IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 10534 OF 2019

Smt. Indira Madhav Mehetre,
Age : 49 Years, Occu. : Household,
R/o Mehetre Nivas, Vikasnagar,
Degloor Road, Udgir, Tq. Udgir,
District Latur. .. Petitioner

Versus

1. The State of Maharashtra,
Through : Principle Secretary,
Higher Technical Education Deptt.,
Mantralaya, Mumbai – 32.

2. The Joint Director,
Higher Technical Education Department,
Nanded Division,
Nanded.

3. The Principal,
Pansare Mahavidyalaya,
Arjapur, Tq. Biloli,
District Nanded.

4. The Accountant General,
Maharashtra,
Nagpur – II, Dist. Nagpur. .. Respondents

Shri Balaji B. Yenge, Advocate for the Petitioner.
Shri K. N. Lokhande, A.G.P. for the Respondent Nos. 1, 2 and 4.
Shri Mrigesh D. Narwadkar, Advocate for the Respondent No. 3.

CORAM : MANGESH S. PATIL AND SANDEEP V. MARNE, JJ.

CLOSED FOR JUDGMENT ON : 13.09.2022

JUDGMENT PRONOUNCED ON : 16.09.2022

<u>JUDGMENT</u> (*Per Sandeep V. Marne, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Heard Mr. Yenge, learned advocate for the petitioner, Mr. Lokhande, learned Assistant Government Pleader for respondent Nos. 1, 2 and 4 and Mr. Narwadkar, learned advocate for the respondent No. 3.

3. By the present petition, the petitioner seeks family pension after death of her husband, who was working on the post of Principal with the respondent No. 3 college. The only ground on which family pension is rejected, is that her husband had opted for Contributory Provident Fund Scheme (for short "C.P.F. Scheme") and that he was not governed by the Pension Scheme.

4. We need not go into the merits of the issue as to whether the petitioner's husband was entitled to switch over from C.P.F. scheme to Pension Scheme in view of various correspondence that has taken place in the matter. By letter dated 11 March 2022, the Joint Director of Higher Education, Nanded Division, Nanded has communicated to the management that upon deposit of employer's contribution to the C.P.F. along with interest, the petitioner's husband can be brought over on pension scheme. There is no dispute that the employer's contribution to C.P.F. scheme has been computed at Rs. 5,36,061/-. She is willing to deposit the same. The only controversy is about the interest. While the respondent State Government is insisting that the amount must be deposited with

interest, Petitioner contends that she is also entitled to interest on the arrears of family pension and, therefore, the interest on the amount of Rs. 5,36,061/- is required to be set off against the interest receivable by her on arrears of family pension.

5. Mr. Lokhande, the learned Assistant Government Pleader appearing for respondent Nos. 1, 2 and 4 has invited our attention to the Government Resolution dated 23.06.2015, under which a scheme is formulated for switching over from C.P.F. Scheme to Pension Scheme after deposit of employer's contribution to C.P.F. along with interest. He would submit that since the Government Resolution makes it mandatory to deposit interest on employer's contribution, no departure can be made in the case of the petitioner. We are in agreement with the submission of Mr. Lokhande. Since swich over from CPF scheme to Pension scheme is contingent upon deposit of employer's contribution along with interest, in accordance with the provisions of the G. R. dated 23.06.2015, the petitioner will have to deposit even the amount of interest on employer's contribution.

6. By letter dated 08 September 2022, the Joint Director of Higher Education, Nanded has computed and communicated the amount of employer's contribution to C.P.F. as well as interest payable thereon. The employer's contribution is Rs. 5,36,061/- and interest thereon is Rs. 1,97,104/-. Thus the total amount payable by the petitioner is Rs. 7,35,165/-. We are of the view that the petitioner will have to pay such amount of Rs. 7,35,165/- for coming over to the pension scheme.

7. There is no dispute that upon payment of such amount of Rs.

7,35,165/-, the petitioner's husband would come over to the pension scheme and upon his death on 01.06.2014, the petitioner would become entitled to family pension. The respondents would be required to pay monthly family pension to the petitioner from 01.06.2014 onwards. It appears that the amount of arrears of family pension from 01.06.2014 onwards would be much higher than the amount of Rs. 7,35,165/- payable by the petitioner towards refund of employer's contribution to C.P.F. along with interest. In these circumstances, instead of directing the petitioner to pay the amount of Rs. 7,35,165/- as a precondition for sanction of family pension, we deem it appropriate to direct that said amount of Rs. 7,35,165/- be adjusted and recovered from the amount of arrears of family pension payable to the petitioner. In the circumstances we proceed to pass following order.

O R D E R

(I) The writ petition is allowed by holding that the petitioner's husband is deemed to have come over on to the pension scheme and he would not be governed by the C.P.F. Scheme. Consequentially the petitioner is entitled to receive family pension from the date of death of her husband i. e. with effect from 01.06.2014. She would also be entitled to receive all other retiral benefits payable as per Rules.

(II) For such switch over from C.P.F. scheme to Pension scheme, the petitioner is liable to pay an amount of Rs. 7,35,165/- towards employer's contribution to C.P.F. including the component of interest.

(III) The amount of Rs. 7,35,165/- be adjusted against the amount towards arrears of family pension payable to the petitioner. Therefore, the respondents shall not insist on actual deposit of amount of Rs. 7,35,165/- and after calculating amount of arrears of family pension and other pensionary benefits, such amount of Rs. 7,35,165/- be adjusted therefrom.

(IV) After deducting the amount of Rs. 7,35,165/- from such arrears, the balance amount of family pension and other pensionary benefits be paid to the petitioner within a period of four (04) months from today.

(V) Rule is made absolute in above terms. No costs.

[SANDEEP V. MARNE, J.] **[MANGESH S. PATIL, J.]**

bsb/Sept. 22