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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7372 OF 2019

Prachi Manohar Gore,
Age-63 years, Occu-Retired,
R/o at Present Rohini, "B", 303,
Sinhagad Road, DSK Vishwa,
Dhayari, Pune – 400 041.

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through Directorate,
Municipalities,
Mantralaya, Mumbai – 400 032,

2. The Commissioner,
Municipal Corporation, Jalgaon

3. The Health Officer,
Municipal Corporation,
Registration of Death
and Birth Department,
Jalgaon

-- RESPONDENTS

**WITH
WRIT PETITION NO.10237 OF 2019**

Chagan Yeshwant Mahale,
Age-62 years, Occu-Pensioner,
R/o Vimalnagar,
Plot No.32, Behind SEM College,
Shirpur,
Taluka Shirpur, Dist. Dhule

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through Directorate of Municipalities,
Mantralaya, Mumbai – 400 032,

2. The Commissioner,
Municipal Corporation,
Jalgaon

3. The Health Officer,
Municipal Corporation,
Jalgaon

-- RESPONDENTS

Mrs.A.N.Ansari, Advocate for the Petitioners.
Ms.Neha Kamble, Mr.D.R.Korade, AGPS' for Respondent No.1.
Mr.V.D.Gunale, Advocate for Respondent No.2.

(CORAM : RAVINDRA V. GHUGE AND
R.M. JOSHI, JJ.)

DATE : APRIL 18, 2024

ORAL JUDGMENT : (Per Ravindra V.Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. These matters are taken up in the special drive to decide the pending pension cases. After considering the entire Petition paper books and the record available and despite the strenuous submissions of Mr.Gunale, who prays that both the Petitions should be dismissed with heavy costs, we find that this is an open and shut case. The undisputed

relevant dates, and sequence of events are as under :-

**[A] WRIT PETITION NO.7372/2019
(Prachi Manohar Gore Vs. The State of Maharashtra and others)**

- (a) The Petitioner Prachi Gore was appointed as a Clerk-cum-Typist on 24.04.1980.
- (b) She superannuated from employment on 31.07.2013.
- (c) He was served with a show cause notice dated 31.08.2015, after superannuation.
- (d) Initially 3 Members Committee was constituted by the Jalgaon City Municipal Corporation.
- (e) Thereafter, one Member Committee was formed to inquire into the matter.
- [f] Orders dated 08.01.2016 and 21.09.2016 were passed by Respondent No.2 / Corporation, thereby ordering deduction from the pension of the Petitioner, without conducting the DE.
- [g] By amendment, the order dated 24.08.2022, passed by the Appellate Authority confirming the earlier orders, has been challenged before us.

[B] WP No.10237/2019
(Chagan Yeshwant Mahale Vs. The State of Maharashtra and Others)

- (a) The Petitioner Chagan Mahale was appointed on 01.02.1978 as Nakerdar.
- (b) The Petitioner superannuated on 30.06.2015, as a Superintendent.
- (c) A show cause notice was served on the Petitioner, on 31.08.2015.
- (d) Orders dated 08.01.2016 and 21.09.2016 were passed by Respondent No.2/Corporation, thereby ordering deductions from the pension of the Petitioner without conducting a DE.
- (e) By an amendment, the Petitioner has challenged the order dated 24.08.2022, passed by the Appellate Authority confirming the earlier orders, before us.

3. In both these Petitions, identical prayer clauses B, C, D, E, E-1 and F-1 read as under :-

“B. To quash and set aside the orders dated 08.01.2016 and 21.09.2016 passed by Respondent No.2, by which deduction was ordered from pension of the Petitioner by issuing any appropriate writ order or direction as the case may be.

C. To quash and set aside inquiry conducted against the Petitioner after her retirement in view of rule 27(B)(II) of Maharashtra Civil Services

Pension Rules 1982 and also second inquiry report dated 29.09.2017, by issuing any appropriate writ, order or direction as the case may be.

D. The Respondents be directed to release gratuity, of the petitioner alongwith interest as per rule 129(A), of Maharashtra Civil Services Pension Rules, 1982, by issuing any appropriate writ order or direction as the case may be.

E. The Respondents be directed to release the amount of commutation of pension with interest by issuing any appropriate writ order or direction as the case may be.

E-1. To quash and set aside the order 17.07.2019 so far as applicant is concerned.

F-1. To quash and set aside order passed by Respondent No.2 dated 24.08.2022, in appeal confirming the order 08.01.2016 and 21.09.2016 (Exhibit "F" collectively page No.34 to 37), by which recovery was ordered from the pension and retirement benefits of petitioner, by issuing any appropriate writ order or direction as the case may be."

4. It is obvious that the employer cannot initiate a departmental enquiry against a superannuated employee, in the light of Rule 27(B)(2)(ii) of the Maharashtra Civil Services Pension Rules, 1982. It is an admitted position that no charge sheet was issued to any of these Petitioners. As such, there was no question of conducting a departmental enquiry. Be that as it may, a departmental enquiry was never conducted and no enquiry Officer was appointed.

5. The Corporation initially formed a 3 Members Committee and that was followed by a Single Member Committee. It is glaring that none of these Committee Members had any right to conduct a preliminary enquiry or conduct an enquiry *dehors* the service rules. However, the Enquiry Officer who tendered the report dated 15.07.2017, concluded that both these Petitioners, namely Prachi Gore and Chagan Mahale, were not working in the Women Child Development Department when the alleged misdeeds had occurred. It is equally glaring that this report was delivered on 15.07.2017 and the order directing recovery was issued on 08.01.2016 and 21.09.2016, before any such report could be tendered.

6. Recently, the Hon'ble Supreme Court delivered a judgment dated 16.04.2024 in **SLP © Nos.8788-8789 of 2023 (Sandeep Kumar Vs. GB Pant Institute of Engineering and Technology Ghurdauri and others)**, wherein it has been reiterated that any order of punishment on the basis of the conclusion of misconducts requiring departmental enquiry, cannot be passed unless such a departmental enquiry is conducted. The issue was with regard to termination of the Appellant and it was concluded that termination of service without holding the

disciplinary enquiry was unjustified and *dehors* the requirement of Law and in gross violation of principles of natural justice.

7. In view of the above, **both these Writ Petitions are allowed.** The impugned orders are quashed and set aside. If any amounts are recovered from the Petitioners, the same shall be refunded to the Petitioners on or before 31.05.2024.

8. Gratuity shall be paid to these Petitioners within 30 days from today, with a statutory interest @ 10% p.a.

9. Since regular pension is being paid, both the Petitioners, who are desirous of taking the benefit of commutation of pension, are at liberty to make an application to the Corporation and if such an application is made, the same shall be considered uniformly as per the Rules, within 30 days.

10. Rule is made absolute in the above terms.

(R.M.JOSHI, J.)

(RAVINDRA V. GHUGE, J.)