondents shifted the responsibility of compliance of certain documents on each other. Thus, by order dated 13.07.2004, this Tribunal finally disposed of the said O.A. No. 212/2003 thereby directing both the offices to make necessary compliance in between their two offices and based on that decide the claim of the applicant within three months from 13.07.2004. The copy of the said order is marked as Exhibit-A. The applicant did not receive any response/communication from the respondent authorities and has therefore filed Contempt Petition No. 83/2005 in

O.A. No. 212/2003 before this Tribunal. This Tribunal has issued interim order dated 24.03.2006 and granted 08 weeks' time to the Accountant General (A&E)-II, Nagpur to take such instructions from the Government with respect to progress of pension proposal of the applicant. However, no such instructions were taken. On 20.11.2006 this Tribunal dismissed the Contempt Petition No. 83/2005 by recording that the respondents have not disobeyed and/or violated the order dated 13.07.2004 passed by this Tribunal in O.A. No. 212/2003. Copy of the order dated 20.11.2006 passed in C.P. No. 83/2005 is marked as Exhibit-C.

(iii) It is the further case of the applicant that she has filed Writ Petition No. 6841/2016 before the Hon'ble High Court of Bombay, Bench at Aurangabad seeking directions to the respondents to pay her family pension. The respondent authorities, however, brought to the notice of the Hon'ble High Court the earlier proceedings. Consequently, by order dated 15.03.2017 the Hon'ble High Court has disposed of the Writ Petition No. 6841/2016 finally (Exhibit-E). However, during the course of proceeding of the aforesaid W.P. no. 6841/2016, the respondent authorities have given reference to the order dated 25.08.2006 issued by the Government and submitted that the petitioner's family pension proposal came to be rejected. In fact, the petitioner and her Counsel were taken to surprise. During pendency of W.P. no. 6841/2016 the applicant came to know about the said fact. In fact, the respondent authorities never served the

said order dated 25.08.2006 on the applicant. The said order dated 25.08.2006 (Exhibit-F) was also not brought to the notice of the Tribunal during pendency of C.P. No. 83/2005 in O.A. No. 212/2003. The C.P. came to be dismissed by order dated 20.11.2006. However, copy of the said order was not served on the applicant though at that time the aforesaid C.P. was pending. The said order dated 25.08.2006 was also not brought on record in the W.P. no. 6841/2016. Hence, this Original Application.

5. The learned counsel for the applicant submits that there was no pension scheme provided to the Government servant retired, discharged or died while in service on or before 01.01.1964. However, considering the demand of the Government servants, the Government of Maharashtra has passed Resolution dated 16.04.1984 providing pension scheme to the Government servants, who died or retired prior to 01.01.1964. The procedure is also laid down in the said G.R. along with the prescribed format. The above G.R. is in respect of grant of the family pension to the widows in the cases where the Maharashtra Civil Service Rules are not applicable. The Government has faced certain difficulties in implementing the G.R. dated 16.04.1984. Therefore, the Government has issued another Circular dated 12.11.1984 prescribing procedure and the certain guidelines for the concerned Head of the

Departments to follow while granting the pension in view of G.R. dated 16.04.1984. Even the Government has issued another G.R. dated 20.06.1986. The applicant is entitled for grant of family pension as per G.R. dated 16.04.1984 read with Circular dated 12.11.1984 and G.R. dated 20.06.1986.

6. The learned counsel for the applicant submits that the applicant had submitted the application in the prescribed form to the respondent authorities. The Collector, Parbhani vide letter dated 12.12.2002 forwarded the pension papers of the applicant to the Accountant General (A&E)-II for taking proper action (Exhibit-J). However, the said proposal was kept pending and no decision has been taken by the respondent no. 2 for a long period.

7. The learned counsel for the applicant submits that the applicant is a poor illiterate widow and at present she is 90 years of age. She is very sick. She is badly in need of family pension. She has no other source of livelihood.

8. The learned counsel for the applicant submits that the Hon'ble High Court of Bombay, Bench at Aurangabad considered the group of 05 cases namely W.P. Nos. 2026-2030/1995 involving the pension claims of exactly similarly

situated 05 widows. There were family pension cases of the exactly similarly situated widows, whose respective husbands were in the Customs Department and retrenched due to abolition of customs department. The Hon'ble High Court has held that the cases of the petitioners therein are required to be considered in terms of G.R. dated 16.04.1984 and accordingly issued directions to the Accountant General (A&E)-II, Nagpur to re-examine the family pension claim of the petitioners therein in the light of above referred G.R. and pass appropriate order. In response to the same, the State of Maharashtra in Revenue & Forest Department issued an order dated 16.06.1999 allowing the family pension to the petitioners whose husband retired prior to 1964 and were not getting pensionary benefits during their lifetime.

9. The learned counsel for the applicant submits that in Group of cases i.e. O.A. No. 342/1996 and other 20 cases this Tribunal passed an order dated 02.11.2000 and held that the applicants therein who have produced the discharge certificate, copy of service book or other record, they are entitled for the pension, family pension and now it will not be open for the respondents to deny the claim of such applicants for grant of pension and pensionary benefits. It is further observed by

this Tribunal that the applicants therein were discharged from service because of final abolition of Customs duties and consequently were required to be discharged from the department. They were not discharge from the service due to any stigma or punishment. They were discharged because of final abolition of Customs Department. Therefore, no fault can be attributed to them.

10. The learned counsel for the applicant submits that the applicant filed O.A. no. 212/2003 before this Tribunal for grant of family pension along with interest. The learned counsel submits that this Tribunal disposed of said O.A. no. 212/2003 by order dated 13.07.2004 directing both the offices to make necessary compliance. Further, the applicant has also filed Writ Petition No. 6841/2016. Surprisingly it was not mentioned in the proceedings before the Hon'ble High Court in the said W.P. no. 6841/2016 that the claim of the applicant came to be rejected by order dated 25.08.2006. The learned counsel, therefore, submits that the present O.A. deserves to be allowed.

11. The learned Presenting Officer on the basis of the affidavit in reply filed on behalf of respondent no. 02 i.e. the Principal Accountant General (A&E)-II, Maharashtra, Nagpur submits that role of respondent no. 02 is limited to scrutiny of

the proposals received from the Heads of Offices of Government of Maharashtra/Pension Sanctioning Authorities in respect of the persons, who retired from various State Government Offices situated in Vidarbha and Marathwada regions, with reference to the rules of M.C.S. (Pension) Rules, 1982 and other G.Rs. and authorizations of pensionary benefits.

12. The learned Presenting Officer submits that the applicant is seeking directions to set aside the order dated 25.08.2006 issued by the respondent no. 4 and to pay her regular monthly family pension with arrears and interest thereon. The learned P.O. submits that the proposal for grant of ad-hoc family pension to the applicant was forwarded by the Collector, Parbhani vide communication dated 12.12.2002. In response to the said letter, the respondent no. 02 vide letter dated 28.02.2003 had requested the Collector, Parbhani to verify and inform whether the husband of the applicant was in receipt of any pension and if so, intimate the Pension Payment Order Number. Subsequently, the applicant approached this Tribunal by filing O.A. no. 212/2003 for the same cause of action. This Tribunal by order dated 13.07.2004 issued directions to the Collector, Parbhani and the office of the Principal Accountant General (A&E)-II, Maharashtra, Nagpur

i.e. respondent no. 02 to decide the claim of family pension of the original applicant within 03 months from the date of said order. In response, the respondent no. 2 vide letter dated 21.09.2004 had requested the Collector, Parbhani to submit the proposal in respect of the applicant for ad-hoc family pension along with necessary documents. Further official letter was issued to the Principal Secretary, Revenue and Forest Department, Mantralaya, Mumbai on 22.02.2006 followed by letter dated 30.03.2006 to the Joint Secretary (Establishment), Revenue & Forest Department.

13. The learned P.O. submits that as per the letter issued by the Collector, Parbhani dated 18.09.2006 it was informed that as per communication of the Government in Revenue and Forest Department, Mantralaya, Mumbai by letters dated 05.08.2006 and 25.08.2006, the applicant is not entitled to receive the ad-hoc family pension. Even the Hon'ble High Court of Bombay, Bench at Aurangabad while deciding W.P. no. 6841/2016 by order dated 15.03.2017 observed that this Tribunal has already issued directions in O.A. no. 212/2003.

14. The learned Presenting Officer on the basis of affidavit in reply submitted by respondent no. 03 submits that

the applicant's husband namely Mohd. Moosa s/o Sk. Hussain was in service of Customs Department as a 'Jawan' in Ex-Hyderabad State. He was discharged on 31.03.1955 due to abolition of Customs Department. He did not get any pension and pensionary benefits. He died on 14.01.1989. Thereafter the respondents had submitted the proposal on 12.12.2002 to the Accountant general (A&E)-II, Maharashtra, Nagpur to grant family pension to the applicant, but by the communication dated 28.02.2003 the said proposal was returned by respondent no. 02 for want of compliance of the G.R. dated 20.06.1986.

15. Learned Presenting Officer submits that the Government of Maharashtra in Revenue and Forest Department vide letter dated 25.08.2006 had informed this Tribunal that the claim of the applicant could not be considered for the reason that the deceased husband of the applicant was not getting pension. The G.R. dated 16.04.1984 read with Circular dated 12.11.1984 and G.R. dated 20.06.1986 are not applicable in the case of the present applicant. The applicant is not entitled for family pension. There is no substance in the O.A. and the same is liable to be dismissed.

16. The applicant, Khurshid Begum w/o Mohd. Moosa, is aged about 92 years at present. She is the widow of Mohd.

Moosa s/o Sk. Hussain, who was in employment of the Ex-Hyderabad State in Customs Department on the post of 'Jawan'. He came to be discharged from the service of the Customs Department on 31.05.1955 due to abolition of the Customs department. Mohd. Moosa died on 14.01.1989. In terms of G.R. dated 16.04.1984 read with Circular dated 12.11.1984, G.R. dated 20.06.1986 and in view of the order issued by the State of Maharashtra in Revenue & Forest Department dated 16.06.1999 the applicant is claiming family pension.

17. In this context, the sequence of events is necessary to be reproduced herein below:-

(i) The applicant Khurshid Begum w/o Mohd. Moosa approached this Tribunal by filing O.A. No. 212/2003 for seeking the family pension on the strength of G.R. dated 16.08.1984 and 20.06.1986 respectively. By order dated 13.07.2004 this Tribunal has partly allowed the said application and directed the Collector, Parbhani to comply the letter dated 28.02.2003 issued by the Accountant General, Nagpur and to forward the necessary documents to it. It is also directed that the Accountant General (A&E)-II, Nagpur shall decide the claim of family pension of the applicant and this exercise shall be done by the Collector, as well as, Accountant General within the period of three months from the date of said order. In paragraph no. 03 of the said order a reference has been given to the

affidavit in reply filed by respondent no. 03 i.e. the Collector, Parbhani. The Collector, Parbhani has categorically stated in his affidavit in reply that the proposal was sent to the Accountant General for grant of the family pension of the applicant and it was returned on 28.02.2023 for want of the G.R. dated 20.06.1986. In the backdrop of the same the aforesaid directions have been given by this Tribunal and accordingly the said O.A. No. 212/2003 came to be disposed of (Exhibit A).

(ii) The applicant had filed Contempt Petition No. 83/2005 in O.A. No. 212/2003. By order dated 24.03.2006 in the aforesaid C.P. 08 weeks' time was granted to the respondent no. 01 to take the decision as early as possible and in any case not beyond the period of 8 weeks from that the date of said order.

(iii) By order dated 20.11.2006 this Tribunal has disposed the Contempt Petition No. 83/2005 in O.A. No. 212/2003 with certain observations in paragraph no. 03 of the order. The reference has been given to the affidavit in reply filed by the Accountant General (A&E)-II, Nagpur. In the said affidavit in reply it is mentioned that the matter is now pending with the Pension Sanctioning Authority i.e. the Collector, Parbhani from whom certain clarification is awaited. In the backdrop of the same, this Tribunal has observed that the respondents have fully complied with the order passed by this Tribunal and that there is no willful and deliberate disobedience of the order dated 13.07.2004 of the Tribunal passed in O.A. NO.

212/2003 and accordingly disposed of the C.P. by order dated 20.11.2006.

(iv) The applicant has filed Writ Petition No. 6481/2016 before the Hon'ble High Court of Bombay, Bench at Aurangabad for the relief of grant of family pension in view of the provisions of G.R. dated 16.04.1984 read with Circular dated 12.11.1984 and G.R. dated 20.06.1986. The applicant has also put-forth her grievance that even though the Collector, Parbhani examined the proposal and sent it back to the Establishment Officer of Revenue and Forest Department, Mantralaya, Mumbai on 08.07.2005, still the claim of the applicant for family pension is not considered, which violates her fundamental rights. By order dated 15.03.2017, the Division Bench of the Hon'ble High Court disposed of the aforesaid writ petition no. 6841/2016 with observations that since this Tribunal has already issued the directions in O.A. no. 212/2003, so also in C.P. No. 83/2005, the instant Writ Petition is not entertainable.

(v) There is a communication dated 25.08.2006 issued by the Desk Officer, Revenue & Forest Department, Mantralaya, Mumbai to the Chief Presenting Officer of this Tribunal that the claim of the applicant about family pension came to be rejected with a request to bring this fact to the notice of this Tribunal.

18. So far as the impugned order dated 25.08.2006 is concerned, there is no reference of the said order in the various

orders passed in connection with O.A. no. 212/2003 by this Tribunal nor in the C.P. No. 83/2005 in O.A. No. 212/2003. Surprisingly there is also no reference in the order dated 15.03.2017 passed in W.P. no. 6841/2016 by the Hon'ble High Court. I find much substance in the contentions raised by the applicant that this order dated 25.08.2006 was not communicated to the applicant at any point of time.

19. In the backdrop of the aforesaid sequence of events so also clarification submitted by the Collector, Parbhani (Exh. Q), I have carefully gone through the proposal submitted by the sanctioning authority i.e. the Collector, Parbhani in connection with family pension of the applicant submitted earlier. It is specifically stated in the said clarification that in the year 1995 said Karodgiri (Customs) Department came to be abolished under the orders of the Government and therefore deceased Mohd. Moosa s/o Sk. Hussain was made to retire, however, was not absorbed in any other Department. He was kept in surplus cell for absorbing in the other Department. He was not given his service benefits after his retirement. In Para 4 of the said clarification it is specifically mentioned that Mohd. Moosa s/o Sk. Hussain had worked for the period from 10.12.1942 to 31.03.1955 and, as such, the Government Circular dated

20.06.1986 and G.R. dated 16.04.1984 are squarely applicable to him for grant of pension to him. In paragraph no. 05 it has also specifically mentioned that one another employee namely Shaikh Mahemood Shaikh Emam, who was working with the applicant's deceased husband Mohd. Moosa s/o Sk. Hussain and similarly discharged from services, had been granted the pension and his P.P.O. number is NDD-448.

20. It is surprising that even after this clarification forwarded by the Pension Sanctioning Authority i.e. the Collector, Parbhani to the Government, the impugned order dated 25.08.2006 came to be passed by respondent no. 4. Though Mohd. Moosa died on 14.01.1989, the applicant has specifically taken the stand that Mohd. Moosa was not aware of the provisions of the G.R. dated 16.04.1984 read with Circular dated 12.11.1984 and G.R. dated 20.06.1986 and therefore said Mohd. Moosa died without any pension. It is the trite of the law that the legitimate claim of the applicant was disallowed by the impugned order dated 25.08.2006 solely for the reason that her deceased husband was not getting pension and therefore she is not entitled for family pension. The said ground in the impugned order dated 25.08.2006 taken for rejection of the pension claim of the present applicant is contrary to the

clarification submitted by the Collector, Parbhani, who has made it clear in paragraph no. 5 in the communication dated 06.05.2006 (Exhibit-Q) that one another employee namely Shaikh Mehamood Shaikh Emam, who had worked with the deceased husband of the applicant namely Mohammed Moosa, got pension after his retirement and even his PPO number is also mentioned therein.

21. The Hon'ble High Court of Bombay, Bench at Aurangabad has dealt with this issue in connection with similarly situated widows in writ petition Nos. 2026-2030/1995. The Division Bench of the Hon'ble High Court by the order dated 07.09.1998 has disposed of the said writ petitions with the following observations:-

"4. It is further clear that after reorganization of the State, services of their husbands were retrenched and no further appointment has made by way of absorption. The claim made by the petitioners as widows of ex-employees was turned down on the ground that their respective husbands had no qualifying service. On the death of their respective husbands, they were neither in service nor they had been receiving pension in the light of provisions contained in G.R. No. PEN.1085/1189/SER-8, dated 20.06.1986, the copy of which is produced on exhibit R-1 in the affidavit in reply filed by the respondent no. 1.

5. In the context it is relevant to refer to Rule 181 of the Bombay Civil Services Rules (for short 'the Rules'). Rule 181

applies to all members of services and holders of posts whose conditions of services the Government of Bombay are competent to prescribe in absence of specific provision contained in Chapter Ex.I. This Rule is subject to two proviso, but it is suffice to refer note 3 to Rule 181 from the Bombay Civil Services Rules explained 7th Edition (Revised) 1980 (Reprint 1984) by J.D. Gangal, & D.V. Gangal.

Note 3 reads as under:

"Government Servants from the former states of Saurashtra, Kutch, Madhya Pradesh and Hyderabad allocated to the State of Bombay who do not elect to be governed in regard to the amount of pension, by the Rules of the former States applicable to them before the 1st November, 1956, or who fail to exercise the option in the matter, shall be governed by the Revised Pension Rules sanctioned in G.R.F./R.No. 8315/33, dated the 20th December, 1950 as amended from time to time.

6. *In the instant case there is no dispute that the respective husbands of these petitioners were serving in Hyderabad State. They however, do not appear to have exercised the option. That means their claim for pension will have to be considered under Rule 181. The entitlement to the pension by the petitioners therefore will have to be considered on the basis of Rule 181, note 3 as hereinabove reproduced.*

7. *It is not in dispute that under revised Pension Rules 1950 as amended from time to time the criteria for qualifying service for pension is made. On completion of 10 years of service the employee is eligible for pension. The petitioners husbands have served more than 10 years especially when pension papers were sent to Accountant General, Nagpur from Tahsildar, Hingoli*

on that basis. If regard be had to G.R. No. EEN/10AG/CR/454/ASER/4 dated 16.04.1988 issued by the State Govt. widows are entitled to minimum family pension in case of Govt. employees died after their retirement in case of pre 1964 cases. Therefore the case of petitioners is required to be considered under the aforesaid G.R. vis-à-vis the Rule 181 that means it will not be proper to consider the case for pension of these petitioners on the basis of Govt. Resolution dated 20.06.1986. In our considered opinion rejection of the claim for pension by extending Govt. Resolution dated 20.06.1986 has caused injustice.

8. We, therefore, allow the petitions, set aside the impugned letter dated 07.03.1995 at exhibit-B and remand the matters to the Accountant General (A & E) II Maharashtra State, Nagpur, with a direction that the A.G. shall re-examine the claim of the petitioners in the light of aforesaid discussion of relevant provisions of G.R. and pass appropriate order in the matter of grant of family pension to widows of the Govt. Employee, who had failed to exercise their options under Rule 181 of the Bombay Civil Services Rules, 1980.”

22. It further appears that by the order dated 16.06.1999 the Under Secretary of Revenue & Forest Department, Mantralaya, Mumbai passed the order granting family pension to the widows in compliance with the order passed by the Hon’ble High Court in the aforesaid writ petition nos. 2026-2030/1995 (Exhibit H collectively).

23. In view of above, this is just beyond understanding as to why the discriminatory treatment was given to the

applicant in the present matter, who is similarly situated widow as in Writ Petition nos. 2026-2030/1995. In view of the same, this Original Application deserves to be allowed. The applicant deserves to be held entitled for family pension from 14.01.1989 i.e.. the date on which husband of the applicant namely Mohd Moosa died. The applicant also deserves to be held entitled for arrears of family pension from 14.01.1989 with interest at the rate of 9% per annum from the said date till actual realization of the entire amount. A liberty is also required to be granted to the applicant to file application/representation to the concerned authority for grant of regular pension to her deceased husband Mohd. Moosa and to claim arrears thereof and upon filing such an application/representation the respondent authorities are required to be directed to consider the same in terms of the observations made in this order so also as per the pension granted to another similarly situated employee namely Shaikh Mahemood Shaikh Emam, who had worked with deceased husband of the applicant in the same Department, in a time bound manner. Hence, the following order:-

ORDER

- (i) The Original Application No. 1010/2022 is hereby partly allowed.

(ii) The order/communication dated 25.08.2006 issued by the respondent no. 04 is hereby quashed and set aside.

(iii) The respondent nos. 01 to 04 are hereby directed to pay the applicant monthly family pension in terms of G.R. dated 16.04.1984 read with Circular dated 12.11.1984 and G.R. dated 20.06.1986 from the date on which the husband of the applicant namely Mohd. Moosa died i.e. 14.01.1989 with arrears thereof and interest at the rate of 9% per annum from 14.01.1989 till actual realization of the entire amount in favour of the present applicant, within the period of 03 months from the date of this order.

(iv) The applicant is at liberty to file application/representation to the concerned authority for grant of regular pension to her deceased husband Mohd. Moosa as is granted in the case of similarly situated another employee namely Shaikh Mahemood Shaikh Emam, who had worked with deceased husband of the applicant in the same Department as expeditiously as possible and preferably within 03 months from the date of this order in terms of the observations made in this order.

(v) The respondent nos. 01 to 04 are also directed to pay the costs of Rs. 10,000/- (Rs. Ten Thousand only) to the applicant within a period of 03 months from the date of this order.

(vi) The present Original Application is accordingly disposed of.

MEMBER (J)

Place : Aurangabad

Date : 11.11.2024

ARJ O.A. NO. 1010 OF 2022 VKJ FAMILY PERNSION