

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.805 OF 2018

The Municipal Corporation, Dhule ... **PETITIONER**

VERSUS

Smt. Indubai Sukhlal Chauvan ... **RESPONDENT**

.....
Shri V.D. Hon, Senior Counsel instructed by
Shri A.V. Hon, Advocate for petitioner
Shri N.L. Chaudhari, Advocate for respondent

WITH

WRIT PETITION NO.806 OF 2018

The Municipal Corporation, Dhule ... **PETITIONER**

VERSUS

Smt. Jamanabai Ananda Mali ... **RESPONDENT**

.....
Shri V.D. Hon, Senior Counsel instructed by
Shri A.V. Hon, Advocate for petitioner
Shri N.L. Chaudhari, Advocate for respondent

WITH

WRIT PETITION NO.934 OF 2018

The Municipal Corporation, Dhule ... **PETITIONER**

VERSUS

Gangaram Keshav Deore ... **RESPONDENT**

.....
Shri V.D. Hon, Senior Counsel instructed by
Shri A.V. Hon, Advocate for petitioner

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Shri N.L. Chaudhari, Advocate for respondent

.....

WITH

WRIT PETITION NO.936 OF 2018

The Municipal Corporation, Dhule ... **PETITIONER**

VERSUS

Bapu Ravaji Salave ... **RESPONDENT**

.....

Shri V.D. Hon, Senior Counsel instructed by
Shri A.V. Hon, Advocate for petitioner
Shri N.L. Chaudhari, Advocate for respondent

.....

WITH

WRIT PETITION NO.944 OF 2018

The Municipal Corporation, Dhule ... **PETITIONER**

VERSUS

Bhima Narayan Gawali ... **RESPONDENT**

.....

Shri V.D. Hon, Senior Counsel instructed by
Shri A.V. Hon, Advocate for petitioner
Shri N.L. Chaudhari, Advocate for respondent

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CORAM : R. G. AVACHAT, J.

Date of reserving order : 1st March, 2021

Date of pronouncing order : 21st April, 2021

ORDER :

All these petitions are being decided by this
common order since common questions of facts and law arise

therein. The petitioner in all these petitions is Municipal Corporation, Dhule. The respondents are its ex-employees. The respondents filed separate Complaints (ULP) against the petitioner Corporation before the Industrial Court, Dhule, claiming arrears of pay and allowances as per 5th and 6th Pay Commission recommendations. All those complaints came to be allowed by separate orders. All those orders have been challenged in these Writ Petitions.

2. The petitioner Corporation amended the Writ Petitions to come with the case that the Government of Maharashtra, in Urban Development Department, issued Government Resolution (G.R.) dated 10/8/2009, making 6th Pay Commission recommendations applicable only to the sanctioned posts. The respondents were not working on the sanctioned posts and, therefore, as per the aforesaid G.R., they are not entitled for the benefits of 6th Pay Commission recommendations. It is also the case of the petitioner Corporation that, as per the Government policy decision, the petitioner Corporation has to maintain the limit of establishment expenses to the extent of not more than 35%. Its establishment expenses goes beyond 35% limit. The petitioner Corporation has been making attempt to get the necessary sanction for creation of the posts. One such

proposal of the Corporation has been turned down by the Government vide communication dated 21/8/2016. It is also the case of the Corporation that there are over 250 employees who have not yet been working on the sanctioned posts. If the respondents are granted the relief contrary to the G.R. dated 10/8/2009, the Corporation would be under obligation to grant similar relief to those 250 employees. The documents in support of these contentions are sought to be produced with the prayer for remand of the matters with a view to give the petitioner Corporation an opportunity of hearing.

3. Heard. Shri V.D. Hon, learned Senior Counsel appearing for the petitioner Corporation would submit consistent with the aforesaid pleadings. According to him, the respondents were not working on sanctioned posts. They were, therefore, not entitled for the benefit of 5th and 6th Pay Commission recommendations. According to learned Senior Counsel, the respondents were paid salary from the Municipal fund. The respondents are not in the list of 87 posts sanctioned by the State Government. The learned Senior Counsel would ultimately urge for allowing the Writ Petitions with a remand of the matters back to the Industrial Court for decision afresh on hearing the petitioner Municipal

Corporation.

4. Shri N.L. Choudhari, learned counsel appearing for the respondents in all the petitions would, on the other hand, submit that, the respondents have been made permanent pursuant to the order passed by the Industrial Court. The respondents have been paid some of the benefits as per the recommendations of the 5th Pay Commission. The petitioner Corporation indulged in pick and choose policy. The employees who were junior to the respondents have all been paid salary and its arrears in terms of the recommendations of the 5th and 6th Pay Commission. According to the learned counsel, the Industrial Court has rightly allowed the complaints and no interference is called for therewith.

5. Perused the impugned orders. Considered the submissions made by learned counsel for the respective parties. Also perused the documents relied on by the learned Senior Counsel appearing for the petitioner Municipal Corporation.

Admittedly, the respondents had all been made permanent pursuant to the orders passed by the Industrial Court in different Complaints (ULP). As such, the respondents were the permanent employees of the petitioner Corporation

on the respective dates of their superannuation. The Industrial Court has categorically observed that, the petitioner Corporation had decided to apply the service conditions to all of its employees in terms of the 5th and 6th Pay Commission recommendations. Before the Industrial Court the petitioner Corporation had sought an excuse on the ground of want of funds to pay the respondents the arrears of salary and allowances in terms of both the Pay Commission recommendations. The Corporation has not offered any explanation as to why it could not produce before the Industrial Court the G.R. dated 6/8/2009 and copy of the communication dated 21/8/2016. For want of such an explanation, the prayer for remand cannot be accepted.

6. The respondents have placed on record the copy of order dated 28/5/2019 issued by the Commissioner of the Corporation. As per the said order, it has been directed to pay the arrears of salary to the employees who have been conferred the benefits of permanency pursuant to the directions of the Industrial Court or High Court/ Apex Court. The stand of the Corporation before the Industrial Court in sum and substance was that, it was ready and willing to pay the respondents arrears of salary in terms of recommendation of both the Pay Commissions, but for the funds. It appears

that not more than Rs.3,00,000/- are due to the respondents from the petitioner Corporation towards their dues. Pursuant to the interim orders passed in these Writ Petitions, the Corporation has even deposited a sum of Rs.1,00,000/- in each of these petitions. Financial crunch cannot be a ground to deny the respondents their legitimate claim. Needless to mention that, the petitioner Corporation has its independent source of income such as amount of property tax etc., besides the grants from the State Government.

7. It may be true that the establishment expenses of the Corporation might have crossed the sanctioned limit. The same cannot be a ground to deny arrears of wages of its Class IV employees who have retired on superannuation. There would be no substantial financial burden in payment of arrears of salary of the respondents pursuant to the impugned orders. I am, therefore, not inclined to interfere with the impugned orders. The Writ Petitions, therefore, fail. The same are dismissed.

**(R. G. AVACHAT)
JUDGE**

After pronouncement of the order, learned counsel for the petitioner seeks continuation of interim orders for a

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period of four weeks. Interim orders to continue for a period of four weeks.

**(R. G. AVACHAT)
JUDGE**

fmp/-