

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

WRIT PETITION NO. 10560 OF 2015

Ahmednagar Mahanagar Palika,
Ahmednagar.
Through its Commissioner.

...PETITIONER

-VERSUS-

Namdeo Laxman Umap,
Age : 66 years, Occupation : Pensioner,
R/o Annabhau Sathe Zopadpatti,
Siddharthnagar, Ahmednagar.

...RESPONDENT

...
Advocate for Petitioner : Shri Bedre Vinayak Sudhakar.
Advocate for Respondent : Shri Barde Parag Vijay.

...
CORAM: RAVINDRA V. GHUGE, J.
DATE :- 10th October, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner/ Municipal Corporation is aggrieved by the judgment and order dated 22.04.2015 delivered by the Industrial Court, Ahmednagar by which Complaint (ULP) No.212/2013 has been allowed and the Petitioner is directed to pay the difference in pension amount of Rs.2,22,254/- to the Respondent/ Complainant.

3 Shri Bedre, learned Advocate for the Petitioner, has strenuously criticized the impugned judgment. He draws my attention to the order dated 05.03.2001 passed by the competent authority of the State of Maharashtra by which certain posts for Class III and Class IV categories were created, effective from 05.03.2001. The Respondent was working as a Safai Kamgar having been appointed on 11.06.1985. He stood retired on 01.11.2000. After his retirement, the post was sanctioned and as such, he cannot be granted the benefits of the 5th and 6th pay commissions' recommendations. His pension has, therefore, been properly calculated as per the recommendations of the 4th pay commission.

4 Shri Bedre then draws my attention to the grounds of challenge (I) to (XVIII) raised in the petition and submits that considering the grounds raised, this petition deserves to be allowed and the impugned judgment and order deserves to be quashed and set aside.

5 Shri Barde, learned Advocate for the Respondent/ Employee, has supported the impugned judgment. He has taken me through the cross-examination of the Management's witness namely, Rangnath Kanuji Gawade. He points out from the reasons set out in the impugned judgment that the reasons assigned by the Industrial Court are based on oral and documentary evidence and hence, the impugned judgment does

not call for any interference.

6 I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.

7 There is no dispute as regards the date of appointment, the date of retirement and the date on which the Government ordered creation of posts which is 05.03.2001.

8 The issue is as to whether, the Respondent, who retired on 01.11.2000, would be entitled for pensionary benefits as per the recommendations of the pay commissions applicable at the relevant time.

9 In the cross-examination of the Petitioner's witness below Exhibit O/4, the statements made by the said witness in his cross-examination are as follows:-

- (a) *The Complainant was retired from service of the Respondent Municipal Corporation from 02.11.2000.*
- (b) *It is true to say that 5th pay commission was made applicable to the Respondent Municipal Corporation from 01.01.1996.*
- (c) *I cannot tell reason why the Complainant was given less pension.*
- (d) *It is true to say that 6th pay commission was made applicable to the Respondent from 01.01.2006.*
- (e) *It is true to say that as per 6th pay commission*

- recommendation, minimum monthly pension of the Complainant shall have been Rs.2,883/- plus D.A..*
- (f) *I am shown the Annexures A, B and C showing basic pension as well as DA payable to the Complainant as per recommendation of 5th pay commission and 6th pay commission and pension paid to the Complainant, without benefit of 5th pay commission and 6th pay commission.*
- (g) *The Respondent Municipal Corporation does not have any dispute over this Annexures A, B and C of the Complainant.*
- (h) *It is true to say that the Complainant is entitled for paying difference in pension Rs.2,22,254/- as per recommendation of 5th pay commission and 6th pay commission during the period from 01.11.1998 to 31.07.2012.*

10 The above said statements made by the Petitioner's witness in his cross-examination supported by Annexures A, B and C, therefore, convinced the Industrial Court that the Respondent was entitled to the difference in pension. The Petitioner has been unable to point out any such circumstance by which these categorical statements made before the Industrial Court could be nullified.

11 In the light of the above, I do not find that the impugned judgment could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.