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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10202 OF 2015

Karn Dhondiba Babare & ors.	.. Petitioners
Vs.	
State of Maharashtra & ors.	.. Respondents

WITH
WRIT PETITION NO. 3676 OF 2017

Gaikwad Shankar Tukaram & ors.	.. Petitioners
Vs.	
State of Maharashtra & ors.	.. Respondents

WITH
WRIT PETITION NO. 4271 OF 2017

Yeldare Raosaheb Pargonda & ors.	.. Petitioners
Vs.	
State of Maharashtra & ors.	.. Respondents

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Shri V.S. Deokar, Advocate for the Petitioners.
Mrs. Meenal S. Deshmukh, Advocate for the Petitioners in
WP/3676/17 & WP/4271/17.
Shri Vijay Killedar, Advocate for Respondent No.3 in all Writ
Petitions.
Mrs. M.P. Thakur, AGP for State – Respondent No.1 in all Writ
Petitions.
Shri Dilip Bodake, Advocate for Respondent No. 2 in
WP/10202/15.
Shri D.G. Dhanure, Advocate for Respondent No.2 in
WP/3676/17 and 4271/17.

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CORAM : R.M. SAVANT, &
M.S. KARNIK, JJ.
DATE : 25th SEPTEMBER , 2018

P.C. :

The above Writ Petitions have been filed for a direction that the benefits of the 6th Pay Commission be granted to the Petitioners. A further direction is sought that the difference in arrears of pension on account of the applicability of the 6th Pay Commission be directed to be paid with interest to the Petitioners.

2. The Petitioners are the retired employees of the Solapur Municipal Transport Undertaking. They were at the relevant time working as Ticket Assessment, Junior Clerks, Conductor, Driver and Time Keeper. The benefits of the 6th Pay Commission have been sought by the Petitioners on the ground that the said benefits have already been extended to the employees of the Solapur Municipal Corporation. Insofar as the benefits of the 6th Pay Commission to the employees of the Transport Undertaking is concerned, a decision was taken by the Municipal Corporation to extend the said benefits to the employees of the Municipal Transport Undertaking. However,

the said decision was subject to the approval of the State Government. The State Government has issued a Resolution dated 10th August, 2009, by which the State Government in its Urban Development Department has taken a policy decision as regards the applicability of the benefits of the 6th Pay Commission to the employees of the Municipal Corporations. The State Government by the said Resolution has issued certain directions which are contained in the said Resolution by way of various clauses which appear in the said Resolution. The State Government has directed that care should be taken while extending the benefits of the 6th Pay Commission to see to it that sufficient funds are available for development work. It is further directed that the Corporation should be in a position to pay back the loans which it has taken along with interest. It is further directed that the expenditure on account of salary should not exceed 35% of the total expenditure of the Municipal Corporation. It is in the teeth of the said Government Resolution dated 10th August, 2009 that the Transport Undertaking once again considered the issue of extending the benefits of the 6th

Pay Commission to its employees. The Transport Undertaking vide a Circular dated 7/11/2015 had decided to extend the benefits of the 6th Pay Commission from 1/9/2015 though the salaries would be notionally computed from 1/1/2006 i.e. date from which 6th Pay Commission is made applicable. The Petitioners aggrieved by the said decision of the actual payments being made from September, 2015 have filed the instant Petition though the Circular dated 7/11/2015 is not challenged in the above Writ Petitions.

3. The Learned Counsel for the Petitioners Mr. Deokar sought to place reliance on the various documents which were inter-alia the settlement entered into between the Municipal Corporation and the Employees Union of the Municipal Corporation in the course of collective bargaining which is at Exhibit 'B' to the Petitions. The said settlement is sought to be relied upon in support of the contention that the employees of the Transport Undertaking are required to be treated at par with the employees of the Municipal Corporation in the matter of the

applicability of the 6th Pay Commission. Learned Counsel also sought to place reliance on the document relating to the Municipal School Board wherein the benefits of the 6th Pay Commission were granted to the employees of the Municipal School Board. The aforesaid documents were sought to be relied upon to contend that the other Undertakings or Boards of the Solapur Municipal Corporation under the Maharashtra Municipal Corporation Act have been extended the benefits of the 6th Pay Commission from an anterior point of time.

4. On behalf of the Respondents affidavits have been filed by the Solapur Municipal Corporation as well as by the Transport Undertakings. In the affidavit filed on behalf of the Solapur Municipal Corporation by One Pradeep Eknath Sathe, Assistant Municipal Commissioner, the financial position of the Municipal Corporation has been mentioned. It has been mentioned in the said Affidavit that though the benefits have been extended to the employees of the Solapur Municipal Corporation, however as on date the arrears have not been paid

due to the deficit budget of the Corporation. It is further stated in the Affidavit that in the budget for the year 2016-2017 the liability of the Transport Undertaking for the period from 1/4/2015 to 31/12/2015 is Rs.1,58,59,241/-. It is further stated that after applying the 6th Pay Commission there will be an additional liability of Rs.12,50,000/- only towards the monthly salary. It is further stated that as on 31/12/2015 there are 839 employees in total working with the Transport Undertaking. It is further stated that as on 31/7/2016 the Transport Undertaking has a liability to the tune of Rs.3,69,84,588/- towards the arrears of Retirement Benefits to its employees. It is therefore stated that the Transport Undertaking is running in a loss and therefore it is unable to extend the benefits of the 6th Pay Commission from an anterior point of time.

5. In the affidavit filed on behalf of the Transport Undertaking it has been stated that 84 new Buses which were procured by the Transport Undertaking are lying idle as they have not found to be roadworthy by the ARAI. However the

Transport Undertaking has to pay the employees of the said 84 Buses. Hence the Affidavits filed on behalf of the Transport Undertaking as well as the Municipal Corporation reflect upon the financial health of the Transport Undertaking which to say the least is not good. It is having regard to the aforesaid facts that the Transport Undertaking has taken a conscious decision which is now comprised in the Circular dated 7/11/2015 to notionally compute the benefits under 6th Pay Commission from 1/1/2006 but to actual giving the benefits from September, 2015. The said decision has been arrived at in consultation with the Union of the Municipal Employees. It is not in dispute that the Petitioners have been given the said benefits which are reflected in the pension which the Petitioners are receiving. However, as indicated above the Petitioners are seeking the said benefits from an anterior point of time.

6. Having regard to the facts of the case, it can be said that Solapur Municipal Corporation, the State Government as well as the Transport Undertaking have applied their mind and

it is on such application of mind it is ultimately decided to pay the benefits of the 6th Pay Commission from September, 2015 though the salary/wages are to be notionally calculated from 1/1/2006. We do not find any illegality in the said decision of the Transport Undertaking for us to exercise our writ jurisdiction under Article 226 of the Constitution of India.

7. The above Writ Petitions are accordingly dismissed.

[M.S. KARNIK, J]

[R.M. SAVANT, J]