

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.221 OF 2022

Krishna s/o Shrawanji Tekade
and others

... Petitioners

- Versus -

Maharashtra Labour Welfare Board
and another

... Respondents

Shri A.D. Dangore, Advocate for Petitioners.

Smt. K.S. Joshi, In-charge Government Pleader for Respondents.

CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.

DATE : 15 MARCH 2022

P.C. :

Heard Shri Dangore, learned Counsel for the
Petitioners, and Smt. Joshi, learned In-charge Government
Pleader for the Respondents.

2) The Petitioners, who are retired employees of the
Respondent No.1 Maharashtra Labour Welfare Board, are praying
that the benefits of the 7th Pay Commission extended to them

under Government Resolution dated 20 July 2021 and order dated 29 October 2021 be changed as giving the benefits from 1 January 2016 instead of 1 July 2021.

3) The Petitioners were appointed on various dates with the Respondent Board. The Petitioners had filed Writ Petition No.6879/2019 in this Court for extending benefits of the 7th Pay Commission. The said petition was disposed of by order dated 5 February 2021 directing the State to take a decision within a period of eight weeks in respect of extending benefits of 7th Pay Commission. Thereafter decision was taken and the entitlement of the Petitioners for receiving benefits of revised pay/pension in the light of 7th Pay Commission was accepted. However, as stated above, benefits were made applicable from 1 July 2021.

4) The Respondents having extended the benefits of the 7th Pay Commission in principle to the Petitioners, have not given the effective date of 1 January 2016 as sought by the Petitioners on the ground of financial implications. The Petitioners in effect are seeking a writ of mandamus that the effective date for release of financial benefits be changed. Before issuance of such mandamus, the stand of the Respondents as regards financial implications will have to be considered.

5) The Respondent Nos.1 and 2, i.e. Maharashtra Labour Welfare Board and the State Government have filed their replies-affidavits and have stated that if such retrospective effect is given, the expenses of the staff and administrative expenses would exceed 60% of the amount available to the Respondent No.1 Board.

6) Shri Dangore, learned Counsel for the Petitioners, sought to contend that Section 6BB of the Maharashtra Labour Welfare Fund Act, 1953 deals with contribution payable under the Act, which comprises contribution payable by the employer, contribution payable by the employee and the contribution payable by the State. The learned Counsel submits that sufficient fund is available with the Respondent No.1 Board and the Respondent No.1 Board had in fact stated in its communication to the State Government on 8 November 2019 that the funds are available and if the benefits of 7th Pay Commission from 1 January 2016 are given to its employees, there will not be financial burden. It is further submitted that in fact the complete fund under Section 6BB has not been made available to the Board by State Government, which has resulted in a situation of shortfall of funds as sought to be made capital of by the State Government.

7) Smt. Joshi, learned I/c. Government Pleader for the Respondents, has brought to our notice that the reply-affidavit is

filed on behalf of both the Respondents and it is affirmed by the Maharashtra Labour Welfare Board as authorized by the Respondent No.2, wherein stand is taken that there will be financial burden and if the amount as sought for by the Petitioners is granted, it will exceed 60% of the annual income. The learned Government Pleader has also submitted that the situation post 2019, that is in the years 2020 and 2021 in respect of Covid pandemic will also have to be considered where there was shortfall in the contribution.

8) On affidavit, a chart is placed by the Respondents where it is stated that from the year 2014-15 to 2020-21, percentage has varied between 44.73 and 58.80 and if current annual income and expenditure as sought for by the Petitioners is compared, the amount would exceed 60% of the annual income. It is not possible for us to sit in appeal over the financial position of the Respondent Board. The communication of the Respondent Board dated 8 November 2019, which was issued prior to Pandemic, can no longer be relied upon in the light of the affidavit filed by the Respondent Board.

9) At this stage Shri Dangore, learned Counsel for the Petitioners, states that from the averments made in the affidavit of the State it appears that the financial position may improve and

the Respondent Board may take a positive stand in favour of the Petitioners and, therefore, in the light of this stand taken in the affidavit, the Petitioners would not pursue the matter further. Smt. Joshi, learned In-charge Government Pleader submits that though it may be so stated, but that the decision, if any in future, would also be subject to Rule 19-A of the Maharashtra labour Welfare Rules, 1953.

10) In the light of this stand taken by the Petitioners during the arguments, writ petition is disposed of.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)

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