

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7211 OF 2020

Dr.Nareshkumar Satyanarayan Dhaniwala,
Age-63 years, Occu-Retired,
R/o 1-18-1055, Vasant Nagar,
Near Rajarshi Shahu School,
Nanded, District Nanded

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai-32.

2. The Director,
Medical Education and Reaseach,
Government of Maharashtra,
Mumbai.

3. The Dean,
Swami Ramanand Teerth Rural
Medical College, Ambejogai,
Tq.Ambejogai, Dist.Beed,

4. The Accountant General,
A & E-II, Pension Branch Office,
HISAB, Nagpur

-- RESPONDENTS

Mr.S.R.Yadav-Lonikar, AGP for State.

**(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)**

DATE : AUGUST 12, 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 has put forth prayer clause 'B' as under :-

"B. The Hon'ble High Court may kindly be pleased to issue writ of mandamus or any other appropriate writ, order or directions in the like nature, thereby directing the respondent authorities to release the pension and other retirement benefits viz., gratuity and leave encashment to the petitioner along with interest @ 9% p.a. thereon from the date of retirement of the petitioner."

3. After considering the submissions of the learned Advocates for the respective sides, we have gone through the petition paper book and we find that this petition can be disposed off in the light of paragraph Nos. 3 and 4 of the affidavit in reply dated 04/01/2021 filed by Rajshekhar Swami Reddy, Assistant Accounts Officer, the Accountant General (A & E)-II, Nagpur.

4. The petitioner has raised a grievance that though he was superannuated pursuant to his acceptance of VRS on 06/02/2015, his retiral benefits have not been cleared.

5. In the affidavit in reply filed on behalf of the Accountant General (A & E)-II, Nagpur, it is stated in paragraph No.3 that the Dean, Swami

Ramanand Teerth Rural Medical College, Ambejogai, Dist. Beed has informed by letter dated 27/03/2019 that it is proposed to recover an amount of Rs.23,69,375/-towards over payment of Non-Practicing Allowances from the petitioner in terms of the Government letter dated 20/02/2019. In paragraph No.4 of the affidavit, it is stated that the Treasury Office, Nanded, vide communication dated 30/11/2019 has informed that though the petitioner was called several times to appear before the Treasury Officer, Nanded for verification/identification, the petitioner has failed to do so, and resultantly, the pension to be paid to the petitioner, is not yet paid. The learned AGP therefore adds that if the petitioner present himself before the Treasury Officer, Nanded, the process for clearing his pension papers, would be eased and his grievance would be solved. He further adds that as this issue was pending, the papers concerning the pension alongwith commutation payment orders were returned to respondent No.4 at Nagpur.

6. We would first deal with the contents of paragraph No.3 in which the authorities contemplate recovering an amount of Rs.23,69,375/- from the petitioner towards over payment of Non-Practicing Allowances. We find that similarly situated doctors, including the petitioner herein, had approached this Court in Writ Petition No.6261/2017, Vaishali Bhagwantrao Bhagwat Vs. State of Maharashtra and others and in connected writ petitions. The petitioner claims to be party to the said proceedings. This

Court delivered a judgment on 26/04/2019 and concluded in paragraph No.16 as under :-

"We do not find that petitioners in any way on interpretation (though erroneous) of the Government Resolution dated 10.11.2009 the benefit was accorded to some of the petitioners of payment of non-practicing allowances as per the revised pay scale. In view of that, we direct that if the recovery has not been made by the respondents from petitioners regarding the excess amount of non-practicing allowance paid, the same shall not be made as the same would be inequitable."

7. In addition to the above, the view taken by the Hon'ble Apex Court in State of Punjab and others Vs. Rafiq Masih (White Washer) [(2015) 4 SCC 334] and in Syed Abdul Qadir Vs. State of Bihar [(2009) 3 SCC 475], is that if an employee is not at fault, has not played any fraud and laches cannot be attributed to his conduct, recovery of amounts erroneously paid, cannot be made from him and more so, after his retirement, save and except on a specific undertaking having been executed by such a candidate to return the amount. The law laid down in these 2 judgments is applicable to Class III and Class IV employees. Though the petitioner was a Doctor, this Court concluded in paragraph 16 reproduced above, that though he was paid in excess of what he deserved due to the erroneous interpretation of the GR dated 10/11/2009, the said amount shall not be recovered from him. However, further payment of such excess amount to those who were in service, was prohibited. We reiterate this decision.

8. The second issue in this petition is as regards the failure on the part of the respondents in processing the pension papers of the petitioner. Considering the statement made in paragraph No.4 of the affidavit in reply filed by respondent No.4, the stand taken is that the petitioner has not presented himself before the Treasury Officer, Nanded despite several communications, thereby precluding the Treasury Officer from proceeding with the papers as the petitioner's presence for verification/identification, was necessary.

9. In view of the above and after concluding that the excess payments made to the petitioner shall not be recovered, this petition is disposed off with the following directions :-

[a] As the pension papers of the petitioner have been returned to the AG's Office at Nagpur, we direct respondent No.4 to forward the said papers to the Treasury Office at Nanded, on or before 15/09/2021.

[b] The petitioner has tendered his e-mail ID and his personal cell phone number, which read thus :-

email id - nsdhaniwala@gmail.com
Cell No. - 9422188450

[c] The Treasury Office, Nanded would inform the petitioner to appear before it on a particular day and particular time, as the information can be supplied on the email as well as on the cell phone of the petitioner.

[d] The petitioner shall undergo the verification/identification at the Treasury Office, so as to enable the authorities to process the pension papers.

[e] We expect the above referred respondents to act with promptitude since the petitioner is an aged person.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)