



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

WRIT PETITION NO.6331 OF 2022

Rishipalsingh s/o Mukhraisingsh Choudhary
Aged 72 years, Occupation – Retired,
R/o. 106/A, Rajaram Society,
Jafar Nagar, Beh. Raut Sabhagruh,
Katol Road,
Nagpur - 440013

...PETITIONER

VERSUS

Municipal Commissioner,
N.M.C. Mahanagar Palika Bhavan,
Civil Lines, Sadar,
Nagpur - 440001

...RESPONDENT

Mr. Vipin M. Lute, Advocate for the petitioner.
Mr. A.S. Mehadia, Advocate for the respondent.

**CORAM : AVINASH G. GHAROTE &
URMILA JOSHI-PHALKE, JJ.**

RESERVED ON : AUGUST 24, 2023

PRONOUNCED ON : SEPTEMBER 05, 2023

JUDGMENT (Per Urmila Joshi-Phalke, J.)

RULE. Rule made returnable forthwith. Heard finally with the consent of learned Counsel for the parties.

2. By this petition, the petitioner has claimed revised pension as per the Government Resolution dated 22nd June, 2009 and balance

amount of Gratuity. The petitioner was an employee of Nagpur Municipal Corporation and serving as a Medical Officer (Health Department) from 10th July, 1982 to 31st July, 2008. He served continuously for 26 years. The petitioner retired on 31st July, 2008. After his retirement, 6th Pay Commission came into force and was made applicable to the retired employee from 01st January, 2006 as per the Government Resolution dated 27th December, 2018. However, the respondent – N.M.C. did not make it applicable from the above dates but it was made applicable from 01st December, 2010. The respondent-N.M.C. had not revised his pension as per 6th Pay Commission. The petitioner has made several representations to revise his basic pay, the respondent-authority has revised his pension incorrectly @ Rs.15,612/-. As per the contention of the petitioner, he is entitled to receive pension in view of Government Resolution No.SNV1009/PK33/SEVA-4 dated 22nd June, 2009. In view of the said Government Resolution, clause No.6 - an employees who have completed 20 years of service are qualified to get the retirement benefit i.e. pension by calculating 50% of last basic pay. His last month's basic pay at the time of retirement was Rs.32,070/-, and therefore, his pension ought to have been calculated at 50% of last basic pay. But the respondent has calculated his pension without considering the Government Resolution dated 22nd June, 2009. The petitioner further claimed that he had received the Gratuity of

Rs.2,50,000 on his retirement and this amount is also wrongly calculated. In the Government Resolution dated 22nd June, 2009 in para No.7, the formula for calculating the gratuity amount is provided which says that 16.5 times of the basic pay or Rs.5,00,000/- whichever is less would be considered as the gratuity amount for the full service of 33 years. The petitioner had completed 26 years of service and hence the days for gratuity amount period is to be calculated as 15 days for one year of service, and therefore, his paid days for gratuity have been calculated as 390 days i.e. 13 months, therefore, the gratuity amount should have been Rs.4,16,910/- but the respondent authority paid Rs.2,50,000/- which is less. It is further contention of the petitioner that he had filed Writ Petition No.1934 of 2022 before this Court for seeking same relief. At the relevant time, this Court has directed the petitioner to put his demand with the Employer – N.M.C. and liberty was granted to him to file the writ petition if it is not considered. As per the order of this Court he had made representation on 13th June, 2022 but the respondent authority has not considered the said representation nor given any reply to the said representation, therefore, he constrains to file the present writ petition.

3. The contention of the petitioner is opposed by the respondent – N.M.C. on the ground that the present petition is liable to be dismissed

summarily on the ground of delay and laches. The petitioner stood retired from service on 31st July, 2008 and as per rules the petitioner was paid pension since the month of August 2008. The 5th Pay Commission was made applicable to the petitioner in the year 2010 with effect from 01st January, 2006. The petitioner has approached to this Court after lapse of almost 10 years and has not given any explanation much less sufficient cause for approaching this Court after lapse of more than 10 years. Hence, the present petition is liable to be dismissed.

4. It is further contention of the respondent – N.M.C. that the salary including Dearness Pay of the petitioner at the time of his retirement was Rs.19,875/- and as per the rules, the petitioner was paid Pension of Rs.7820/- per month. The petitioner has never objected to the said calculation. The respondent on 01st December, 2010 had decided to give benefits of 5th Pay Commission to its employees with effect from 01st January, 2006 subject to the condition that difference of amount of salary/pension/gratuity till 01st December, 2010 shall not be paid to any of the employees. The petitioner has accepted the aforesaid condition, and therefore, rightly not claimed the difference of amount of salary. By taking into consideration the decision to implement 5th Pay Commission, the petitioner though retired on 31st July, 2008, his salary including Dearness Pay was fixed at Rs.32,070/- per month for the

purposes of calculating the pension. The respondent by adopting the same method calculated the pension, and therefore, the contention of the petitioner that as per the Clause No.6 of the Circular dated 22nd June, 2009 the petitioner is not entitled for an amount of Rs.16,035/- per month towards the pension.

5. Heard Shri V.M. Lute, learned Counsel for the petitioner. He reiterated the contention and submitted that the petitioner is entitled to receive the pension as per the revised pay. The petitioner has rendered his 26 years service as a Medical Officer and retired on 31st July, 2008. The Nagpur Municipal Corporation has made applicable the 6th Pay Commission from 01st December, 2010. Thus, in view of Clause No.6 of the said Government Resolution No.SNV1009/PK33/SEVA-4 dated 22nd June, 2009, the petitioner is entitled to receive 50% of average of his last 10 months basic pay or 50% of last months basic pay as a pension which is not considered. The gratuity amount is also not calculated as per said Government Resolution. As far as the delay and laches is concerned he submitted that the cause of action is continuous. The cause of action in case of pensionary benefits continues from month to month, and therefore, the petitioner is entitled to receive the arrears of pension by considering his revised pay. He is also entitled to receive the amount of gratuity in view of the said Circular. Whereas learned Counsel Shri

Mehadia submitted that there is inordinate delay in claiming the said relief. The petitioner never approached to the respondent for his revised pay. He accepted the calculations while fixing his pension. The writ petition is filed after 10 years thus, there is delay and laches and on the ground of delay and laches the writ petition deserves to be dismissed.

6. In support of his contention he placed reliance on the *State of Maharashtra Vs. Digambar [(1995) 4 SCC 683]* and *Chairman, State Bank of India and anr. Vs. M.J. James [(2022) 2 SCC 301]* wherein it is held that how a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State by invoking writ jurisdiction of the High Court under Article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decisions of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blameworthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226

of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants

relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.

7. On the basis of this observation, Shri Mehadia, learned Counsel submitted that there is inordinate delay in claiming the said relief, and therefore, the petition deserves to be dismissed.

8. On hearing the learned Counsel for the parties and on perusal of the petition and the reply, there is no dispute that the petitioner was serving with the Nagpur Municipal Corporation as a Medical Officer. There is also no dispute that he retired from service on 31st July, 2008. After his retirement, 6th Pay Commission came into force and was made applicable to the retired employees from 01st January, 2006 as per the Government Resolution dated 27th October 2008. Said Government Resolution is reproduced for the reference :

“या समितीने केलेल्या शिफारशीच्या अनुषंगाने संदर्भाधिन (२) वरील शासन निर्णय दिनांक २७ फेब्रुवारी, २००९ च्या आदेशान्वये निवृत्तीवेतन धारकांच्या निवृत्तीवेतनामध्ये सुधारणा करण्याचा निर्णय घेण्यात आला आहे. त्यानुसार शासनाने महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील निवृत्तीवेतन, निवृत्ती/मृत्युउपदान आणि कुटुंब निवृत्तीवेतन नियमित

करणा-या तसेच महाराष्ट्र नागरी सेवा (निवृत्तीवेतनाचे अंशराशीकरण) नियम १९८४ मधील नियमामध्ये खालीलप्रमाणे फेरबदल करण्याचा निर्णय घेतला असून हे फेरबदल शासकीय कर्मचारी तसेच उपरोल्लेखित नियम ज्यांना लागू आहेत अशा इतर कर्मचा-यांना लागू राहतील.”

9. Said Government Resolution was made applicable to the retired employees from 01st January, 2006. It is not disputed that the Nagpur Municipal Corporation made it applicable from 01st December, 2010. If the said Government Resolution is perused it states about the rules as to how the amount of pension is to be calculated regarding the persons who are already retired. The relevant Clause No.6 states about the rule how the pension is to be calculated. It is reproduced as under:

“२० वर्षांची अर्हताकारी सेवा पूर्ण केल्यानंतर नियतव्योमानानुसार/ स्वेच्छा सेवानिवृत्ती घेउन सेवानिवृत्त होणा-या कर्मचा-यांना सेवानिवृत्तीच्या शेवटच्या १० महिन्यात अर्जित केलेल्या सरासरी मूळ वेतनाच्या किंवा शेवटच्या महिन्यात घेतलेल्या मूळ वेतनाच्या ५०% यापैकी जी रक्कम कर्मचा-यास लाभदायक ठरेल, ती रक्कम निवृत्तीवेतन म्हणून अनुज्ञेय होईल. त्यामुळे दि.१.१.२००६ नंतर सेवानिवृत्त झालेल्या ज्या निवृत्तीवेतनधारकांचे निवृत्तीवेतन त्यांच्या अर्हताकारी सेवेत भर घालून निश्चित करण्यात आले आहे, त्या निवृत्तीवेतनधारकांचे निवृत्तीवेतनही या सुत्रानुसारच निश्चित करण्यात यावे.”

10. The petitioner has also claimed that the gratuity amount is also not calculated by the respondent as per the Government Resolution. He referred Clause No.7 of the said Government Resolution which is reproduced hereunder:

“७. महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील नियम ९(३६) (एक) मध्ये व्याख्या केल्यानुसार मूळ वेतनावर निवृत्ती/मृत्यु उपदानाची

परिगणना करण्यात येईल. उपदानाची कमाल मर्यादा वेतनाच्या साडेसोळा पट किंवा पाच लाख यापैकी जी कमी असेल ती राहील.”

11. Thus, in view of clause No.7, the petitioner is entitled to receive the gratuity amount 16.5 times of the basic pay or Rs.5,00,000/- whichever is less. As per his contention only amount of Rs.2,50,000/- was sanctioned to him as gratuity amount in stead of Rs.4,16,910/-. He also placed reliance on the Government Circular dated 27th December, 2018 which is a revised Government Resolution which says that the earlier Government Resolution is made applicable from 01st January, 2006. The clauses in the earlier Government Resolution were made applicable from 01st January, 2006. It is further declared that the employees who retired during 01st January, 2006 to 26th February, 2009 are also entitled for the revised pension in view of the said Government Resolution. The petitioner has claimed that his last drawn pay was Rs.32,070/- and by considering the same 50% of the last month's basic pay comes to Rs.16,035/-, and therefore, he is entitled to receive revised pension by calculating his pension on the basis of his basic pay. However, the respondent has calculated it incorrectly. He also claimed that he is entitled to receive the gratuity 16.5 times of the basic pay. His both contentions are substantiated by the Government Resolution dated 27th October, 2008. The contention of the respondent is that the petitioner never approached to claim the said relief to the respondent

and now after delay of 10 years he is claiming the said relief which he is not entitled as now no cause of action arose. As far as the demand by the petitioner is concerned, it is the duty of the respondent to revise the pension of the petitioner. The respondent was under obligation to revise the pension of all the employees who are retired during the period from 01st January, 2006 to 26th February, 2009. The revised Resolution of the Government dated 27th December, 2018 by which all the departments were informed in clause No.7 which is reproduced hereunder:

“ ७. सर्वसाधारण सुचना :-

अ) शासन विभागांकरीता सूचना-

शासनाच्या प्रत्येक विभागाने त्याच्या अधिपत्याखालील सर्व कार्यालय प्रमुखांनी यांनी दिनांक ०१.०१.२००६ ते २६.०२.२००९ या कालावधीतील निवृत्तिवेतनधारकांच्या निवृत्तिवेतन/कुटुंब निवृत्तिवेतनाची प्रकरणे सुधारित करून याबाबत दर सहा महिन्यांनी आढावा घ्यावा. त्यांच्या अधिपत्याखालील एखाद्या कार्यालय प्रमुखांनी यांनी सुधारित निवृत्तिवेतन प्रकरण महालेखापाल कार्यालयास सादर न केल्यामुळे उद्भवलेल्या न्यायालयीन प्रकरणास तो विभाग सर्वस्वी जबाबदार राहील.

ब) कार्यालय प्रमुख यांच्यासाठी सूचना.

१. कार्यालय प्रमुख यांनी दिनांक ०१.०१.२००६ ते २६.०२.२००९ या कालावधीत सेवानिवृत्त झालेल्या सर्व शासकीय कर्मचारी यांच्या निवृत्तिवेतनाची प्रकरणे उपरोक्त प्रमाणे सुधारित करून मा. महालेखापाल कार्यालयास सेवापुस्तकासह विहित नमूना क्र. ६. मध्ये सुधारणेसाठी सादर करावीत. ज्या निवृत्तिवेतनधारकांच्या/कुटुंबनिवृत्तिवेतनधारकांच्या निवृत्तिवेतनाचे अभिलेख उपलब्ध नसतील अशा प्रकरणी निवृत्तिवेतनधारकांनी/कुटुंबनिवृत्तिवेतनधारकांनी संबंधित कार्यालय प्रमुखाकडे P.P.O. (निवृत्तिवेतन प्रदान आदेश) च्या प्रतीसह अर्ज करावा. कार्यालय प्रमुखाने अर्ज प्राप्त झाल्यानंतर योग्य ती शहानिशा करून निवृत्तिवेतन प्रकरण सुधारणेकरीता मा. महालेखापाल कार्यालयास सादर करावे.

२. दिनांक ०१.०१.२००६ ते २६.०२.२००९ या कालावधीत सेवानिवृत्त झालेल्या सर्व शासकीय कर्मचारी यांच्या सुधारित निवृत्तिवेतनाची/कुटुंबनिवृत्तिवेतनाची प्रकरणे तातडीने सादर करण्याची दक्षता घ्यावी. सुधारित निवृत्तिवेतन/कुटुंबनिवृत्तिवेतन प्रकरणांबाबतचा अहवाल संबंधीत प्रशासकीय विभागास पाठविण्यात यावा.”

12. Thus, in view of the said Government Circular also it was the respondent who has to revise the pension of the petitioner in view of the Government Resolution dated 01st January, 2006 which was made applicable to the employees of the Nagpur Municipal Corporation from 01st December, 2010.

13. As per the respondent the claim of the petitioner is barred by the limitation as there is a delay and laches in claiming the relief. He also placed reliance on the various judgments referred above. The delay as long as the one occasion in this case would result in the dismissal of the petition on the ground of laches if the cause of action is not continuous. It is no doubt true that the cause of action in case of pensionary benefits continues from month to month but, it is well settled that in case of delay in filing the writ petition beyond the period of 3 years, the monetary relief could be restricted even in case of pensionary benefits only for a period of 3 years preceding the date of filing the writ petition. In cases when the cause of action is not continuous, a writ petition seeking a particular relief would be barred by laches as mere

making of representation to an authority would not stop the period of limitation. It is held by the Honourable Apex Court from time to time that monetary relief could be granted for a period of 3 years preceding the date of filing of the writ petition even if the cause of action is continuous. The monetary reliefs payable towards pension are also governed by the same rule. The same ratio is laid down by the Honourable Apex Court in the case of *M.R. Gupta Vs. Union of India (UOI) and ors.* [AIR 1996 SC 669], *Jai Dev Gupta Vs. State of H.P. and ors.* [AIR 1998 SC 2819], *Shiv Dass Vs. Union of India (UOI) and ors.* [AIR 2007 SC 1330] and *Union of India (UOI) and ors. Vs. Tarsem Singh [(2008)2 SCC (LS) 765]*. Thus, considering the Government Resolution which entitles the petitioner for a revised pension as well as the gratuity, the petitioner would be entitled to the arrears of the ~~family~~ pension only for a period of 3 years preceding the date of filing of the writ petition i.e. from 08th September, 2022.

Corrected as per
Court's order dated
26/09/2023.

14. Hence, for the reasons aforesaid, we pass the following order :

- (i) The writ petition is partly allowed.
- (ii) It is declared that the petitioner is entitled for the revised pension in view of the Government Resolution dated

01st January, 2006 made applicable from 01st December, 2010 by the respondent.

Corrected as per
Court's order dated
26/09/2023.

(iii) The respondent – N.M.C. is directed to pay revised ~~family~~ pension to the petitioner from September, 2019. The arrears of the pensionary benefits with effect from 08th September, 2019 should be paid to the petitioner within a period of six weeks. If the aforesaid directions are not complied with the respondents would be liable to pay the aforesaid amount with interest @18% per annum.

15. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)

**Divya*