IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2723 OF 2021

Mahendra Govindrao Gaikwad,
Age-59 years, Occu-Retired
(Sectional Engineer)
R/o 58, Gautam Nagar, Gondur Airport Road,
Walwadi Shivar, Deopur, Dhule,
Taluka and Dist. Dhule -- PETITIONER

VERSUS

1. The State of Maharashtra,
   Through its Secretary,
   Rural Development Department,
   Mantralaya, Mumbai.

2. The Chief Executive Officer,
   Zilla Parishad, Dhule,
   Dist. Dhule.

3. The District Water Conservation Officer,
   Zilla Parishad (Minor Irrigation),
   Dhule, District Dhule. -- RESPONDENTS

Mr.A.S.Sawant, Advocate for the petitioner.
Mrs.M.A.Deshpande, AGP for respondent No.1.
Mr.N.N.Desale, Advocate for respondent Nos.2 and 3.

(CORAM : RAVINDRA V. GHUGE AND S.G. DIGE, JJ.)
DATE : APRIL 21, 2022

ORAL JUDGMENT : (Per Ravindra V.Ghuge,J.)

1. Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2. By this petition, the petitioner has put forth prayer clauses A and B as under :-

> *"A. The Hon'ble High Court may be pleased to quash and set aside the impugned order dated 24.01.2019 passed by the District Water Conservation officer, Zilla Parishad (Minor Irrigation), Dhule, only to the extent of recovery of an amount of Rs.1,68,480/- (Rupees One Lakh Sixty Eight Thousands Four Hundred and Eighty) and further be pleased to pass necessary orders for the said purpose;*
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> *B. The Hon'ble High Court may be pleased to direct the respondents to refund the amount of Rs.1,68,480/- (Rupees One Lakh Sixty Eight Thousands Four Hundred and Eighty) alongwith interest to the petitioner as early as possible within a stipulated period and further be pleased to pass necessary orders for the said purpose;"*

3. The learned Advocate for the petitioner contends that after his superannuation on 30.11.2018, the Zilla Parishad/employer deducted an amount of Rs.1,68,480/- from the gratuity amount payable to the petitioner. It is undisputed that the petitioner has not been charged with any misconduct, no departmental enquiry has been conducted

against him and there has not been any order of punishment issued against him.

4. He draws our attention to an order dated 13.04.2007 issued by respondent No.3 vide which he was granted one increment as a reward for having performed credible service. This was based on the then existing policy. By virtue of the said additional increment, his basic scale rose and he started earning his salary with addition of the increment.

5. He then submits that the State of Maharashtra issued a Government Resolution dated 24.08.2017 by which the said benefit that was introduced by earlier decisions dated 01.10.2006 and 01.10.2007, stood withdrawn. Since the 6th Pay Commission Recommendations were made applicable, it was resolved by the State that the additional increment should be discontinued.

6. He points out a decision of the learned Division Bench of this Court at the Principal Seat, dated 06.12.2021 in WP No.4533/2021 filed by Sudhir Namdeo and others Vs. State of Maharashtra and

another, alongwith a group of petitions, wherein this Court concluded that such petitioners were awarded additional increment as a gesture of certifying that they have put in excellent work. It was in the form of a reward, which was introduced by the circulars of the Government. This Court interpreted the effect of the GR dated 24.08.2017 and concluded that the same would be applicable prospectively. It would be apposite to reproduce Clause 8(b) which are the directions of the Court, as under :-

> "*B. Government Resolution dated 24th August, 2017 will have prospective effect and not retrospective and in case, if any benefits are accorded to the petitioners of said Government Resolution, the respondent - Zilla Parishad, Satara, Thane, Palghar and Sindhudurg are directed not to withdraw such benefits and if any recovery pursuant to the said Government Resolution is made, shall be refunded to the petitioners.".*

7. Learned Advocate for the Zilla Parishad has strenuously opposed this petition contending that the petitioner had executed an undertaking dated 08.02.1999 agreeing to the recovery of excess amounts, if wrongly paid. Therefore, he would be liable for repayment of the excess amount that he has wrongly earned.

8. We find that the stand taken by the Zilla Parishad cannot be sustained for the reason that there is no element of mis-calculation or wrong calculation of the pay scale of the petitioner. A policy was in place in 2007 and based on the said policy, the petitioner legally earned an additional increment in recognition of the creditable service put in by him. There was nothing illegal about the said increment. It was not erroneously paid to him. The payment of the said increments till the introduction of the GR dated 24.08.2017 and till the superannuation of the petitioner on 30.11.2018, was not faulted. Even today, the case of the Zilla Parishad is not that the petitioner was a beneficiary of a miscalculation or wrong calculation. The case of the Zilla Parishad is based on the GR dated 24.08.2017 vide which the payment of the additional increment was stopped. This is considered by this Court and by judgment dated 06.12.2021, it has been concluded that the said GR will be applicable prospectively. We are in agreement with the view taken by the learned Division Bench of this Court at the Principal Seat.

9. Considering the above, this petition is allowed in terms of prayer clause "A" and "B".

10. On the quantum of interest, the learned Advocate for the Zilla Parishad has vehemently opposed and submits that the act of the Zilla Parishad was bonafide and there were no oblique motive in causing the deduction. In the absence of laches on the part of Zilla Parishad, no interest should be granted.

11. The learned Advocate for the petitioner submits that provident fund accumulation gets an interest of Rs.8.1%. Gratuity amount cannot be touched by anybody, except in specific conditions. It is more than 3 years that a large amount of Rs.1,68,480/- has been withheld.

12. Considering the above, we are of the view that an interest @ 6% per annum would be equitable and we, therefore, grant the said interest on the amount deducted by the Zilla Parishad. As such, the deducted amount alongwith 6% interest p.a. shall be paid to the petitioner on or before 15.07.2022.

13. The learned Advocate for the Zilla Parishad further submits that though the judgment dated 06.12.2021 has been delivered, the Zilla Parishad has not been communicated of the same by the State

Authorities through the Rural Development Department. As such, we direct the Registrar (Judicial) of this Court to place a copy of this order alongwith the order dated 06.12.2021 in WP No.4533/2021 delivered at the Principal Seat, before the Principal Secretary, Rural Development Department so as to be circulated to all the Zilla Parishads in the State of Maharashtra.

(S.G. DIGE, J.) **(RAVINDRA V. GHUGE, J.)**