

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5968 OF 2013

Malharrao T. Kukdolkar
since deceased through heirs
A) Smt. Sushama M. Kukdolkar & Ors. ...Petitioners
Versus
The State of Maharashtra & Ors. ...Respondents

Mr. Sanjay Kshirsagar for Petitioners.
Mr. C. P. Yadav – AGP for Respondents – State.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 27 JUNE 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 11th October 2010 in Original Application No. 357 of 2010 made by the Maharashtra Administrative

Tribunal (MAT) to the extent, the MAT has held that the petitioner is not entitled to the subsistence allowance as per the Fifth Pay Commission Scales for the period 21st September 1992 to 28th February 1999.

4] Mr. Kshirsagar, the learned counsel for the petitioner makes it clear that except this portion of the impugned judgment and order, the petitioner has no grievance as regards the remaining portion.

5] Mr. Kshirsagar, learned counsel for the petitioner submits that the MAT, has in fact recorded findings in favour of the petitioner on most of the issues. However, the MAT, without assigning reasons whatsoever, has denied the petitioner subsistence allowance as per Fifth Pay Commission Scales for the period 21st September 1992 to 28th February 1999. Mr. Kshirsagar submits that such a conclusion which is backed by no reasons whatsoever cannot be permitted to stand.

6] Mr. Yadav, the learned AGP submits that by order dated 12th March 2008, the competent authority had made

it clear that the period of suspension was to be treated as it is and perhaps to be taken into consideration only for pensionable pay. He submits that admittedly, the order dated 12th March 2008 made by the competent authority was never challenged by the petitioner and therefore the same has attained finality. He submits that on the basis of the order dated 12th March 2008 read with note - 10 to the Rule 7 of the Maharashtra Civil Services (Revision Pay) Rules, 1998, the MAT, was entirely justified in denying the petitioner subsistence allowance as per the Fifth Pay Commission Scales. He submits that there is no error in the impugned judgment and order so as to warrant any interference.

7] From the perusal of the impugned judgment and order, we find that there is neither any discussion nor are there any reasons for the conclusion recorded by the MAT that the petitioner is not entitled for subsistence allowance as per Fifth Pay Commission Scales for the period 21st September 1992 to 28th February 1999. On this short ground, without ourselves examining the rival contentions, we propose to set aside that portion of the impugned judgment and order

and thereafter remand the matter to the MAT for adjudication on the said limited issue. Such a course of action will not only enable the rival parties to place on record their contentions but further, if the decision is maintained or reversed with reasons, then, even this Court, will have the benefit of such reasoning, in the event of any challenge.

8] Therefore without ourselves adjudicating upon the rival contentions, we set aside the portion of the impugned order to the extent it holds that the petitioner is not entitled for subsistence allowance as per Fifth Pay Commission Scales for the period 21st September 1992 and 28th February 1999 and remand the matter to the MAT for fresh adjudication, limited to this issue alone.

9] We make it clear that all contentions of all parties on the aforesaid limited issue are kept open for adjudication by the MAT. Therefore, we may not be taken as having expressed any opinion on this limited issue, one way or the other. We further make it clear that though the original petitioner Shri. Malharrao T. Kudolkar has expired, this

petition was permitted to be pursued by his legal representatives since, the issue involved was one of monetary benefits. Therefore, reference to "*the petitioner*" in this judgment and order be construed contextually.

10] The parties to appear before the MAT on 16th July 2018 at 11.00 a.m. and produce authenticated copy of this order.

11] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

12] All concerned to act on basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA