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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

907 WRIT PETITION NO. 47 OF 2024

1. Shantaram Tryambak Solanke,
Age: 60 years, Occ. Retired,
R/o. 16, Trimurti Society,
Near Bhavani Mandir,
Pimprala, Tq. and Dist. Jalgaon
2. Prabhawati Madhukar Zalte,
Age: 62 years, Occ. Retired,
R/o. Gut no. 60, Plot no. 95,
Shiv Colony, Jalgaon,
Tq. And Dist. Jalgaon
3. Eknath Zipru Kapade,
Age: 64 years, Occ. Retired,
R/o Kapase Galli, Pimprala,
Tq. And Dist. Jalgaon
4. Asha Dayaram Mahajan,
Age: 64 years, Occ. Retired,
R/o. Bhoite Nagar, Jalgaon,
Tq. and Dist. Jalgaon
5. Hiranman Gangadhar Patil,
Age: 69 years, Occ. Retired,
R/o. 8, Ganpati Nagar, Jalgaon,
Tq. and Dist. Jalgaon
6. Mohammad Yunus Abdul Sattar,
Age: 59 years, Occ. Retired,
R/o Aksanagar, Meharoon, Jalgaon,
Tq. and Dist. Jalgaon
7. Raziabano Mohammad Ishak,
Age: 60 years, Occ. Retired,

(2)

R/o Aksanagar, Meharoon, Jalgaon,
Tq. and Dist. Jalgaon

....PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Principal Secretary to
Urban Development Department,
Mantralaya, Mumbai-32
2. The Director of Municipal Administrative
3rd Floor, GTS Building,
Sir Pochkhanwala Road, Mumbai
3. The Municipal Corporation of Jalgaon
Through its Commissioner
4. The Administrative Officer,
Office of School Board,
Municipal Corporation, Jalgaon,
Dist. Jalgaon

....RESPONDENTS

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Mr Vinod Patil, Advocate for Petitioners

Mr S. K. Tambe, Addl. G.P. for Respondent Nos.1 & 2

Mr L. V. Sangit, Advocate for Respondent Nos.3 & 4

CORAM : RAVINDRA V. GHUGE

AND

Y. G. KHOBRAGADE, JJ.

DATE : 5th September, 2024

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

1. Rule. Rule made returnable forthwith and heard finally, by consent of the learned Advocates for the respective sides.

(3)

2. We have perused the strenuous submissions of the learned Advocates for the respective sides. The Respondent/Municipal Corporation has entered an affidavit-in-reply, dated 22/07/2024. Our attention is drawn to paragraph No.2 of the said reply, which reads as under :-

“2. I say and submits that, petitioners asked commutation of pension. As per rule 13(1) of Maharashtra Civil Services (Commutation Of Pension) Rules 1984. "An Applicant who is in receipt of any pension referred to in rule 12 and desire to commute a fraction of that pension any time after the date his retirement from service but before the expiry of one year from the date of retirement, shall-

(a) apply to the head office in form -A after the date his retirement;

(b) Ensure that the application in form -A duly completed, is delivered to the head office as early as possible but not later than one year of the date of retirement:"

As per these rules, the Petitioners ought to have submitted their applications within one year from the date of retirement in form-A but they have not submitted the same within one year, therefore commutation of pension is not paid to the petitioners. All petitioners are getting 100% pension and there is no monetary loss caused to them.”

3. It is, thus, obvious that, Rule 13(1) of the Maharashtra Civil Services (Commutation Of Pension) Rules, 1984, permits a

(4)

candidate to seek commutation of pension before expiry of one year from the date of retirement. For the said purpose, he has to apply to the Head Office in Form 'A'. Once Form 'A' is duly filled in and is complete in all respects, it has to be delivered to the Head Office. In the instant case, there are no pleadings by the Petitioners that, any of them had filled in Form 'A' and had tendered it to the concerned Head Office. There is no allegation that, their forms were kept pending and were not processed. In the absence of pleadings and material before the Court, a Writ of Mandamus cannot be issued merely because the Petitioners pray that this Court should show sympathy towards them. A statement is made by the Petitioners in paragraph Nos.1 and 2 of the Petition paper book, they have retired between 7 years to two years, prior to the filing of this Petitions.

4. In view of the above, **this Writ Petition is dismissed** to the extent of the prayer of the Petitioners for commutation of pension. In the event, though there are no pleadings, if any of the Petitioners can make out a case of having entered Form 'A', well within time, or has still not completed one year of his retirement,

(5)

he can file Form 'A' and the Corporation shall consider the said claim.

5. Insofar as the prayer for gratuity is concerned, the learned Advocate for the Corporation submits that, part payment of the gratuity has been made to the extent of 50% share of the Corporation. He submits that the Government has to pay the remaining 50%.

6. The issue as to prescribing interests on belated payment of gratuity @ 12% p.a., in the light of the Notification dated 05.10.1999, we leave the said issue open to the Petitioners to tender representation to the Employer precisely calculating the outstanding dues, as well as the interest component. The Corporation shall verify the said claims and upon being convinced, shall make the payment to the Petitioners within 60 days from the date of tendering of the representation. Insofar the share of gratuity of the Government to the extent of 50% is concerned, we direct the State, to make such payment along with statutory interest per annum, within 60 days from today.

(6)

7. If the Model Code of Conduct is introduced, the same would not be an impediment for complying with the aforesaid directions.

8. **This Writ Petition is disposed off.**

9. Rule is discharged.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

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