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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1188 OF 2013

Indrakumar Gvalani

..Petitioner

Vs.

The State of Maharashtra & Ors.

.

..Respondents.

Mr. Vikram Koparikar i/b Mr. Mihir Desai for Petitioner.

Mr. D.A. Nalawade, Govt. Pleader for Respondent Nos.1 & 2.

Ms. S.S. Halwasia i/b M/s Halwasia & Co., for Respondent No.3.

**CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.**

DATE : 18th April 2015.

P.C.:

Rule. Rule made returnable forthwith by consent of the parties.

2 The Petitioner has basically approached this Court being aggrieved by Government Resolution dated 30th October 2009 by which the State Government has revised the earlier pension policy. By the said Government Resolution, it is provided that the employees who were retired after 1st January 2006 will be governed by new pension policy. The issue came before this Court for consideration and the Division Bench of this Court, Bench at Aurangabad vide its order dated 9th May 2014 in **Writ**

Petition No.8985 of 2011 along with connected matters (Smt. Savitribai Narsayya Guddapa Vs. The State of Maharashtra & Ors.), held the cut off date prescribed in Government Resolution. We may refer to paragraphs 22 and 23 of the said judgment which read thus:

“22 The Supreme Court, in case of Association of College & University Superannuated Teachers Vs. Union of India and others in Civil Appeal No.908 of 2013 (Arising out of SLP © No.3700 of 2012) while considering similar fact situation, in case of refusal of enhanced amount of gratuity by prescribing cut-off date, allowed the civil appeal filed by the appellant therein, holding that the cut-off date 1st September 2009 specified in Government Resolution dated 21st August 2009, in the facts of that case, was discriminative and same was declared unconstitutional.

We hold the cut-off date 27th February 2009 prescribed in Government Resolution dated 30th October, 2009 for payment of revised pension under the Maharashtra Civil Services (Pension) Rules, 1982, making it applicable to those employees who retired from 27th February, 2009 and not to those employees, who retired in between 1st January, 2006 to 26th February, 2009, as constitution.

23 In the light of discussion herein above, as a sequel to the above, we direct that within three months from the date of receipt/production of copy of this order, the State Government shall pay to the Petitioners and other similarly situated employees, the difference of the pension and revised pension payable.

We make it clear that, we have considered the controversy only confined to the cut-off date applied in Government Resolution dated 30th October 2009 to those retirements from vis-a-vis the employees who retired between 1st January, 2006 to 26th February 2009 for payment of revised pension. We only declare the said cut-off date as unconstitutional. We have not tested the rest of the provisions

of the said Government Resolution since die not fall for our consideration, which shall remain unaffected.”

3 Undoubtedly, the Petitioner has retired on 31st May 2008 i.e. after 1st January 2006 i.e. prior to Government Resolution dated 30th October 2009.

4 The learned Government Pleader opposed the petition on the ground that the aforesaid judgment upheld before the Apex Court and Special Leave Petition is pending before the Apex Court.

5 Undoubtedly, though the State has preferred an SLP against against the judgment delivered by the Division Bench of this Court, however, the same is not stayed by the Apex Court. It is to be noted here that the Review Applications taken out by State were also rejected by the Division Bench of this Court, Bench at Aurangabad. Not only that, but various petitions have been allowed following the said judgment.

6 In that view of the matter, we are allowing the present petition with following directions:

Since the Petitioner has retired on 31st May 2008 i.e. prior to

30th October 2009, the Petitioner's case would be governed by the old pension scheme and not new pension scheme. The Respondents to pay to the Petitioner on the basis of old pension scheme from 1st May 2015 and arrears of difference shall be paid within a period of four months from today.

7 Rule made absolute in above terms with no order as to costs.
Writ Petition stands disposed of.

(A.S. GADKARI, J.)

(B.R. GAVAI, J.)