

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

44 WRIT PETITION NO. 14153 OF 2017

NOORJA BEGUM KHURSHID HUSSAIN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. K.J. Ghute Patil
AGP for Respondent Nos 1 to 5 : Mrs. A.V. Gondhalekar
Advocate for respondent no. 6 : Mr. S.G.Rudrawar

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CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.

DATE : JUNE 19, 2018

O R D E R :

The petitioner assails the order of respondent nos. 5 and 6 seeking recovery of the amount paid excess and directing absorption of sanction of pension amount.

2. Mr. Ghute Patil, learned counsel for the petitioner submits that the petitioner has actually worked upto 30th November, 2014. As the petitioner worked till 30.11.2014 the petitioner is entitled for the relief of salary for the said period and moreover her services are

required to be counted upto 30th November, 2014.

3. Mr. Rudrawar, learned counsel for respondent no. 6 submits that in fact, the petitioner ought to have retired by attaining the age of superannuation on 31st October, 2011. In view of that the petitioner is not entitled for the salary after the said date as the petitioner has erroneously worked even after the date of superannuation.

4. We have considered the submissions canvassed by the learned counsel of respective parties. It is not in dispute that the petitioner had actually rendered her services up to 30th November, 2014. The contention is that the petitioner attained the age of superannuation on 31st October, 2011, however, the respondent allowed petitioner to work upto 30th November, 2014.

5. As the petitioner has actually worked for the said period, it would be in-equitable on the part of the respondent to recover the salary for the period of 1.11.2011 to 30.11.2014. The salary is paid to the

petitioner for the period the petitioner had actually worked on the said post, may be by mistake.

6. Considering the above, we hold that the petitioner would be entitled for the salary for the period of 1.11.2011 to 30.11.2014. However, as the petitioner attained the age of superannuation on 31.10.2011, for all pensionary benefits the service of the petitioner shall be counted till 31.10.2011 and the pensionary benefits be paid to the petitioner accordingly.

7. With these observations, the writ petition is allowed. The respondent shall release the withheld amount of the petitioner within a period of two months.

[SUNIL K.KOTWAL, J.] [S.V.GANGAPURWALA, J.]

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