IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7379 OF 2020

Smt. Pramila Manohar Pawar
Age 57 years, Occu. Service
R/o Flat No. 9, Rajani Hos. Soc.
Kanchanwadi, Aurangabad ... Petitioner

VERSUS

1) The State of Maharashtra
(Copy to be served upon Govt.
Pleader, High Court for
Secretary Rural Development
And Water Conservation Department
Mantralaya, Mumbai-32)

2) The Chief Executive Officer,
Zilla Parishad, Aurangabad

3) District Health Officer,
Zilla Parishad, Aurangabad

4) Medical Officer,
P.H.C. Jikthan,
Tq. Gangapur, Dist. Aurangabad ... Respondents

...

Mr. D.R. Irale Patil, Advocate for petitioner
Mr. S.R. Yadav, AGP for respondent no. 1
Mr. D.B. Pawar, Advocate for respondent nos. 2 to 4

...

CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.

DATE : 15TH NOVEMBER 2021

ORAL JUDGMENT (PER – RAVINDRA V. GHUGE, J.) :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner, who is due to retire on 31-12-2021, has preferred this petition setting out her prayers at clauses (B) and (C), which read as under:

> “(B) The Hon’ble Court may be pleased to quash and set aside the impugned revised pay fixation order dated 30.11.2013 proposing recovery of Rs. 4,45,156/- made by respondent no. 4, Medical Officer, P.H.C. Jikthan Tq. Gangapur and the impugned orders dated 27.09.2013 passed by respondent no. 3 and order dated 09.01.2014 passed by respondent no. 2 and provide the benefit of impugned order passed in identical matter W.P. 7987/2017 and oblige.
>
> C) Pending hearing & final disposal of this writ petition the Hon’ble court may pleased to pass prohibitory order and restrain the Respondents to act upon the revised pay fixation and recovery order dt. 30.11.2013 passed by M.O. P.H.C. Jikthan Tal. Gangapur ”

3. By an order dated 28-10-2020, this Court issued notice to the respondents and granted interim relief to the petitioner, directing that the recovery should not be made pursuant to the impugned revised pay fixation order.

4. Having considered the strenuous submissions of the learned counsel for the respective sides, we have gone through the

petition paperbook with their assistance and the specific objection of the respondent that, under Rule 14 (1) (a) and (c) of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 ("**1964 Rules**"), a statutory remedy is available to the petitioner, so as to assail the cause of action, which has arisen vide the impugned order dated 26-11-2013.

5. Before we proceed to deal with the cause of action brought before us, we deem it appropriate to deal with the primary contention of the respondent that this writ petition would not be maintainable.

6. Rule 14(1)(a) and (c) of the 1964 Rules read as under:

> "***14. Appeals against other orders***:-
>
> (1) A Parishad servant may appeal against an order which-
>
> (a) denies or varies to his disadvantage, his pay, allowances, pension or other conditions of service as regulated by any rules; or
>
> ...
>
> (c) interprets to his disadvantage the provision of any such rule; or ..."

7. We are aware of the law laid down by the Hon'ble Apex Court in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai Vs. Tuticorin Education Society, 2019 SCC Online SC 1292*** (Civil Appeal No. 7764/2019, decided on 30.10.2019) and ***Genpact India Private Limited Vs. Deputy Commissioner of Income Tax and***

others, (2019) 419 ITR 440, concluding that a statutory remedy should be availed of by the litigant and even if the petition has been filed in this Court or has been admitted, he should be relegated to the remedy that is available in law and the writ petition should not be entertained. However, in the instant case, though the earlier order dated 26-11-2013, correcting the pay fixation of the petitioner was passed and the excess payment made to her on the basis of wrong pay fixation is ordered to be recovered in equal monthly instalments from her salary, the said order has not been implemented for seven years.

8. The contention of the petitioner is that as the pension papers have to be prepared well in advance keeping in view her superannuation on 31-12-2021, the respondent – employer called upon her to deposit an amount of Rs.4,45,156/- in 2020, so as to clear the pension papers. In view of the said oral direction, the petitioner has approached this Court on 28-09-2020 putting forth the said grievance.

9. As such, if this Court, after granting interim relief and more specifically when the petitioner is to superannuate on 31-12-2021, which is around 45 days, directs the petitioner to avail the statutory remedy, the rigours of the litigation to be suffered by the petitioner would be aggravated and there is a possibility that her appeal before the Chief Executive Officer may not be decided before her superannuation. Rather than causing further hardships to her in these peculiar facts of

the case, we find it appropriate to exercise our extra-ordinary jurisdiction.

10. While coming to the conclusion of entertaining this petition, we have perused the Government Resolution dated 26-02-2019, marked as “X-1” for identification, wherein the State Government has ordered that such recovery of excess payment shall not be made as against retired employees who were in the class-III and class-IV categories, or who are at the stroke of retirement, or such payment has been made more than five years prior to the initiation of such recovery proceedings. We find in the present case that though the notice for correcting pay fixation and for recovering the excess amount was issued on 26-11-2013, which was followed by another notice dated 09-01-2014, no such recovery was made against the petitioner.

11. There is no dispute that the petitioner joined employment with the respondent zilla parishad as an Auxiliary Nurse Midwife on 27-03-1987 and by an erroneous pay fixation in accordance with the fifth pay commission recommendations, she was paid excess amount for the period 01-01-1996 till 31-12-2005. Sixth pay commission recommendations were made applicable for the period 01-01-2006 till 2016, which is not an issue before us. The issue pertains to the wrongful payment under the fifth pay commission and, as such, the recovery was sought after seven years in 2013 and was not implemented for further seven years till 2020. No undertaking was

taken from the petitioner which would bind her to repay the excess amount paid to her under the fifth pay commission.

12. In the facts and circumstances as recorded above, we find that the petitioner’s case is squarely covered by the law laid by the Hon’ble Apex Court in the cases of ***Syed Abdul Qadir Vs. State of Bihar, (2009) 3 SCC 475***, ***The State of Punjab & others Vs. Rafiq Masih (White Washer), (2015) 4 SCC 334*** and ***High Court of Punjab and Haryana and others Vs. Jagdev Singh, (2016) 14 SCC 267.*** Since, there is no undertaking tendered by the petitioner at the time of commencement of the pay scale under the fifth pay commission, the law laid down in **Jagdev Singh** (supra) would exclude the case of the petitioner.

13. The revised pay fixation order dated 30-11-2013 has been accepted by the petitioner and has not been challenged before us contending that she has no grievance about the same.

14. In view of the above, this petition is partly allowed. The recovery proposed under the impugned order for an amount of Rs.4,45,156/- stands quashed and set aside.

15. Rule is made absolute in the above terms.

[S.G. MEHARE, J.] **[RAVINDRA V. GHUGE, J.]**

arp/