IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 4588 OF 2015

1. Shivaji S/o Shripatrao Landge
Age : 69 years, Occ : Pensioner,
R/o Kallamb, Tq. Kallamb,
Dist. Osmanabad.

2. Rajaram S/o Bhaurao Waghmare
Age : 69 years, Occ : Pensioner,
R/o Kallamb, Tq. Kallamb,
Dist. Osmanabad.

3. Devidas S/o Vittal Shendge
Age : 72 years, Occ : Pensioner,
R/o Kallamb, Tq. Kallamb,
Dist. Osmanabad.

4. Dnyanoba S/o Narayan Bangar
Age : 72 years, Occ : Pensioner,
R/o Bangarwadi, Tq. Kallamb,
Dist. Osmanabad.

5. Maroti S/o Tulshiram Gaike
Age : 68 years, Occ : Pensioner,
R/o Yermala, Tq. Kallamb,
Dist. Osmanabad.

...PETITIONERS

-VERSUS-

1. The State of Maharashtra
Through the Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32.

2. The Zilla Parishad,
Osmanabad through its
Chief Executive Officer
Tq. & Dist. Osmanabad.

..RESPONDENTS

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Advocate for Petitioners : Mr. M.V. Salunke h/f Mr. Salunke V.D.
AGP for Respondent/State : Mr. S.K. Tambe
Advocate for Respondent no.2 : Mr. S.G. Sangle

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CORAM : S.S. SHINDE & RAVINDRA V. GHUGE, JJ.
Dated: February 02, 2016

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ORAL JUDGMENT (RAVINDRA V. GHUGE, J) :-

1. Rule. Rule made returnable forthwith. Heard finally, by the consent of the parties.

2. We have considered the submissions of Shri Salunke, the learned Advocate on behalf of the petitioners, the learned A.G.P. and Shri S.G. Sangle, learned Advocate on behalf of Respondent No.2.

3. Considering the order, that we intend to pass, we are not required to advert to the entire submissions of the learned counsels.

4. The issue raised before us is as regards

whether the provisional pension payable to the petitioners is being paid as per Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 or not ? The petitioners have placed reliance upon the judgment of the learned Supreme Court in the matter of ***State of Jharkhand and others V/s Jitendra Kumar Srivastava*** reported in ***(2013) 12 SCC 210.***

5. There is no dispute between the litigating sides that the provisional pension payable to a Gazetted or Non-Gazetted servant, during the pendency of the judicial proceedings or during his suspension, is governed by Rule 130 of the 1982 Rules.

6. Rule 130 of the 1982 Rules reads as under :-

> "130. **Provisional pension where departmental or judicial proceedings may be pending.**
>
> (1) (a) In respect of a Gazetted or Non-gazetted Government servant referred to in sub-rule (4) of rule 27, the Head of Office

shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

[Provided that where departmental proceedings have been instituted under Rule

10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, for Imposing any of the minor penalties specified in sub-clauses (I), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government Servant].

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

7. It is, therefore, apparent that the maximum pension which would have been admissible to an employee on the basis of the qualifying service upto the date of retirement of the Government servant, can be calculated. However, in case of an employee, who has been placed under suspension till the date of his retirement, the provisional pension will have to be

calculated upto the date immediately preceding the date on which he was placed under suspension.

8. Rule 130(1)(b) authorizes the head of the office to grant such provisional pension for a period of six months during the period commencing from date of retirement unless the period is extended by the Audit Officer and such provisional pension is to be continued upto and including the date on which, after the conclusion of the departmental or judicial proceedings, final orders are passed by the competent authority. There is no dispute that, the petitioners are being paid provisional pension till this date.

9. Issue is as to whether the certificate issued by Respondent No.2 indicating the calculation of provisional pension is in tune with Rule 130(1)(a) or not.

10. The petitioners reiterate that the provisional

pension being paid to them is not in accordance with the Rules as Dearness Allowance has not been taken into account while calculating such provisional pension. Adverting to the certificate at Page 36 filed by Respondent No.2, the learned counsel for the petitioners submit that the said calculations are based purely on basic wages payable to the petitioners and do not take into account the Dearness Allowance, which component will have to be added.

11. *Per contra*, Shri Sangle, the learned Advocate appearing on behalf of Respondent No.2 submits that the certificate at Page 36 appears to be as per Rule 130. However, he is unable to make a definite statement as to whether it is as per Rule 130(1) of the 1982 Rules.

12. In the light of the peculiar facts, as recorded hereinabove and in view of the controversy turning upon rule 130(1)(a), we allow this Petition partly only to

the extent of directing Respondent No.2 to consider whether provisional pension being paid to the petitioners is in tune with Rule 130(1)(a). Respondent No.2 shall consider the cases of the petitioners in the light of the said provision within a period of 8 weeks from today. While arriving at a decision, Respondent No.2 shall consider the ratio laid down by the Apex Court in the case of State of Jharkhand (supra). The decision that may be arrived at shall be communicated forthwith to the petitioners.

13. If need arise, Respondent No.2 is at liberty to cause a hearing in the matter so as to hear the petitioners.

14. Needless to state, after the decision is arrived at and communicated to the petitioners, in the event the petitioners feel aggrieved by the said decision, they would be at liberty to avail of a legal remedy.

15. Rule is made partly absolute in the above terms.

Sd/- Sd/-
(**RAVINDRA V. GHUGE, J.**) (**S.S. SHINDE, J.**)

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