IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8425 OF 2015

Nanda w/o. Vitthaldas Vaishnav,
Age 51 years, Occ. Service,
r/o. ESIS Hospital, Chikalthana,
Aurangabad,
Tq. and Dist.Aurangabad ..Petitioner

Versus

Union of India,
Through its Under Secretary,
Ministry of Finance,
Department of Education,
New Delhi
and others ..Respondents

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Mr.S.G.Bhalerao, Advocate i/b. Mr.Y.R.Barahate, Advocate for petitioner

Mr.S.B.Deshpande, A.S.G.I for respondent no.1

Mr.S.B.Pulkundwar, AGP for respondent nos.2 to 6

Mr.Alok Sharma, Advocate for respondent no.7

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CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.
DATE : MAY 03, 2016

JUDGMENT (Per Sangitrao S. Patil, J) :

Heard.

2] Rule. Rule, made returnable forthwith. By consent of the parties, heard finally.

3] The admitted position emerging from the pleadings of the parties is that as per the Resolution dated 05.05.2009 issued by the Finance Department, Government of Maharashtra, Mantralaya, Mumbai in view of the recommendations of the Sixth Pay Commission, the Government decided to raise the ceiling on the maximum amount of Retirement Gratuity and Death Gratuity from Rs.3.50 Lakhs to Rs.5.00 Lakhs with effect from 01.01.2006. Thereafter, on 21.08.2009, the Government of Maharashtra, Finance Department, issued another resolution raising the said ceiling from Rs.5.00 Lakhs to Rs.7.00 Lakhs with effect from 01.09.2009. Consequently, the employees who retired between the period from 01.01.2006 to 01.09.2009 were paid the Gratuity upto Rs.5.00 Lakhs only and were deprived of the benefits of enhancement of the said ceiling limit upto Rs.7.00 Lakhs vide Government Resolution dated 21.08.2009.

4] The Association of the College and University Superannuated Teachers filed Writ Petition before the Bombay High Court challenging the cut-off date as mentioned in the Government Resolution dated 21.08.2009 for grant of enhanced gratuity to the employees, which came to be dismissed. The said Association then filed Civil Appeal No.908 of 2013 (arising out of SLP(C) No.3700 of 2012) before the Hon'ble the Supreme Court to challenge the said cut-off date. The Hon'ble the Supreme Court allowed that appeal, declared the cut-off date 01.09.2009 specified in the Government Resolution dated 21.08.2009 as unconstitutional, and held that the employees governed by Government

Resolution dated 05.05.2009 also are entitled to get benefit of the enhanced gratuity i.e. Rs.7.00 Lakhs. The Hon'ble the Supreme Court further directed the Government of Maharashtra to pay the members of the appellant – Association and other similarly situated employees, the amount of difference of gratuity already paid and the enhanced gratuity payable as per the Government Resolution dated 21.08.2009 within three months from the date of receipt/production of the copy of the said order.

5] The learned Counsel for the petitioner submits that the husband of the petitioner who was working as a Lecturer in Dr. Babasaheb Ambedkar Arts and Commerce College, Aurangabad died on 14.01.2008 in harness. The petitioner was paid gratuity of Rs.5.00 Lakhs only in view of the Government Resolution dated 05.05.2009. Since her husband died prior to 01.09.2009, she was not given the gratuity at the enhanced limit as per the Government Resolution dated 21.08.2009 because of the cut-off date mentioned therein. However,since the said cut-off date has been declared unconstitutional by the Hon'ble the Supreme Court, the petitioner was entitled to get the enhanced amount of Rs.90,880/-. The said amount has been paid to her after filing of this Writ Petition. However, in view of the provisions of Rule 129-A of the Maharashtra Civil Services (Pension) Rules, 1982, the petitioner is entitled to get interest on the enhanced amount of gratuity at the rate of 18% per annum from the date of her entitlement to receive the same till the actual date of disbursement of that amount to her. He, therefore, prays that the respondents may be directed to pay the amount of interest to the petitioner.

6] Respondent no.6 opposed the petition by filing reply (page 92). On the basis of the said reply, the learned AGP submits that as per the Resolution dated 04.02.2015 issued by the Finance Department, Government of Maharashtra, no interest is payable on the amount of difference of gratuity payable to the employees or their successors consequent upon the order dated 30.01.2013 passed by the Hon'ble the Supreme Court in Civil Appeal No.908 of 2013 (referred to above), as prescribed in Rule 129-A (5)(b) of the Maharashtra Civil Services (Pension) Rules, 1982. He, therefore, submits that the claim of the petitioner for interest may be rejected and the petition may be dismissed.

7] As seen from the reply filed by respondent no.6, there is no dispute that after filing of this petition, the amount of Rs.90,880/- has been paid to the petitioner towards the difference in the amount of gratuity in view of the order of the Hon'ble the Supreme Court passed on 30.01.2013.

As per the said order, the amount of difference of gratuity was required to be paid within a period of three months from the date of receipt/production of copy of the said order. Respondent no.2 does not seem to have deposited/paid the amount of difference of gratuity to the petitioner within the said period of three months. Naturally, respondent no.2 would be liable to pay interest on the said amount in view of the provisions of Section 129-A of the Maharashtra Civil Services (Pension) Rules, 1982, which read as under :-

> " ***129-A. Interest on delayed payment of gratuity.*** - *(1) Whether the payment of retirement gratuity or death gratuity, as the case may be has been delayed beyond the period of three months from the date of retirement or death, and it is clearly established that the delay in payment was attributable to*

administrative lapse, an interest at the rate applicable to General Provident Fund deposits shall be paid on the amount of gratuity, in respect of the period beyond three months :

Provided that, no interest shall be payable if the delay in payment of such gratuity was attributable to the failure on the part of the Government servant, to comply with the procedure laid down in this Chapter :

Provided further that no interest shall be payable in the case where a provisional gratuity is paid.

(2) Every case of delayed payment of retirement gratuity or death gratuity, as the case may be, shall suo motu, be considered by the concerned Administrative Department, and where the Department is satisfied that the delay in payment of such gratuity was caused on account of administrative lapse, that Department shall sanction payment of interest

after obtaining the admissibility report, in this behalf, from the Accountant General (Accounts and Entitlement), Maharashtra, Mumbai or Nagpur, as the case may be. The approval of the Finance Department for payment of such interest shall not be necessary. "

8] The contention of the learned AGP that in view of the Resolution dated 04.02.2015 (Exhibit R/1) issued by the Government of Maharashtra, Finance Department, stating therein that the the amount of interest is not payable on the amount of difference of gratuity, is sans substance. The said Government Resolution, which is directly in conflict with the provisions of Rule 129-A, referred to above, cannot have an overriding effect so as to nullify the said provisions. Respondent no.2 is bound to pay interest on the delayed payment of the amount of gratuity to the petitioner.

9] In the above circumstances, we direct respondent nos.2 and 3 to calculate the amount of interest on the amount of difference of gratuity i.e. Rs.90,880/-, in view of the provisions of Rule 129-A, after three months from the passing of the order on 30.01.2013 (i.e. from 30.04.2013 onwards) till the date on which it was paid/deposited for being paid to the petitioner. The interest so calculated, shall be disbursed to the petitioner as expeditiously as possible and in any case, within a period of three months from today.

10] The Writ Petition is partly allowed. Rule is made absolute in the above terms. Writ Petition stands disposed of. No costs.

[SANGITRAO S. PATIL, J.] **[S.S. SHINDE, J.]**

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