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

WRIT PETITION NO. 2276 OF 2021

Kaliram Kashiramji Gaikwad, Aged about 59 years, Occup.Retired, R/o Behind Tahsil Office, Burdi, Tah. Armori, district Gadchiroli. **Petitioner**

-Vs.-

1. State of Maharashtra, through it's Secretary, Rural Development Department, Bandhkam Bhavan, Fort Mumbai-01.
2. Divisional Commissioner, Nagpur Division, Nagpur
3. Chief Executive Officer, Zilla Parishad, Gadchiroli, District Gadchiroli **Respondents**

G.N.Khanjode, counsel for the petitioner
Mr.A.S.Fulzele, Additional Government Pleader for respondent Nos.1 and 2.
Smt.Meghna Munshi counsel for respondent No.3.

CORAM: A.S.CHANDURKAR AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 25th July, 2023

O R A L J U D G M E N T (**Per** : A.S.Chandurkar, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The petitioner came to be appointed as a 'Laboratory Technician' with Zilla Parisahd, Gadchiroli on 01.04.1998. During the course of service, he was placed on the post of Scientific Technical Officer-Class-III and he superannuated on 30.06.2020. The petitioner is aggrieved by the action initiated by the Zilla Parishad of seeking to recover the alleged excess payments made to the petitioner between the period from 01.07.2002 to 31.12.2017. For that reason, initially the petitioner was not paid his retiral benefits. During the pendency of the proceedings, the petitioner has been paid amount of pension as well as the amount of leave encashment. Presently, amount of gratuity of Rs.7,24,900/- has been withheld.

4. The learned counsel appearing for the petitioner submits that the alleged excess payment took place between 01.07.2002 to 31.07.2017. In view of the Government order dated 10.08.2020, excess payment made prior to five years is not liable to be recovered. In addition, the petitioner is a Class-III employee and thus such recovery cannot be effected. Ignoring the said Government order, the petitioner's amount of gratuity has

been withheld. Placing reliance on the decision in the case of **Manohar Bappaji Gaikwad Vs State of Maharashtra** reported in **2023(2) Mh.L.J.,106** it is submitted that since the benefit of pay fixation was granted to the petitioner and there are no allegations of fraud or misrepresentation, the recovery is unjustified.

5. On the other hand, the learned counsel appearing for the Zilla Parishad has submitted that the petitioner had tendered an undertaking on 11.08.2019 in which it was stated that if any excess payment is made pursuant to the revision of pay fixation, that amount was agreed to be permitted to be deducted from his entitlement. In view of the decision in the case of **High Court of Punjab and Haryana and ors. Vs.Jagdev Singh** reported in **(2016) 14 SCC 267**, the petitioner was bound by his undertaking and therefore, no fault could be found with the order of recovery.

6. Having heard the learned counsel appearing for the parties and on perusal of the documents on record, we are satisfied that the Zilla Parishad is not justified in withholding the amount of gratuity of the petitioner for Rs. 7,24,900/- for the following reasons:-

a) The amount of gratuity can be withheld only in accordance with the provisions of the payment of Gratuity Act, 1972. There is no order passed under the said Act on the basis of which the amount of gratuity can be withheld.

b) The petitioner is serving on a Class-III post and he superannuated on 30.06.2020. As per the Government order dated 10.08.2020 excess payment made for a period prior to five years is not liable to be recovered. The over payment is stated to have been made from 01.07.2002 to 31.12.2017, which is almost five years prior to the petitioner's superannuation.

c) The undertaking given by the petitioner on 11.08.2019 is with regard to any excess payment made pursuant to pay revision under the Revised Pay Rules of 2019. Admittedly, over payment has been made prior to the petitioner receiving any payment on account of his pay revision. The undertaking therefore, cannot operate in these facts when the over payment is stated to have taken place till 31.12.2017.

7. For all these reasons, the ratio of the decision in **High Court of Punjab and Haryana Vs.Jagdev Singh** (supra) cannot be applied to the facts of the present case. Accordingly, it is held that the Zilla Parishad is not justified in refusing to release the amount

of gratuity of the petitioner for Rs.7,24,900/-. Within a period of four weeks of receiving copy of the judgment, the said amount shall be released in favour of the petitioner failing which, the same shall carry interest @ 4% till it's realisation.

8. The petitioner on 18.05.2020 has made a representation for release of additional increment that is admissible to him for having superannuated on 30.06.2020. The said increment becomes admissible on 01.07.2020. The Medical Officer, Primary Medical Centre, Vairagad shall consider the said request made on 18.05.2020 (Page 250) of the writ petition and take necessary steps in that regard. The petitioner is at liberty to seek interest on belated release of pensionary amount under Rule 129 (B) of the Maharashtra Civil Services (Pension) Rules, 1982 in accordance with law.

9. Rule is made absolute in the afore-stated terms. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J) **(A.S.CHANDURKAR,J)**

Signed By:KAVITA PRAVIN TAYADE
P. A.
Kavita
Signing Date:31.07.2023 10:43