IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7636 OF 2023

1. The Commissioner of Police, D.N. Road, Opp. Crawford Market, Mumbai-1.

2. The Additional Commissioner of Police, Eastern Region Department, Chembur, Mumbai-1.

3. The Additional Chief Secretary, Finance Department, Mantralaya, Mumbai. **...PETITIONERS**

V/S.

Smt. Deepali Dinkar Shirsat
Age-54 yrs, Widow of Retired Police Hawaldar, Buckle No. 21925, R/a.702, Swapnapurti CHS, Sagar Nagar, Parksite, Vikroli, Mumbai-79 **...RESPONDENT**

Mr. N.K. Rajpurohit, AGP for the applicant-State.

Mr. Laxman Kubal a/w. Mr. Nilesh Desai, Advocate for the Respondent.

CORAM : DHIRAJ SINGH THAKUR, &
SANDEEP V. MARNE, JJ.

<u>Date : 22 June 2023</u>.

22 June 2023.

P.C. :

1. This petition is filed by the Petitioner-State Government challenging judgment and order dated 22 December 2022 passed by the Maharashtra Administrative Tribunal, Mumbai Bench (**Tribunal**) in Original Application No. 964/2023. By its order, the Tribunal has granted the relief of payment of difference in the amount of commutation of pension to the Respondent.

2. The issue that arose before the Tribunal and which again arises for our consideration is, whether Respondent is entitled to receive difference in the amount of commuted value of pension arising out of enhancement of pension due to implementation of 7^{th} Pay Commission pay scales.

3. The difference in the amount of commuted value of pension is denied to the Respondent on the ground that the application for payment of the same has not been made by the deceased employee and that the widow had no right to make such an application.

4. Respondent's husband Late Dinkar Shirsat was working as a Head Constable under Commissioner of Police, Mumbai and retired on attaining the age of superannuation on 31 May 2016. He exercised the option for commutation of pension and received amount towards commutation. At that time

his pay, pension and commuted value of pension were determined on the basis of 6th Pay Commission payscale. Shortly after his retirement, he unfortunately expired on 20 September 2016. After retirement and death of the deceased employee, Maharashtra Civil Services (Revised Pay) Rules, 2019 came to be notified in the year 2019 for the purpose of implementation of recommendations of the 7th Pay Commission. The Maharashtra Civil Services (Revised Pay) Rules, 2019 were made effective on 1 January 2016 on account of which, pay of the deceased employee got enhanced from 1 January 2016 and consequently his pension was also increased w.e.f. 1 June 2016. The arrears of pay and pension appears to have been paid to Respondent. On account of increase in the amount of monthly pension, there was natural increase in the amount of commuted value of pension.

5. Petitioner who is the widow of the deceased employee made an application for payment of difference in the commuted value of pension. Since the request was not granted, she instituted O.A. No.964/2023 before the Tribunal. The Tribunal has proceeded to allow the Original Application considering the provisions of Rules 7 and 10 of the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 (**Commutation of Pension Rules**).

6. Mr. Rajpurpohit, the learned Counsel appearing for the Petitioner would contend that in terms of the Circular dated

12 July 2021 issued by Finance Department of Government of Maharashtra, unless the Pensioner personally makes an application for payment of difference in the amount of commuted value of pension, the same cannot be paid. That in the present case, the deceased employee did not make any application for payment of difference in the commuted pension and that the widow was not entitled to make such an application.

7. Thus only on account of the Circular dated 12 July 2021, Petitioners have taken a decision not to pay the difference in the commuted value of pension to the Respondent.

8. Rules-7 and 10 of the Commutation of Pension Rules read thus :

> "*7. **Death of an applicant before receiving the commuted value***
> *If an applicant dies without receiving the commuted value on or after the date on which commutation became absolute, the commuted value shall be paid to his heirs."*

> *"**10. Retrospective revision of final pension***
> *An applicant who has commuted a fraction of his final pension and after commutation his pension has been revised and enhanced retrospectively, as a result of Government's decision, the applicant shall be paid the difference between the commuted value determined with reference to enhanced pension and the commuted*

value already authorized. For the payment of difference, the applicant shall not be required to apply afresh.

Provided that, if a pensioner has specifically mentioned the amount of commutation of his final pension in his application of commutation of pension and as a result of government decision his final pension has been revised and enhanced retrospectively, if the pension expresses his willingness, he is entitled to revised and enhanced amount of commutation of his final pension up (forty per cent) of revised final pension;

Provided further that, as per revised Pay Commission Order, the Government has changed the pay scale and pension has been revised and enhanced retrospectively, the pension may opt for difference of commutation, and he may submit the application to the concerned authority for the same within six months from the date of order issued by the Government. If the pension does not apply or opt for the difference it is presumed that he is not interested for revised commutation.

Provided also that in the case of an applicant who has commuted a fraction of his original pension not exceeding (ten percent of basic pension) after being declared fit by a Civil Surgeon of a District Medical Officer and as a result of retrospective enhancement of pension, be becomes eligible to commuted an amount exceeding (ten percent of basic pension) per mensem, he shall be allowed the difference between the commuted value of (ten percent of basic pension) per mensem and the commuted value of the fraction of the original pension without further medical examination. The commutation of any further amount beyond (ten percent of basic pension) per mensem shall be treated as fresh commutation and allowed subject to examination by a Medical Board."

9. Thus, in the event of death of an employee before receiving commuted value of pension, the same is payable to his/ her legal heirs. Similarly, in the event of revision of pension after payment of commuted value of pension, the difference in the commuted value is also payable to a pensioner under Rule 10. We do not see any logic in not extending the benefit of payment of difference in the commuted value of pension to widow of the deceased employee. Thus what is sought to be restricted to a widow is something which was payable to the deceased employee during his lifetime. Rule-7 of the Commutation of Pension Rules clearly entitles a widow to receive commuted value of pension in the event of death of the employee before receipt of the amount.

10. We therefore do not see any difficulty why the Respondent could be denied difference in the commuted value of pension, which the deceased employee would have received, had he been alive.

11. Reliance of the Petitioners on the Circular dated 12 July 2021 is clearly misplaced. The Circular is issued essentially for guidance in respect of the cases where there is increase in the amount of pension on account of implementation of the 7th Pay Commission to pensioners retiring from 1 January 2016 to 31 December 2018. The objective of the Circular is not to deny difference in the amount of commuted value of pension to a widow of the deceased employee. Merely because the Circular

prescribes that an application for payment of difference in the commuted value of pension is required to be made by the pensioner himself, no inference can be drawn that there is any intention on the part of the State Government to deny such payment to a widow of a deceased pensioner.

12. The view taken by the Tribunal is plausible and does not suffer from perversity warranting this Court's interference in exercise of supervisory jurisdiction. Resultantly, we do not find any error being committed by the Tribunal in allowing the Respondent's Original Application. The Writ Petition filed by the Petitioners is devoid of merits. It is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.) (DHIRAJ SINGH THAKUR, J.)