

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7309 OF 2018

Surekha D/o Nanasaheb Pande,
Age : 60 Years, Occu. Pensioner,
R/o Shriyash Apartment,
Garkheda Parisar, Ulkanagari,
Aurangabad,
Tal and Dist. Aurangabad.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
Social Justice and Special Assistance
Department, Mantralaya,
Mumbai - 32.
2. The Accountant General (A & E)
II Maharashtra, Nagpur 440 001,
Post Box No.114.
3. The Commissioner,
Handicapped Welfare,
Maharashtra State, Pune.
4. District Social Welfare Officer,
Zilla Parishad, Aurangabad.
5. Navjeevan Society for Research and
Rehabilitation of Mentally retarded,
Naregaon Naka, Aurangabad,
Through its Secretary.
6. Navjeevan Matimand Mulanchi Shala,
Chikalthana, Aurangabad,
Through its Headmaster.

... **Respondents**

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Advocate for Petitioner : Mr. V. D. Gunale.
AGP for Respondent Nos.1 to 4–State : Mr. S.B.Yawalkar.
Adv. for Respondent Nos.5 & 6 : Mr. C. V. Dharurkar.

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

DATE : 30.08.2021

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, a retired employee, has put forth prayer clauses “C”, “C-1” and “D” as under :

"C) By writ of certiorari or any other writ order of direction, the impugned order dated 05.07.2016 issued by respondent No.2 thereby deducting an amount of Rs.21,106/- from the pension payable to the petitioner to be quashed and / or set aside and consequently, the respondent No.2 be directed to release the said amount of Rs.21,106/- and be paid to the petitioner."

"C-1) By writ of certiorari or any other appropriate writ, order or directions the impugned letter/communication dated 31.01.2019 issued by the respondent no.4 to the Headmaster returning the proposal of leave encashment of the petitioner submitted by the Headmaster on the ground that, the employees enjoying long leave are not entitled for the benefit of leave encashment, be quashed and/or set aside."

"D) By writ of mandamus or any other writ order of direction, the respondent Nos.1 and 3 to 6 be directed to pay the petitioner a remaining amount of gratuity with 18% interest and also the payment of leave encashment with interest forthwith and for that purpose necessary orders may kindly be issued."

3. We have considered the extensive submissions of the learned advocates for the respective sides and with their assistance, we have gone through the petition paper book. Mr. Gunale has strenuously canvassed the grounds set out in the memo of the petition.

4. Insofar as the deduction of Rs.21,106/- from the retiral benefits of the petitioner is concerned, it is apparent that the said amount was an excess payment made to the petitioners with reference to the wrong fixation of her pay scale. However, the petitioner has specifically executed an undertaking to the employer that if there is any amount found to have been paid in excess owing to incorrect fixation of pay, pension, family pension, gratuity amount, value of pension or any excess payment erroneously made, can be deducted or would be refunded by the employee or may opt for an adjustment against the payment of retiral benefits. We

are, therefore, of the view that this aspect of the matter is covered by the judgment delivered by the Hon'ble Apex Court in the matter of *High Court of Punjab and Haryana and others Vs. Jagdev Singh (2016) 14 SCC 267*. As such, we reject prayer clause "C".

5. Insofar as prayer clause "C-1" for leave encashment claim of the petitioner is concerned, the In-charge Head Mistress of the School had issued a communication dated 23.03.2016 addressed to respondent No.4 so as to appraise the said Authority that the petitioner had not availed of long leave. It was recommended that she should be paid leave encashment.

6. An affidavit-in-reply has been filed by respondent No.4 Mrs. Meena Ashok Ambadekar, District Social Welfare Officer. It has been set out in paragraph 8 that the petitioner cannot be granted leave encashment, in the light of the order of respondent No.4 dated 04.08.1995.

7. It is obvious that though respondent No.4 talks about the communication dated 23.03.2016 issued by the In-charge Head Mistress, we do not find that the information supplied by the Head Mistress that the petitioner has not availed of any long leave, has not been considered.

8. To this extent, we are directing respondent No.4 to consider the factual statement made by the Head Mistress vide her communication dated 23.03.2016 and arrive at a decision afresh, on or before 15.10.2021. In the event, the decision is adverse to the petitioner, it shall be supported with reasons and the petitioner would be at liberty to assail the said decision. In the event, respondent No.4 approves the leave encashment of the petitioner, the said amount shall be paid to her, as expeditiously as possible and preferably, on or before 30.10.2021.

9. Insofar as the prayer clause "D" is concerned, the learned advocate Mr. Gunale submits that he had fumbled in drafting the prayer. Issue is as regards late

payment of P. F. amount (GPF) and what is prayed is that the gratuity amount was belatedly paid. Mr. Gunale, therefore, submits that prayer clause "D" may not be considered in this petition and the matter be relegated to respondent No.4 to decide as to whether the petitioner is at fault in submitting papers belatedly or whether the papers were submitted in time and the respondents delayed the payment of G.P.F.

10. In view of the above, this petition is disposed off by directing respondent No.4 as under :-

(a) Comply with the direction set out in paragraph No.8, herein above.

(b) Peruse the entire GPF file of the petitioner and assess as to whether the petitioner had belatedly tendered the papers for payment of G.P.F. Only in the event, the petitioner is not at fault and the delayed payment is on account of the mistake of the respondents-authorities, appropriate interest as prescribed in law shall be calculated and shall be paid to the petitioner, on or before 30.11.2021.

11. Rule is discharged.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-