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

WRIT PETITION NO. 7386 OF 2022

Mr.Manohar Jairam Sonewane, aged about 62 years, Occupation:Retired R/o Ravi Shankar Ward, Near Darga, Civil Lines, Gondia-441601. **Petitioner**

-Vs.-

1. The State of Maharashtra, Finance Department, (Accounts and Treasury), through its Secretary, Mantralaya, Mumbai-400032.
2. The Directorate of Accounts and Treasuries (Secretariat),Post Office, J.N.Heredia Road, Off Kamani Road, Ballard Estate, Blair Pier, Thakersy House, 3rd Floor, Estate, Mumbai-400001.
3. The Joint Directorate of Accounts and Treasuries, Lekha Kosh Bhavan, Civil Lines, Near Collector Premises, Civil Lines, Nagpur, Maharashtra 440001.
4. Pay Verification Unit, Accounts and Treasuries, Lekha Kosh Bhavan, Civil Lines, Near Collector Premises, Civil Lines, Nagpur Maharashtra 440001 through its Accounts Officer.
5. District Treasury Officer, Treasury Officer, Collector Premises, Patanga Ground, Collector Premises,

Amgaon Road,District:Gondia-441601.

6. Assistant Accounts Officer, Office of Accountant General (A and E)-II, Maharashtra, Civil Lines, Nagpur 440001. **Respondents**

Ms. Kalpana Pathak, counsel for the petitioner.
Mr.M.K.Pathan, AGP for respondents

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

DATE : 25th APRIL, 2023

O R A L J U D G M E N T (**Per** : Vrushali V.Joshi, J.)

Heard.

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

3. By way of the present writ petition, the petitioner is challenging the Judgment and order dated 28/07/2022 passed by Maharashtra Administrative Tribunal, Nagpur in Original application No. 285 of 2020. The petitioner is also challenging the order dated 13.05.2020 issued by the respondent 5-District Treasury Officer, Amgaon, Dist.Gondia, whereby the respondent-5 is intending to recover the excess

payment amounting to Rs.5,38,069/- and is also challenging the revised pay fixation order dated 30.07.2019 issued by respondent 5 reducing “One Step Higher Pay” of the petitioner and retrospectively with effect from 11/01/2010 thereby adversely affecting the extended benefit of “One Step Higher Pay” of the petitioner and the communication dated 14/08/2019 along with Annexure issued by respondent 5 showing the Statement of Fixation of pay of the petitioner by considering the “Newly Revised One Step Higher Pay” instead of “One step Higher Pay”.

4. The petitioner was appointed as Junior clerk in Sub-Treasury Office, Goregaon, District -Gondia on 27.11.1998. He was promoted from time to time. He was promoted as Deputy Accountant/Sub Treasury Officer (Lower Grade) with effect from 11/01/2010 by the respondent 5. Thereafter, the petitioner was transferred from Collector Office, Gadchiroli to Sub-Treasury Office, Amgaon, District Gondia, where he served from January-2012 to June-2015. Thereafter, he was transferred from Sub-Treasury Office, Amgaon, District Gondia to District Treasury-District Gondia, where he served

from 01.07.2015 to 31.10.2018 and he was superannuated as Deputy Accountant/Sub Treasury Officer (Lower Grade) from the office of District Treasury-District Gondia on 31.10.2018. The post of Deputy Accountant/Sub Treasury Officer (Lower Grade) is Class “C” post Thus, the petitioner had worked with respondent in Naxalite and Tribal Area i.e. Gadchiroli and Gondia District throughout his service tenure.

5. Respondent 1 issued a Government Resolution dated 06.08.2002, whereby special benefits are declared by the respondent 1 for the Government Servants, who are posted in Gadchiroli District including the extension of benefits of “One step Higher Pay scale” to such Government servants. The Petitioner served the respondents in various capacities as Junior Clerk, Senior Clerk and Deputy Accountant from the year 1998 till the date of his retirement i.e. 31.10.2018 in Gadchiroli and Gondia District, which are Naxalite and Tribal areas and therefore, he was paid “One Step Higher Pay”in view of the guidelines issued as per Government Resolution dated 06.08.2002 and his pay was accordingly fixed.

6. The petitioner has received “One Step Higher Pay” for the post of Deputy Account in Basic Pay of Rs.11010/- + 4400/- = Rs.15410/- as on 11.01.2010 and same came to be revised from time to time by the respondents while working in Gadchiroli and Gondia District till the date of his retirement. The said Government Resolution nowhere stipulates that the extension of benefits of “One Step Higher Pay” applicable to the next higher post should be recovered from concerned government servant at any point of time. The petitioner has not received the said benefit by a way of playing misrepresentation or fraud on the respondents. The petitioner had no knowledge that the aforesaid benefits received by him was in excess of what was due or wrongly paid.

7. Respondent l had issued a Government Resolution dated 17.12.2013 that the proposal is pending before the respondent 1 regarding revision of benefits in view of recommendation of VIth pay Commission extended to the Government Servants as per Government Resolution dated 06.08.2002 and no decision has been taken so far in that

regard. Therefore, during the pendency of the said decision, it is directed that, an amount of benefit of pay scale along with pay band received by the Government Servant of the post on the date of his retirement should be calculated in respect of the Government servants, who have retired from rural and naxalite district/area after 01.01.2006. The said Government Resolution further directs that, a recovery should be made as per the provisions of Section 134(A) of Maharashtra Civil Services (Pension) Rules, 1982 from those employees who have received the benefits of higher pay scale at the time of retirement.

8. The respondent 1 had issued a Government Resolution dated 15.02.2014, thereby the respondent 1 had stayed the recovery until further orders. Thereafter, respondent 1 had issued Government Resolution dated 18.10.2014, whereby the stay vide order dated 15.02.2014 came to be vacated and recovery was ordered in pursuance of the earlier Government Resolution dated 17.12.2013.

9. Respondent has fixed the pension of the petitioner on the basis of Regular Pay i.e. pay Rs. 13,130/- + Grade Pay

Rs. 4,200/- + Rs.17,330/-. Thus, the petitioner had received an amount between Rs.16,000/- to Rs.17,000/- per month towards his monthly pension and same came to be increased and revised from time to time due to increase in the amount of dearness allowance after several months. At present he is receiving an amount of Rs. 22,450/- per month towards his pension.

10. The petitioner has received “One step Higher Pay” for the post of Deputy Accountant in Basic Pay of Rs.11010/- +4400=Rs.15410/-w.e.f. 11.01.2010 and same came to be revised from time to time by the responders while working in Gadchiroli and Gondia District till the date of his retirement. To the surprise of the Petitioner, his pay has been reduced and fixed by the respondent 5 on his own vide revised pay fixation order dated 30.07.2019 in the “Newly Revised One step Higher Pay” i.e. Rs.9710/- + Rs. 4,400/-= Rs. 14,110/- retrospectively w.e.f.11/01/2010 instead o f Rs. 11010 + Rs.4400/-=15410/-without giving any opportunity of hearing, without issuing any notice and without recording any reasons.

11. The petitioner has received “One step Higher Pay” for the post of Deputy Accountant in Basic Pay of Rs.11010 + Rs.4400=Rs.15410/- w.e.f. 11.01.2010 which is certainty higher than that “Newly Revised One step Higher Pay” i.e.Rs.9710 + Rs.4400/- = Rs. 14,110/-.

12. Subsequently, state of Maharashtra has implemented the recommendations of 7th Pay Commission for all Government servants including the petitioner with effect from 01.01.2016 vide Government Resolution dated 01.01.2019 and Corrigendum dated 04.01.2019. While fixing the pay of the petitioner as per recommendation of 7th pay Commission, his pay has been reduced and fixed by the respondent 5 vide revised Pay Fixation order dated 30.07.2019 and communication dated 14.08.2019.

13. The respondents have no right, power and authority to withdraw the benefits of promotion of pay so extended to the petitioner by introducing “Newly Revised One step Higher Pay” retrospectively and that too after retirement resulting

into huge amount of recovery which is illegal, harsh, unjustified, arbitrary malafide.

14. Therefore, the petitioner has filed Original Application No.285 of 2020 before Maharashtra Administrative Tribunal, Nagpur and as the MAT has dismissed the said Original Application No.285 of 2020, the petitioner has filed this writ petition before this Court.

15. The learned counsel appearing for the petitioner Ms.Kalpana Pathak has argued that as per requirement of law it was incumbent upon the respondents to conduct an enquiry or at least issue show cause notice asking the petitioner to explain as to why recovery should not be effected. The impugned order dated 13.05.2020, as well as revised pay fixation order dated 30.07.2019 and communication dated 14.08.2019 along with annexure are in complete violation and breach of the principles of natural justice. Therefore, same are liable to be quashed and set aside.

16. Learned counsel appearing for the petitioner further states that once the fixation of pay of the petitioner is in the

appropriate pay scale was fixed by the respondents as per rules then, there is no question of recovery of the alleged access amount from the petitioner after his retirement retrospectively on the basis of Newly Revised Newly One Step Higher Pay, which is illegal, arbitrary, malafide and impermissible in the eye of law. The Hon'ble Apex Court in the reported judgment between the State of **Punjab and Ors. Vs.Rafiq Masih (White Washer) etc.[2014(8) SCC 833** has summarised several situations, wherein the reference by the employees would be impermissible in the eye of law and few of them are where such recovery is from retired employee or employees who are due to retire within one year of the order of recovery etc. The aforesaid judgment is squarely applicable to the present facts and circumstances of the matter.

17. The petitioner served the respondent department in various capacities of Junior Clerk, Sr. Clerk deputy accountant and from the date of his appointment till the date of his retirement in Gajchiroli and Gondia District which are Naxalite and triable area and therefore, he was paid "One Step Higher Pay" by the respondents till his retirement in

view of the guidelines issued as per the Government Resolution dated 6.08.2002. The said Government Resolution nowhere stipulates that the extension of benefits of “One Step Higher Pay applicable to the next higher post should be recovered from the concerned government servant at any point of time in pursuance of the said Government Resolution the pay of the petitioner was fixed in One Step Higher Pay” and the same came to be revised from time to time and in view of recommendation of 6th Pay Commission and Government Resolution referred to herein above his pay was fixed in the pay of Rs.9300/-+Rs.4200+=Rs.13500/- w.e.f. 01.01.2006. Thus, the respondent department had extended the benefits of “One Step Higher Pay”. The petitioner in view of recommendation of 6th pay Commission and Government Resolution referred to herein above and same remained continued till the date of his retirement.

18. The petitioner has relied on the judgment of the Hon’ble Apex Court in reported judgment between **Syed Abdul Qadir Vs.State of Bihar in [(2009)3 SCC 475]** has

held that recovery in the situations narrated herein-above is prohibited and impermissible in the eye of law.

19. Sub Rule 38(9) of *Maharashtra Civil Services (Pension) Rules,1982* deals with the definition of pensionable pay means the average pay earned by Government Servant during the last ten month's service or last month’s pay whichever is more beneficial to the Government Servant. The words “or last month's pay whichever is more beneficial to the Government Servant” have been inserted and shall be deemed to have ben inserted with effect from 27.02.2009 by Notification dated 18.01.2016 which is subsequent to the amendment dated 27.10.2014. Thus, the petitioner served the respondents in Naxalite and Tribal area throughout his service tenure therefore, he was paid “One Step Higher Pay” in view of the guidelines issued as per the Government Resolution dated 06.08.2002.Thus, average pay earned by the petitioner during last 10 moths of his service or even last one months pay are more beneficial to him theretofore his last pay shall be deemed to have been considered as “Pensionable Pay” for the purposes of his pension by considering one step

higher pay which he has received in view of Government Resolution dated 06.08.2002.

20. The learned AGP has stated that the matter is covered by the judgment passed by this Court in **Writ Petition No. 1701 of 2015 (The Principal Secretary, Department of Finance and ors. Vs. Ashok Jagannathrao Aknurwar)**. The order passed by the learned Maharashtra Administrative Tribunal is right and the learned Tribunal has also relied on the said judgment, hence prayed to reject the petition.

21. The petition is covered by the judgment passed by this Court in Writ Petition No. 1701 of 2015 supra. It is observed in this writ petition in paragraph 5:-

> 5. For answering the issue involved in this case, it would be necessary to consider the relevant provisions of the Rules of 1982. It would be necessary to refer to rule 9(36) of the Rules which defines "pay". Rule 9 (36) reads thus :
> *"9(36) "Pay" means the amount drawn monthly by a Government servant as –*
> *(i) the pay (including special dearness pay) which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre ; and*

(ii) personal pay, and special pay ; and
(iii) any other emoluments which may be specially classed as pay by Government."

The word "pensionable pay" is explained in rule 60(1) of the Rules. Rule 60(1) of the Rules with which we are concerned reads thus : "
60. ***Pensionable pay.*** *– (1) The "Pensionable pay"*
means the average pay earned by a Government servant during the last ten months' service."
On a reading of the aforesaid relevant rules, it is clear that 'pensionable pay' would mean the average pay earned by a government servant during the last ten months' service. 'Pensionable pay' refers to the 'pay' earned by a government servant. "Pay" is defined in rule 9(36) of the Rules. As per rule 9(36) "pay" would mean the pay which has been sanctioned for a post held by a government servant substantively or in an officiating capacity and / or to which he is entitled, by reason of his position in a cadre. Rule 9(36) (ii) includes "personal pay" and "special pay" in the definition of the word "pay". It is apparent from a reading of rule 9(36) of the Rules that "pay" would mean the pay which has been sanctioned for a post held by a government servant by reason of his position in a cadre. On a reading of the definition of the word "pay", it is clear that 'pay' means the pay which is sanctioned for a post and is drawn by an employee. Pay would include "personal pay" and "special pay". The tribunal, however lost sight of the words "pay which has been sanctioned for a post held by a government servant". The respondent was holding the post of an

accounts officer D.R.D.A. at the time of his retirement. Admittedly, the pay sanctioned for the post of accounts officer D.R.D.A. was in the pay scale of Rs.9,300-34,800 with grade pay of Rs.4,400/. The respondent was however drawing a higher pay in the scale of Rs.15,600-39,100 with grade pay of Rs.5,400/as an incentive for working in the naxalite affected area. On a reading of the government resolution dated 06/08/2002 under which a higher pay scale was granted to the respondent, it appears that higher pay scale is granted to a government servant posted in a naxalite affected area only as an incentive to encourage him to work in the said area. It is apparent from a reading of the government resolution, dated 06/08/2002 that the special incentive is granted to the employee with a view to ensure that he is encouraged for working in the naxalite affected area and hence, as soon as he stops working in the naxalite affected area and is transferred to a nonnaxalite affected area or a non-tribal area, he would be brought on the scale that is sanctioned for the post and not the higher pay scale which he was drawing as a result of his being posted in the naxalite affected area. The pay sanctioned for the post of an accounts officer was Rs.9,300-34,800 with grade pay of Rs.4,400/, but the respondent was drawing the pay in the scale of Rs.15,600-39,100 with grade of Rs.5,400/which was not sanctioned for the post, but was only granted as an incentive for working in the naxalite affected areas or the tribal areas. 'Pay' under rule 9(36) of the Rules would only include the pay sanctioned for a post, personal pay and special pay and any emolument classed as 'pay'. The pay received by the respondent in the higher pay scale cannot be termed as a special pay as it is only in the nature of an incentive, as could be gathered from a reading of the government resolution dated 06/08/2002. On a reading of the government resolution, it is clear that higher pay scale is provided for a government servant, only for the period during which he works in the naxalite affected areas. That is not a 'pay' sanctioned for the post that he is holding. The government servant would be entitled to the higher pay scale as an incentive in terms of the government resolution dated 06/08/2002, only from the date of joining the posting in the naxalite affected area and till the date he continues to work in the naxalite affected area. The government servant working on a particular post would stop drawing a higher pay scale as soon as he is transferred out of the naxalite affected area or the tribal area. It is apparent from a reading of the government resolution that the special incentive is sought to be granted to the employees only for the period during which they work in the naxalite affected areas or the tribal areas. On a reading of rule 9(36) of the Rules, it cannot be said that the higher pay scale drawn by the respondent during the last ten months of his service would fall within the definition of the word “pay” and that the higher pay scale is a special pay which was drawn by the respondent. The tribunal did not consider the government resolution dated 06/08/2002 as also the provisions of rule 9(36) of the Rules of 1982 in the right perspective before holding that the higher pay drawn by the respondent was a special pay drawn by him and his pension was liable to be computed on the basis of the last pay

> drawn by him in the scale of Rs.15,600-39,100,with grade pay of Rs.5,400/. While allowing the original application filed by the respondent, the tribunal failed to notice the provisions of rule 9(36)(i) of the Rules which makes a reference to the pay which has been sanctioned for a post. The tribunal gave undue weightage to the department's circulars dated 19/01/2007 and 24/07/2008 while deciding the issue in favour of the respondent, without considering the import of the government resolution dated 06/08/2002 and the provisions of rule 9(36) of the Rules of 1982. Since there was some confusion about the correct position of law in this regard, it appears that the State Government, by resolution dated 17/12/2013, clarified the position. As per the government resolution, it was not permissible to compute the pension on the basis of the higher pay scale received by a government servant for working in the naxalite affected areas or the tribal areas. We do not find that the government resolution dated 17/12/2013 is in any way, violative of the provisions of rule 9(36) or rule 60(1) of the Maharashtra Civil Services (Pension) Rules as held by the tribunal. The government resolution dated 17/12/2013 is in consonance with the provisions of rule 9(36)(i) of the Rules of 1982".

22. The petitioner was holding the post of Deputy Accountant at the time of his retirement i.e. on 31.10.2018. He received "One Step Higher Pay" for the post of Deputy Account in the basic pay of Rs.11010+Rs.4400/-=

Rs.15410/- as on 11.01.2010 the same came to be revised from time to time by the respondents while working in Gadchiroli and Gondia till the date of his retirement. On a reading of the Government Resolution dated 06.08.2002 under which higher pay scale was granted to the respondent, it appears that higher pay scale is granted to a government servant posted in a naxalite affected area only as an incentive to encourage him to work in the said area. It is apparent from the reading of the Government Resolution dated 06.08.2002 that the special incentive is granted to the employees with a view to ensure that he is encouraged for working in the naxalite affected area and hence, as soon as he stops working in the naxalite affected area and is transferred to a non-naxalite affected are or non-tribal area, he would be brought on the scale that is sanctioned for the post and not the higher pay scale which he was drawing as a result of his being posted in the naxalite affected area. The pay sanctioned for the post of an accountant was Rs11010/- with grade pay of Rs.4400/- but the petitioner was drawing the pay in the scale of Rs.14570/- with a grade of Rs. 4400/-

= 18970/- which was not sanctioned for the post but was only granted as an incentive for working in the naxalite affected areas or the tribal area. 'Pay' under rule 9(36) of the Rule would only include the pay sanctioned for a post personal pay and special pay and any emolument classed as 'pay'. The pay received by the respondent in the higher pay scale cannot be termed as a special pay as it is only in the nature of an incentive, as could be gathered from a reading of the Government Resolution dated 06.08.2002.It is It is clear that higher pay scale is provided for a government servant, only for the period during which he works in the naxalite affected area. That is not a 'pay' sanctioned for the post that he is holding. The government servant would be entitled to the higher pay scale as an incentive in terms of the Government Resolution dated 06.08.2002, only from the date of joining the posting in the naxalite affected area and till the date he continues to work in the naxalite affected area. The government servant working on a particular post would stop drawing a higher pay scale as soon as he is transferred out of the naxalite affected area or the tribal area. It is appeared from a reading of the Government Resolution that a special incentive is sought to be granted to the employees only for the period during which they worked in the naxalite affected area or the tribal area. On a reading of rule 9(36) of the Rules, it cannot be said that the higher pay scale drawn by the **petitioner** during the last ten months of his service would fall within the definition of the word "pay" and that the higher pay scale is a special pay which was drawn by the respondent.

23. As per the government resolution it was not permissible to compute the pension on the basis of the higher pay scale received by a government servant for working in the naxalite affected areas or the tribal areas, we do not find that the Government Resolution dated 17.12.2013 is in any way, violative of the provisions of rule 9(36) or rule 60(1) of the *Maharashtra Civil Services (Pension) Rules*. The Government Resolution dated 17.12.2013 is in consonance with the provisions of rule 9 (36) (i) of the Rules of 1982.

24. There is a difference in the pay scale drawn by a government servant working in the non naxalite affected area and the naxalite affected area for the same post. There is a vast difference between the pay drawn by an employee working in the naxalite affected area and the non-naxalite affected area. On a reading of the provisions of rules 60(1) and 9(36) of the Rules and the Government Resolution dated 06.08.2002, it is clear that the intention of the government was not to grant considerably higher pension to a government servant, who has worked in a tribal area or the naxalite affected area in the last year of his service, vis-a-vis a government servant, who has worked in a non-naxalite affected area during the last year of his service. There would be a great difference in the monthly pension drawn by a government servant holding the same post in non-naxalite affected area and the naxalite affected area during the last year of his service. The State Government did not intend to do so. It would also be necessary to consider that the government servant posted at a distance of barely five or ten kilometres from a naxalaite affected area during most part of

his service including the last year of his service would draw a much lower pension as compared to the government servant, who is posted barely five or ten kilometres away from him in a naxalite affected area, if the submission made on behalf of the petitioner is accepted.

25. We find that the learned MAT has turned down the grievance of the petitioner against the recovery of the amount paid to him towards his pensionary benefits for a period from 2010. There is no dispute and the State of Maharashtra and the respondent have not taken a stand that the petitioner was in any way responsible for the miscalculation of the pensionary benefits or that he had played a fraud on the respondents and had manipulated his calculations of his retiral benefits. No latches or malafides have been attributed to the conduct of the petitioner.

26. Considering the case of the petitioner about recovery from the pension would be squarely covered by

judgment delivered by the Hon'ble Apex Court in the matter of **Syed Abdul Qadir Vs.State of Bihar (supra) and State of Punjab and Ors. Vs.Rafiq Masih (supra)**. We have considered the impugned order of the learned MAT to the extent of upholding the action of the employer in seeking recovery of excess amount paid after his retirement we find that said conclusion would not stand the test pronounced by the Hon'ble Apex Court in paragraph no.12 in the case of **State of Punjab and Ors. Vs.Rafiq Masih (supra)** and considering the earlier law laid down in the matter of **Syed Abdul Qadir Vs.State of Bihar (supra).**

27. In view of the above, the writ petition is partly allowed. The impugned order issued by respondent 2 shall stand set aside only to the extent of the recovery of the excess amount paid to the petitioner with retrospective effect. The order passed by the Tribunal to the extent of recovery is set aside. Rule accordingly.

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

(MRS.VRUSHALI V. JOSHI, J) (ROHIT B. DEO)