

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

39 WRIT PETITION NO. 11313 OF 2015

GAUTAM DHONDIRAM GAIKWAD AND OTHERS
VERSUS

THE STATE OF MAHARASHTRA AND OTHERS
WITH

WRIT PETITION NO. 11278 OF 2015

SUDHIR S/O JEEVANRAO BABULGAONKAR
VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioners : Mr. Deshpande Ajay S.

AGP for Respondents State: Mr. V. H. Dighe

Advocate for Respondents 2&3 : Mr. Rejendra S. Deshmukh

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 18th August, 2016

ORDER:

1. Petitioner in Writ Petition No. 11278/2015 seeks directions against the respondents to extend pension and pensionery benefits as per salary certificate issued by respondent No.2 on 07.02.2015. The petitioners in Writ petition No. 11313/2015 seek directions against the respondents to pay pension and pensionery benefits as per the Pay Bands and Grade Pays prescribed in Schedule-A to the Circular dated 08.03.2013 issued by respondent No.1 i.e. on the basis of last pay drawn by the petitioner.

2. Mr. Deshpande, learned counsel for the petitioners, submits that vide Government Resolution

dated 22nd June, 2009, the respondent State has evolved a policy that pension has to be determined on the basis of 10 months average salary or the last months salary, whichever is beneficial to the employee. The Government Circular dated 08.03.2013 is also issued by Respondent No.1 to the same effect.

3. Mr. Deshmukh, learned counsel for respondent Nos. 2 and 3 supports the contention of the petitioners and states that even affidavit has been filed by the Respondent Nos. 2 and 3 to that effect.

4. Mr. Dighe, learned AGP submits that decision in Writ Petition No.429/2015 is qua the petitioners therein and cannot be extended to the petitioners of the present writ petitions.

5. We have considered the submissions.

6. By judgment dated 13.08.2015 in Writ petition No. 429/2015, we have laid down a general proposition that Assistant Superintendent of Civil Judge, Senior Division has to be paid the same salary as has been paid to the Assistant Superintendent of Civil Judge, Junior Division. The said order nonetheless lays down general proposition and the same has to be considered by the respondents.

7. Mr. Deshmukh, learned counsel for respondent Nos.2 and 3 submits that in respect of five petitioners, benefit is already extended and in respect of remaining petitioners, proposals have been received back for compliance of the Registrar. The Registrar shall comply with the deficiencies as expeditiously as possible and send it to Respondent No.4 expeditiously.

8. It is made clear that the respondents shall consider the case of the petitioners in accordance with the Government Resolution dated 22nd June, 2009 for the pensionary benefits.

9. The petitioner of writ petition No.11278/2015, is a retired employee and even if, according to respondents, some excess payment has been made, the same is not recoverable as laid down in the case of **Rafiq Manish (White Washes), reported in 2015 (4) SCC 334.**

10. Writ petitions are accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC