



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

WRIT PETITION NO.7338 OF 2023

1. The State of Maharashtra, through its Secretary, Ministry of Revenue, Mantralaya, Mumbai – 32.
2. The Settlement Commissioner and Director of Land Record, Pune, Maharashtra.
3. The Deputy Director of Land Record, Nagpur Region, Nagpur.
4. The Deputy Superintendent of Land Record, Chandrapur.

... PETITIONERS

VERSUS

Shri Madhao Arjun Khutemate, aged about 63 years, Occupation : Retired, State Pensioner, R/o Shriram Nagar (Tukum), Chandrapur, Tq. And Dist. Chandrapur.

... RESPONDENT

Shri Patil, Assistant Government Pleader for the petitioners.
Shri R.R.Dawda, Advocate for the respondent.

CORAM : VINAY JOSHI AND SMT. M.S. JAWALKAR, JJ.
DATED : 04.07.2024.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **RULE.** Rule is made returnable forthwith.

2. The matter is taken up for final disposal by consent of the parties.

3. This petition is filed by the State challenging the order dated 29.09.2022 passed by the Maharashtra Administrative Tribunal ("MAT") in Original Application No.146 of 2017, whereby the MAT has allowed the following prayers of the employee's application :

1-c. Grant Fixation of pension on the basis of last month pay Rs.14,020 + Grade Pay 4200/- = Total Rs.18,220/- that provisional pension fixed paid and drawn by respondents as stated in para 4.9.

2-a Grant interest @ 1.5% monthly on arrears of pension from due date to date of realization of payment as stated in para 6.4 and 6.8 "B".

2-b. Grant of gratuity Rs.22,870/- and interest @ 1.5% monthly on arrears of gratuity and unpaid gratuity from due date to date of realization of payment as stated in para 6.5."

4. Precisely, it is the contention of the State that two advance increments have been granted to the respondent without following the requisite norms. The illegality continued till fixation of the pension on

the basis of erroneous advance increments. Initially, the respondent's pension papers were forwarded for fixation on which objection was raised by the Accountant General. The Employer has cancelled two advanced increments vide order dated 29.02.2016. Being aggrieved by the said order, the employee (respondent) has preferred the application bearing Original Application No.146 of 2017 raising the challenge to the order of cancellation of advance increment, urged for proper fixation and sought to set aside the order of recovery. While deciding the said application, MAT has partially allowed the application by which the order of recovery as well as order of withdrawal of two advance increments has been set aside. Since the MAT has not dealt with the rest of the prayers, at Prayer Clause 1-c to 2-b (*supra*), the respondent (Employee) has filed Writ Petition No.2122 of 2022. This Court vide order dated 20.04.2022 has held that prayer clause 1-b and 1-bb does not survive as there was no challenge by the State since it has attain finality. The said prayer clauses read as below :

“1-b Restrain the respondents to recover Rs.19,570/- over payemtns of pay and allowances from the gratuity fund as stated in para 4.12.

1-bb. The order dated 29.02.2016 (Annexure R-II) passed by the Settlement Commissioner and Director of Land Record, Pune be cancelled and set aside.”

5. This Court has expressed that the MAT has not dealt for rest of the prayer clauses no.1-c, 2-a and 2-b, and thus, for said limited purpose, the matter was remitted back for consideration. In the light of the aforesaid background, the MAT has reconsidered the rest of the prayers and by passing reasoned order, allowed the original Application, granting these prayers.

6. The State has basically impugned the order on the premise that two advance increments have been granted against the norms. Therefore, MAT was not right in fixing pension on the basis of last pay drawn. According to the State, erroneous advance increments were recalled. Notably, the said order has been set aside by the MAT and attained finality as expressed by this Court in the order dated 20.04.2022. In the circumstances, the said issue does not remain on the background that the initial order of the MAT was not challenged by the State. So far as the prayer clause 1-c, which has been granted by the MAT is concern, it has purely a consequential effect of fixation of pension on the basis of advance increments. Since the challenge to the grant of two advanced increments, has been negated, certainly fixation of pension on the basis of last months pay would be well justifiable. As regards to the challenge to the grant of interest is concern, the MAT have rightly considered the said aspect in view of the Rule 129A of the

Maharashtra Civil Services(Pension) Rules, 1982. In the circumstances, we see no merits in this petition, hence dismissed. No costs.

(SMT. M.S. JAWALKAR, J.)

(VINAY JOSHI, J.)

Trupti