

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

WRIT PETITION NO. 8261 OF 2018

Dr. Abdul Sattar Sheikh Ismail,
aged about 62 years, Occ. Retired,
R/o Plot No. 53-A, Gulshan Nagar,
Pandhrakawda Road, Yavatmal.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
through its Principal Secretary,
Department of Higher & Technical Education,
Mantralaya, Mumbai – 32.
2. The Joint Director of Higher Education,
Amravati Division, Amravati.
3. Loknayak Bapuji Aney Mahila Mahavidyalaya,
Yavatmal, through its Principal,
Yavatmal Ta. & Dist. Yavatmal.

RESPONDENTS

Shri A.I. Sheikh, Advocate for the petitioner.
Ms. K.R. Deshpande, Assistant Government Pleader for respondent Nos. 1 and
2/ State.

CORAM : A.S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : JULY 27, 2022

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
Counsel for the parties.

2. The petitioner has filed this Writ Petition along with the
following prayers :

“(a) direct the respondent no.2-the Joint Director of Higher Education, Nagpur Division, Nagpur to release five advance increments of Ph.D in favour of petitioner as per Clause 7 (i) of the Govt. Resolution dated 12.08.09 (Annexure-D) and further direct to revise his pension accordingly and release the arrears thereof within a stipulated period;

(b) to command the respondent no.2- Joint Director of Higher Education, Amravati Division, Amravati to refund the amount of Rs.1,79,400/- which was recovered from the petitioner after his retirement along with interest at the rate 12% per annum within a stipulated period;

(c) to command the respondent no.2- Joint Director of Higher Education, Amravati Division, Amravati to pay the Dearness Allowance of amount of Rs. 9820/- to petitioner which has not been paid to him from January 2016 to May 2016 within a stipulated period;”

3. In the reply filed by respondent Nos. 1 and 2, it has been stated in paragraphs 8 and 9 as under :

“8. It is submitted that, the Hon’ble High Court has ruled in Writ Petition NO.3300/2010 and 5211/2019 that the claim of five increments for possessing Ph.D. degree while entering into the services of Secondary Education to Higher Education which is to be treated as a qualification of acquiring Ph.D at entry level. It is submitted that, the claim of the petitioner is similar in nature as already accepted by the Hon’ble High Court in its earlier decision. In view of the judgments delivered by the Hon’ble High Court, the Government had issued the communication dated 05.11.2019 to cover such claim of five Ph.D. increments. The copy of the

*communication dated 05.11.2019 is annexed herewith as **Annexure R-6**.*

9. It is submitted that, the petitioner has received five increments by which the excess amount of Rs.1,79,400/- was recovered from the petitioner. In this circumstances the respondent State is ready to refund Rs.1,79,400/- without any interest thereon and also ready to revise the pension case to that effect. It is further made it clear that, the claim of the Dearness Allowances of Rs.9820/-, if pending, it will also disburse to the petitioner in accordance with the law.”

4. In view of the aforesaid statements made on behalf of respondent Nos. 1 and 2, prayer clauses (a) and (b) insofar as release of five advance increments as well as refund of Rs.1,79,400/- stand answered. Considering the fact that respondent Nos. 1 and 2 have fairly come-up with a stand that the petitioner is entitled to the benefits of the judgment passed in similar matters, we do not find that such refund should be directed along with interest.

5. Insofar as prayer clause (c) is concerned, the petitioner is permitted to make a representation to respondent No.2 for seeking release of the amount of dearness allowance. If such representation is made, the same shall be decided in accordance with law within a period of four weeks from receiving such representation. The excess amount of Rs.1,79,400/- shall be paid to the petitioner within a period of six weeks

from today failing which the petitioner would be entitled to interest @ 4% per annum on the said amount from the date of the judgment till realisation. The consequential benefits on revision of pension if made, shall also be admissible in accordance with law.

6. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI – PHALKE, J.)

(A.S. CHANDURKAR, J.)

SUMIT