

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

**WRIT PETITION NO.9077 OF 2019
WITH
CIVIL APPLICATION NO.5159 OF 2022
IN WP/9077/2019**

**VASANT GANPATRAO SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the petitioner/ Applicant : Shri Ingale Vivekanand
V.

AGP for Respondent 1 : Shri S.G. Sangle
Advocate for Respondents 2 to 4 : Shri Ajinkya Reddy

...

**CORAM : RAVINDRA V. GHUGE
&
S.G. DIGE, JJ.**

DATE :- 07th April, 2022

Per Court :-

1. By this Writ Petition, the petitioner has put forth
prayer clauses B, C and D as under :-

- “B. The respondent No.2 to 4 may kindly be directed to grant benefit of the Govt. Resolution dated 06.04.2017, by fixing the revised pay scale as per the said Govt. resolution.*
- C. Pending hearing and final disposal of the Writ Petition respondents may kindly be directed to deposit the amount of arrears of petitioner as per the pay scale as per the Govt. Resolution dated 06.04.2017.*
- D. Pending hearing and final disposal of present*

Writ Petition the respondents 4 may kindly be directed to submit the Service Book alongwith Revised pay fixation proposal to the Res. No.2 i.e. Chief Executive Officer, Zilla Parishad, Osmanabad.”

2. By the Civil Application, the petitioner has prayed for reliefs in terms of prayer clauses B and C, which read as under :-

- “B) That, the Respondent No.1 and Account General Nagpur may kindly be direct to not to recover any amount from the pension as per alleged excess amount paid to the applicant i.e. Rs.1,62,425/-.
- C) That the Respondent No.1 and Account General Nagpur may kindly be directed to pay the amount alongwith interest deducted from the pension since July, 2021 to the applicant.”

3. We have considered the submissions of the learned advocates for the respective asides and the learned AGP on behalf of the State. With their assistance, we have gone through the petition paper book. We have perused the affidavit in reply filed on behalf of the Zilla Parishad.

4. It is beyond debate that the arrears of excess payments made in the absence of any undertaking (read : ***High Court of Punjab and Haryana and others vs. Jagdev Singh, (2016) 14 SCC 267***), is impermissible in the light of ***Syed Abdul***

Qadir vs. State of Bihar, 2009 (3) SCC 475 and the State of Punjab and others vs. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334.

5. The petitioner has superannuated on 31.07.1996. Recovery is initiated by order dated 25.08.2021, which is not impugned in the Civil Application. The said order is issued by the Senior Treasury Officer from the Treasury Office at Osmanabad, on the ground that his pension pay scale as per the sixth pay commission should have been at the rate of Rs.9,447/- and which has been inadvertently fixed at Rs.9,947/-. He has got excess benefits for an amount of Rs.500/- per month from 01.01.2006. Further fixation of pensionary benefits at the rate of Rs.25,564/- is based on the earlier erroneous pension pay scale of Rs.9,947/- and as such, excess payment continued aggregating Rs.1,62,425/-. This is sought to be recovered in 21 equal installments. Some recovery has already been made since June, 2021 till April, 2022. The petitioner has approached this Court by this Civil Application filed on 14.03.2022.

6. There is no dispute that the Government Resolution dated 06.04.2017 is applicable to the employees of the Zilla Parishad. There is also no dispute that it would apply to the

petitioner, who has superannuated on 31.07.1996. The Government Resolution grants notional effect from 01.01.1996 and the actual benefit of the Government Resolution would be available to the beneficiaries from 01.04.2014.

7. It is beyond debate that though a paltry amount by way of the Government Resolution dated 06.04.2017 would be available to the petitioner w.e.f. 01.04.2014, the same would not be more than the benefits which he has erroneously received for an amount of Rs.1,62,425/-, which is now sought to be recovered. Out of 21 installments, 10 installments have already been recovered.

8. The learned advocate for the petitioner submits that if the further recovery of excess payments made to him is stalled from 01.04.2022, the benefits available under the Government Resolution dated 06.04.2017 can be extended to him w.e.f. 01.04.2022. This would balance the equities as well as eliminate further litigation in this matter. He further submits, on instructions, that the petitioner has specifically prayed in prayer clause B that his pay scales be revised by virtue of the Government Resolution dated 06.04.2017. He now submits that the said benefits be made available to him w.e.f. 01.04.2022 and

earlier excess payments may be set off against the arrears.

9. In these circumstances, we are of the view that on the one hand, we would be restraining the State from causing recovery of the excess amounts which were paid to the petitioner erroneously and at the same time, to balance the equities, the actual benefits of the Government Resolution dated 06.04.2017 can be made available to the petitioner from 01.04.2022 and further recovery would be stalled.

10. In view of the above, this Writ Petition is partly allowed. We are setting aside the order dated 25.08.2021 w.e.f. 01.04.2022. We direct the respondent/ Zilla Parishad and its Pay Unit to immediately calculate the revised pay scale of the petitioner to the extent of computing the arrears and pensionary benefits w.e.f. 01.04.2022 and forward such proposal to the Accountant General, Nagpur, by ensuring that it reaches the said office on or before 30.04.2022. Fresh pension shall, accordingly, be calculated by the office of the Accountant General, Nagpur, to be payable to the petitioner w.e.f. 01.04.2022. Arrears under the Government Resolution dated 06.04.2017 would be set off against the excess payments made to the petitioner and the amounts already recovered, so as to ensure that the benefits of

the Government Resolution would be available to the petitioner
w.e.f. 01.04.2022.

11. In view of the above, the Civil Application does not
survive and stands disposed off.

kps (S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)