

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 149 OF 2023

DISTRICT : AURANGABAD

Vijay Ramchandra Thorat,)
Age : 40 years, Occu. : Nil,)
R/o Hamalwada, Railway Station, Aurangabad.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
The Secretary,)
Public Work Department,)
Mantralaya, Mumbai.)
2. **The Accountant General (A & E)-II,**)
Pension Branch, Samaj Kalyan Office)
Road, Civil Lines, Nagpur,)
Maharashtra 440001.)
3. **Executive Engineer,**)
Public Works Department (Division),)
Jalna, Old MIDC Area, Jalna-431203.)
4. **Sub-Divisional Engineer,**)
Public Work Department, Sub Division,)
Bhokardan, Tq. Bhokardan, Dist. Jalna.)

... **RESPONDENTS**

APPEARANCE : Shri D.K. Dagadkhair, Counsel for Applicant.

: Shri V.G. Pingle, Presenting Officer for
respondent authorities.

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

DATE : 08.07.2024

ORDER

1. Heard Shri D.K. Dagadkhair, learned counsel appearing for the applicant and Shri V.G. Pingle, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the parties at the admission stage itself.

3. By filing the present Original Application, the applicant is seeking direction to the respondents to pay him family pension since death of his father Ramchandra Rajaram Thorat i.e. from 05.08.2017. The applicant is also seeking direction to pay him the arrears of family pension since the date of death of his father i.e. from 05.08.2017 with interest on the delayed payment of family pension to the applicant.

4. Brief facts as stated by the applicant giving rise to the present Original Application are as follows :-

(i) The father of the applicant by name Ramchandra Rajaram Thorat was in service of the respondents as a Driver. He was retired in the year 2005 on attaining the age of superannuation. He was getting pension during his lifetime. He died on 05.08.2017. Mother of the applicant has predeceased to his father. She died on 06.02.2008.

(ii) It is the further case of the applicant that he is educated up to 12th Std. belongs to Scheduled Caste. The applicant is 100% blind since his birth. He has no source of income for his livelihood. The applicant depends on his parents wholly. At present, the applicant is suffering from Starvation. The applicant alone cannot move anywhere without assistance of caretaker.

(iii) It is the case of the applicant that after death of his father, he had approached the respondents. However, the respondents have not given any response. Thus the applicant has preferred representation dated 28.01.2022 to the respondents requested therein for payment of family pension to him. The applicant is 100% blind and he has no source of income for his livelihood. The applicant has again on 25.03.2022 and 22.04.2022 personally approached to the respondents and requested for payment of family pension. However, till date the respondents have neither paid family pension nor communicated anything to the applicant. Hence, the present Original Application.

5. Learned counsel for the applicant submits that in terms of the provisions of Rule 116 of the Maharashtra Civil

Services (Pension) Rules, 1982 (hereinafter referred as 'the Rules of 1982') particularly 116(5) proviso, if the son or daughter of a Government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty-one years in the case of the son and twenty-four years in the case of the daughter, the family pension shall be payable to such son or daughter for life, subject to certain conditions, as detailed in the proviso. Learned counsel further submits that the conditions as mentioned in the above proviso are not applicable to the case of the applicant and as such, he is entitled for the family pension, as due to 100% blindness he is unable to earn his living. Learned counsel submits that the disability certificate is issued by the Medical Authority, Maharashtra by notified Medical Superintendent, Government Medical College and Hospital, Aurangabad.

6. Learned counsel for the applicant submits that so far as G.R. dated 08.10.2018 is concerned, the father of the applicant was serving as Driver and as such, he had no knowledge about submitting information in writing to the department about his blind son when his pension papers were prepared. The applicant cannot be denied his legitimate right of

family pension in terms of the aforesaid provisions of Rule 116 of the Rules of 1982 merely for the reason that the father of the applicant has not submitted requisite information. The applicant is not responsible for the said lacuna, if any. Learned counsel submits that the present Original Application deserves to be allowed.

7. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent No. 2 i.e. the Principal Accountant General (A&E)-II, Maharashtra, Nagpur submits that admissibility of family pension to physically / mentally disabled children is to be decided by the respondent No. 3 i.e. Executive Engineer, Public Works Division, Jalna in terms of Maharashtra Civil Services (Pension) Rules, 1982 being a Pension Sanctioning Authority. Learned P.O. submits that since the respondent No. 2 has not received the proposal of family pension to be paid to the applicant from respondent No. 3, no action has been taken in this regard.

8. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 3 and 4 submits that 100% blindness certificate came to be issued by the Medical Superintendent, Government Hospital, Aurangabad on

24.09.2021, which is later in time after the death of father of the applicant. Learned Presenting Officer submits that as per the pension papers submitted by the father of the applicant at the time of his retirement in the year 2005, the name of the applicant is not mentioned as suffering from 100% blindness. Thus the office of respondents is unable to take any steps for family pension to the applicant as per relevant rules.

9. Learned Presenting Officer submits that the Government of Maharashtra, Finance Department has issued G.R. dated 08.10.2018 in respect of disabled person family pension. In clause No. 1 of the said G.R. dated 08.10.2018, it is clearly mentioned that at the time of submission of documents for family pension, the employee of the State is required to mention that if any child is disabled or blind. In the instant case, the father of the applicant has not mentioned the name of his son as disabled person and thus the office of respondents is bound by the G.R. dated 08.10.2018.

10. Learned Presenting Officer submits that the father of the applicant came to be retired in the year 2005 and died in the year 2017 and till 2017 the applicant has not made any application in respect of family pension by mentioning that he is

100% blind. For the first time in the year 2022 the applicant has made representation to the respondents for family pension on account of 100% blind, which is contrary to the G.R. dated 08.10.2018. Learned P.O. submits that the applicant is not entitled for family pension in terms of G.R. dated 08.10.2018. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

11. In this context Rule 116 of the Rules of 1982 particularly sub-rule (5) is required to be reproduced herein below, which is as under :-

“116. Family Pension, 1964.-

(5) The period for which family pension is payable shall be as follows:-

- (i) in the case of a widow or widower, up to the date of death or remarriage, whichever is earlier : and in the case of a widow, upto the date of death.]*
- (ii) in the case of a son, until he attains the age of twenty-one years; and*
- (iii) in the case of an unmarried daughter, until she attains the age of twenty-four years or until she gets married, whichever is earlier:*

Provided that if the son or daughter of a Government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty-one years in the case of the son and twenty – four years in the case of the daughter, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely :-

- (i) if such son or daughter is one among two or more children of the Government servant, the family pension shall be initially payable to the minor*

children in the order set out in clause (iii) of sub-rule (7) of this rule until the last minor child attains the age of twentyone or twenty-four, as the case may be, and thereafter the Family Pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disable and shall be payable to him/her for life ;

- (ii) if there are more than one such children suffering from disorder or disability of mind or who are physically crippled or disabled, the family pension shall be paid, in the order of their birth and the younger of them will get the family pension only after the elder immediately above him/her ceases to be eligible :*

Provided that, where the family pension is payable to such twin children it shall be paid in the manner set out in clause (d) of sub-rule (6) of this rule.}

- (iii) the Family Pension shall be paid to such son or daughter through the guardian as if he or she were a minor except in the case of the physically crippled or disabled son/daughter who has attained the age of majority :}*
- (iv) before allowing the Family Pension for life to any such son or daughter, the sanctioning authority shall satisfy itself that the handicap is of such a nature as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a Medical Officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child ;*
- (v) the person receiving the Family Pension as guardian of such son or daughter 1(or such son or daughter not receiving the Family Pension through a guardian.) shall produce every three years a certificate from a Medical Officer not below the rank of a Civil Surgeon to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.*

Explanation – (a) ()

- (b) A daughter shall become ineligible for Family Pension under this sub-rule from the date she gets married.*

(c) The Family Pension payable to such a son or daughter shall be stopped if he or she starts earning his/her livelihood.

(d) In such cases it shall be the duty of the guardian 1{or such a son or daughter,} to furnish a certificate to the Treasury or Bank, as the case may be, every month that (i) he or she has not started earning his/her livelihood ; (ii) in case of daughter, that she has not yet married.”

12. In terms of sub-rule (5) of Rule 116 of the Rules of 1982, the family pension is payable in the case of a son, until he attains the age of twenty-one years. In terms of proviso, if the son or daughter of a Government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living, then he is entitled for family pension for life subject to certain conditions. However, those conditions are not applicable to the case of the applicant.

13. There is a disability certificate annexed to the present Original Application issued by the notified Medical Superintendent, Government Medical College and Hospital, Aurangabad. On perusal of the same, it appears that the applicant is suffering from (BE) Atypical Retinitis Pigmentosa. He has 100% Permanent Disability in relation to his both eye as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under RPwD Act, 2016

notified by Government of India vide S.O. 76(E) dated 04.01.2018). The disability certificate has been issued by the competent authority and appears to be an authentic document. There is no reason to doubt the said certificate.

14. The respondent authorities have mainly placed their reliance on the G.R. dated 08.10.2018 (Annexure R-1). On perusal of the same, clause No. 2 appears to be relevant for the present discussions. The same reads as under :-

“२. त्याकरिता निवृत्तीवेतन मंजूरी प्राधिकाऱ्याने शासकीय कर्मचाऱ्याचे निवृत्तीवेतनाचे प्रकरण तयार करतानाच नमुना ३ मध्ये "कुटुंबाचा तपशील" मध्ये अशा मानसिक / शारीरिक विकलांगता / दुर्बलता असणाऱ्या अपत्याच्या नावाचा समावेश करावा. अशा अपत्यास, आपली उपजिविका करणे शक्य होणार नाही अशा स्वरूपांचे हे अधूपण आहे, याची खात्री मंजूरी प्राधिकारी करून घेईल आणि त्यासाठी अशा अपत्याचे मानसिक विकलांगता / शारीरिक दुर्बलतेबाबतचे जिल्हा शल्य चिकित्सकाकडून प्राप्त झालेल्या प्रमाणपत्रावरून खात्री करून घेईल. मंजूरी प्राधिकाऱ्याने निवृत्तीवेतन प्रकरणासोबत अशा अपत्याचा फोटो, जिल्हा शल्य चिकित्सकाकडून प्राप्त झालेले प्रमाणपत्र व आवश्यक ती सर्व कागदपत्रे जोडून कर्मचाऱ्याचे निवृत्तीवेतनाचे प्रकरण महालेखापाल कार्यालयाकडे मंजूरीकरिता पाठवावे जेणेकरून महालेखापाल कार्यालयाकडून सदर शासकीय कर्मचाऱ्याच्या निवृत्तीवेतन प्रदान आदेशामध्येच अशा अपत्याच्या नावाचा समावेश करण्यात येईल.”

It is the say of respondent authorities that at the time of submission of documents, the employee of the State is required to mention if any child of his disabled or blind in the pension papers. The father of the applicant has not mentioned the name of the applicant as son suffering from permanent disability, particularly 100% blindness, and thus in view of the said G.R.

dated 08.10.2018, the applicant is not entitled for the family pension.

15. On careful perusal of the clause No. 2 of the said G.R. dated 08.10.2018, which is reproduce hereinabove, it appears that at the time of preparing pension proposal of the Government employee, in Annexure-3 (जमुना ३) under the head of “family details” if son or daughter is suffering from any disorder or disability of mind or is physically crippled or disabled and unable to earn a living, should be mentioned by the Pension Sanctioning Authority. However, the respondent authorities have conveniently ignored while relying upon the said G.R. dated 08.10.2018 particularly clause No. 2 that the Pension Sanctioning Authority while preparing the pension papers of the Government employee shall mention that the children or any of the children of such a retired Government employee is suffering from any disorder or disability of mind or is physically crippled or disabled and unable to earn his living in Annexure-3 under the head of “family details”. Further clause No. 2 does not rest there but make it incumbent upon the Pension Sanctioning Authority to verify the aforesaid fact on the basis of medical certificate. It is also incumbent upon the Pension Sanctioning Authority to affix the photograph of such a disabled or physically crippled and

suffering from disorder child / children of such a retired Government employee on the pension papers and then forward it to the office of Accountant General for sanction purpose, so as to enable the office of Accountant General to issue pension order by mentioning the name of such a physically crippled or disabled child / children in the pension order itself. It is thus clear that certain duties have been casted upon the Pension Sanctioning Authority to procure information, verify it and mention it in the pension papers along with photograph of such a physically crippled or disabled child or children of the retired Government employee. In the instant case, the respondent authorities have failed to perform their duties and denied the legitimate claim of the applicant under the false pretext of noncompliance of G.R. dated 08.10.2018.

16. It is neither intention of the Government nor it is expected from the Government employee, who retired as a Driver to give requisite information at the time of submission of his pension papers and as such, it is incumbent upon the Pension Sanctioning Authority to procure such information at the time of submission of pension papers and also to get satisfied about the said disablement on the basis of medical certificate received from the competent authority.

17. In view of above, the applicant, who is physically disabled suffering from 100% blindness unable to earn his living complying with all the provisions of sub-rule (5) of Rule 116 of the Rules of 1982 is entitled for the family pension till his life. There is no bar of G.R. dated 08.10.2018 as incorrectly pretended by the respondent authorities. The applicant is also entitled for the arrears of family pension from the date of death of his father i.e. from 05.08.2017 with interest @ 9% per annum from the date of death of his father till its actual realization. The applicant shall be paid the family pension as admissible from the date of this order till his life. Hence, the following order.

ORDER

- (i) The Original Application is hereby allowed.
- (ii) The respondents shall pay the family pension to the applicant till his life.
- (iii) The respondents are hereby directed to pay the arrears of family pension to the applicant since death of his father Ramchandra Rajaram Thorat i.e. from 05.08.2017.
- (iv) The respondents shall pay interest on the arrears of family pension to the applicant @ 9% p.a. from 05.08.2017 till its

actual realization within a period of three months from the date of this order.

- (v) The respondents shall pay the costs of Rs. 10,000/- to the applicant towards the expenses of litigation etc.
- (vi) The Original Application is accordingly disposed of.

PLACE : Aurangabad.
DATE : 08.07.2024

(Justice V.K. Jadhav)
Member (J)

KPB S.B. O.A. No. 149 of 2023 VKJ Family Pension