

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO.3281/2021

Major (Dr.) Shilpa Maroti Kharapkar,
Retd., aged 40 Yrs., Occ. District Sainik
Welfare Officer, R/o 33-B, Bhausahab
Surve Nagar, Nagpur - 22.

..Petitioner.

..Vs..

1. State of Maharashtra,
through Secretary, Department of
General Administration, Mantralaya,
Mumbai 400 032.
2. Director of Sainik Welfare,
Maharashtra State, Pune.
3. Pay Verification Unit,
Joint Director, Accounts and
Treasury, Nagpur.

..Respondents.

Mr. Tushar D. Mandlekar, Advocate with Shri Rohan V. Malviya, Advocate for the petitioner.
Mr. N.R. Patil, A.G.P for respondent Nos.1 to 3.

CORAM :- SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.
DATED :- 1.9.2021.

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

Heard.

2. The grievance of the petitioner is that the pay of the petitioner

which was fixed after the petitioner had exercised her option regarding pay fixation in terms of the Government Resolution dated 11.7.2012 has been now refixed erroneously by the impugned orders by misplaced reliance upon the Government Resolution dated 2.6.1992 which is not applicable to an ex-military officer like the petitioner who has been reemployed as the District Sainik Welfare Officer on a reserved post and who had not rendered her services in military only for the purposes of emergency situation.

3. The further contention is that the effect of the petitioner exercising her option in terms of Government Resolution dated 11.7.2012, the applicability of the Government Resolution dated 2.6.1992 and the effect of what is stated in clause 11 of the Government Resolution dated 30th August, 2019, in the light of the appointment of the petitioner as the District Sainik Welfare Officer on a reserved post, have not been considered at all by the Maharashtra Administrative Tribunal, which has by its interim order dated 25.8.2021 impugned herein, has set aside the pay fixation made by the Collector, Wardha vide order dated 8.1.2019 and confirmed the pay fixation done by the In-charge Director of Sainik Welfare Board Maharashtra State Pune and that too by passing an interim order.

4. The contention so raised would require consideration and, therefore, issue notice to the respondents.

5. Mr. N.R. Patil, learned A.G.P. waives notice for the respondents.

6. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent.

7. On perusal of the impugned order, which is an interim order, it is seen that it has almost finally decided the issue regarding the correct pay fixation of the petitioner as it has quashed and set aside the pay fixation made by the Collector and has upheld the pay fixation made by the In-Charge Director, Sainik Welfare Board Maharashtra State Pune and which has been confirmed by the Pay Verification Board, Nagpur. If the Tribunal was to decide this issue in a final manner, the Tribunal ought to have considered applicability and effect of various Government Resolutions in the light of the facts and circumstances in which the petitioner came to be appointed on a reserved post. Government Resolution dated 2.6.1992, *prima facie*, indicates that it would not be applicable to those ex-military officers who are reemployed on a reserved post and also those persons who are not employed as officers on Short Service Commission only during

emergency. But, heavy reliance has been placed upon the applicability of the Government Resolution dated 2.6.1992 to the case of the petitioner. The appointment order of the petitioner clearly shows that she was appointed as the District Sainik Welfare Officer on a post reserved for O.B.C. (Women). There is one more Government Resolution dated 4th October, 1976 which deals with the issue of pay fixation of such reemployed ex-military officers. Even this Government Resolution, *prima facie*, applies to Emergency Commissioned Officers or Short Service Commissioned Officers who were commissioned to Army between 1st November, 1962 to 10th January, 1968 who were / are appointed against unreserved vacancies. All these Government Resolutions and their effects and the relevant facts and circumstances of this case do not find any contemplation as well as reflection in the impugned orders and, therefore, we are of the opinion that the impugned orders cannot stand to the scrutiny of law.

8. In the result, the petition is **allowed**. The impugned orders are quashed and set aside and the matter is remanded back to the Maharashtra Administrative Tribunal for deciding the issue of pay fixation of the petitioner, on its own merit and finally, in accordance with law, after giving all parties due opportunity of hearing, as expeditiously as possible and preferably within six months from the

date of appearance of the petitioner before it on the next scheduled date which is stated to be 22nd September, 2021. The petitioner is permitted to draw her salary in accordance with the pay fixation made by the Collector, Wardha as per his order dated 8th January, 2019 subject to the condition that she will give an undertaking before the Maharashtra Administrative Tribunal that in case the decision goes against her, she will refund the amount which has been paid in excess to her within six months. The parties are permitted to file reply / rejoinder and also additional documents, if any. Rule accordingly. No costs.

JUDGE

JUDGE

Tambaskar.