IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8051 OF 2022

1. Madhukar Namdeo Bawaskar
Age: 63 Years, Occ. Pensioner,
R/o. Plot No.20, New Balaji nagar
Aurangabad.

2. Nathuram Kashiram Meher
Age: 64 Years, Occ. Pensioner,
R/o. House No. 5-11-29,
Op. Sant Tukaram Hostel Padampura,
Aurangabad.

3. Abba Mhasaji Walunje
Age: 62 Years, Occ. Pensioner.
R/o. Plot No.30. New Balaji nagar
Aurangabad.

4. Shankar Pralhad Kachawar
Age: 63 Years, Occ. Pensioner.
R/o. H.No. 4-18-34. New Balaji Nagar
Aurangabad.

5. Smt. Kalpana Dattaraya Sabnis
Age: 60 Years, Occ. Pensioner.
R/o. H.No. 7-10-20, N-7 Cidco
Aurangabad.

6. Ashok Trimbak Waghchoure
Age: 60 Years, Occ. Pensioner.
R/o. Plot No. 169. Nageshawar wadi
Aurangabad. ... **PETITIONERS**

V/s.

1. The State of Maharashtra
for Secretary, Urban Development Dept.
Mantralaya, Mumbai-32.

2. The Aurangabad
Municipal Corporation
Aurangabad, through its
Commissioner & Administrator. ... **RESPONDENTS**

...

Mr. D.R. Irale, *Advocate for the Petitioners*
Mr. R.S. Wani, *AGP for Respondent-State*
Ms. Anjali Dube, *Advocate for Respondent No.2*

...

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.
RESERVED ON : 31st January, 2024
PRONOUNCED ON : 4th April, 2024

JUDGMENT (Per: Y. G. Khobragade, J.) :-

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

2. By the present petition under Article 226 of the Constitution of India, the Petitioners have prayed for issuance of a writ of mandamus to quash and set aside the clause pertaining to denial of arrears for the period w.e.f. 01.01.2016 to 31.08.2019 on account of revised pay fixation under the 7th Pay Commission. It further prayed for issuance of necessary order directing the Respondent No.2 to exercise powers conferred under the Maharashtra Municipal corporation Act for rectification of the Resolution No.1161 dated 11.09.2019 in respect of clearing outstanding dues/arrears for the period w.e.f.

01.01.2016 to 31.08.2019 and to provide consequential pensionary benefits including gratuity, commutation and leave encashment.

3. The learned counsel appearing for the Petitioners submits that, the Petitioner Nos. 1 to 6 were working with the Respondent No.2 in Class-III category. The State Government issued a GR dated 30.01.2019 and made the recommendations of 7th pay commission applicable to the government employees w.e.f. 01.01.2016. In pursuance of the said GR the Respondent No.1 – State Government issued a GR on 02.03.2019 providing Revised Service Assured Career Scheme on completion of 10, 20 and 30 years of service as per the 7th pay commission recommendations. On 02.08.2019 the Urban Development Department of the State of Maharashtra adopted the GR dated 30.01.2019 and made the revised pay scale under the 7th pay commission applicable to the employees of all Municipal Corporations in the State of Maharashtra. Accordingly, the Respondent No.2 – Municipal Corporation accepted the GR dated 02.08.2019 and decided to provide the benefits of revision of pay scale under the 7th pay commission to its employees. Accordingly, Respondent No.2 passed a Resolution No.1161 on 11.09.2019 in the general meeting and made the revised pay scale applicable to all classes of employees w.e.f. 01.01.2016, however, it has been resolved in the General Body meeting of the Respondent No. 2 that, all the employees working with it's

establishment would not be entitled to receive arrears of pay scale and pensionary benefits w.e.f 01.01.2016 to 31.08.2019. Therefore, action on part of Respondent No.2 in denying arrears due to revision of pay scale under the 7th pay commission w.e.f. 01.01.2016 to 31.08.2019, is arbitrary, illegal and bad in law. Hence prayed for quashing and setting aside the same.

4. The learned advocate for the Petitioners, further submits that, the Respondent No.2 Municipal Corporation paid arrears for the period w.e.f. 01.01.2016 to 31.08.2019 to the employees who are working on deputation in Class-I and Class-II, however, outstanding benefit of arrears of revised pay scale denied to the Class-III and Class-IV employees who are working with the Respondent No.2 establishment on regular basis. Therefore, action on the part of Respondent No.2 is discriminatory and violative of Article 14 of the Constitution of India.

5. To buttress these submissions, the learned counsel appearing for the Petitioners placed reliance on the case of **Maharashtra State Financial Corporation Ex-Employees Association V/s. State of Maharashtra; AIR 2023 SC 792**.

6. The Respondent No.2 – Municipal Corporation filed affidavit in reply and strongly resisted present petition on the ground that, Respondent

No.2 made the revised pay scale applicable to its employees. As per the notification issued by the Ministry of Finance of State Government on 30.01.2019 recommending revision of pay scale of 7th pay commission on 02.03.2019, the State government issued GR and made the recommendation of 7th pay commission applicable to all employees of Municipal Corporation within the State of Maharashtra. Accordingly, on 02.08.2019 the Respondent No.2 passed Resolution No.1161 in it's general body meeting and made the recommendations of 7th pay commission applicable to its employees, however as per directions contained in Clause-A (1) of GR dated 02.08.2019, the Municipal Corporation is required to extend revision of pay scale to it's employees after considering financial status of the corporation. Therefore, Respondent no. 2 decided not to grant arrears and pensionary benefits to all the employees under the revised pay scale w.e.f. 01.01.2016 to 31.08.2019. As per Clause-B (d) of GR dated 02.08.2019 the Corporation is required to carry additional burden of financial liabilities and said financial liabilities are required to be borne by the Corporation from its own income and financial capabilities. Therefore, considering the financial capabilities of the Respondent No.2, it was unanimously decided in general body meeting for extending benefits of revised pay scale to the employees under the 7th pay commission w.e.f. 01.01.2016, but no arrears would be payable to its employees w.e.f. 01.01.2016 till 31.08.2019.

7. On the other hand, Ms.Anjali Dube, the learned counsel appearing for the Respondent No.2 – Municipal Corporation orally argued for a considerable period and also filed the written notes of arguments. The learned advocate submits that, the Respondent No.2 – Municipal Corporation made applicable 7^{th} pay revision w.e.f. 01.01.2016 in respect of all categories of employees including those who are retired during the period w.e.f 01.01.2016 to 31.08.2019. The revision of pay scale for the purpose of pensionary benefits already granted to the Petitioners who were retired during said period and as such the employees like the Petitioners who were retired during said period, have not been excluded from application of 7^{th} pay revision and their pension being computed under the 7^{th} pay scheme, however, in the general body meeting it was unanimously resolved about non payment of 'arrears' under the 7^{th} pay revision w.e.f. 01.01.2016 to 31.08.2019 and applicable uniformly to all the employees whether they are retired prior to 31.08.2019 or the employees who are working as on 31.08.2019. Therefore, said resolution does not in discrimination amongst the existing employees and employees who have retired during the period from 01.01.2016 to 31.08.2019.

8. The learned advocate appearing for the Petitioners further canvassed that, the ratio laid down in the case of ***Maharashtra State Financial Corporation Ex-Employees Association (supra)*** on behalf of the Petitioners is

distinguishable from the facts of the present case. Because in the cited case, revision of 5th pay commission was implemented by the State w.e.f. 01.01.1996, however, Maharashtra State Financial Corporation decided to adopt the revision of pay scale on 31.08.2010 w.e.f. 01.01.2006. Under these circumstances, Hon'ble Supreme Court held that, exclusion of employees, who retired between 01.01.2006 and 29.03.2010 on achieving their date of superannuation, was violative of Article 14 of the Constitution and 5th pay revision has been made applicable to those employees of Maharashtra State Financial Corporation who were working as on 29.03.2010, whereas, the revision was given w.e.f. 01.01.2006. Since, the employees who retired or died during the period 01.01.2006 to 29.03.2010 were excluded from 5th pay revision they were aggrieved by the discrimination.

9. The learned advocate appearing for Respondent No. 2 further submits that, since, Respondent No.2 made the recommendations of 7th pay commission w.e.f. 01.01.2016 applicable, but as per the GR dated 02.08.2019, all the Municipal Corporations in the State of Maharashtra granted liberty to make applicable recommendations of 7th pay commission to its employees on certain terms and conditions as well as considering financial capability. Therefore, Respondent No.2 passed the resolution in general body and made revision of 7th pay scale applicable to its employees after considering financial

capabilities and decided that all class of employees would not be entitled for arrears of pay salary and pensionary benefit w.e.f. 01.01.2016 to 31.08.2019.

10. Having regard to the rival submissions canvassed by both the sides, we have gone through the record. It is matter of record that, Petitioner Nos.1 to 6 were working with Respondent No.2 in Class-III category. On the face of the record, it appears that Petitioner Nos.1 to 6 superannuated on achieving age of superannuation w.e.f. 31.07.2017, 30.04.2018, 30.06.2018, 28.02.2020 and 30.09.2019, respectively. Needless to say that, on 30.01.2019, the State Government issued a GR and made the revision of pay scale applicable to its employees under the 7th pay commission w.e.f. 01.01.2016. Further on 02.03.2019 the State Government issued a GR and revised benefits of service assured career scheme under the 7th pay commission on completing 10, 20 and 30 years service (stage wise). On 02.08.2019, the State Government issued a GR that the revision of pay scale under 7th pay commission are applicable to the employees of the State Government w.e.f. 01.01.2016, but the employees working with Municipal Corporations in State of Maharashtra are not entitled to said pay scale. Therefore, the State Government resolved that, all Municipal Corporations would extend benefit of 7th pay commission to employees of all categories and said proposal would be placed before the general body of the council for extending benefits of 7th pay commission to its employees after

considering the financial capabilities of respective Municipal Corporations. The relevant extract of said GR reads as under:

"**प्रस्तावना:-**

वित्त विभागाच्या दि.३०.०१.२०१९ च्या अधिसूचनेन्वये राज्य शासकीय कर्मचाऱ्यांना दि.०१.०१.२०१६ पासून ७ व्या वेतन आयोगानुसार सुधारित वेतनश्रेणी लागू करण्यात आल्या आहेत.

७ व्या वेतन आयोगानुसार सुधारित वेतनश्रेणी राज्य शासकीय कर्मचाऱ्यांप्रमाणे महाराष्ट्र विधानमंडळ सचिवालय, न्यायालयातील अन्यायिक कर्मचारी, अनुदानीत शाळेतील कर्मचारी, कृषी व अकृषी विद्यापीठे आणि त्यांना संलग्न अनुदान प्राप्त अशासकीय महाविद्यालयातील कर्मचारी तसेच इतर अनुदान प्राप्त संस्थांतील कर्मचाऱ्यांना लागू करण्यात आल्या आहेत. तथापि, राज्यातील महानगरपालिकांमधील कर्मचाऱ्यांना ७ व्या वेतन आयोगाच्या तरतूदी अद्याप लागू करण्यात आलेल्या नाहीत.

सदर अधिकारी/ कर्मचाऱ्यांप्रमाणे राज्यातील महानगरपालिकांमधील अधिकारी/ कर्मचाऱ्यांना ७ व्या वेतन आयोगाच्या शिफारशीनुसार सुधारित वेतनश्रेणी लागू करण्याबाबत कार्यपध्दती विहित करण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय: -

राज्यातील महानगरपालिकांमधील अधिकारी/ कर्मचाऱ्यांना ७ व्या वेतन आयोगानुसार सुधारित वेतनश्रेणी लागू करण्याबाबत खालीलप्रमाणे कार्यपध्दती तसेच, अटी व शर्ती विहित करण्यास मान्यता देण्यात येत आहे:-

(अ) ७ वा वेतन आयोगानुसार सुधारित वेतनश्रेणी लागू करण्याबाबतची कार्यपध्दती:-

१) महानगरपालिका आयुक्तांनी महानगरपालिकेची आर्थिक स्थिती विचारात घेऊन, ७ व्या वेतन आयोगानुसार सुधारित वेतनश्रेणी लागू करण्याचे प्रस्ताव महानगरपालिकेच्या महासभेसमोर सादर करावा.

२) महानगरपालिकेच्या महासभेने सदर प्रस्तावाबाबत निर्णय घ्यावा

३) महानगरपालिकेच्या महासभेने सुधारित वेतनश्रेणी लागू करण्याबाबतचा ठराव केल्यानंतर, त्याबाबतचा परिपूर्ण प्रस्ताव आयुक्तांनी शासनाच्या मान्यतेसाठी सादर करावा.

४) सदर प्रस्तावास शासनाची मान्यता मिळाल्यानंतर, त्यानुसार महानगरपालिकेस त्यांच्या कर्मचाऱ्यांना ७ वा वेतन आयोग लागू करता येईल.

५) ७ व्या वेतन आयोगानुसार थकबाकी अदा करण्याबाबत महानगरपालिकांनी त्यांची आर्थिक स्थिती विचारात घेऊन निर्णय घ्यावा.

(ब) ७ वा वेतन आयोगानुसार सुधारित वेतनश्रेणी लागू करण्याबाबत विहित अटी व शर्ती:-

(१) ७ वा वेतन आयोगानुसार निश्चित करण्यात येणाऱ्या वेतनश्रेणी, राज्य शासनाकडील संबंधित समकक्ष पदांना लागू करण्यात आलेल्या वेतनश्रेणीपेक्षा कोणत्याही परिस्थितीत अधिक असणार नाहीत.

(२) वेतनश्रेणीबाबत समकक्षता ठरविताना काही अडचणी आल्यास, त्याचे शासनाच्या पूर्वमान्यतेने निराकरण करण्यात यावे.

(३) ७ व्या वेतन आयोगाचा लाभ केवळ मंजूर पदांवरील कार्यरत अधिकारी/ कर्मचारी यांना देण्यात यावा.

(४) महानगरपालिकांनी शासन निश्चित करेल असा सुधारणा कार्यक्रम राबविणे बंधनकारक असेल.

(५) ७ वा वेतन आयोग लागू करताना केवळ अपवादात्मक बाब म्हणून महानगरपालिकेचा आस्थापना खर्चाची विहीत मर्यादा शिथिल करण्यात आली तरीही महानगरपालिकांनी खालील बाबींची पुर्तता करणे आवश्यक राहील:-

(अ) महानगरपालिकेतंर्गतची विकास कामे, केंद्र व राज्य शासनाच्या योजनेतील महानगरपालिकेचा हिस्सा, विकास कामांसाठी घेतलेले कर्ज आणि व्याज यांच्या परतफेडीसाठी पुरेसा निधी शिल्लक राहील यांची खात्री करावी.

(आ) संबंधित महानगरपालिकेने उत्पन्नात वाढ करुन, त्यांचा आस्थापना खर्च पुढील ३ वर्षात विहीत मर्यादेत राहील, याबाबत उपाययोजना करणे अनिवार्य असेल.

(इ) ७ च्या वेतन आयोगानुसार सुधारित वेतनश्रेणी लागू केल्यामुळे, येणारे अतिरिक्त वित्तीय दायित्व शासनाकडून देण्यात येणारे जी.एस.टी. अनुदान व महानगरपालिकेच्या स्वउत्पन्नातून भागविण्याचे असल्याने, ७ व्या वेतन आयोगाच्या तरतूदी लागू करताना, संबंधित महानगरपालिकांनी त्यांची आर्थिक स्थिती विचारात घेऊन, निर्णय घेणे आवश्यक आहे."

11. Indeed, on 11.09.2019, Respondent No.2 conducted the meeting of the General Body and passed the Resolution No.1161, wherein it has been decided to extend the benefits of revision of pay scale to its employees under the 7th pay commission w.e.f. 01.01.2016 as per GR dated 02.08.2019, however, the employees in all categories would not be entitled for arrears of

revised pay scale w.e.f. 01.01.2016 to 31.08.2019 excluding the pensionary benefits. The resolution passed by the Respondent No.2 read as under:

> "ठराव:-
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> **प्रस्तावात** दर्शविल्याप्रमाणे, शासन अधिसुचना वित्त विभाग क्र: वेपूर-2019/प्र.क्र.1/सेवा-9 दिनांक 30 जानेवारी-2019 अन्वये सुधारीत वेतन संरचना व त्यामधील प्रारंभिक वेतन निश्चितीच्या महाराष्ट्र नागरी सेवा (सुधारीत वेतन) नियम-2019 लागू करण्यात आले असुन त्यानुसार शासन निर्णय क्र.एम.सी.ओ.-2019/प्र.क्र. 102/नवि- 14 दि.02 ऑगस्ट-2019 रोजी राज्यातील महानगरपालिके मधील अधिकारी/कर्मचाऱ्यांना सातव्या वेतन आयोगानुसार सुधारीत वेतनश्रेणी लागू करण्याबाबत शासनाने विहीत कार्यपध्दती अवलंबुन त्यातील अटी व शर्तीच्या अधिन राहुन मान्यता दिलेली आहे.
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> सदर शासन निर्णयानुसार निर्देशीत केल्याप्रमाणे औरंगाबाद महानगरपालिकेतील कर्मचाऱ्यांना सातव्या वेतन आयोगा प्रमाणे प्रस्तावात दर्शविल्यानुसार सुधारीत वेतन सरचना जोडपत्र-2 (Annexure-II) च्या अनुसुची/Schedule प्रमाणे वर्ग-1 (दि. 1/6/2019 रोजीची स्थिती) सवर्गातील अनुक्रमांक 01 ते 12 वर्ग-2 संवर्गातील अनुक्रमांक 01 ते 19 वर्ग-3 संवर्गातील अनुक्रमांक 01 ते 59 आणि वर्ग-4 संवर्गातील अनुक्रमांक 01 ते 23 प्रमाणे सुधारीत वेतन श्रेणी दि.01.01.2016 पासून लागू करण्यास सर्वानुमते मंजुरी देण्यात येते.
>
> तसेच महानगरपालिकेची सध्याची आर्थिक स्थिती व उत्पन्न विचारात घेता दि. 01.01.2016 ते दि.31.08.2019 या कालावधीतील थकबाकी अधिकारी/कर्मचाऱ्याना व सेवानिवृत्त वेतन धारकाना अनुज्ञेय राहणार नाही. वैधानिक कार्यवाही व्हावी."

12. In the case of **Maharashtra State Financial Corporation Ex-Employees Association** cited ***(supra)*** the benefit of revision of pay scale as a result of 5th pay commission report was made applicable to the employees of MSFC who were working on 29.10.2010 giving effect to the same w.e.f. 01.01.2006, but benefit of said revision of pay scale was denied to those employees who had retired or died during the period 01.01.2006 to 29.03.2010. Under these circumstances, it has been held that, the denial of

said benefits of pay revision was challenged as being discriminatory and arbitrarily.

13. Needless to say that, the policy decision taken by Respondent No.2 in its general meeting for extending benefits to its employees under the revised pay scale of 7th pay commission as per GR dated 02.08.2019 does not stand judicial scrutiny. It is not the case of the Petitioners that, Respondent No.2 granted revision of pay scale under 7th pay commission to other similarly situated employees, and that the said benefits were denied to the Petitioners only. Therefore, ratio laid down in the case of **Maharashtra State Financial Corporation Ex-Employees Association** ***(supra)*** is not applicable to the facts and circumstances of the present case.

14. Respondent No.2 conducted the meeting of the General Body on 11.09.2019 and passed the Resolution No.1161 deciding to extend the benefits of revision of pay scale to its employees under the 7th pay commission w.e.f. 01.01.2016 as per GR dated 02.08.2019 and employees in all categories would not be entitled for arrears of revised pay scale w.e.f. 01.01.2016 to 31.08.2019 excluding the pensionary benefits, which have been accepted by all the employees. It is not the case of the Petitioners that, Respondent no. 2 granted arrears of revised pay scale w.e.f. 01.01.2016 to 31.08.2019 to other similarly situated employees but denied to them. The Petitioners have not brought any

other circumstance on record to show that, other similarly situated employees who retired during the period of 01.01.2016 to 30.08.2019 have been granted arrears of pensionary/revision of pay scale. Therefore, we do not find any discrimination made applicable by the Respondent no. 2 while extending benefits of revised pay scale and the Petitioners are entitled for arrears of revision of pay scale w.e.f. 01.01.2016 to 30.08.2019. In view of above discussion, we do not find that the action on the part of Respondent No.2 is in violation of Article 14 of Constitution of India.

15. Hence, the present petition is hereby dismissed. Rule is discharged. The Civil Application No. 12935 of 2023 is accordingly disposed off. No order as to cost.

[Y.G. KHOBRAGADE, J.] **[RAVINDRA V. GHUGE, J.]**

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