IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 8924 OF 2024

JAMILODDIN KHALILODDIN
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

AND
921 WRIT PETITION NO. 9198 OF 2024

SHUKOOR KHAN ISMAIL KHAN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND ANOTHER

AND
938 WRIT PETITION NO. 9237 OF 2024

DAYANAND LOKAJI JONDHALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

AND
36 WRIT PETITION NO. 9110 OF 2024

NANDKUMAR PRABHAKARRAO KULKARNI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

AND
901 WRIT PETITION NO. 9264 OF 2024

VILAS MADHAVRAO MATPALLEVAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

.....

Advocate for the Petitioners : S/Shri M.S. Shah, G.R. Syed, S.B. Patil and Ms. Priyanka Shinde in respective petitions
AGP for Respondents/State : S/Shri V.M. Kagne, N.B. Patil, R.S.Wani and S.K. Tambe
Advocate for the Resp./Corporation : Mr. S.P. Urgunde

.....

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.
DATE : 27th August, 2024

P.C. :-

1. Writ Petition No.9264/2024, is not on board. By consent of the parties, taken on board. Copy is supplied to the learned advocate Shri Urgunde.

2. The learned advocate for the Petitioners in Writ Petition No.9198/2024, submits on instructions that Petitioner Nos.1 to 3, 6 and 8 desire that their names be deleted from the array of Petitioners. In view of the statement made, **these Petitioners shall be deleted from the array of Petition**.

3. In all these Petitions, the identically placed Petitioners pray for a Writ of Mandamus or an order, direction or Writ of the like nature, to direct the Nanded Waghala Municipal Corporation to grant the difference of salary in the light of the 7th Pay Commission recommendations, all consequential benefits, interest statutorily computable thereon and commutation of pension benefits. Leave encashment and gratuity is paid to some of the Petitioners.

4. We have considered the strenuous submissions of the learned advocates for the respective sides, especially the vehement submissions advanced by the learned advocate for the Municipal Corporation Shri Urgunde, who prays that these Petitions be dismissed with heavy costs. He relies upon an affidavit in reply filed by Shri Janardhan Gulabrao Pakwane, Chief Accounts Officer of the Municipal Corporation in Writ Petition No.5408/2024 (Nitin Shrinivas Tornekar & Ors. V/s. State of Maharashtra & Ors.)

5. Shri Urgunde further submits that the Corporation is in a very weak financial condition. Several localites are not paying taxes regularly. The Government is not supporting the Corporation by extending funds. The Petitioners should first approach the grievance Committee of the Corporation constituted in the light of the suggestion made by this Court at the Principal Seat, vide order dated 15.10.2016, delivered in Writ Petition No.7038/2013.

6. We find it unconscionable on the part of the Corporation in not paying the legal dues. All the dues of the Petitioners are admitted, on the one hand and the dues are not paid to the Petitioners and identically placed retired employees or in service employees (to the extent of the 7th Pay Commission salary scales), on the other hand. The plea taken by the Corporation is that it does not have adequate funds. This cannot be a ground for non-payment of the

retiral benefits, of not only the Petitioners, but identically placed retired employees, inasmuch as, those employees who are in service and are not being paid the salary scales as per the 7th Pay Commission recommendations.

7. The Municipal Corporation had stated in paragraph 9 of the affidavit in reply, filed in the case of Nitin Tornekar (supra), in bold letters, as under:-

> *"The payment of arrears requires a policy decision for making the number of installments considering the financial position. The deponent respectfully submits that, after taking a strategic decision regarding the payment of the difference amount of the 7th Pay Commission to the working / retired officers / employees of NWCMC. The difference amount of the 7th pay commission will be released."*

8. In so far as the contention of the Petitioners that Shri Pakwane has received all his arrears under the 7th Pay Commission recommendations in a single installment, Shri Urgunde emphatically submits that Shri Pakwane has not received such arrears of pay scales. We are of the view that if Shri Pakwane did not receive such arrears, why has he not refuted these allegation in his affidavit that has been filed in the case of Nitin Tornekar (supra). Shri Urgunde submits that because the pleadings with regard to Shri Pakwane, were missing in the Petition, the affidavit his reply is silent on the said issue.

9. The learned Advocate for the Corporation submits that it may not be true that Mr.Janardhan Gulabrao Pakwane received the arrears in lump

sum. He further assures that the arrears are legally payable to the Petitioners and they would be paid as early as possible.

10. Shri Urgunde has tendered one circular dated 23.02.2021, which is signed by the then Commissioner of the Municipal Corporation, indicating that the benefits of the 7th Pay Commission would be payable from 01.01.2016 and the difference / arrears would be paid in installments, as and when the financial condition of the Corporation improves. The said circular is taken on record and marked as **'X-1'** for identification.

11. The Corporation is under an obligation to recover all taxes which are payable by the residents. If the Corporation is dilly-dallying on recovery of taxes, it alone can be blamed. Time and again, we have given indications to several Corporations in matters before us, that they should recover all taxes without an exception and should strictly implement the policy of recovery of taxes, even against Elected Representatives, People's Representatives, Corporators and VIPs. Arrears from such persons should also be recovered without an exception. Nevertheless, financial stringency cannot be a ground for delaying or not paying the retiral benefits of the employees and the Petitioners.

12. In view of the above and considering the contentions that the Municipal Corporation has financial difficulties, we are inclined to grant installments to the Corporation for clearance of the payments of these Petitioners and similarly situated retired employees.

13. In view of the above, **these Writ Petitions are partly allowed** with the following directions:

a) The first equated installment, inclusive of 6% interest per annum, on the unpaid amounts, shall be paid on or before 30.09.2024, to these Petitioners.

b) The second equated installment shall be paid on or before 31.10.2024 and the last equated installment would be payable on or before 30.11.2024.

c) In so far as unpaid gratuity amounts are concerned, they shall carry interest @ 12% which is the recent decision of the Union of India and which is notified.

d) The payment towards leave encashment with interest @ 6% per annum, shall be payable within 75 days from today.

e) The pension commutation will be made effective from 15.10.2024 and the interest would be calculated only thereafter. The commutation amount shall be paid to these Petitioners along with interest as is statutorily payable on or before 30.11.2024.

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

mub