

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

WRIT PETITION NO.14770 OF 2019

Vasant S/o Baliram Damkondwar,
Age 69 years, Occu. Retired as Sanitary Inspector,
R/o Ram Mandir Galli, Mukhed,
Tq. Mukhed, District Nanded. **... Petitioner**

Versus

1. State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya - 32.
2. The Director,
Municipal Administration,
Government Transport Services Building,
3rd Floor Sarfozwalla Marg, Varali,
Mumbai-30.
3. The Divisional Commissioner,
Aurangabad Division,
Aurangabad.
4. The Collector,
Collectorate Office,
Nanded.
5. The Chief Officer,
Municipal Council, Mukhed,
District Nanded. **... Respondents**

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Advocate for Petitioner : Ms. J. P. Reddy & Mr. P. P. Gude.

AGP for Respondents-State : Mr. Y. G. Gujarathi.

Advocate for Respondent No.5 : Mr. G. G. Kadam.

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**CORAM : R. D. DHANUKA, AND
S. G. MEHARE, JJ.**

DATE : 10.03.2022

ORAL JUDGMENT (PER R. D. DHANUKA, J.) :-

1. Rule. Learned AGP waives service of notice for respondent Nos.1 to 4. Learned counsel waives service of notice for respondent No.5. Rule is made returnable forthwith and heard finally by the consent of the parties.

2. By this petition filed under Article 226 of Constitution of India, the petitioner has prayed for writ of Mandamus against respondent No.5 to pay the retiral benefits i.e. gratuity, leave encashment, 6th pay arrears and Assured Progressive Scheme arrears total amount of Rs.4,76,526/- to the petitioner forthwith with interest @ of 12% per annum from the date of retirement i.e. 31.03.2008 in the interest of justice.

3. Learned counsel for the petitioner invited our attention to the exhibits annexed to the petition and also the affidavit-in-reply filed by respondent No.5. It is submitted that the amount of Rs.4,76,526/- mentioned by the petitioner in the prayer clause is admitted by respondent No.5. He submits that though

the said amount is admitted by the respondent No.5 as due on 21.12.2021, till then, the amount will be paid.

4. The learned counsel for respondent No.5 on the other hand states that his client has not disputed the liability of Rs.4,76,526/- though there is some dispute in respect of the amount of leave encashment of Rs.68,770/- which according to respondent No.5 should be Rs.38,770/-.

5. It is submitted by the learned counsel that since there are large number of employees whose dues are not paid, respondent No.5 will pay the arrears of the petitioner as per seniority list of employees whose payments and arrears are due against respondent No.5. The payment would be made as and when the respondent No.5 receives funds in its Treasury.

6. Learned counsel for the petitioner tenders a statement and would submit that according to the said statement of respondent No.5, respondent No.5 has already paid the retiral dues of some of the employees, who are junior to the petitioner and retired after the date of retirement of the petitioner. Learned counsel for respondent No.5 seeks time to take instructions to verify the correctness of the statement made by

the learned counsel for the petitioner. We are not inclined to grant any adjournment to respondent No.5.

7. Perusal of the affidavit-in-reply filed by respondent No.5 more particularly paragraph Nos.4 and 5 clearly indicates that there is no dispute about the amount of arrears of salary claimed by the petitioner in the sum of Rs.4,76,526/-. The only stand taken by the respondent No.5 is that the financial condition of respondent No.5 has worsen due to Covid-19 pandemic spread. It is stated that respondent No.5 will certainly pay the arrears of the petitioner as per seniority list of employees whose payments and arrears are due against respondent No.5. It is further stated that the payments of arrears of the petitioner and other employees will be made as and when respondent No.5 receives funds in its Treasury.

8. The claims of the petitioner for arrears of salary is due since 2008. Respondent No.5 cannot refuse to pay the salary on the ground that there are other employees also whose salaries are not paid due to precarious financial condition of respondent No.5. Liability towards the petitioner's claim is clearly admitted in affidavit-in-reply. We accordingly pass the

following order :

ORDER

- (i) Respondent No.5 is directed to pay the retiral benefits of the petitioner as quantified in prayer clauses B and C in the sum of Rs.4,76,526/- and the further amount if any payable within two (2) weeks from today with interest @ provided under various provisions of law for each of the Heads as claimed in the petition from the date of retirement i.e. 31.03.2008 till payment without fail.
- (ii) It is made clear that if the amount is not paid as directed by this order, this Court will initiate the proceedings under the provisions of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India against respondent No.5.
- (iii) Rule is made absolute in the aforesaid terms.
- (iv) Parties to act on the authenticated copy of this order.

- (v) Place the matter on board for "reporting compliance" on 28.03.2022.

(S. G. MEHARE, J.)

(R. D. DHANUKA, J.)

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vmk/-