



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4520 OF 2024

Shadul Habibsab Shaikh

VERSUS

The State Of Maharashtra Through
Its Principal Secretary And Others

...

Mr. T. M. Venjane, Advocate for the Petitioner

Mr. R. K. Ingole, AGP for Respondents/State

Ms. Yogita Thorat, Advocate for Respondent Nos. 2 and 3

...

CORAM : RAVINDRA V. GHUGE &
R. M. JOSHI, JJ

DATE : MAY 02, 2024

PER COURT :

1. The Petitioner has now superannuated from the post of Health Assistant in the Health Department of the Zilla Parishad. He has put-forth prayer clauses B, C and D as under:

B) By issuing writ of mandamus or any other appropriate writ in the like nature, the respondents may kindly be directed to fix final pensionable pay and to grant regular pension, gratuity to the petitioner as per 7th Pay Commission as provided under the Maharashtra Civil Services (Pension) Rules, 1982 in the interest of justice, within stipulated period, preferably within a period of 1 month from passing order by this Hon'ble Court.

C) By issuing writ of mandamus or any other appropriate writ in the like nature, the

respondents may kindly be directed to pay the difference of final regular pension deducting the amount paid to the petitioner by way of provisional pension from 10.04.2023 till the actual grant of regular pension as per 7th Pay Commission and to pay interest @ 12% on regular pension from 10.04.2023 till the grant and payment of actual regular pension and for the payment of interest on the amount payable to the petitioner of gratuity from 10.04.2023 till the actual payment of gratuity, within stipulated period, preferably within a period of 1 months from passing order by this Hon'ble Court.

D) Be pleased to direct the respondents to pay the arrears of salary from the suspension period from 06.04.2022 to 29.11.2022.

2. We have heard the learned Advocates for the respective sides. The Departmental Enquiry was conducted against the Petitioner after he was trapped by the Anti Corruption Bureau allegedly indulging in bribery/illegal gratification. Enquiry Officer has mentioned in the findings that though Charge Nos. 1, 2 and 4 are not proved, no opinion or conclusion is expressed with regard to Charge No. 3 since the criminal case is still pending.

3. It does not call for any debate that if the Petitioner is ultimately convicted for committing the offence with which he is charged with, an act amounting to moral turpitude / offence involving moral turpitude would stand proved. In such a situation, the Petitioner would be deprived of gratuity on account of forfeiture under Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972.

3. We are informed that the trial in the criminal proceedings has commenced. If the Petitioner is acquitted, he would be entitled for the entire gratuity amount with interest. However, if he is convicted, the amount would be forfeited. Hence, granting gratuity under our order at this stage would complicate the issues if the Petitioner is convicted, since he will have to return the gratuity amount to the employer. Instead we request the trial Court to complete the trial in Special Case No. 98/2023, pending with 5th Extra Joint District and Sessions Judge – 1, Nanded within 12 months.

4. In view of the above, **this Writ Petition is**

disposed off. We request the trial Court dealing with Special Case No. 98/2023, to conclude the same as expeditiously as possible and preferably within a period of 12 months from today. Needless to state, if the Petitioner is acquitted, he would be entitled for the gratuity amount with interest, if there is no other legal impediment. This would also apply to the issue of the salary for the suspension period.

(R. M. JOSHI, J)
Malani

(RAVINDRA V. GHUGE, J)