IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7462 OF 2019

Nasera Begum Syed Hamidullah
VERSUS
1. The State Of Maharashtra
2. Aurangabad Municipal Corporation, Aurangabad

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Mr. Zia Ul Mustafa, Advocate for the Petitioner
Mr. V. S. Badakh, AGP for Respondent No.1/State
Mr. A. R. Vaidya, Advocate for Respondent No.2

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CORAM : RAVINDRA V. GHUGE & R. M. JOSHI, JJ
DATE : MARCH 20, 2024

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J)

1. Rule. Rule made returnable forthwith and heard finally by the consent of parties. This is a suo-moto special drive for deciding pending old pension matters.

2. The Petitioner is a widow. Her husband was appointed as a driver with Respondent No. 2 on 02.07.1984. He superannuated at the age of 58 years on 31.08.2017. No departmental enquiry is pending and there is no instance of any disciplinary action.

3. Respondent No. 1 passed a Resolution on 01.12.2006 and sanctioned pay scale of Rs. 1200-30-

1560-D.R.-40-2040 with effect from 01.01.1992. Further pay revisions occurred on account of the 5th and 6th pay commission recommendations. The Respondent Corporation relies upon the audit objection dated 29/31 December, 2015. No notice of recovery was issued to the deceased. No show cause notice was issued to him as to why there should be a re-pay fixation. Pensionary benefits, gratuity, leave encashment etc. were simply withheld without any communication to the deceased. The husband of the Petitioner eventually passed away on 12.02.2020. It is, thus, obvious that neither any show cause notice was issued to the deceased as regards purported wrongful pay fixation nor any order has been passed for initiating a recovery for purported excess payment.

3. It is well settled that neither pension nor gratuity can be withheld when services of the concerned employee has been peaceful and blotless. In view of the above, **this Writ Petition is partly allowed.** Respondent No. 2 is directed to release the arrears of pension, gratuity amount and leave encashment with interest @ 6% p.a. within the period of 90 days. The arrears of pension would be calculated until the payment of

pension commences. The amount of provisional pension paid shall be adjusted while calculating the arrears of full pension.

4. In the event, the Corporation desires to revise the pay fixation, a notice would be issued to the Petitioner and after granting an opportunity of hearing, an appropriate reasoned order may be passed. All contentions on the said count are kept open.

5. Rule is made partly absolute in the above terms.

(R. M. JOSHI, J) **(RAVINDRA V. GHUGE, J)**

Malani