
(2007) 02 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No. 3803 of 2001

Pramila Pandit Sagat

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 12-02-2007

Acts Referred:

Evidence Act, 1872 — Section 107, 108

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 62, 62(7), 62(8), 89, 90

Citation : (2007) 5 ALLMR 781 : (2007) 6 BomCR 853

Hon'ble Judges : Hardas P.V., J;Borkar P.R., J

Bench : Division Bench

Advocate : A.N. Ansari, for the Appellant; V.H. Dighe, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Borkar P.R., J.—This is a petition filed by the present petitioner dissatisfied with the order passed by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad in Original Application No. 226 of 1998, decided on 9.7.2001, whereby it was held that the husband of petitioner Pandit Sagat is presumed to be dead as he had been missing for more than seven years, as per Sections 107 and 108 of the Evidence Act and the Departmental Inquiry held against said Pandit Sagat and consequent order of dismissal was illegal, but the petitioner is not entitled to family pension but she would be entitled to extraordinary family pension which claim may be considered by the respondents. By this petition the petitioner challenges the refusal to grant family pension to her.

2. Brief facts giving rise to this petition are stated thus:

The petitioner's husband Pandit Sagat had disappeared on or about 16.1.1983 and since then his whereabouts were not known to any one. Prior to that he was arrested by police of the City Police Station, Aurangabad in connection with a theft. He was thereafter released on bail but he did not return home and was missing. The petitioner has six children, so she went to the office of respondent

No. 3 seeking for her family pension and appointment on compassionate ground. She was approaching the authorities from time to time. On 14.1.1997 the authorities issued charge-sheet against Pandit Sagat and Inquiry Officer was also appointed. Inquiry was initiated against Pandit Sagat and it was completed exparte as Pandit Sagat could not be personally served with notice and was absent. Ultimately the order of dismissal was passed in the Departmental Inquiry. That order was passed in July, 1997. The appeal representation filed by the petitioner against said order was also dismissed on 26.12.1997. The petitioner's prayer for pension and/or for grant of compassionate appointment was also rejected on 20.10.1997. Being aggrieved by those orders the petitioner filed the Original Application No. 226 of 1998 in the Maharashtra Administrative Tribunal.

3. As stated earlier, the Tribunal by its order dated 9th July, 2001 has held that as in view of the provisions of law Pandit Sagat could be presumed to be dead in or about 1990 and, therefore, the Departmental Inquiry held in 1997 and consequent dismissal order was illegal and same was set aside.

4. So far as pension is concerned, it was observed that extraordinary family pension could be granted to the petitioner and thus respondent No. 1 was directed to consider claim for extraordinary pension.

5. Heard Mrs. A.N. Ansari, learned Counsel for the petitioner and learned A.G.P. Mr. Dighe for respondents.

6. So far as appointment on compassionate ground and other reliefs are concerned, they are no more pressed before us by the petitioner. The petitioner claims that she is entitled to family pension and as such direction be given to respondents to award family pension and also consequent other retirement benefits to which she is entitled.

7. Mrs. Ansari drew our attention to Maharashtra Civil Services (Pension) Rules, 1982. Rule 62 defines different classes of pensions and Sub-rule (7) is regarding family pension and Sub-rule (8) is regarding extraordinary family pension. As per Sub-rule (8) extraordinary family pension is one which is granted to the family of deceased Government servant under rules in Appendix IV. As per the Appendix IV, paragraph 2, family of a Government servant who is killed or who dies of injuries received or disease contracted in the circumstances described in Rules 89 and 90, if the deceased Government servant had not opted for the Family Pension, 1964, is entitled to such extraordinary family pension. In other words, as per the Rules existing earlier, a Government servant must have been killed or he must have died of injuries received or he must have died of disease contracted in the circumstances described in Rules 89 and 90. However, Mrs. Ansari brought to our notice Government Resolution No. PEN-1089/491/SER-4, issued by Finance Department on 5th July, 1991. The headline of the Government Resolution it self shows that by said Government Resolution of grant of family pension and gratuity was provided to the families of Government

servants/pensioners who disappear suddenly and whose whereabouts are not known. Said Government Resolution is squarely applicable to the present case in hand and it is clear that the family pension and gratuity will have to be awarded to the present petitioner and, therefore, we are of the opinion that the petitioner must succeed as she is entitled to family pension and gratuity as laid down in the said Government Resolution Accordingly we allow this petition and direct that the respondents shall pay the petitioner family pension and gratuity and all other legally permissible retiral benefits in view of the above quoted Government Resolution of 5th July, 1991. We further direct that the order of payment of family pension and gratuity be passed within four months from this order and in case of failure, the petitioner would be entitled to interest at the rate of 7.5% per annum thereafter till actual payment. Rule is made absolute on the above terms. No order as to costs.