



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5261 OF 2022

Vitthal S/o Keshav Tipartiwar (Since Dead) Thr. Legal Heirs Kamal Wd/o Vitthal Tipartiwar,
Chandrapur and ors.

-vs-

Maharashtra Jeevan Pradhikaran Thr. Member Secretary, New Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri S. D. Chopde, Advocate for petitioners.
Ms Meghna Munshi, Advocate for respondent Nos.1 to 3.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.
DATE : May 09, 2024

1. Heard.
2. Ms Meghna Munshi, learned counsel appearing for the respondent-employer seeks time to file reply inspite of last chance was given earlier. She submits that though the instructions are issued, the undertaking furnished by the deceased employee is not matching with service record and as such she intends to have further clarification in the matter.
3. The aforesaid request for adjournment is resisted by the learned counsel for the petitioner in view of the identical controversy decided by this Court on 07/02/2023 in Writ Petition No.405/2022 (*Gajanan Prabhakar Rao Pande vs. Maharashtra Jeevan Pradhikaran and ors.*), particularly paragraphs 13 and 14 which read thus :

“ 13. Ms Munshi would emphasis that since the petitioner submitted an undertaking that if the pay-scales prescribed by the 6th Pay Commission are made applicable, any excess payment due to the incorrect fixation of pay, in present or in future, may be recovered, the law laid down by the Hon’ble Supreme Court in High Court of Punjab and Haryana and ors. vs. Jagdev Singh would squarely apply.

14. We have given anxious consideration to the submissions

canvassed by learned Counsel Ms Munshi for the respondents. The undertaking is given by the petitioner when the pay-scales prescribed by the 6th Pay Commission were made applicable to the employees of the respondent 1. In our considered view, the undertaking on which heavy reliance is placed, takes the case of the respondents no further. Learned counsel Mr Chopde for the petitioner is right in submitting that the order of recovery and reduction of pay-scale is not only on the premise of incorrect fixation as such. The order of recovery and the reduction of pay-scale, which would have a cascading effect of pension, is as a fact on the assumption that the promotion of the petitioner as Assistant Draftsman in February 1990 and then as Draftsman in May, 2009 is illegal.”

4. That being so, we deem it appropriate to allow the petition for the reasons recorded by the Division Bench in the matter of *Gajanan Prabhakar Rao Pande* (supra).
5. The issue of undertaking by the employee was also been looked into by the Division Bench in the aforesaid judgment.
6. As such the impugned communication dated 15/02/2022 is hereby quashed and set aside.
7. It is held that the petitioners are entitled for pension/family pension and such other allowances and benefits as are admissible in law which shall be paid within a period of eight weeks from today.
8. The writ petition is partly allowed in aforesaid terms. Disposed of as such. No costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)