IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15156 OF 2019

Laxminarayan s/o Sayanna Kadewar,
Age-59 years, Occu-Nil,
R/o Near Saptashringi Mata Mandir,
Rameshwar Colony, Plot No.9, Mehrun,
Tq.Mehrun, Dist. Jalgaon **-- PETITIONER**

VERSUS

1. The State of Maharashtra,
   through its Secretary,
   Welfare of Vimukta Jatis, Nomadic Tribe,
   Other Backward Class and
   Special Backward Class Department,
   Mantralaya, Mumbai – 32.

2. The Managing Director,
   Vasantrao Naik Vimukta Jatis
   and Nomadic Tribes Development
   Corporation Ltd.,
   Juhu Supreme Shopping Center,
   Gulmohar Cross Road No.9,
   J(RAUTT) Maski D.P.V. Ville Parle (West)
   Mumbai – 400 049 **-- RESPONDENTS**

Mr.V.S.Valse, Advocate for the Petitioner.
Mr.N.D.Batule, AGP for Respondent No.1.
Mr.N.N.Patil, Advocate for Respondent No.2.

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

DATE : SEPTEMBER 12, 2024

ORAL JUDGMENT [Per Ravindra V Ghuge, J] :

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

2. The Petitioner has put forth prayer clause B, C and D as under :-

“B. Be pleased to quash and set aside the communication dated 15.10.2019 (Exh.”H”) issued by the Managing Director of Vasantrao Naik Vimukta Jatis and Nomadic Tribes Development Corporation Ltd., Mumbai.

C. Be pleased to direct the Manging Director of Vasantrao Naik Vimukta Jatis and Nomadic Tribes Development Corporation Ltd., Mumbai to release the pensionary and retirement benefits of the Petitioner of Rs.6,69,440/- at the earliest, preferably within one month.

D. Pending hearing and final disposal of this writ petition, be pleased to stay the effect and operation of the communication dated 15.10.2019 issued by the Manging Director of Vasantrao Naik Vimukta Jatis and Nomadic Tribes Development Corporation Ltd., Mumbai.”

3. By the first order passed by this Court [S.V.Gangapurwala (as his Lordship then was) and Avinash G.Gharote, JJ.] dated 17.12.2019, the Respondent/Employer was injuncted from making

further recovery of amounts in pursuance to the impugned order dated 15.10.2019.

4. The Petitioner was appointed on daily wages as a Peon on 03.03.1986 . On 26.06.2012, the Government Resolution was issued applying the 6th Pay Commission Recommendations to the employees of the Vasantrao Naik Vimukta Jati and Bhatkya Jamati Vikas Mahamandal/Respondent No.2 herein. On 31.05.2018, the Petitioner superannuated as a Peon from the Class 4 category.

5. The impugned order is issued on 15.10.2019, after 17 months of the retirement of the Petitioner, thereby concluding that he was wrongfully paid increments as well as difference of salary, as per the 6th Pay Commission Recommendations and which had an effect on the calculations of his leave encashment for 300 days. As per the calculations of the employer, the Petitioner stood to earn Rs.2,27,960/- towards leave encashment and group gratuity amount of Rs.4,51,480/-. The total amount was Rs.6,79,440/-. Since the employer concluded that excess amount was paid to the Petitioner, an amount of Rs.1,53,112/- towards the pay scale and an amount of Rs.2,15,959/- on

the basis of the added increment, viz. total amount of Rs.3,69,071/-, was sought to be recovered. Accordingly, the said amount was deducted from the total retiral benefits and the Petitioner was paid Rs.3,10,369/-.

6. The employer has taken a stand vide the affidavit in reply that excess payment was made to the Petitioner by virtue of the GR dated 26.06.2012. The GR indicated that all the employees on regular employment of V.J.N.T.Corporation are to be granted revised pay scale as per the recommendations of the 6th Pay Commission. According to the employer, the GR proposed that such employees of V.J.N.T. category, who are not eligible for such benefits, would suffer stoppage of payment of such benefits, to be recovered from their salaries.

7. According to the employer, the Managing Director contravened the GR dated 26.06.2012 and granted the 6th Pay Commission benefits with arrears and difference of pay w.e.f. 01.01.2006. This was noticed in October 2019, after the Petitioner superannuated, on 31.05.2018. The Petitioner was deprived of the retiral benefits and a remainder portion of the said benefits was paid to

the Petitioner after 17 months of his retirement, by with holding an amount of Rs.3,69,071/-

8. The learned Advocate for the employer points out an undertaking purportedly executed by the Petitioner. We have perused the said undertaking. On page no.86, there is a signature scribbled on a revenue stamp below the date, which is in typed form. Neither the name of the Petitioner nor his designation as a Peon, neither the District Collector's office where he was working, nor his address, is mentioned in the said undertaking. The undertaking carries a date 07.09.2022. The learned Advocate for the employer submits that the date has mistakenly appeared on the said document. According to him, there is no date on the said undertaking.

9. The Employer relies upon the judgment delivered by the Hon'ble Supreme Court in **High Court of Punjab and Haryana and Others Vs. Jagdev Singh [AIR 2016 SCW 3523].** The facts of the case in the said judgment are distinguishable. In this case, the undertaking is undated according to the employer. As a date 07.09.2022 appears on the undertaking, the same does not seem to be executed earlier in point

of time.

10. In **Syed Abdul Qadir and others Vs.State of Bihar and others, 2009(3) SCC 475** and **State of Punjab and others Vs.Rafiq Masih (White Washer) etc., (2015) 4 SCC 334 = AIR 2015 SC 696,** the Law is settled that firstly the recoveries at the stroke of retirement would be impermissible. Secondly, the recovery from a Class I employee at the stroke of retirement or on the verge of retirement, would not be permitted.

11. In view of **Jagdev Singh** (supra), we are of the view that, if an undertaking is executed on the date when the payment, increments or payment of the monetary benefits commences, such an undertaking could be pressed into service. In the instant case, the Petitioner is a Class IV employee. Deductions are carried out 17 months after his retirement. The undertaking is doubtful. No opportunity of hearing has been given to him. The Law laid down in **Syed Abdul Qadir and Rafiq Masih (White Washer)** (supra), has apparently been ignored by the employer.

12. In view of the above, **this Writ Petition is allowed.** The impugned order dated 15.10.2019 is quashed and set aside. The deducted amount shall be paid to the Petitioner by Respondent No.2, within 30 days from today. Interest on the gratuity amount shall be calculated as is statutorily provided under The Payment of Gratuity Act, 1972 and the same shall be added to the amount withheld, to be paid within 30 days.

13. Rule is made absolute in the above terms.

(Y.G.KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**