

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

ORIGINAL APPLICATION NO. 364 OF 2022

(Subject – Leave/Family Pension and Pensionary Benefits)

DISTRICT : LATUR

Laxmibai Uttam Potdar,)
Age : 55 years, Occu. : Household,)
R/o : Panchal Colony, Nanded Naka, Udgir,)
Tq. Udgir, Dist. Latur.)

.... **APPLICANT**

V E R S U S

1. State of Maharashtra,)
Through its Secretary,)
Agricultural, Animal Husbandry, Dairy)
Development and Fisheries Department,)
Mantralaya, Mumbai.)

2. The Regional Dairy Development Officer,)
Aurangabad, Tq. Dist. Aurangabad.)

3. The General Manager,)
Government Milk Scheme, Parbhani,)
Tq. Dist. Parbhani.)

... **RESPONDENTS**

APPEARANCE : Shri S.P. Dhoble, Counsel for the Applicant.

: Shri D.M. Hange, Presenting Officer for
respondent authorities.

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

DATE : 01.07.2024

ORDER

1. Heard Shri S.P. Dhoble, learned counsel appearing for the applicant and Shri D.M. Hange, learned Presenting Officer appearing for respondent authorities.

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

3. By filing the present Original Application, the applicant is seeking quashing and setting aside the decision dated 05.10.2017 taken by respondent No. 1 and consequent office order dated 05.01.2018 issued by respondent No. 3, thereby not considering the absence period of husband of the applicant from 09.06.1994 till 27.03.2008 for any purpose including for grant of pensionary benefits. The applicant is also seeking directions to the respondents to re-fix the pensionary benefits and family pension of the applicant by considering and counting absence of deceased Uttam from 09.06.1994 till 27.03.2008 for all purposes such as increment, consequential benefits and for pensionary benefits and in accordance with the same, the applicant be paid the arrears of pensionary benefits, as well as, regular pensionary benefits along with interest at the rate of 12% p.a.

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

(i) Deceased Uttam s/o Dattatray Potdar was working as Dairy Attendant, Class-IV with the Government Milk Scheme at Udgir from 07.05.1975. He was a permanent employee. He was discharging his duties as Dairy Attendant in Government Milk Scheme, Udgir. Thereafter considering the satisfactory services of deceased Uttam, the respondent No. 2 authority vide order dated 08.05.1984 had promoted him on the post of Junior Clerk Class-III on temporary basis and he was given appointment order at Government Milk Scheme, Parbhani. He was given higher pay scale and such entry was taken in his service book. Thus from 14.05.1984, deceased Uttam was working on the post of Junior Clerk with the respondents. On 07.01.1986, the respondent No. 2 authority had transferred deceased Uttam from Government Milk Scheme, Parbhani to Government Milk Scheme, Udgir. He was also given the benefit of 4th Pay Scale from 01.01.1986 and revised the pay scale.

(ii) Further deceased Uttam was again transferred to Government Milk Scheme, Parbhani and resumed at

Parbhani on 25.10.1991. Thereafter the respondent No. 2 authority had transferred deceased Uttam from Government Milk Scheme, Parbhani to Government Milk Scheme, Bhoom, Dist. Osmanabad by transfer order dated 05.08.1996. Further deceased Uttam in the meanwhile i.e. from 09.06.1994 was suffering from serious illness like Tuberculosis with bronchitis. Therefore, he could not join the transfer place at Government Milk Scheme, Bhoom and he was on medical leave till 26.12.2007 i.e. for about 13 years. He was granted medical leave. After recovery from the illness in the year 2007, deceased Uttam had approached the respondent No. 3 for resuming the duty. The concerned authority has referred him to Medical Board, Ambajogai for his fitness for resuming the Government service and he was thus examined and the concerned Medical Board had issued fitness certificate dated 10.03.2008 (Annexure A-2). Thus on the basis of the fitness certificate issued by the Medical Board dated 10.03.2008, the respondent No. 3 authority directed the deceased Uttam to file affidavit to the effect that while on medical leave, he was not in any private service and there was no criminal case registered against him and

accordingly, on compliance permitted him to resume duties.

(iii) It is the further case of the applicant that after joining of the duty by deceased Uttam on 27.03.2008, the respondent No. 3 by office order dated 31.03.2008, retired the deceased Uttam from the post of Clerk on attaining the age of superannuation.

(iv) It is the further case of the applicant that though deceased Uttam was retired on 31.03.2008 on attaining the age of superannuation, the pension papers were not forwarded for sanction of pension with the concerned authority by respondent Nos. 2 and 3. Thus he was not granted the provisional pension or pensionary benefits. Thus deceased Uttam has filed representation on 09.02.2015 addressed to respondent No. 3.

(v) Uttam unfortunately died on 29.04.2015 on account of illness at Latur. The applicant, who is widow of deceased Uttam is pursuing the present Original Application.

(vi) The applicant by filing representation dated 24.11.2015 addressed to respondent Nos. 2 and 3

requested for grant of pension and pensionary benefits to her husband, as well as, family pension to the applicant in terms of provisions of Maharashtra Civil Services (Pension) Rules, 1982. In the said representation, the applicant has given in detail the necessary information and submitted to grant pension and pensionary benefits to her deceased husband and family pension to herself. The applicant had also pointed out that her deceased husband has completed more than requisite qualifying service for grant of pensionary benefits. However, despite the receipt of the aforesaid representation, the respondents had not taken any steps. The applicant was constrained to approach the Hon'ble High Court of Bombay, Bench at Aurangabad by filing W.P. No. 803/2016. By judgment and order dated 08.08.2016, the Hon'ble High Court of Bombay, Bench at Aurangabad pleased to allow the said W.P. filed by the applicant and it was specifically directed that the respondent Nos. 1 to 3 shall consider the Medical Certificate produced by deceased Uttam and take necessary steps to regularize or get regularized the absence of the deceased Uttam from duties from 28.10.1991 to 27.03.2008. It was also directed that the respondents shall

take all necessary steps as expeditiously as possible and within four months from the date of order, so as to enable the petitioner to receive the pensionary benefits, which were payable to the deceased Uttam and also to get the family pension since after his demise.

(vii) It is the further case of the applicant that it was expected from the respondents to take immediate steps. However, for the reasons best known to them, the respondents did not take necessary steps within stipulated and reasonable period. The applicant was constrained to file Contempt Petition No. 151/2017. The respondents after seeking many adjournments in the Contempt Petition, filed affidavit in reply on 12.03.2018 pointing out therein that the respondent No. 1 has taken the decision in terms of the communication dated 05.10.2017. The applicant further submits that the said decision taken by respondent No. 1 was contrary to the order passed by the Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid W.P. No. 803/2016. The Hon'ble High Court of Bombay, Bench at Aurangabad, however, without going to the aforesaid aspect of the matter pleased to dispose of the Contempt Petition No. 151/2017 vide order dated 17.01.2019 observing that

since the respondents have sanctioned the family pension to the applicant, the grievance as raised cannot be considered in the contempt petition, as the same beyond the scope of contempt petition.

(viii) It is the further case of the applicant that the applicant thereafter constrained to approach the Court again. The applicant has thereafter approached the Hon'ble High Court of Bombay, Bench at Aurangabad by filing W.P. No. 6494/2019, which came to be disposed of by order dated 10.06.2019, granting thereby liberty to the applicant to avail alternate remedy. Hence, the present Original Application.

5. Learned counsel for the applicant submits while allowing the W.P. No. 803/2016, the Hon'ble High Court of Bombay, Bench at Aurangabad has categorically held that considering the serious ailments of deceased Uttam, it was not necessary or compulsory for the respondents to ask the deceased Uttam to get the Medical Certificates regarding his illness counter signed by the Civil Surgeon. It was also observed that considering the facts and circumstances, there was no reason to doubt the genuineness of the contents of said medical certificate

considering the actual physical health of deceased Uttam. In terms of the aforesaid observations, the Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid W.P. No. 803/2016 has directed respondents to grant necessary leave to deceased Uttam for the period from 28.10.1991 to 27.03.2008. In view of the aforesaid findings and directions of the Hon'ble High Court of Bombay, Bench at Aurangabad, it was expected from the respondents to take steps to condone the break in service of deceased Uttam by granting him necessary leave along with all the admissible benefits for the aforesaid period. However, the respondents have not taken necessary steps within the stipulated period and in the result, the applicant was constrained to file Contempt Petition No. 151/2017. In the said Contempt Petition the respondent No. 1 by filing affidavit in reply belatedly pointed out to the Court that by order dated 05.10.2017 a decision has been taken to sanction extraordinary leave to deceased Uttam for the period from 28.10.1991 to 08.06.1994 by granting admissible leave. In so far as the period from 09.06.1994 till 27.03.2008, the absence of deceased Uttam shall be considered as extraordinary leave (for other than medical reason) and the said period of deceased Uttam would not be considered for any purpose including for the purpose of

pensionary benefits. The aforesaid order is contrary to the order passed by the Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid W.P. No. 803/2016. Further it was not open for the respondents to express doubt about the genuineness of the said medical certificate.

6. Learned counsel for the applicant submits that the respondent No. 3 authority by office order dated 05.01.2018 passed the consequential order thereby sanctioned the medical and personal extraordinary leave to deceased Uttam for the period from 21.01.1991 to 27.03.2008 without any salary and without any benefit for the service from 09.06.1994 till 27.03.2008. The respondent No. 3 authority has also issued an order regarding fixation of pay scale of deceased Uttam from the initial date of his appointment till the date of his attaining the age of superannuation. Learned counsel submits that perusal of the said order would clearly indicate that deceased Uttam has been granted the pensionary benefits without considering his service from 09.06.1994 till 27.03.2008 and his basic pay scale as on 31.12.1996 has been considered for calculation of admissible pensionary benefits.

7. Learned counsel for the applicant submits that the applicant has raised all these grievance in the aforesaid

Contempt Petition. However, the Hon'ble High Court of Bombay, Bench at Aurangabad without going in to the aforesaid aspect of the matter pleased to dispose of the Contempt Petition No. 151/2017 vide order dated 17.01.2019 with the observations that the grievance as raised cannot be considered in the contempt petition, as the same is beyond the scope of contempt petition.

8. Learned counsel for the applicant submits that in view of the above stated facts and circumstances, the impugned decision passed by respondent No. 1 thereby not considering the absence period of deceased Uttam for pensionary benefits is absolutely illegal, improper and contrary to the judgment and order passed by the Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid W.P. No. 803/2016.

9. Learned counsel for the applicant submits that the impugned order is not only arbitrary, but the same is contrary to the findings and observations made by the Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid W.P. No. 803/2016. In terms of the said findings and observations made in the aforesaid W.P., the absence period of deceased Uttam since 28.08.1991 till 27.03.2008 deserves to be condoned by

granting appropriate leave along with all consequential benefits such as salary, increments and consequential benefits.

10. Learned Presenting Officer on the basis of affidavit in reply on behalf of respondent Nos. 1 to 3 submits that as per the record of the respondent, the husband of the applicant was unauthorizedly remained absent from duties w.e.f. 28.10.1991 till 27.03.2008 (approximately 17 years). During this period, on 26.12.2007 concerned employee came to join duties. Hence, he was referred to Medical Board for medical examination. The Medical Board issued certificate that at present there is no medical problem. In view of the same, the concerned employee was allowed to join duties at Government Milk Scheme, Parbhani w.e.f. 28.03.2008. However, on 31.03.2008 the concerned employee attained the age of superannuation and hence, retired on that day.

11. Learned Presenting Officer submits that though the concerned employee was allowed to join duties, his absence period from 28.10.1991 to 27.03.2008 was not regularized, because the concerned employee did not submit leave application with supporting medical certificate within time. In fact, when the concerned employee came to join the duties, he produced

medical certificate from the private Medical Practitioner for the period of his absence from 28.10.1991 to 27.03.2008. Since this Medical Certificate was not in accordance with the Civil Services Rules, the respondent No. 2 had asked to produce medical certificate duly counter signed by the Civil Surgeon, which the concerned employee failed to do so. Consequently, the pension case of the concerned employee could not be forwarded for want of regularization of absence period. As such, there are latches on the part of concerned employee.

12. Learned Presenting Officer submits that in view of the directions of the Hon'ble High Court in W.P. No. 803/2016, the proposal for regularization of absence period was sent to the State Government for necessary sanction. The State Government had sanctioned the said proposal in terms of the order passed by the Hon'ble High Court in W.P. No. 803/2016. Learned Presenting Officer submits that (i) leave period from 28.10.1991 to 08.06.1994 was sanctioned on medical ground being extraordinary leave and (ii) Absence period from 09.06.1994 to 27.03.2008 is directed be considered as non-medical, extraordinary leave with the further directions that this leave period shall not be considered for pensionary benefits, as well as, for any other service related benefits. Learned P.O. submits that

thus the respondent has extended the service benefits considering the medical leave period from 28.10.1991 to 08.06.1993 (about 3 years) and not given the pension and other benefits for non-medical period for near about 14 years.

13. Learned Presenting Officer submits that in view of this order, the respondent No. 3 has forwarded the case of pension of the applicant to the Accountant General, Nagpur. Accordingly, regular pension was started to the applicant in the year 2018.

14. Learned Presenting Officer submits that the applicant has raised her grievance that respondents have not taken necessary steps within stipulated period and reasonable time and thus she was constrained to file C.P. No. 151/2017. Learned P.O. submits that the respondents have taken the positive steps i.e. sending proposal to State Government, got is sanctioned and thereafter forwarded the pension case to the Accountant General Office, Nagpur. Learned P.O. submits that considering the same, even in C.P. No. 151/2017 while disposing of it, the Hon'ble High Court of Bombay, Bench at Aurangabad has not passed any adverse order against the respondents. Learned P.O. submits that the respondents have fully complied with the order passed

by the Hon'ble High Court of Bombay, Bench at Aurangabad directing respondents to decide the representation of the applicant as per the applicable rules, which the respondents perfectly did.

15. Learned Presenting Officer submits that the order of respondent No. 3 dated 05.01.2018 is in continuation of the order of sanction issued by the State Government. Learned P.O. submits that considering the above, the applicant is not entitled for any relief from this Tribunal. Thus the present Original Application filed by the applicant is not maintainable and liable to be dismissed with costs.

16. I have gone through the pleadings of both the sides and perused the annexures. I have heard carefully both the sides represented by learned counsel at length.

17. It is not necessary to repeat the facts. It appears that during the lifetime of deceased Uttam even though he resumed the duties on 28.03.2008 and retired on attaining the age of superannuation on 31.03.2008, his pension papers were not prepared. Even after his demise on 29.04.2015, the respondents did not take steps to grant family pension to the applicant. The applicant therefore, constrained to file W.P. No. 803/2016 before

the Hon'ble High Court of Bombay, Bench at Aurangabad. The Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad by judgment and order dated 08.08.2016 in W.P. No. 803/2016 directed the respondents to consider the Medical Certificate produced by deceased Uttam and take necessary steps to regularize the absence of deceased Uttam from duties from 28.10.1991 to 27.03.2008 within four months from the date of order, so as to enable the applicant to receive the pensionary benefits, which were payable to the deceased Uttam and also to get the family pension since after his demise.

18. The Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid W.P. No. 803/2016 has made the certain observations, which needs to be reproduced herein below. The Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in Para Nos. 7, 8 and 12 has made the following observations :-

"7. There is no dispute that the deceased Uttam joined the service of respondent no.3 as a Dairy Attendant on 29.05.1975. He got promoted to the post of Junior Clerk with effect from 14.05.1984. He became permanent employee of respondent no.3. He remained absent from duties due to his illhealth. There is a Medical Certificate issued by the Medical Officer, District T.B. Centre, Bidar, which has been countersigned by the Civil Surgeon, wherein it is mentioned that the deceased Uttam was suffering from Tuberculosis, Bronchitis and the period of his absence from duties for 765 days with effect from 28.10.1991 to 30.11.1993 was absolutely necessary for recreation of his health.

Thus, the said certificate makes it clear as to how, serious ailments were being suffered by the deceased Uttam. There are two more certificates produced on record, which were issued by Dr. Arun Daithankar, T.B. Expert and Dr. A.M. Khan, M.D. (Medicine), respectively, issued on 26.12.2007 and 27.03.2008, respectively, wherein also, there is specific mention of the serious ailments suffered by the deceased Uttam, which compelled him to remain absent from the duties for recovery of his health. The said certificates pertain to the period from 09.06.1994 to 26.12.2007 and 27.12.2007 to 27.03.2008, respectively.

8. *If the contents of the above-mentioned certificates are taken into consideration, it cannot be said that the deceased Uttam deliberately or intentionally remained absent from his duties without there being any compelling reason. As seen from the certificate issued by the Medical Officer, District T.B. Centre, Bidar, which was countersigned by the District T.B. Surgeon, Bidar, it is clear that the deceased Uttam was suffering from Tuberculosis. The said disease and other associated ailments have been referred to in the subsequent certificates issued by the private medical practitioners. Countersigning of the said Medical Certificates by the Civil Surgeon of the District was essential for the purpose of verifying the genuineness of the ailments suffered by the deceased Uttam and to confirm that his absence from duties was, therefore, essential for his recovery from those ailments. It is a rule of caution to get the medical certificate countersigned from the Civil Surgeon so that a Government Servant would not proceed on leave without any ailment compelling him to remain absent from the duties and seek regularisation of his leave period on mere production of the Medical Certificate. In the Medical Certificate dated 26.12.2007, it was specifically mentioned that the deceased Uttam was suffering from Tuberculosis with Bronchitis. It was also mentioned that he was suffering from fever, tingling numbness in both legs, inability to walk with paraplegia etc. In the certificate dated 27.03.2008, it was mentioned that the deceased Uttam was suffering from hepatitis with severe anemia with acute pains with fever and loss of appetite. The ailments suffered by deceased Uttam by themselves would have spoken for the circumstances compelling him to remain absent from the duties for recovery of his health. With such obvious and self-speaking features of physical inability of the deceased Uttam to attend the duties, in our view, it was not compulsory /necessary for respondent no.3 to ask the deceased Uttam to get the said Medical Certificates countersigned by the Civil Surgeon. There was no reason to doubt the genuineness of the contents of the said medical certificates considering the actual physical health of the deceased Uttam.*

12. In the above circumstances, we are of the considered view that the respondents shall consider the medical certificates produced by the deceased Uttam and on the basis of those certificates, grant whatever leave that was admissible to the deceased Uttam and regularise the period of his absence from 28.10.1991 to 27.03.2008. If the need be, respondent nos.2 and 3 may move respondent no.1 for sanction of leave and regularisation of the period of absence of the deceased Uttam. The respondents shall further take necessary steps to get verified the Service Book of the deceased Uttam from the Pay Verification Unit, at the earliest. The respondents shall take all necessary steps as expeditiously as possible to enable the petitioner to get the pensionary benefits payable to the deceased Uttam and also the family pension payable to her.”

19. By referring the Medical Certificates dated 26.12.2007 and 27.03.2008, it has been specifically observed by the Hon'ble High Court of Bombay, Bench at Aurangabad that the ailments suffered by deceased Uttam by themselves would have spoken for the circumstances compelling him to remain absent from the duties for recovery of his health. With such obvious and self-speaking features of physical inability of deceased Uttam to attend the duties, it was not compulsory / necessary for respondent No. 3 to ask the deceased Uttam to get the said Medical Certificates countersigned by the Civil Surgeon. There was no reason to doubt the genuineness of the contents of said medical certificates considering the actual physical health of the deceased Uttam. The Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad after making these observations unequivocally also observed that it was not difficult for

respondent No. 3 to grant necessary leave to deceased Uttam for the period from 28.10.1991 to 27.03.2008. In terms of the aforesaid observations, in para No. 12, the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid W.P. directed the respondents to consider the Medical Certificates produced by deceased Uttam and on the basis of those certificates, grant whatever leave that was admissible to the deceased Uttam and regularize the period of his absence from 28.10.1991 to 27.03.2008. It is also directed that the respondents shall take all necessary steps as expeditiously as possible to enable the petitioner (applicant herein) to get the pensionary benefits payable to the deceased Uttam and also the family pension payable to her.

20. In my considered opinion, the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in the judgment and order dated 08.08.2016 in W.P. No. 803/2016 leaves no scope to the respondent authorities to take any different view, but to consider the Medical Certificate produced by deceased Uttam and take necessary steps to regularize the absence of deceased Uttam from duties from 28.10.1991 to 27.03.2008.

21. The Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad while disposing of the aforesaid W.P. No. 803/2016 in the judgment and order dated 08.08.2016 has prominently observed and considered the following aspects :-

(i) Deceased Uttam was suffering from Tuberculosis, Bronchitis and the period of his absence from duties for 765 days with effect from 28.10.1991 to 30.11.1993 was absolutely necessary for recreation of his health.

(ii) There are two more certificates produced on record, which were issued by Dr. Arun Daithankar, T.B. Expert and Dr. A.M. Khan, M.D. (Medicine), respectively, issued on 26.12.2007 and 27.03.2008, respectively, wherein also, there is specific mention of serious ailments suffered by deceased Uttam, which compelled him to remain absent from the duties for recovery of his health. The said certificates pertain to the period from 09.06.1994 to 26.12.2007 and 27.12.2007 to 27.03.2008, respectively.

(iii) In the Medical Certificate dated 26.12.2007, it was specifically mentioned that the deceased Uttam was suffering from Tuberculosis with Bronchitis. It was also mentioned that he was suffering from fever, tingling numbness in both legs, inability to walk with paraplegia etc.

(iv) In the certificate dated 27.03.2008, it was mentioned that the deceased Uttam was suffering from hepatitis with

severe anemia with acute pains with fever and loss of appetite.

(v) The ailments suffered by deceased Uttam by themselves would have spoken for the circumstances compelling him to remain absent from the duties for recovery of his health.

(vi) It was not compulsory / necessary for respondent No. 3 to ask the deceased Uttam to get the said Medical Certificates countersigned by the Civil Surgeon.

(vii) There was no reason to doubt the genuineness of the contents of the said medical certificates.

(viii) It was not difficult for respondent No. 3 to grant necessary leave to the deceased Uttam for the period from 28.10.1991 to 27.03.2008.

(ix) The respondents shall consider the medical certificates produced by the deceased Uttam and on the basis of those certificates, grant whatever leave that was admissible to the deceased Uttam and regularize the period of his absence from 28.10.1991 to 27.03.2008.

22. In the backdrop of the aforesaid observations and directions, it is surprising that the respondent No. 1 has passed the following impugned order dated 05.10.2017, which is as under :-

“महाराष्ट्र शासन

न्यायालयीन बाब

क्रमांक: दुविआ १४१६/प्र.क्र.२७६/पदुम ९
 कृषि, पशुसंवर्धन, दुग्धव्यवसाय विकास व
 मत्स्यव्यवसाय विभाग, पाचवा मजला (विस्तार), दालन
 क्र. ५२०, मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,
 मंत्रालय, मुंबई-४०००३२.
 ई-मेल: nitin.pawar69@nic.in
 दिनांक :- ०५.१०.२०१७

प्रति,

आयुक्त,
 दुग्धव्यवसाय विकास विभाग,
 वरळी, मुंबई.

विषय :- अवमान याचिका क्र. १५१/२०१७ श्रीमती लक्ष्मीबाई उत्तम पोतदार
 विरुद्ध
 महाराष्ट्र शासन व इतर

संदर्भ:- आपले पत्र क्र.आदुवि-१९ (ड)/रिमाक्र-८०३/१६/श्रीमती पोतदार/
 प्र.क्र.०६/१६/प्रादुविअ/औबाद/२०१७/३६३६, दि.२७/७/२०१७.

उपरोक्त प्रकरणी आपल्या कार्यालयाच्या संदर्भाधिन दि. २७/७/२०१७ च्या पत्रान्वये
 शासनास सादर केलेल्या प्रस्तावास अनुसरून याचिका क्र. ८०३/२०१६ मध्ये मा. न्यायालयाने
 दिलेल्या निर्णयास अनुलक्षून श्री. उत्तम दत्तात्रय पोतदार यांच्या रजा कालावधी महाराष्ट्र नागरी
 सेवा (रजा) नियम १९८१ मधील नियम ६३(६) नुसार खालील प्रमाणे मंजूर करण्यात येत आहे.

- १) दि. २८/१०/१९९१ ते दि.८/६/१९९४ पर्यंत देय व अनुदेय रजा वगळता उर्वरीत
 कालावधीच्या वैद्यकीय कारणास्तव असाधारण रजा म्हणून मंजूर करण्यास मान्यता
 देण्यात येत आहे.
- २) तसेच दि.९/६/१९९४ ते दि.२७/३/२००८ या कालावधीतील अनुपस्थिती असाधारण
 रजा (वैद्यकीय कारणाशिवाय) म्हणून मंजूर करण्यास मान्यता देण्यात येत आहे.
 दि.९/६/१९९४ ते २७/०३/२००८ हा कालावधी कोणत्याही सेवाविषयक प्रयोजनार्थ
 (निवृत्ती वेतनविषयक लाभासह) ग्राह्य धरण्यात येणार नाही.
 सबब या प्रकरणी पुढील कार्यवाही आपल्या स्तरावरून करण्यात यावी व त्याबाबत
 शासनास अवगत करण्यात यावे,

सही/-
 (अ.शि.नाईकवाडे)
 कक्ष अधिकारी, महाराष्ट्र शासन”

23. Thus, the impugned order dated 05.10.2017
 (Annexure A-8) is contrary to the decision rendered by the

Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid W.P. It appears from the impugned order that the respondent No. 1 has sanctioned the absence period of deceased Uttam from 28.10.1991 to 08.06.1994 only as extraordinary leave on medical ground and major period of absence from 09.06.1994 till 27.03.2008 sanctioned as extraordinary leave without medical reasons not considering the said period for any purposes including the pensionary benefits. The impugned order is a classic example to defy the orders of the Hon'ble High Court of Bombay, Bench at Aurangabad with a systematic and deliberate effort. The respondents have extended the service benefits by considering the medical certificate only for the period from 28.10.1991 to 08.06.1993 (for about three years) and refused to give pensionary and other benefits for a period from 09.06.1994 to 27.03.2008, despite the specific observations and directions of the Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid W.P. No. 803/2016.

24. In view above, the absence of deceased Uttam from 09.06.1994 till 24.03.2008 is necessary to be considered for pensionary benefits and the applicant is entitled for the arrears of pensionary benefits, as well as, regular pension. Hence, the following order :-

ORDER

- (i) The Original Application is hereby partly allowed.
- (ii) The impugned order dated 05.10.2017 issued by respondent No. 1 and the consequential office order dated 05.01.2018 issued by respondent No. 3 to the extent of not considering the absence period of deceased Uttam from 09.06.1994 to 27.03.2018 for any purpose including for grant of pensionary benefits, are hereby quashed and set aside.
- (iii) The respondents are hereby directed to re-fix the pensionary benefits and family pension of the applicant by considering and counting the absence of deceased Uttam from 09.06.1994 till 27.03.2008 for the purpose of pensionary benefits.
- (iv) The applicant be paid the arrears of pensionary benefits, as well as, regular pensionary benefits and also family pension after the said re-fixation, as expeditiously as possible and preferably within a period of six months from the date of this order.
- (v) In the circumstances, there shall be no order as to costs.
- (vi) The Original Application is accordingly disposed of.
- (vii) The original record and proceedings be returned to the learned Presenting Officer forthwith.

PLACE : Aurangabad.**DATE : 01.07.2024****KPB S.B. O.A. No. 364 of 2022 VKJ Leave / Family Pension and Pensionary Benefits.****(Justice V.K. Jadhav)****Member (J)**