

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO. 9 OF 2019****IN****PUBLIC INTEREST LITIGATION NO. 188 OF 2015**

The State of Maharashtra,
Through, Principal Secretary,
Law and Judiciary Department.

.....Applicant

IN THE MATTER BETWEEN-

Vihar Durve

....Petitioner.

Vs.

The State of Maharashtra & Ors.

....Respondents.

WITH**CIVIL APPLICATION NO. 10 OF 2019****IN****PUBLIC INTEREST LITIGATION NO. 188 OF 2015**

The Maharashtra Judges Association,
Through its President-
Shri. Dilip S. Ghumare

.....Applicant

IN THE MATTER BETWEEN-

Vihar Durve

....Petitioner.

Vs.

The State of Maharashtra & Ors.

....Respondents.

Mr. A.B. Vagyani, Government Pleader a/w Mr Y.S. Khochare, APP for the Applicant-State in CAI No. 9 of 2019.

Mr. Rahul Shivaji Kadam for the Applicant in CAI No. 10 of 2019.

Mr. Sanjay Udeshi a/w Mr. Netaji Gawade I/by M/s. Sanjay Udeshi & Co. for the Respondent No.2.

**CORAM : A. S. OKA, AND
A. S. GADKARI, JJ.
DATE : 5th FEBRUARY, 2019.**

P.C.:-

Heard Mr. Vagyani, the learned Government Pleader, the learned counsel appearing for the Maharashtra Judges Association, the third Respondent in PIL and the learned counsel appearing for the second Respondent in PIL (High Court Administration).

2 As per the Administrative Order dated 18th January, 2019 both the Applications have been assigned by the Hon'ble the Chief Justice to this Bench.

3 Civil Application No. 10 of 2019 has been filed by the Maharashtra Judges Association, which is the third Respondent in the disposed of PIL. The learned Government Pleader, on instructions, states that the General Provident Fund Account (for short, "*GPF Account*") opened by the Judicial Officers appointed before 1st November, 2015 have not been closed. On instructions, he further states that the State Government has no objection for granting prayer clause (C) of Civil Application No. 10 of 2019. We accept the statements.

4 In view of these statements of the learned Government

Pleader made on instructions, prayer clause (C) of Civil Application No. 10 of 2019 deserves to be granted.

5 Now, coming to the Civil Application No. 9 of 2019 filed by the State Government, the prayer (a) of the Application reads thus-

“(a) By passing an appropriate order this Hon'ble Court may be pleased to recall and modify clause 18(iii) of the Judgment & Order dated 11th August, 2017 and order dated 21st August, 2018, to the extent of permitting State Government to transfer the amount contributed by the Judicial Officers in Pension Tier-I Account alongwith the interest/return accrued thereon to the General Provident Fund (GPF) through the office of the Accountant General.”

6 Modification is sought of Clauses (ii) and (iii) of the operative part of the Order dated 21st August, 2018 in Civil Application No. 42 of 2018 which reads thus-

“(ii) We direct the State Government to transfer the amount deducted from the salary/pay of the Judicial Officers appointed after 1st November, 2015 as their contribution to the New Pension Scheme alongwith return/interest accrued thereon to the concerned Judicial Officers within the maximum period of two months from the date on which this order is uploaded;

(iii) We make it clear that as there is already an inordinate delay in making refund of the amount deducted from the salary of the Judicial Officers, no further extension of time will be granted.”

7 It is not in dispute that the directions contained in clauses (ii) and (iii) have not been complied with by the State Government and it is an admitted position that, not a single farthing has been paid by the State Government to any of the Judicial Officers in the State. We are surprised to note that though the Order dated 21st August, 2018 was passed on the Civil Application filed by the State Government and though time to comply with the said Order expired on 20th October, 2018, till today, the State Government has not even applied for the extension of time. In fact, clause (iii) directs that the extension of time cannot be granted.

8 The present Civil Application No. 9 of 2019 has been taken out on 2nd January, 2019, practically 2 and ½ months after the expiry of the period fixed under clause (ii). We must also note here that neither the State Government nor the third Respondent-Maharashtra State Judges Association have challenged the Order dated 21st August, 2018 and it has become final.

9 The learned Government Pleader relied upon the minutes of meeting dated 18th June, 2018. Today, no reliance can be placed on the said minutes as the Order of which the modification is sought is of 21st August, 2018.

10 The learned counsel appearing for the third Respondent has placed on record a print out of e-mail dated 5th February, 2019 sent to him by a Member of the third Respondent. It is taken on record and marked as “L-1” for identification. It records that the third Respondent has no objection for granting prayer clause (a) of the aforesaid Civil Application No. 9 of 2019.

11 However, we find that the consent of all the Judicial Officers, who are the beneficiaries of the Orders dated 11th August, 2017 and 21st August, 2018 is not placed on record. We may note here that the Judicial Officers were entitled to the refund under the Order dated 11th August, 2017 of the excess amount illegally recovered from their salary by the State Government. However, as stated above, not a single farthing is repaid by the State Government to any of the Judicial Officers till today.

12 We are not sure whether all the Judicial Officers who are the beneficiaries of the Order dated 21st August, 2018 want the modification which is consented to by the third Respondent. Therefore, those Judicial Officers who want the refund of the entire amount with interest will need protection.

13 We may also note here that the third Respondent

Association was heard before passing the Order dated 21st August, 2018 and at no stage, the third Respondent raised a contention that the entire amount of refund should be transferred to GPF Accounts of the Judicial Officers.

14 Hence, we pass the following Order-

- a) We accept the statements made by the learned Government Pleader which are recorded in paragraph 3 above as the Statements of the State Government;
- b) Prayer Clause (C) of the Civil Application No. 10 of 2019 is granted. The Judicial Officers, who have already applied for opening of GPF Accounts, shall be entitled to open GPF Accounts and accordingly, the State Government shall ensure that the GPF Accounts are permitted to be opened. Even those Judicial Officers who hereinafter apply for opening of the GPF Accounts will be entitled to open the Accounts. The State Government shall be bound by these directions;

- c) We make it clear that in view of the statement made across the bar, neither the office of the Accountant General nor any of the Departments of the State Government will be entitled to raise any technical objection to the Applications made by the Judicial Officers for opening of the GPF Accounts;
- d) In view of the consent of the third Respondent, prayer clause (a) of Civil Application No. 9 of 2019, is granted subject to following modifications:-
 - (i) The State Government, through the Registry of this Court will invite options from all the Judicial Officers, who are entitled to the benefit of the refund under the Order dated 21st August, 2018 about receiving the entire amount with interest directly or about transfer of the amount with interest to their respective GPF Accounts. The Judicial Officers be granted time of one month to submit their options from the date on which the options are

invited;

- (ii) Those Judicial Officers who opt for transfer of the amount payable under Order dated 21st August, 2018 to their respective GPF Accounts, the entire amount with interest shall be transferred to their respective GPF Accounts within a period of one month from the date on which the respective Judicial Officers submit their consent;
- (iii) In case of those Judicial Officers who opt for directly receiving the entire amount with interest, the State Government shall credit the entire amount with interest to the respective salary Accounts within a period of one month from the respective dates of submitting the option;
- (iv) In case of the Judicial Officers who do not exercise any of the two options within the stipulated time, the entire amount of refund with interest shall be transferred to their

respective GPF Accounts within a period of one month from the date on which the time to give option expires. Those who do not have GPF Accounts will be entitled to refund as per Clause (iii) above.

- e) We make it clear that the refund was ordered under the Order dated 11th August, 2017 of the amounts which were illegally deducted from the salary of the Judicial Officers in breach of Orders of the Apex Court. We, therefore, make it very clear that the State Government is under an obligation to comply with this Order within the period fixed under this Order and under no circumstances, further extension will be granted.
- f) Both the Applications are disposed of in the above terms.

(A.S. GADKARI, J.)

(A.S. OKA, J.)