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

WRIT PETITION NO. 4813 OF 2018

Nootan w/o Nitin Bansod
Aged about 59 years,
Occ.: Retired, R/o. Raghuveer Apartment,
A-7, B-7, Wankhede Nagar, Dabki Road,
Akola – 444002 ... **Petitioner**

Versus

1. Accountant General, Office of the Accountant General (A & E) – II, Maharashtra, Nagpur - 440001
2. District Treasury Office, Akola, Collector Office Compound, Akola.
3. The Education Officer (Secondary), Zilla Parishad, Akola, Maharashtra.
4. Swami Vivekanand Shikshan Prasarak Sanstha Zarandi, Through its Secretary, C/o. Vasantrao Naik Vidyalaya, Patur, Taluka – Patur, District – Akola

... **Respondents**

Mr. H.R. Gadhia, Advocate for petitioner.
Ms. T.H. Khan, AGP for respondent Nos.1 to 3/State.
Mr. G.G. Mishra, Advocate for respondent No.4.

CORAM : SMT.ANUJA PRABHUDESSAI, AND MRS.VRUSHALI V. JOSHI, JJ.
DATE : 07.12.2023.

ORAL JUDGMENT: (PER: Smt. Anuja Prabhudessai, J.)

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

(2) The petitioner had sought the following reliefs :

"1. Heard.

2. Our attention is invited to a communication dated 05.11.2015, by which the petitioner has failed to make recovery of amount of Rs.2,63,667/-. The petitioner has retired on 31.12.2017, but, no enquiry was initiated prior to her retirement, nor till this date any action is taken."

(3) Order dated 27.11.2018, recorded the statement made on behalf of the respondent Nos.1 to 3 that the entire pensionery benefits of the petitioner would be paid within two weeks. It is stated that pursuant to the said order dated 27.11.2018, the petitioner received an amount of Rs.14,86,837/-. The petitioner filed a Civil Application (CAW) No.2504/2019, alleging that an amount of Rs.9,89,719/- is still in balance, the details of which are given in para 3 of the application and the same are as under:-

"3. The petitioner submits that pursuant to the order dated 27.11.2018 the petitioner has been given the remaining person of Rs.4,35,454/- and the petitioner is receiving the pension regularly per month and also the petitioner has received commuted valued amount of Rs.6,83,275/- and also gratuity of Rs.3,68,108/-. Accordingly, as per the order

dated 27.11.2018 the petitioner has received only total amount of Rs.14,86,837/- towards the remaining pension, commuted valued and gratuity. However, the petitioner on her superannuation is entitled to following amounts which are still unpaid and hence, she was entitled to receive them at the time of retirement :-

a. Leave encashment of earned leaves of	*Rs. 7,35,964/-*
b. Remaining gratuity of	*Rs. 1,27,687/-*
c. Salary of the month of April, 2014	*Rs. 64,641/-*
d. Increment and House Rent of	*Rs. 61,427/-*
Total amount of Rs.	***Rs. 9,89,719/-***

e. Difference of amount due and payable under the 7th Pay Commission."

(4) The respondents claimed that as per the audit report, the petitioner is liable to pay an amount of Rs.2,63,667/- towards recovery of amount of income tax which was not deducted by the petitioner from the employees for the assessment year 2014-15 to 2016-17 and towards income tax and an amount of Rs.3,93,260/- is to be recovered towards penalty of income tax as she has failed to deduct the income tax from the employees for the assessment year 2014-15 to 2016-17. It is further stated that the petitioner is not entitled for house rent as she was not staying at the headquarters, that she was also not entitled for salary for the month of April 2014 as she did not report for the duties from 21.04.2014 to 04.05.2014. It is stated that an amount of Rs.14,86,837/- was paid to the petitioner after adjusting the said amount towards penalty of income tax as well as recovery of income tax from the employees for the assessment year 2014-15 to 2016-17.

(5) The petitioner superannuated on 31.12.2017. The respondent never issued any notice to the petitioner towards non-recovery of the income tax from the employees and no disciplinary proceedings were initiated against the petitioner till the date of her retirement or even till date. Learned counsel for the petitioner has referred to the decision of the co-ordinate Bench of this Court in ***Rasmdas s/o Tejram Bhoyar Vs. Education Officer (Secondary), Zilla Parishad, Nagpur and Others, 2015 (5) Mh.L.J. 197***, wherein it is observed thus :

> *"13. In view of the finding that the issuance of charge-sheet by the Chief Executive Officer is unsustainable and the enquiry is vitiated, the natural consequence would be that the matter has to go back to that stage i.e. the issuance of the charge-sheet. However, the petitioner attained the*

age of superannuation on 31 st August, 2008. The learned advocate for the respondent/Management and the learned A.G.P. have not been able to point out any provision under the Rules of 1981 which enables the Management to continue the enquiry after the employee attained the age of superannuation. The issue is concluded by the judgment given by this Court in the case of Chandraprabha Prabhakar Ghorpade V/s. Maruti alias Marutrao Shivram Patil 2008(6) Mh.L.J. and the judgment given by the Hon'ble Supreme Court in the case of Anant R. Kulkarni V/s. Y.P. Education Society and others (cited supra). Therefore, it has to be held that now there cannot be further enquiry against the petitioner."

(6) The facts of the present case are no different. As noted above, no enquiry has been initiated against the petitioner and in such circumstances, the action of the respondent withholding of amount towards non-recovery of income tax from the employees cannot be approved. Furthermore, there is no justification for non-payment of gratuity amount or to the amount towards leave encashment. The amount claimed towards increment of house rent and salary for the month of April, 2014, involves disputed questions of fact, in view of which learned counsel for the petitioner seeks leave to file separate representation for recovery of amount payable towards salary for the month of April, 2014 and increment & HRA.

(7) In such circumstances, the petition is disposed of with directions to respondent Nos.1 to 3 to release an amount of Rs.8,63,651/- i.e. the balance amount mentioned in para 3 of the Civil Application (CAW) No.2504/2019, excluding the increment and HRA as well as salary for the month of April, 2014.

(8) Respondent No.4 shall issue NOC within two weeks. Respondent Nos.1 to 3, shall thereafter, to release the amount within six weeks.

(9) Leave granted to the petitioner to make representations or take any other appropriate steps for recovery of increment of HRA and arrears of salary for the month of April, 2014.

[MRS.VRUSHALI V. JOSHI, J.] **[SMT. ANUJA PRABHUDESSAI J.]**

Prity