

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2632 OF 2013

Prakash S/o Keshavrao Deshmukh,
Age : 63 years, Occu. : Retiree,
R/o 'Matoshri', New Khetan Nagar,
Kaulkhed, Akola .. Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Chief Secretary,
General Administration Department,
Mantralaya, Mumbai - 32
2. The Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai - 32
3. The Principal Secretary,
School Education Department,
Mantralaya, Mumbai - 32
4. The Director of Secondary School
Education Department,
Directorate of Education,
Government of Maharashtra,
Pune
5. The Deputy Director of Education,
Nashik Region, Nashik

6. The Chief Executive Officer,
Zilla Parishad, Nandurbar
7. The Education Officer (Primary),
Zilla Parishad, Nandurbar
8. The Principal Accountant General,
(A & E) – I, Maharashtra,
Mumbai – 20
9. The Chief Executive officer,
Zilla Parishad, Buldhana .. Respondents

Shri S. T. Shelke h/f Shri M. M. Nerlikar, Advocate for Petitioner
Smt. S. A. Dhumal, Asst. Govt. Pleader for the Respondent Nos.
1 to 5 and 8
Shri P. S. Patil, Advocate for the Respondent No. 6 and 7

**CORAM : S. V. GANGAPURWALA AND
V. L. ACHLIYA, JJ.**

CLOSED FOR JUDGMENT ON : 27/01/2015
JUDGMENT PRONOUNCED ON : 08/05/2015

JUDGMENT (Per S. V. Gangapurwala, J.) :-

- 1) Rule. Rule returnable forthwith. With the consent of parties taken up for final hearing.
- 2) Vide the present writ petition the petitioner seeks directions to pay the amount towards the retiral benefits and

interest accrued thereon, so also, the difference amount as per the 6th Pay Commission.

3) Mr. Shelke the learned counsel for the petitioner states that, amount towards one step promotion claimed in the petition is not pressed now as it is disallowed to all. The benefit of the 6th Pay Commission has already been given on 01st August, 2014. The pension is paid on 11.07.2011 as per the 05th Pay commission on 11.07.2011. As such the learned counsel submits that, now the petition is restricted to the extent of interest on the late payment of retiral benefits. The learned counsel submits that, the petitioner retired as a Education Officer (Primary), Zilla Parishad, Nandurbar in March, 2008. However, on 25th March, 2011 the Principal Accountant General issued pension payment order and gratuity order and it is only on 11.07.2011 petitioner received monthly pension, gratuity and leave encashment amount as per 5th Pay Commission. As such the petitioner is entitled for the amount of interest from March, 2008 till 11.07.2011 so also interest from March, 2008 till 01.08.2014 on the difference of the amount of 6th Pay Commission. As it is only on 01st August, 2014 the benefit of 6th Pay Commission was accorded to the petitioner. The learned counsel further submits that, the delay was on the part of the respondent Zilla Parishad

and the authorities, as such, petitioner is entitled for interest. The learned counsel relies on the judgment of the Apex Court in a case of **Dr. Uma Agrawal V/s State of U. P. and Another** reported in **AIR 1999 SC 1212**, so also the judgment of the Apex Court in a case of **D. D. Tewari (Dead) Through Legal Representatives V/s Uttar Hariyan Bijli Vitran Nigam Limited and Others** reported in **2014 (8) SCC 894**. The learned counsel submits that, the stand of the respondent that, pay fixation was not done is erroneous. Pay fixation was done from time to time as would be clear from the entries in the service book made at the relevant time. According to the learned counsel the respondents are suppose to start the process of preparation and completion of pension papers prior to two years of the date of retirement. The respondents have failed in their duty and the delay in payment of pension amount is at the behest of the respondent. The petitioner is entitled for interest at the rate of 18% per annum.

4) Mr. P. S. Patil the learned counsel for the respondent submits that, there was no fault on the part of the respondent in processing the pension papers. If at all there is delay it is on the part of the petitioner. The service book of the petitioner was not complete. The petitioner himself was a Education Officer

(Primary) and competent authority to maintain and keep service record of employees and officers and was careless in his own service tenure to take all necessary entries in the service book at various Zilla Parishads. The petitioner himself is a head of office, however, did not prepare his own pension proposal up to the date of retirement. 22 increments of the petitioner from 1981 to 2003 were withheld as petitioner had not crossed the efficiency bar which was due in 1981, itself. The petitioner had not produced proof of Marathi and Hindi language passing certificate, which is mandatory for completion of probation period. The petitioner produced that in the year, 2010 that is two years after retirement and it is only then petitioner got relaxation on 03.05.2010. The service tenure of the petitioner with Zilla Parishad, Nandurbar is very short. The petitioner came to be reinstated after his suspension from Amravati to Zilla Parishad Nandurbar on 14.09.2014 thereafter retired on 31.03.2008. The Chief Executive Officer, Zilla Parishad, Nandurbar issued letters to various Zilla Parishads such as Akola, Amravati, Buldhana where petitioner was working to sent no objection certificates. On 28.03.2008 office of Zilla Parishad, Nandurbar received one letter dated 14.03.2008 from the office of Director of Education, Pune stating that, Government has decided to conduct Departmental Enquiry against the petitioner.

It is regarding the work during his tenure as Education Officer (Secondary) and as petitioner is going to retire in March, 2008 he should not be issued final pensionary benefits. On 15.05.2008 the Deputy Director of Education asked Chief Executive Officer, Zilla Parishad, Nandurbar not to issue final pensionary benefits to the petitioner. On 21.04.2008 Deputy Secretary School Education and Sports Department issued memo declaring that petitioner is found guilty in Departmental enquiry therefore petitioner is entitled to get 50% of salary and allowances towards the first three months period of his suspension. Thereafter on 22.07.2009 Deputy Secretary Government of Maharashtra passed an order declaring that petitioner is acquitted from Departmental Enquiry. The Zilla Parishad issued check of Rs. 7,65,510/- (Rs. Seven Lacs Sixty Five Thousand Five Hundred Ten) to the petitioner on 23.03.2009 regarding his GPF. The Chief Executive Officer was reminding the Chief Executive Officers of Akola, Amravati, Buldhana Zilla Parishads to give no objection certificates. Even one such letter was issued on 10.05.2010. The no Objections were received from various Zilla Parishads by Zilla Parishad, Nandurbar only up to 14.07.2010 and on 15.07.2010 Zilla Parishad, Nandurbar send original service book of petitioner to Pay Verification Unit Officer, Nasik for pay verification. Thereafter Pay Verification Unit sent back

original service book of petitioner to Zilla Parishad, Nandurbar with nine queries which were immediately complied. It is only on 24.05.2010 for the first time petitioner submitted his official proposal for pensionary benefits in the office of Zilla Parishad, Nandurbar. Immediately on receiving the pay fixation from the Pay Verification Unit on 01.02.2011 immediately on 06.02.2011 proposal is forwarded of pension to the Accountant General. Thereafter again it is only on 18.04.2011 office of Education Officer, Zilla Parishad, Nandurbar received order of issuance of pensionary benefits dated 25.03.2011 and it was further intimated to submit further revised proposal for pension as per 6th Pay Commission. Even the revised proposal for pensionary benefits as per 6th Pay Commission was forwarded on 28.05.2012 to the Accountant General, however, on 25.07.2012 the office of Accountant General sent proposal back with further queries. Thereafter on 05.02.2013 the service book was forwarded to the Zilla Parishad, Buldhana for necessary entries. The Zilla Parishad, Nandurbar received the original service book from Zilla Parishad, Buldhana on 17/10/2013 and it was submitted to the office. Thereafter the service book was sent to the Education Officer (Secondary), Zilla Parishad, Nagpur as petitioner was in service at Nagpur from 01.04.1995 and the same is with the office of Zilla Parishad, Nagpur. According to the learned counsel there

is no Departmental delay in forwarding the pension papers but the delay is on account of all the aforesaid facts narrated by the respondent Zilla Parishad.

5) It is submitted by Mr. Shelke the learned counsel for the petitioner that pay fixation of the petitioner as per 4th Pay commission was done on 01.01.1986 by Amravati Zill Parishad. Thereafter pay fixation as per 5th Pay Commission as on 01.01.1996 was done by Amravati Zilla Parishad in the year, 2004 itself. The entry with regard to Group Insurance is also taken in the service book on 18.02.1999. Even in the communication from the Director of Education dated 14.03.2008 there was direction to pay the provisional pension and other benefits, however, the provisional pension was also not granted. The pay fixation as per the 6th Pay Commission has been verified and done by the Pay Verification Unit, Nasik and is a part of record. The petitioner was responsible for preparation of service book and pension papers of his subordinates and it was for the respondent No. 6 to prepare the pension papers of the petitioner.

6) We have considered the submissions canvassed by the learned counsel for the respective parties. The petition is now restricted to the claim with regard to interest of late payment of

retiral benefits.

7) It is trite that, pension and retiral benefits is not a bounty but the valuable right and property in the hands of the retired employee and any culpable delay in settlement and disbursement thereof entails payment of interest has been held by the Apex Court in a case of **D. D. Tewari (Dead) Through Legal Representatives V/s Uttar Hariyan Bijli Vitran Nigam Limited and Others** referred supra. However, it is also fact that, the payment of interest is permissible if the delay is at the behest of the department. The fact that, the petitioner retired on attaining the age of superannuation on 31st March, 2008 is not disputed. It is also not disputed that, the petitioner got the pension amount and the gratuity on 11.07.2011. GPF amount was received by the petitioner earlier. On 11.07.2011 the said amount of pension and gratuity was paid as per the pay fixation done pursuant to the 5th Pay Commission. The petitioner received the benefit as per the 6th Pay Commission on 01.08.2014, these facts are undisputed.

8) The respondent department is harping on the premise that, the Zilla Parishad, Nandurbar is not responsible for the delay caused. However, there is nothing on record to show

that prior to two years of retirement of petitioner Zilla Parishad, Nandurbar commenced the process of completing the pension papers. Even it was not commenced prior to six months of the retirement of the petitioner. Even from the affidavit in reply filed, the respondent states that, the letters were forwarded by the Chief Executive Officer, Zilla Parishad, Nandurbar to the various other Zilla Parishads only when the petitioner was in verge of retirement that is three days prior to retirement of the petitioner. No reason is given for non submission of the said letters earlier in point of time. Even if the Departmental enquiry is proposed, the petitioner is entitled for provisional pension. The same was not paid. It is submitted that, the petitioner is acquitted in the enquiry on 22.07.2009. In case a person is acquitted from enquiry then said person is entitled for interest after lapse of six months from the date of retirement. As there is nothing on record to substantiate that, prior to the retirement of petitioner the respondent had started process of finalizing the pension papers. The contention of the respondent that information was not received from other Zilla Parishad where the petitioner was working cannot be sustained.

9) In light of the above, we have no hesitation to held that, the petitioner would be entitled for interest after lapse of

six months from the date of retirement that is from 01st October, 2008 till 11.07.2011 on the amount of gratuity and the pension (as same is paid on 11.07.2011) at the rate of 8% per annum that is the rate as per the Government Resolution. Even the respondent No. 6 was directed to submit the revised proposal as per the 6th Pay Commission by the office of Accountant General vide letter dated 18.04.2011, however, the same was submitted only on 10.01.2014. The petitioner would be entitled for interest on the dues of the amount payable as per the 6th Pay Commission from 01st May, 2011 till 30th July, 2014 that is the date when the petitioner was given the benefit of 6th Pay Commission. In the result we pass the following order -

ORDER

- A) The writ petition is partly allowed.
- B) The respondent No. 6 shall pay interest at the rate of 8% per annum from 01st October, 2008 till 10th July, 2011 on an amount of pension and the gratuity which is paid to the petitioner on 11.07.2011 as per 5th Pay Commission.
- C) The respondent No. 6 is also liable to pay interest at the rate of 8% per annum from 01st

May, 2011 to 30th July, 2014 on the amount of pension and gratuity paid to petitioner on 30.07.2014 as per 6th Pay Commission.

D) The respondent No. 6 shall pay the said amount of interest as directed above to the petitioner within a period of four (4) months.

10) Rule is accordingly made partly absolute, however, with no orders as to costs.

[V. L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]

sam/March. 15