

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

WRIT PETITION NO. 4776 OF 2022

PETITIONER :-

Vijay Tawarmal Nanwani,
Aged 62 years, Occup. Retire, R/o
Bhudwar Bazar Road, Dhamangaon
Railway, District Amravati 444 709.

...VERSUS...

RESPONDENTS :-

1. State of Maharashtra, through its
Secretary, Urban Development
Department, Mumbai- 32.
2. Municipal Council, Dhamangaon,
Railway, through its Chief Officer,
Dhamangaon Railway, District Amravati
444 709.

Mr.Alok Daga, counsel for the petitioner.
Mr.M.K.Pathan, AGP for respondent 1
Mr.M.I.Dhatrak, counsel for respondent 2.

**CORAM : ROHIT B. DEO &
 MRS.VRUSHALI V. JOSHI, JJ.**

DATED : 14/03/2023

J U D G M E N T (Per :Rohit B.Deo, J.)

1. Heard.

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

3. The petitioner superannuated as Class-III employee on 30/11/2019.

4. The grievance of the petitioner is that while he is receiving pension, the amount of gratuity, leave encashment and arrears due to the revision in pay scale on the basis of the recommendations of the 7th Pay Commission, is not paid.

5. We have perused the affidavit in response filed on behalf of the respondent-2-Municipal Council. Paragraphs-3, 4 and 5 of the affidavit in response read thus:-

“3. That, so far as the retiral dues of the petitioner is concerned, out of total amount of gratuity of Rs.8,43,100/- Rs.1,00,000/- is paid and outstanding amount of gratuity is of Rs. 7,43,150/-. The total amount of leave encashment comes to Rs.5,72,320/- and payment made is Rs.1,00,470/- and outstanding leave encashment amount is Rs.4,71,850/-. Therefore, the total amount outstanding of gratuity and leave encashment comes to Rs. 12,15,000/-.

4. That, so far as the payment of arrears of 7th Pay Commission is concerned, the State Government is granting the arrears of payment to every Municipal Council in Maharashtra of 7th Pay Commission and whatever instalments have been received from the State government, it has been paid to everybody. Considering the weak financial

condition and considering the fact that huge amount of gratuity and leave encashment is outstanding of the superannuated employees, it is not possible to make the remaining balance payment of arrears of 7th Pay Commission unless the aid is received from the State Government. Therefore, the remaining payment of 7th Pay Commission will be made, as and when the funds are made available by the State Government.

5. It is to be considered that the financial condition of Municipal Council is weak and total outstanding amount is very huge towards payment of gratuity and leave encashment. Copy of details of chart showing the payment made and payment to be made as on 04.07.2022 is annexed herewith and marked as Annexure No.R2-1.”

6. We note that the opposition of the respondent-2-Municipal Council is by and large restricted to the interest part. While we are alive to the financial difficulties in which the respondent-2-Municipal Council finds itself, and we are not therefore inclined to grant interest on the amount of leave encashment, we are not persuaded to refuse interest on the unpaid gratuity, since such interest is statutorily envisaged.

7. Mr. Dhatriak, does invite our attention to certain orders in which we have not granted interest. We note that while, interest is granted on the gratuity amount in some matters, as Mr. Dhatriak rightly points out, in few matters the interest is not

granted. Be that as it may, if the petitioner is pressing the entitlement of interest, we have to consider the same on the touchstone of the statutory provisions and the fact that in a given case, such interest may not have been seriously pressed and therefore, not granted cannot be a guiding light.

8. We, therefore, allow the petition partly and direct the respondent-2-Municipal Council to pay the gratuity and leave encashment dues to the petitioner within the next six months. We clarify that the amount of gratuity shall carry interest as envisaged under the Maharashtra Civil Service (Pension) Rules, 1982. We further order that if the other dues are not paid within the six months' period, the same shall carry interest at the rate of nine per cent per annum.

9. Rule is made absolute in the above terms. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(ROHIT B. DEO, J)