IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10608 OF 2024

Shaikh Shabbir Shaikh Nazir
Age: 65 years, Occu. Retired
R/o. Karanja, Azizpura Beed,
Tq. & Dist. Beed … **Petitioner**

VERSUS

1. The State of Maharashtra
Through its Chief Secretary,
Transport Department,
Mantralaya, Mumbai – 32

2. The Assistant P. F. Commissioner (Accounts)
Regional Office, Aurangabad

3. The Maharashtra State Road Transport
Corporation, Through its Divisional
Controller, Beed Division, Beed,
Near Bus Stand, Beed,
Tq. & Dist. Beed … **Respondents**

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Mr. A. R. Syed, Advocate for the Petitioner
Mr. S. K. Tambe, AGP for Respondent No.1 – State
Mr. N. K. Choudhari, Advocate for Respondent No.2
Mr. D. S. Bagul, Advocate for Respondent No.3

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CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.

DATE : 30.09.2024

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

1. Heard Mr. A. R. Syed, the learned Advocate for the Petitioner, Mr. S. K. Tambe, the learned AGP for Respondent No.1, Mr. N. K. Choudhari, the learned Advocate for Respondent No.2 and Mr. D. S. Bagul, the learned Advocate for Respondent No.3.

2. Since very short issue involved in the present petition, therefore, it is heard finally at the state of the admission.

3. By the present Petition, the Petitioner put forth prayer clauses (C), (D), (E) and (F) as under:-

> "*(C) This Hon'ble Court may be pleased to issue appropriate writ, order or directions against the respondent no.3 to forward the pension papers of the petitioner by complying all the requisite formalities required for release of pension within stipulated period.*
>
> *(D) The Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondent No.2 to compute and release the pension of the petitioner within stipulated period.*
>
> *(E) This Hon'ble Court may be pleased to issue appropriate writ order or directions to the respondent no.3 to pay 18% interest on the unpaid pension within stipulated period.*

(F) This Hon'ble Court may be pleased to issue appropriate writ order or directions to the respondent no.3 to pay an amount of Rs.5,00,000/- towards compensation for harassment to the petitioner for release of pension."

4. Having considered the strenuous submissions on behalf of both the sides, we have gone through the Petition paper-book. It is undisputed that, on 06.05.1989, the Petitioner was joined the service as a Bus Driver with the Respondent No.3 and after rendering more than 28 years of service, he superannuated on 31.12.2017 after attaining the age of superannuation. Therefore, the Respondent No.3 Employer MSRTC was under obligation to forward proposal of pension of the Petitioner prior to six months of his superannuation. However, no such proposal has been forwarded. Therefore, the Petitioner was approached with Respondent No.3 seeking for releasing the pensionary benefits, but till date, no such benefits are extended to him. Ultimately, the Petitioner sought information under the Right to Information Act on 22.02.2019, but no such information was supplied, which resulted to lodged an Appeal before the Appellate Authority on 03.08.2019. Since the Respondent no. 3 MSRTC failed to release the pensionary benefits, therefore, the petitioner through the Employees' Union raised his grievance with

the Assistant P. F. Commissioner (Account Group), Aurangabad. Therefore, on 13.01.2023 to the Assistant P. F. Commissioner (Account Group), Aurangabad, issued a communication to Respondent No.3, stating that as per its office record i.e. Form No.8 FPF for the year 1995/96, no any contribution remitted in A/c No.4187 for EPF71 and EPS 95 from the inception of ECR with effect from 2012. So also, no name of the Petitioner i.e. Shri Shaikh Shabbir Shaikh Nazir, shown in any account number with effect from 2012 till his date of retirement. However, on 04.07.2023, the Divisional Controller MSRTC, issued a communication to the Deputy Commissioner, Provident Fund, that, the petitioner having EPS account No.MH/15841/4187 and MH/15841/4188. Therefore, on two account numbers, no pension can be sanctioned and no pension has been sanctioned in favour of the Petitioner.

5. Mr. A. R. Syed, the learned counsel appearing for the Petitioner canvassed that though the Respondent No.3 employer deducted contribution towards P. F./pension from the salary of the Petitioner and credited in the Petitioner's account No.NG/15841/4187 from the year 2011-2012 till 31.12.2017 i.e. till the date of the petitioner's retirement, but Respondent no. 3 wrongly

deposited said subscription in account No.NG/15481/4188 which is standing in the name of Shri Baburao Bajirao Ovhal and denied the pensionary benefits to the Petitioner.

6. Mr. Bagul, the learned counsel appearing for the Respondent No.3 Employer fairly conceded that as per the communication dated 30.08.2024, issued by Respondent No.2 Authority, the Petitioner having P.F. account No.NG/AUR/15841/4187 from the date of his joining till his superannuation. However, on verification of the I.D. number NGAUR0015841000004187, it is found that the said ID was allotted to Shri Baburao Soudagar Kande and no any member ID linked with the member of Shri Shaikh Shabbir Shaikh Nazir (Petitioner) in the system of the EPFO. So also, the employee in whose account amount of provident fund subscription inadvertently deposited, furnished the undertaking for release of funds in the account of NGAUR/15841/4187. Therefore, the petitioner would get the said benefits, hence, prayed for dismissal of the petition.

7. Needless to say that Respondent No.3 who is employer of the Petitioner, regularly deducted the monthly contribution towards

the P.F. from the salary of the Petitioner, however, due to *bona fide* mistake on the part of the Employee of the Respondent no. 3 MSRTC, said amount of contribution deposited in account of another employee, namely Baburao Bajirao Ovhal, who tendered an undertaking on 14.10.2022 for diverting the said amount in the account of the Petitioner.

8. Paragraph 20 of the Employees' Pension Scheme, 1995 provides that every employer shall send to the Commissioner, within three months of the commencement of this scheme, a consolidated return of the employees entitled to become Members of the Employees' Pension Fund showing the basic wage, retaining allowance, if any, and dearness allowance including the cash value of any food concession paid to such employee. Paragraph 23 of the said scheme provides for allotment of account numbers for implementation of the employees pension scheme, 1995. Paragraph 39-A provides that the employer of the exempted establishment or class or establishments and/or the Board of Trustees of the exempted establishment or class of establishments, shall submit a monthly return to the Commissioner in Form-I.

9. No doubt, the petitioner is a member of the Employees' Pension Scheme, 1995, and he has contributed monthly subscription for the said scheme. The Petitioner superannuated on 31.12.2017. This fact is not disputed by Respondent No.3 employer. However, Respondent No.3 contended that the amount of contribution in respect of the petitioner has been wrongly deposited in the account of another employee Shri Baburao Bajirao Ovhal, who has tendered an undertaking for transfer of the said fund. This does not redress the grievance of the Petitioner, who is not at fault for the mismanagement of the MSRTC.

10. Needless to say that, Para 4 of the Employees Pension Scheme, 1995 provides that the employer shall pay the contribution payable to the Employees’ Pension Fund in respect of each Member of the Employees' Pension Fund employed by him directly or through the contractor and the Principal employer is responsible to pay the contribution to the Employees' Pension Fund.

11. Since the Petitioner rendered 28 years service and superannuated on 31.12.2017, and as such, he is a member of the Employees' Pension Scheme, 1995, therefore, on superannuation, the

Petitioner is entitled for the pension under the Employees' Pension Scheme, 1995. Needless to say that, P. F., contribution fund of the petitioner deposited some time in A/C No. NG/15841/4187 and some time in A/C No. NG/15841/4188. It is not in dispute that another Employee Shri Baburao Bajirao Ovhal having P.F. A/C No. NG/15841/4188. However, the Respondent no. 3 deposited contribution of petitioner's share in P.F. A/C No. NG/15841/4188 standing in the name of Shri Baburao Bajirao Ovhal. Therefore, it is the primary responsibility of the Respondent No.3 to first deposit amount of contribution in account of the Petitioner and thereafter, the Respondent no. 3 MSRTC with the consent of the Respondent no. 2 may take independent recourse to transfer or to get back said amount from account of it's employee Shri Baburao Bajirao Ovhal, in whose account subscription wrongly deposited.

12. Since, the Petitioner deprived from receiving the statutory pensionary benefits since last seven years, because of inaction on the part of Respondent No.3, therefore, the Petitioner would certainly be entitled to receive the said benefit with interest @ 9% p.a. from the date of his retirement i.e. 31.12.2017, till actual payment is being made. Accordingly, the Respondent No.3 is hereby directed to pay the

pension under the contributory fund from the Employees' Pension Scheme, 1995, to the Petitioner within period of one month from this order along with compensation amount of Rs.25,000/- (Rupees Twenty Five Thousand). The Respondent no. 3 MSRTC is hereby granted liberty to recover the said amount from the account of another employee i.e. Shri Baburao Bajirao Ovhal, in whose account the contributory fund is wrongly deposited.

13. With the above directions, the **Writ Petition is disposed off**.

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

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