

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10074 OF 2015

Shri Gopalkrishna Tukaram Dhopade ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

Mr. N. V. Bandiwadekar, for the Petitioner.

Mr. C. P. Yadav, AGP for the Respondent-State.

CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.

DATE : 11 July 2017

JUDGMENT (Per Riyaz I. Chagla, J.) :

1. Rule. Rule made returnable forthwith. Heard by consent of parties.

2. The Petitioner by the present Petition is claiming refund of the amount of Rs. 1,56,445/- payable as on 24th September 2012 with further interest at 12 percent per annum, which amounts have been recovered by the Respondent from the Petitioner and which amounts were payable as and by way of stagnation increments.

3. The Petitioner was appointed as full time Demonstrator for Chemistry in the Respondent No. 4 College and thereafter, as Lecturer in 1975. On 1st October 1976 the Petitioner was wrongly transferred to Junior College and hence the Petitioner was constrained to file Writ Petition No. 779 of 1993 which was allowed on 2nd April 1993 and the Petitioner was restored and continued as Lecturer in senior College with effect from 1st July 1975. The Petitioner had been sanctioned stagnation increment under the Government Resolution issued by Respondent No.1 on 25th January 1999. On 10th March 2008, Respondent No. 1 issued a letter informing the Director of Education that the scheme of stagnation increments under

Government Resolution was not applicable to teaching employees of the Universities and affiliated Colleges. Respondent No.5 issued letters to the Petitioner on 21st May 2008 directing him to refund the amount of stagnation increment paid to him. The Petitioner protested to the Respondent No. 5 against recovery of the stagnation increments from the Petitioner. However, the Respondent No. 5 started deducting the amounts from the monthly salary of the Petitioner. One of the Teachers filed Writ Petition No. 2326 of 2008 before the Nagpur Bench of this Court to Challenge the action of recovery of the stagnation increments. The Court on 12 June 2008 directed the parties to maintain *status quo*. The Court had thereafter recorded the statement of the Government in Writ Petition No. 2326 of 2008 that the proposal for granting stagnation increments to the teachers is pending with Finance Department and that necessary action in this regard will be taken after consultation with Finance Department. This Court, after recording the statement, disposed of the Writ Petition. The Petitioner based on the said order of the Court made

representation to Respondent No. 5 requesting it to stop all recovery and to pay the amount already recovered. The Petitioner retired from the service of Respondent No. 5. The Government recovered the amount of stagnation increments paid to the Teachers from their salaries while in service and/or from the retirement benefits after their retirement. This was also done in the present case of the Petitioner.

4. In two Writ Petitions filed before Aurangabad Bench of this Court i.e. Writ Petition No. 9054 of 2010 and 2868 of 2011, the Division Bench of this Court by order dated 22nd August, 2011 allowed the Writ Petitions and set aside the impugned communication of the Government dated 10th March 2008 and 18th March 2010 under which the Government had recovered the stagnation increments paid to the Teachers. The Government was by the said order directed to return the stagnation increment recovered from the Teachers within 3 months alongwith interest at 12% p.a.. The Petitioner made a representation to Respondent No. 5 for refund of the stagnation

increments. Respondent No. 5 in turn sent a letter to Respondent No. 2 to take action for refund of the said amount recovered from the Petitioner. The Petitioner made further representations, but without any response. Respondent No. 4 informed the Petitioner on 19 December 2014 that an amount of Rs. 50,000/- had already been released. The Petitioner has not received any such amount, nor has the amount been credited in his bank account. The Petitioner not having been refunded the amount as and by way of stagnation increments which was in breach of the order passed by the Aurangabad Bench, filed the present Petition.

5. Shri. Bandiwadekar, the learned Advocate for the Petitioner has submitted that the present Petition is squarely covered by the order passed by this Bench on 20 June 2017 which followed the order and judgment dated 22 August 2011 passed by the Aurangabad Bench of this Court (Supra), whereby the stagnation increments wrongly recovered were ordered to be refunded to the Petitioner therein within a period of three

months from the date of the order along with interest at 12 percent per annum. Shri. Bandiwadekar has submitted that the same order is required to be passed in the present Petition, as recovery of the amount from the Petitioner on account of stagnation increment is bad in law and should be quashed and set aside as had been done by the order dated 28th June 2017.

7. We are of the considered view that the present Petition is covered by order dated 28th June 2017 of this Bench following the order and judgment of the Aurangabad Bench of this Court, as the identical issue has been decided therein. We are of the considered view that the recovery of the amounts from the Petitioner on account of stagnation increment is bad in law. We accordingly, allow the present Petition by passing the following order.

ORDER

- (a) It is held and declared that the recovery of the amount paid to the Petitioner on account of

stagnation increment is bad in law and therefore, quashed and set aside.

(b) The amount recovered from the pension of the Petitioner is directed to be refunded to the Petitioner within a period of three months from today alongwith interest at the rate of 12% per annum.

[RIYAZ I. CHAGLA J.]

[B.R. GAVAI, J.]