

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

957 WRIT PETITION NO. 6996 OF 2013

SIMINTA VENKATRAO DHAKADE
VERSUS
CHIEF EXECUTIVE OFFICER, Z.P. LATUR AND ANR

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Advocate for Petitioner : Mr. N.B. Khandare
AGP for Respondent 2 : Mr. P.G. Borade
Advocate for Respondent 1 : Mr. P.R. Tandale

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**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

DATED : January 12, 2018.

ORDER :

. The petition is filed for giving direction to the respondent, the employer to fix the pay of petitioner after taking in to consideration the recommendations of 5th Pay and 6th Pay Commissions' Reports and that needs to be done so that the petitioner gets the pensionary benefits. The relief of giving annual increment is also claimed by the petitioner. Both the sides are heard.

2) The petitioner was working as Mid-wife Auxilary Nurse, on Class III post with respondent Zilla Parishad. The departmental inquiry was started against her due to misconduct and she was terminated on 8.5.2009. In the appeal filed by the

petitioner, the order of termination came to be set aside by the appellate authority and following order came to be passed :-

"The appellant was to be reinstated and her pay was lowered to the starting pay and starting pay was given to her."

3) The learned counsel for petitioner submitted that though there is order of aforesaid nature, the petitioner was entitled to get the benefit of 5th Pay and 6th Pay Commissions' Report and pay ought to have been fixed accordingly. The learned counsel for Zilla Parishad drew the attention of this Court to the circular prepared by the Government for implementation of the 6th Pay Commission's Report. There cannot be dispute on the procedure which is required to be followed while giving benefits.

4) When employee is reinstated and the basic pay available to the post is to give to the employee initially, the basic pay on the date of her initial appointment needs to be considered. After considering that, the same basic pay scale needs to be considered at the time of implementing the Pay Commission's Report.

5) In view of penalty order, not a single increment can be given to the employee and her basic pay scale which is available in the new pay scale needs to be given to the employee. The same procedure needs to be adopted while giving pay scale as per the second report of Pay Commission. Thus, the employee will get the basic pay scale as per the 6th Pay Commission's Report and she will not be getting any increment in basic pay and accordingly, the pension will have to be fixed.

6) The record and submissions show that order was made in respect of suspension period and it is held that she was entitled to get 50% of the pay during the suspension period. Thus, the order is already there in respect of the period for which she was not on duty. Though the increment will not be available, the service rendered by her will have to be considered at the time of fixing of pension. Accordingly, the pension needs to be fixed. In the aforesaid terms, the petition is allowed and disposed of. It is to be done within three months from today.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]]

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