IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 **WRIT PETITION NO.1173 OF 2023**

THE STATE OF MAHARASHTRA
VERSUS
SHOBHA BAJIRAO KHADE

...
Advocate for Petitioner / State : Mr. P.S. Patil
Advocate for Respondents : Mr. Y.B. Bolkar h/f. Kakasaheb B. Jadhav
...

CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.
DATE : 21st February, 2023

P.C. :-

1. The issue raised before this Court is as to whether the original applicant would be entitled for interest on the delayed payment of the value of commuted pension, when the pension amount was not reduced. The State has challenged the order to the extent of grant of interest, by the learned Maharashtra Administrative Tribunal

2. The original applicant approached the Maharashtra Administrative Tribunal by preferring Original Application No. 697 of 2019. The prayers put-forth are as under:

> *"A) To allow the Original Application.*
> *B) To direct the respondents to pay the amount of Commuted Value of pension Rs. 5,78,202/- with Interest to the applicant.*
> *C) To direct the respondents to pay the interest on the delayed payment of retrial benefits i.e. the amount of gratuity and amount of GPF of Rs. 1 lac and other amounts to the applicant.*

D) To direct the respondent no. 4 to sanction and decide the proposal dtd. 21.1.2019 submitted by the respondent no.5 for payment of amount of Commuted value of pension of Rs. 5,78,202/- to the applicant forthwith..

E) To direct the respondents to decide the applications dtd. 21.12.2018 submitted by the applicant for payment of Commuted Value of Pension and interest on the retrial benefits.

F) Any other equitable and suitable relief may kindly be granted In favour of applicant in the Interest of justice."

3. By the impugned judgment dated 22.06.2022, the Tribunal concluded that the communication dated 10.05.2019 issued by respondent no.4 is quashed and set aside and the respondents were directed to pay pensionary benefits viz. commuted value of pension Rs. 5,78,202/- together with admissible interest, in the light of Rule 129(b) of M.C.S. Pension Rules, 1982 as well as the part GPF amount, to the applicant, within a period of two months.

4. The learned AGP representing the petitioner State has relied upon the order passed by the Competent Authority dated 21.06.2016 which is as under:

"Part-II

1. NAME OF THE GOVT. SERVANT: BAJIRAO VITHOBA KHADE

2. CLASSS OF PENSION	Superannuation Pension (Rule 63)
3. FORWARDING OFFICE:	TALUKA AGRICULTURAL OFFICER, GANGAPUR
4. RESIDENTIAL ADDRESS :	BAJIRAO VITHOBA KHADE SOCIETY, NEAR MHASKE PETROL PUMP, BEED BYE PASS, SATARA PARISAR, AURANGABAD.

5. DATE OF BIRTH : 05/05/1958 6. DATE OF DEATH

7. DATE OF APPOINTMENT : 28/08/1984	8. DATE OF RETIREMENT : 31/05/2016
I) BANK: II) BRANCH:	III) ACC NO:
9. POST HELD: AGRICULTURAL OFFICER	10. SCALE OF PAY: 9300-34800
11. PENSIONARY PAY: 24180= + 4600/-	12. LAST PAY DRAWN: 24180/-+ 0/-
13. GROSS SERVICE: 31/9/4	14. WEIGHTAGE: 0/0/0
15. NON QUALIFYING SERVICE: 0/0/0	16. NET QUALIFYING SERVICE: 31/9/4
17. AMOUNT OF PENSION: 14390/-	18. REDUCED PENSION: 8634/-
19. COMMUTED PENSION: 5756/-	20. COMMUTED VALUE: 578202/- OF PENSION
21. AGE NEXT BIRTHDAY: 59	22. COMMUTATION AMOUNT / PERCENTAGE : 40
23. COMMUTATION RATIO : 8,371	
AVG_NPA: 0	NPA: 0

FROM	TO	PAY
01/08/2015	31/05/2016	24180”

5. The learned AGP submits that there is no dispute that the request of the petitioner for seeking 40% commutation of the pension amount, was accepted. His last pay drawn was considered for calculating the pensionable pay. The amount of pension of Rs.14,390/- was calculated. The reduced pension on account of the commutation was also calculated and the total pension payable after commutation was drawn @ Rs.8634/-. However, thereafter, no further steps were taken. There was no reduction in the pension amount.

6. It is conceded by both the parties that the above reproduced calculation post 40% commutation of pension was only a paper work and never implemented. It is also conceded by the widow that her husband drew the pension amount @ Rs.14390/-. It is also conceded that after the 7th Pay

Commission Recommendations were implemented, the pension amount was revised to Rs.37,150/-. It is also conceded that on the one hand, commuted value of the 40% pension of Rs.5,78,202/- was not paid, but on the other hand, there was no reduction in the pension amount that would have occurred if the deduction as regards the commutation amount / percentage would have been effected.

7. The issue is, therefore, plain and simple. Whether the widow would be entitled for interest on the commuted value of pension, without the pension being actually commuted and the entire pension amount being fully and regularly paid?

8. We find that, if the pension had been paid as per the commuted value, after effecting the commuted value of 40% pension, the widow would have been entitled for reduced pension. If the sanction of the commutation was only kept on paper and factually the widow received entire pension amount without any deductions towards commutation value of pension, it means that the implementation of the decision to commute the pension was deferred, without causing any prejudice to the widow. Nevertheless, since the decision was never implemented earlier and the widow enjoyed the entire amount of pension without the effect of commutation, no interest could have been granted. This aspect has apparently been lost sight of by the learned

Tribunal which has not even adverted to this factual position. Neither was this aspect argued by the counsel before the Tribunal, nor did the Tribunal realise that interest on commuted value of pension would have been payable, only if proportionately the pension would have been reduced without paying the commuted value of pension.

9. There is a twist in this case after the impugned judgment was delivered. The learned AGP points out two office memorandums dated 25.10.2022 and 31.10.2022 issued by the Government of India, Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners' Welfare. These two memorandums have not been placed on record through the e-filing mode. The learned AGP submits that considering the said office memorandums, the State has decided to pay the commuted value of pension to the actual pensioner or his widow and the said amount cannot be recovered from the widow only because the actual pensioner has passed away. The State Government, by a good gesture, has paid the commuted value of pension of Rs. Rs. 5,78,202/- despite the death of the pensioner, to the widow. So also, there has been no reduction in the pension amount which is payable to the widow pursuant to the 7th Pay Commission Recommendations.

10. After the Tribunal directed the State to pay the commuted value of pension to the extent of 40%, the Government has paid the said amount.

However, even thereafter, the pension amount was not reduced in view of the above stated memorandums. In effect, now the petitioner continues to draw the entire pension amount that was permissible without commutation of pension and, at the same time, she has been paid the entire value of the commuted pension. The day the commuted value of pension was paid to her, from that day the pension could have been reduced proportionately, since 40% of the pension was surrendered by way of commutation. However, the State did not choose to do so. In these circumstances, now there is no question of granting any interest on the commuted value of pension.

11. In view of the above, this petition is allowed. The impugned order of the learned Tribunal to the extent of granting interest to the widow, stands quashed and set aside. The Original Application No. 697 of 2019 stands dismissed to this extent. Needless to state, the decision as regards payment of the commuted value of pension is concerned, the same would call for interference.

[SANJAY A. DESHMUKH, J.] **[RAVINDRA V. GHUGE, J.]**

mub