

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

Writ Petition No.3557/2014

Smt. Anita w/o Suresh Wagh Vs. Zilla Parishad, Yavatmal and others.

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Notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's  
Orders.

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**CORAM : B.P. Dharmadhikari &**  
**A.P. Bhangale, JJ.**  
**DATE : 17<sup>th</sup> February, 2015.**

1] Heard Advocate Meghe for the petitioner, Advocate Sonawane for respondent no.1 and learned AGP Ms. Joshi for respondent nos.2 and 3.

2] We find that the husband of the petitioner namely Suresh S. Wagh expired while in service on 21<sup>st</sup> March, 2007. After his death, his Employer-respondent no.1 has issued order on 18.9.2008 holding him entitled to placement in Pay Scale of Rs.5500-9000 from 1.10.1994. This pay scale substitutes earlier pay scale of Rs.1400-2300.

3] His widow is before us complaining that though the order has been passed and necessary entries have been made in service book, actual amount becoming due and payable has not been received by her. It is further submitted that the arrears becoming payable to deceased on account of this pay revision and the consequential stepped up pension along with arrears should, therefore, be

given to petitioner.

4] Advocate Sonawane is strongly opposing the prayers. He submits that the petition has been filed almost after seven years of death and there is no explanation for laches. He relies upon the judgment of the Division Bench of this Court in the case of **C.R. Mawlankar Vs. Victoria Jubilee Technical Institute and others** reported at 2008 (5) Mh.L.J. 620 to urge that there, in similar circumstances, delayed demand for pension by retired employee was rejected. He also states that amount may have been paid to the petitioner.

5] Perusal of the judgment in the case of **C.R. Mawlankar Vs. Victoria Jubilee Technical Institute** (supra) shows that the petitioner, who retired after an extension on 1.4.1986 claimed provident fund dues. He also stated that he was interested in opting for pensionary benefits and he was willing to refund to respondent no.1 its contribution to the provident fund along with interest @ 6% p.a. The said application was rejected. That rejection was then questioned by him in the Writ Petition filed in the year 1994. Thus, the petition challenged denial of entitlement of petitioner to receive pension. He had received benefit of provident fund scheme. As such, said judgment has no bearing on present controversy.

6] Here, though there is some delay, it is apparent that right of deceased to get proper pay scale has been recognised by Zilla Parishad after his death. The amount becoming payable to him therefore must go to his legal heirs. The employer has not taken any such step.

7] We find that salary drawn by deceased at the time of his death was in pay scale of Rs.1400–2300 and his pension and other retiral benefits must have been calculated accordingly. This pay scale has been substituted by a much better pay scale of Rs.5500–9000 and that too retrospectively from 1<sup>st</sup> October, 1994. Thus, the arrears for work done by deceased till his death from 1.10.1994 must enure to the benefit of his legal heirs. His last pay therefore, shall be substantially much more and this will result in hike in monthly pension.

8] In this situation, we find that denial of interest for the period of delay can suitably compensate the employer.

9] We accordingly direct respondent no. 1 to compute the benefits due to deceased on account of order dated 18.9.2008 till his death and to pay arrears on that account to his legal heirs in accordance with law within a period of six months from today. Similarly, the pension shall also be re-calculated on the basis of last pay drawn and the arrears on that account from the date of death till date shall be made over to person receiving it within a period of six months. No interest shall be paid on these arrears.

10] However, the regular pension due and payable shall also be worked out suitably within a period of three months from today and from the month of June 2015 the petitioner shall start getting the pension at the revised rate.

11] It is made clear that if arrears are not paid within a period of six months stipulated supra, the legal heirs shall be entitled to interest in terms of Rule 129-A

and 129-B of the Maharashtra Civil Services (Pension) Rules, 1982 for the period of delay after expiry of the said period of six months.

12] The Writ Petition is disposed of in the aforesaid terms.

**JUDGE**

**JUDGE**

*Ambulkar*