

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

41 WRIT PETITION NO.15204 OF 2019

TRYAMBAK BALIRAM SARKATE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Barahate Yuwaraj R.
AGP for Respondents: Mr. Y. G. Gujrathi
Advocate for respondent Nos. 3 to 8: Mr. Ghute patil
...

CORAM : **S. V. GANGAPURWALA & AVINASH G. GHAROTE, JJ.**

Date: December 16th, 2019

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PER COURT :-

1 We have heard learned counsel for the petitioner and respondents. Learned counsel for the petitioner and respondents do not dispute that the petitioner is similarly situated as the petitioners in Writ petition No.4616/2016 and Writ petition No.4624 of 2016 decided under the Judgment dated 22.12.2017.

2 In the light of that and for the reasons recorded in the said Judgment, we follow the same course .

3. The step taken by the respondents for re-fixation of the pay scale of the petitioner after about 13 years or more without hearing petitioner and thereafter recovery and actually deducting it from the gratuity cannot be upheld. As per the procedure laid down in Rule 134(a) of the Maharashtra Civil Service (Pension)

Rules, 1982, opportunity ought to have been given to the petitioner herein and therefore, now we would be inclined to give an opportunity to the respondents to re-fix the pay of the petitioner after giving an opportunity. This is a fit case where the writ jurisdiction of this Court under Article 226 and 227 deserves to be invoked. For the aforesaid reasons writ petition deserves to be allowed and it is accordingly allowed.

4 The respondents are directed to repay the amount to the petitioner that has been recovered within a period of six months. The respondents are at liberty to re-fix the pay of the petitioner after giving opportunity to the petitioner.

5 Writ petition is disposed of. No costs.

(AVINASH G. GHAROTE, J)

(S. V. GANGAPURWALA, J)