IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6398 of 2019

Bhaskar Motiram Thakare,
Aged about 60 years, Occupation-Retired,
R/o. Koshom Tondi, Taluka-Sadak Arjuni,
District Gondia. .... **PETITIONER**

...V E R S U S...

1. State of Maharashtra through its Secretary, Rural Development and Water Conservation Department, Mantralaya, Mumbai-32.

2. State of Maharashtra through its Secretary, School Education and Sports Department, Mantralaya, Mumbai-32.

3. Divisional Commissioner, Nagpur Division, Nagpur.

4. The Zilla Parishad, Gondia, Through its Chief Executive Officer, Tq. and District Gondia.

5. Education Officer (Primary) Zilla Parishad, Gondia. Tq. and District Gondia.

6. Chief Accounts and Finance Officer, Zilla Parishad, Gondia. Tq. and District Gondia. .... **RESPONDENTS**

Shri A.R.Deshpande , Advocate for petitioner.
Ms T.H.Khan, Assistant Government Pleader for respondent nos. 1 to 3.
Shri A.Y.Kapgate, Advocate for respondent nos. 4 to 6.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE :- SEPTEMBER 28, 2022.

JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner was appointed as an Assistant Teacher with Zilla Parishad, Gondia on 25.01.1998. During the course of his service, he received the District Teacher award on 05.09.2007 on account of his excellent work in the field of teaching. By virtue of Government Circular dated 12.12.2000 the petitioner claims entitlement to two additional increments by virtue of having received such award. During the course of his service, he on 06.06.2012 received two advance increments from 01.10.2012 for discharging his services satisfactorily. Necessary entries to that effect were taken in his service book. These benefits were made admissible in view of Government Resolution dated 14.12.2006. The petitioner superannuated from service on 28.02.2017. After his superannuation, the Zilla Parishad sought to make some deductions from the benefits admissible to him. This was informed to the petitioner vide communication dated 21.06.2017. An amount of Rs,1,56,576/- towards over payment was sought to be deducted from the amount of gratuity. In that

regard the petitioner made a representation on 02.07.2018 which remained undecided. In the aforesaid backdrop, the petitioner approached this Court by filing the present writ petition seeking entitlement to the additional increments by virtue of being the District Awardee teacher.

3. After notice was issued in the writ petition, the Zilla Parishad, Gondia was directed to examine the decision of this Court rendered in Writ Petition No.5419 of 2019 (*Sanjay R. Waghmare and ors. vs. State of Maharashtra and ors.)* with connected writ petitions decided on 14.02.2019 and to file an affidavit in that regard. Thereafter on 05.03.2021 the Chief Executive Officer, Zilla Parishad, Gondia passed an order and proceeded to grant advance increment only from 03.07.2016 to 28.02.2017 being the period of three years prior to filing of the writ petition. Insofar as the demand for two additional advance increments was concerned, that relief was refused to the petitioner. The petitioner, pursuant to liberty granted by this Court on 09.03.2021 has challenged the order dated 05.03.2021 to the extent it is prejudicial to the rights of the petitioner.

4. At the outset, Shri A.Y.Kapgate, learned counsel for the Zilla Parishad raised a preliminary objection to the tenability of the writ petition on the ground that an alternate statutory remedy under Rule 14(1) of the

Maharashtra Zilla Parishads District Services (Discipline and Appeal), 1964 (for short, the Rules of 1964) was available to the petitioner. According to him the order dated 05.03.2021 could be challenged by filing statutory appeal. Said preliminary objection has been raised in Civil Application (W) No.891 of 2021. He placed reliance on the decisions in *City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwala and others* ***[(2009) 1 SCC 168],*** *Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.* ***[(2018) 3 SCC 85]***, *Radha Krishan Industries Vs. State of Himachal Pradesh and others* ***[(2021) 6 SCC 771]*** and *United Bank of India vs. Satyawati Tondon and others* ***[(2010)8 SCC 110]*** to urge that the writ petition may not be entertained on merits. In addition, it was submitted that there was considerable delay in seeking the relief of benefit pursuant to receipt of the District Award by the petitioner. There was no explanation for the same. On this count, it was submitted that the writ petition may not be entertained.

5. Responding to the aforesaid preliminary objections, it was submitted by the learned counsel for the petitioner that though the statutory remedy of appeal under Section 14(1) of the Rules of 1964 could be said to be available to the petitioner, the order dated 21.06.2017 had been passed without hearing the petitioner. By that order an amount of Rs.1,56,576/-

was deducted from the amount of gratuity payable to the petitioner without granting any opportunity of hearing. Further this was by withdrawing the two additional increments that were received by the petitioner during the course of his service. After his retirement, the same were sought to be withdrawn. This had further resulted in a retrospective reduction in the petitioner's pay-scale. The controversy in question was already decided by this Court in Writ Petition No.1010 of 2015 (*Grace George Pampoorickal Vs. Municipal Corporation of Gr. Mumbai and ors.*) decided on 20.04.2018 at the Principal Seat. In somewhat similar circumstances this Court had entertained Writ Petition No.6773 of 2019 (*Dilip Wamanrao Telrandhe Vs. Divisional Commissioner, Nagpur Division, Nagpur and ors.*) by turning down a similar preliminary objection of availability of an alternate statutory remedy. The right to receive pension was akin to a right to property and by denying that right the petitioner's fundamental rights were affected. For said proposition reference was made to the observations in paragraph 14 of the decision in *State of Jharkhand and others vs. Jitendra Kumar Srivastava and another* ***[(2013) 12 SCC 210]***. Reference was also made to the decision in Civil Appeal No.5121 of 2011 (*The Assistant Commissioner of State Tax and others vs. M/s Commercial Steel Ltd.*) decided on 03.09.2021 wherein it was held that in exceptional circumstances where there was breach of fundamental rights or violation of principles of natural justice, existence of an alternate statutory remedy cannot be treated as an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution of India.

On the aspect of delay in approaching this Court for seeking aforesaid benefits, it was submitted that in such situation the Court has restricted the grant of monetary benefit for a period of three years from the date preceding the filing of the writ petition. In the impugned order dated 05.03.2021 relief had been granted only from 03.07.2016 to 28.02.2017 after considering the fact that present writ petition was filed on 13.08.2019. He therefore submitted that the writ petition ought to be heard on merits.

6. We have heard the learned counsel for the parties at length and we have perused the documents placed on record. At the outset, the objection to the maintainability of the writ petition can be considered. Against the order dated 21.06.2017 an appeal would lie under Rule 14(1) of the Rules of 1964. To urge that in the facts of the present case it was not necessary for the petitioner to invoke the statutory remedy, it is urged on behalf of the petitioner that the deduction from the amount of gratuity and retrospective reduction in his pay-scale after his retirement was done without grant of any opportunity of hearing to the petitioner. It is urged that since

such action that is prejudicial to the interest of the petitioner had been taken without granting any opportunity of hearing to him, the same is in breach of principles of natural justice.

It is undisputed that the aforesaid action of deduction has been taken without hearing the petitioner. One of the exceptions carved out while maintaining a writ petition under Article 226 of the Constitution of India despite availability of an alternate statutory remedy is that the impugned action has been taken in breach of principles of natural justice. This aspect has been considered in the decisions relied upon by the learned counsel for the petitioner. Even in *Satyawati Tondon, City and Industrial Development Corporation* and *Authorized Officer, State Bank of Travancore & another* (supra) this aspect has been recognised subject to observing the rules of self-imposed restraint evolved by the Hon'ble Supreme Court. There can be no dispute that existence of an alternate statutory remedy would normally be a ground not to entertain a writ petition under Article 226 of the Constitution of India. However, if the exceptions as carved out by the Hon'ble Supreme Court including the aspect that the impugned action has been taken in breach of principles of natural justice, the same could be considered as a valid reason for entertaining the writ petition. Another aspect to be kept in mind is absence of any disputed question of fact and the question involved being adjudicated earlier by this Court in its various earlier decisions. For all these reasons we are of the view that the availability of a statutory remedy by way of an appeal under Rule 14(1) of the Rules of 1964 by itself would not be sufficient in the facts of the present case not to invoke extra ordinary jurisdiction especially when the impugned action has been taken in breach of principles of natural justice.

7. Coming to the aspect of delay as raised by the learned counsel for the respondent nos. 4 to 6, it is seen that while raising a challenge to the recovery of alleged excess payment made to the petitioner from the amount of gratuity is concerned, the same was done on 21.06.2017 which is after the petitioner’s retirement on 28.02.2017. The petitioner was in fact granted two advance increments from 01.10.2012 in the light of the Government Resolution dated 14.12.2006. After such deduction was made, the petitioner made a grievance in that regard through a representation dated 02.07.2018. In that context, this writ petition was filed on 13.08.2019 wherein the prayer to grant an additional increment pursuant to having received the District Teacher’s award was made. The right to receive such additional increment is in view of the Circular dated 12.12.2000 which has been considered by this Court in its various decisions. By the order dated 15.02.2021 this Court had directed the Chief Executive Officer to examine various decisions of the

Hon’ble Supreme Court as well as of this Court as annexed to the writ petition and take a decision thereon. The said directions were reiterated on 01.03.2021. In view of these directions, the Chief Executive Officer on 05.03.2021 passed an order by which an advance increment for having received the District Teacher award on 05.09.2007 was granted. This benefit however was from 03.07.2016 to 28.02.2017 being the period of three years prior to filing of the writ petition. Since the petitioner was partly aggrieved by the order dated 05.03.2021, this Court on 09.03.2021 granted leave to amend the writ petition so as to challenge the same. Accordingly, the writ petition has been amended and a challenge has been raised to the said order. We find that the Zilla Parishad itself having found that the petitioner entitled to receive one additional increment in view of Circular dated 12.12.2000 as the petitioner has received the District Teacher award on 05.09.2007, the objection based on delay loses its force. By the order dated 05.03.2021 while granting such additional increment the monetary benefit has been granted for three years preceding the filing of the writ petition. This is in view of various orders passed on those lines by restricting the monetary relief for a period of three years from the filing of the writ petition. We therefore do not find that the objection raised by the Zilla Parishad on the ground of delay warrants acceptance. Hence the preliminary objections raised by the Zilla Parishad are turned down.

8. Coming to the challenge to the order dated 05.03.2021 passed by the Chief Executive Officer, it is seen that insofar as the entitlement of the petitioner to grant of one advance increment for having received the District Teacher award is concerned, reference has been made to the Circular dated 12.12.2000 in that regard. After referring to various decisions of this Court the Chief Executive Officer has directed the grant of one advance increment to the petitioner from 05.09.2007. The arrears have however been restricted to a period of three years from filing of the writ petition. The arrears have been granted from 03.07.2016 to 28.02.2017. The only grievance of the petitioner in this regard is that such benefit could not have been restricted till 28.02.2017 which date has been taken into account as he retired from service. The effect of grant of the additional increment is not liable to be restricted till the date of his retirement inasmuch as the petitioner would be entitled to receive monetary benefits flowing from such additional increment even after his retirement. The objection raised in that regard is justified and hence it is necessary to direct the Zilla Parishad to grant the benefit of the additional increment in terms of the Circular dated 12.12.2000 from 03.07.2016 and onwards. In other words, the pensionary benefits to which the petitioner is entitled from 01.03.2017 would include the benefit that has

accrued to the petitioner by virtue of such additional increment in view of the Circular dated 12.12.2000.

9. As regards the other benefit of receiving two advance annual increments is concerned, the Chief Executive Officer has observed in the impugned order that by virtue of the earlier Government Resolutions such advance increments were being granted. However by a subsequent policy decision dated 27.02.2009 these advance increments have been discontinued. Reference is also made to Government Resolution dated 19.12.2015 in which it has been stated that employees who have retired or Class-III and Class-IV employees who are on the verge of retirement would not be subjected to recovery in case there has been any excess payment made in that regard. After noting that the petitioner superannuated on 28.02.2017 the Chief Executive Officer has directed that the amount of Rs.1,56,576/- that was recovered would be paid back to the petitioner.

The petitioner was receiving the aforesaid increments from 01.12.2012 till his superannuation. As a result of withdrawing the said increments his pay-scale would be reduced with retrospective effect. In this regard, the learned counsel for the petitioner has rightly placed reliance on the decision in *Grace George Pampoorickal* (supra). Therein, the Division Bench has observed that revision of the last pay drawn by an employee with retrospective effect after about 17 to 18 months of retirement was not permissible. Direction was issued to calculate the retiral benefits on the basis of last pay drawn by that employee. We find that the petitioner is entitled to such benefit. The Zilla Parishad itself having held that recovery of the excess amount was unjustified and having resolved to pay back that amount, there is no reason to deprive the petitioner of the benefits flowing from such grant of increments from 01.10.2012. Depriving him of those benefits would result in reducing his pay-scale with retrospective effect after retirement which has been held to be not permissible. To that effect, the impugned order dated 05.03.2021 is required to be modified.

10. For aforesaid reasons, the following order is passed:

(I) The order dated 05.03.2021 passed by the Chief Executive Officer, Gondia is modified in the following manner:

(i) The petitioner is entitled to receive benefit of the additional increment from 03.07.2016 and onwards. In other words, the petitioner would be entitled to receive retiral benefits after considering the grant of the additional increment from 05.09.2007. The pay-scale of the petitioner is required to be revised accordingly.

(ii) As regards grant of two additional increments are concerned, the same have been received by the petitioner from 01.10.2012. In terms of the order dated 05.03.2021 passed by the Chief Executive Officer, Zilla Parishad, Gondia the amount of Rs.1,56,576/- shall be repaid back to the petitioner within a period of three months from today, if not already repaid.

(iii) The pensionary benefits shall be paid to the petitioner after re-fixing his pay-scale on the basis of last pay drawn prior to superannuation. The Zilla Parishad shall release such benefits to the petitioner within a period of three months from today.

(II) Rule is made absolute in aforesaid terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.) **(A.S.CHANDURKAR, J.)**

Andurkar..