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

WRIT PETITION NO.2465 OF 2020

1. Vishnupant s/o Narayanrao Kashid, aged about 75 years, occupation retired, r/o Dr.Khadse Layout, Bachelor Road, Wardha, taluka and district Wardha.

2. Shankar s/o Daulatrao Mahajan, aged about 73 years, occupation retired, r/o Wardha, taluka and district Wardha.

2-A Shantabai w/o Shankar Mahajan, aged about 75 years, occupation Nil, r/o Sane Guruji Nagar, Arvi Naka, Ward No.1, Wardha, tahsil and district Wardha. ….. Petitioners.

:: V E R S U S ::

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

2. The Chief Executive Officer, Zilla Parishad, Wardha, Taluka and district Wardha. ….. Respondents.

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Mrs.Smita Dashputre, Advocate h/f Shri S.U.Ghude, Counsel for Petitioners.
Shri N.M.Kolhe, Counsel for Respondent No.2.
Shri S.M.Ukey, Additional Government Pleader for Respondent No.1.

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CORAM : AVINASH G.GHAROTE & URMILA JOSHI-PHALKE, JJ.
CLOSED ON : 22/08/2023
PRONOUNCED ON : 01/09/2023

JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard. **Rule**. Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for parties.

2. By this petition, petitioners seek direction to respondent No.2 - the Chief Executive Officer, Zilla Parishad, Wardha to grant benefit of one additional increment w.e.f.2.10.1999 and 5.9.2000 respectively as per order of this court dated 3.9.2019 along with arrears including 9% interest w.e.f. the date of issuing certificate of the District Awardee Teachers.

They also claim declaration that circular dated 12.12.2000 issued by respondent No.1 - State Maharashtra is arbitrary and violative of Article 14 of the Constitution of India.

3. Petitioners came to be appointed on 19.8.1964 and 19.9.1963 respectively as Assistant Teachers on the establishment of Zilla Parishad at Wardha. They retired on 30.6.2001 and 30.6.2003 respectively. As per their contentions, the Zilla Parishad granted District Awards to

selected teachers in its various schools for their excellent performance. Petitioners were also selected for the District Awards for the years October 1999 and September 2000 respectively. They are entitled for the benefit of one additional/advanced increment as per Government Resolution dated 12.12.2000. According to them, the said Government Resolution is unjust and arbitrary as respondent No.1 – State of Maharashtra ought to have made it applicable retrospectively to those who were already honoured with the District Awards earlier to the said Government Resolution. The act of respondents amounts discrimination between the similarly situated persons. They have also made representation on 14.5.2019 which remained unanswered. Hence, this petition for directions and declarations.

4. Respondent No.2 – the Chief Executive Officer, Zilla Parishad, Wardha, submitted its affidavit-in-reply and denied contentions of petitioners. It is submitted that under the Scheme of District Awardee Teachers, benefit of one additional increment is implemented from the date of 12.12.2000 as per the said Government Resolution issued by the Rural Development Department. Before introduction of

the said Government Resolution, benefit of grant of one additional increment to the District Awardee Teachers was not permissible. As far as the judgment dated 3.9.2019 passed by this Court in Writ Petition No.2343/2008 is concerned, all petitioners in the said petition had received certificates under the Scheme of the District Awardee Teachers after introduction of the said Government Resolution and, therefore, the present petition is devoid of merits and liable to be dismissed.

5. The above contentions of respondent No.2 – the Chief Executive Officer, Zilla Parishad, Wardha, are endorsed by respondent No.1 - State of Maharashtra and prayed for dismissal of the petition.

6. Heard Advocate Mrs.Smita Dashputre h/f learned counsel Shri S.U.Ghude for petitioners, learned counsel Shri S.M.Ukey for respondent No.2 and learned Additional Government Pleader for respondent No.1.

7. Learned counsel for petitioners reiterated contentions and submitted that as petitioners are the District Awardee Teachers for the years October 1999 and September

2000, they retired on 30.6.2001 and 30.6.2003 respectively. They were in service when the said Government Resolution was issued and, therefore, in view of the said Government Resolution, they are entitled for the benefit of additional/ advanced increment. She submitted that in Writ Petition No.2343/2008 petitioners therein received the said benefit and, therefore, petitioners in the present petition being similarly situated are also entitled for the said benefit.

8. In support of her contentions, learned counsel for petitioners placed reliance on the decision of the Honourable Apex Court in the case of **Bannari Amman Suguars ltd. vs. Commercial Tax Officer and others**[1].

9. Learned Additional Government Pleader for respondent No.1 and learned counsel for respondent No.2 submitted that the said Government Resolution cannot be applied retrospectively unless there is a specific provision to that effect and, therefore, petitioners are not entitled for such benefit.

1 (2005)1 SCC 625

10. Learned Additional Government Pleader for respondent No.1, in support of his submission, placed reliance on the decision in the case of **Pranjali films, Nashik and anr vs. State of Maharashtra and ors**[2] wherein it is held that retrospective operation of resolution is impermissible except when there is an express provision of a retrospectivity.

11. The issue to be looked into is, whether Government Resolution dated 12.12.2000 can be made applicable retrospectively.

12. There is no dispute that petitioners were appointed on 19.8.1964 and 19.9.1963 as Assistant Teachers on the establishment of the Zilla Parishad at Wardha. Admittedly, they received the District Awards for their excellent services for the years October 1999 and September 2000 and certificates were issued to them. They retired on 30.6.2001 and 30.6.2003 retrospective. Admittedly, they were selected as the District Awardee Teachers prior to issuance of the said Government Resolution. Whether the said Government Resolution is applicable prospectively or retrospectively, is the issue.

2 2008(4) Mh.L.J. 789

13. It is well settled that any new law introduced is presumed to be prospective in nature unless expressly stated to be retrospective with date in past from which statute shall apply.

14. Perusal of the said Government Resolution shows that issued on 12.12.2000 and there is no express provision made to make it applicable retrospectively.

15. The Honourable Apex Court had an occasion to examine concept of retroactive and retrospective in the case of **State Bank's Staff Union (Madras Circle) Vs. Union of India**[3] and in paragraph Nos.20 and 21 it has been laid down, as under:

> "20. Judicial Dictionary (13th Edn.) K.J. Aiyar, Butterworth, p. 857, states that the word "retrospective" when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases, Permanent Edn., Vol. 37-A, pp. 224-25, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new

3 (2005)7 SCC 584

disability, in respect to transaction or considerations already past.

21. In Advanced Law Lexicon by P. Ramanath Aiyar (3rd Edition, 2005) the expressions "retroactive" and "retrospective" have been defined as follows at page 4124 Vol.4:

"Retroactive- Acting backward; affecting what is past.

(Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. - Also termed retrospective. (Black, 7th Edn. 1999)
'Retroactivity' is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called 'true retroactivity', consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as 'quasi-retroactivity', occurs when a new rule of law is applied to an act or transaction in the process of completion......The foundation of these concepts is the distinction between completed and pending transactions...." (T.C. Hartley, The Foundations of European Community Law 129 (1981)."

16. The Honourable Apex Court in the case of **Jay Mahakali Rolling Mill vs. Union Of India**[4] held that "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the Statute in question. Retrospective law means a law which

4 (2007)12 SCC 198

looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force."

17. It is well settled that in absence of Rule having been given a retrospective effect, it could not have been given a retrospective effect. The State in exercise of its powers under Article 309 of the Constitution of India may give retrospective effect to a Rule. However, the same must be explicit and clear by making express provision therefor or by necessary implication. But, such retrospectivity of a Rule cannot be inferred only by way of surmises and conjectures.

18. Admittedly, the benefit of advanced increment is to be granted as per the policy of the Government prevailing at that time.

19. This court has an occasion to consider whether Government Resolution 24.8.2017 is prospective or retrospective. Now, this issue is no longer *res integra*.

20. In the decisions of this court, **Uday J.godave and ors vs. The State of Maharashtra and ors**[5]; **Ganpat Vitthal**

5 Writ Petition No.4050/2017 decided on 22.10.2020

Dapute and ors vs. The State of Maharashtra and ors[6], and **Appasahebd Mali and others vs. State of Maharashtra and others**[7], it has been held that the Government Resolution has a prospective effect.

21. The said Government Resolution, which is questioned in the present petition, nowhere speaks about its retrospective effect. As already observed that unless it is specifically stated that it has a retrospective effect, it cannot be made applicable retrospectively. The benefit of an advanced increment is granted by this court as per the judgment dated 3.9.2019 passed in Writ Petition No.2343/2008 considering that petitioners in the said writ petition have received certificates under the Scheme of the District Awardee Teachers after introduction of the Government Resolution. Thus, the benefit of an advanced increment granted as per the prevailing Government Policy. The present petitioners are not entitled for the said benefits as at the relevant time, when they were selected as District Awardee Teachers, the Scheme was not in existence and in absence of any specific provision of retrospective effect,

6 Writ Petition No.14797/2017 decided on 11.6.2019
7 Writ Petition (St.) No.532/2021 decided on 24.3.2021

petitioners are not entitled for such benefits. As such, the reliance placed by learned counsel for petitioners is not relevant as the issue of promissory estoppel is discussed in the said decision.

22. In the light of the above, the writ petition deserves to be dismissed and the same is **dismissed**. No costs.

Rule is discharged accordingly.

(URMILA JOSHI-PHALKE, J.) **(AVINASH G.GHAROTE, J.)**

!! BrWankhede !!