

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 65 OF 2021

Mr. Ramesh Rambhau Nigade

... Petitioner

Versus

State of Maharashtra and Ors.

... Respondents

Mr. V. S. Talkute for the Petitioner.

Mr. S. B. Kalel, AGP for the State-Respondent Nos. 1 and 2.

Mr. Rajendra Anbhule for the Respondent No.3.

**CORAM: R. D. DHANUKA AND
R. I. CHAGLA, JJ.**

**DATE : 26th JULY, 2021.
(Through Video Conference)**

P.C. :-

1. Rule. Learned AGP for the respondent nos. 1 and 2 waives services. Learned counsel for the respondent no.3 waives service. Heard finally by consent of parties.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks an order and direction against the respondents to complete the formalities regarding the grant of pension to the petitioner and for payment of pension to the petitioner as expeditiously as possible and to pay interest @ 18% on delayed payment of the pension from the date of the retirement of the petitioner till realization of the pension along with the arrears.

3. The petitioner was born on 1st June, 1958. On the date of the

appointment of the petitioner in the year 1989, the petitioner was 31 years old and was overage by three years. The petitioner belongs to open category.

4. On 5th September, 1994, the petitioner was appointed as a watchman on a temporary post. On 10th December, 1996, the services of the petitioner were made permanent after completing his three years probation period. On 9th May, 2018, the petitioner was informed by the respondent no.3 of his retirement as per the selected pension scheme. On 31st May, 2018, the petitioner retired from services after 29 years of service including five years of temporary service.

5. On 31st May, 2018, the petitioner was informed that the pension of the petitioner could not be processed in view of objection raised by the State Government on account of the petitioner being overage. The petitioner thus filed this petition for various reliefs.

6. Mr. Talkute, learned counsel for the petitioner invited our attention to various documents annexed to the writ petition and would submit that the issue raised by the petitioner in this writ petition is no longer *res-integra*. He invited our attention to interim order passed by this Court on 19th May, 2021 and order of this Court dated 14th April, 2021 in Writ Petition No. 2545 of 2021 filed by **Arun A. Prabhudesai v/s. State of Maharashtra and Ors.**

7. Learned counsel invited our attention to various other judgments annexed to the writ petition at pages 25 to 37 and would submit that the

other employees similarly situated and have succeeded on those petitions. Those judgments apply to the facts of this case.

8. Learned counsel invited our attention to the averments made by the State Government in paragraph 13 of the affidavit-in-reply and would submit that even the respondent no.2 in his communication to the State Government has recommended the decision taken in respect of the petitioner and similar situated employees of the respondent no.3-university as early as possible in compliance of the queries raised by the respondent no.1.

9. Learned AGP on the other hand submits that the petitioner was overage by eight years. No documents are produced in support of this submission.

10. This Court in catena of decision already annexed to the writ petition and the last decision on this issue delivered on 14th April, 2021 in case of **Arun A. Prabhudesai** (supra) after referring to earlier judgments, has held that the objections regarding overage at the time of appointment could not be sustained for denying pension to the respective employees. This Court held that since the probation of the petitioners had been delayed due to no fault of theirs and despite the law laid down by this Court in catena of decisions, respondent nos. 1 and 2 shall pay the pension and dues of the petitioner with interest @ 8% p.a. on the delayed payment of the pension from the date of receiving the dues and until payment. In our view, the said judgments annexed to the petition and the judgment in case of **Arun A.**

Prabhudesai (supra) apply to the facts of this case. We are respectfully bound by the said judgments. There is no substance in any of the submissions made by the learned AGP for the State.

11. We accordingly pass the following order :-

- i. Respondents are directed to complete the formalities relating to release of probation dues of the petitioner within four weeks from today. The Management shall submit the requisite papers, if not already submitted to the respondent for realization the probation dues.
- ii. The respondent nos. 1 and 2 to pass appropriate orders and release the probation dues as expeditiously as possible and in any event within a period of four weeks from the date of receipt of papers from the Management with interest @ 8% p.a. on the delayed payment of pension from the date of due date and until payment without fail.
- iii. It is made clear that if the dues of the petitioner are not released within the time prescribed, the amount will carry interest @ 12% p.a. from the date of expiry of the aforesaid period until payment.
- iv. Writ Petition is disposed off in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

[R. I. CHAGLA, J.]

[R. D. DHANUKA, J.]