

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

WRIT PETITION NO.7041 OF 2022

**GOUS MOHIYODDIN MOINODDIN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for the Petitioner : Shri G.R.Syed
AGP for Respondent 1 : Shri S.K. Tambe
Advocate for Respondent 2 : Shri R.K. Ingole
...

**CORAM : RAVINDRA V. GHUGE
&
ARUN R. PEDNEKER, JJ.**

DATE :- 22nd September, 2022

Per Court :-

1. The petitioner is before us with prayer clause B,
which reads as under :-

“B) The Respondent No.2 may kindly be directed to pay interest @ 12 per annum on the delayed payment of arrears as per the judgment and order passed by this Hon’ble Court in Writ Petition No.3294/2005 dated 21.06.2017.”

2. The learned advocate representing respondent No.2 points out that the petitioner had initially filed Writ Petition No.3294/2005 wherein, prayer clause C was pressed. Prayer clause C reads as under:-

“(C) *Writ of Mandamus or any other appropriate writ, order or direction in the nature of writ may, kindly, be issued to respondents to fix the pay of the petitioner after giving him deemed date of promotion and to give the petitioner the difference of pay and allowances in the scale of Rs.395 to 800 with effect from 08.02.1980 and in the pay scale of Rs.1640 to 2900 with effect from 01.01.1986 to 31.12.1995 and in the scale of Rs.5500 to 9500 with effect from 01.01.1996 to 31.12.2001 together with interest at the rate of 12% per annum till realization.*”

3. The learned advocate for respondent No.2, therefore, has relied upon the following judgments in support of his contention that the principle of constructive res judicata would come in the way of the petitioner and this petition cannot be entertained :-

(a) Forward Construction Company vs. Prabhat Mandal, 1986 AIR SC 391 : 1986 (1) SCC 100.

(b) M. Nagabhushana vs. State of Karnataka and others, 2011 AIR SC 1113 : 2011 (3) SCC 408.

(c) Dr.Shriram Baburao Pisal vs. The State of Maharashtra, Writ Petition No.9219/2011 (Aurangabad), decided on 22.01.2021.

4. The learned advocate for the petitioner submits that

this Court has categorically held in the judgment dated 21.06.2017 passed in Writ Petition No.3294/2005, more particularly in paragraph 5, as under :-

“5. When the petitioner was wrongly superseded by his junior employee, when he was given deemed date of promotion with effect from 08.02.1980 and when his pay was fixed accordingly as per the pay scale applicable from time to time, as mentioned in the order dated 10.05.2002 passed by respondent no.1, there was no legal impediment in the way of the petitioner in getting the arrears of pay and allowances on the basis of the pay fixed as per the said order dated 10.05.2002.”

5. The learned advocate for the petitioner, therefore, submits that the only option available to the petitioner would be to prefer a review petition on the ground that this Court had categorically concluded that he was wrongly superseded, he was given the deemed date of promotion, his pay scale was accordingly fixed and he was held entitled for all allowances and arrears from 1980. It could be possible that the interest may not have been granted by oversight as there is no specific rejection of the prayer for grant of interest. He, therefore, desires to file a review petition along with a civil application for condonation of delay.

6. The learned advocate for the petitioner, therefore, prays, on instructions, that this petition may be disposed off as withdrawn.

7. In view of the above, this Writ Petition is disposed off as withdrawn, on instructions.

8. In the event, the petitioner prefers a review petition, the same would be dealt with on it's own merits.

kps (ARUN R. PEDNEKER, J.) (RAVINDRA V. GHUGE, J.)