IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2682 OF 2005

1) Jijasaheb Sonaji Bhosale,
Age 50 years, Occ. Agriculture,
R/o. 14/162, Mhada Colony,
Opp. Baba Patrol Pump, Aurangabad,
Chairman of Subsidiaries of M.D.C.
Employees Association.

2) Sadashiv Bhaurao Patil,
Secretary, M.D.C. & Subsidiaries Companies
Employees Association,
Age 66 years, Occ. Retired,
R/o. N-7, C-2, 114, CIDCO,
Aurangabad. ... **Petitioners**

VERSUS

1) Chief Secretary,
Industries Energy and Labour,
Department, Mantralaya
Mumbai-32.

2) Secretary Finance,
Mantyralaya, Mumbai-32.

3) Managing Director,
Marathwada Development Corporation,
Vikas Bhavan,
Dr. Rajendra Prasad Road,
Aurangabad.

4) Shri. B.V. Rathod,
Director of All Subsidiary Companies,
of M.D.C., Vikas Bhavan,
Dr. Rajendra Prasad Road,
Aurangabad. ... **Respondents**

...

Advocate for Petitioners : Mr. F.R. Tandale.
A.G.P. for Respondent nos. 1 and 2 : Ms. S.S. Joshi.
Advocate for Respondent no. 3 & 4 : Ms. Charuta S.Deshmukh

CORAM : MANGESH S. PATIL & PRAFULLA S. KHUBALKAR , JJ.

DATE : 05.02.2025

JUDGMENT : (MANGESH S. PATIL, J.)

We have heard the learned advocate Mr. Tandale for the petitioners, learned A.G.P. Ms. Joshi for respondent nos. 1 and 2 and learned advocate Ms. Deshmukh for respondent nos. 3 and 4.

2. The petitioners are claiming following reliefs:

> *"B) The directions to respondent nos. 1 to 4 be given to make the payment of 1st, 2nd and 3rd I.R. to the employees to whom while relieving, the payment of 1st, 2nd and 3rd I.R. was not given and to make the payment of 3rd I.R. on the similar line of Ist and IInd I.R., to whom the payment of 1st and 2nd I.R. was taken into account while relieving them under V.R.S. scheme, also the direction be given to the respondents to give the D.A. which was due from 1st August, 2004, as per Government Resolution No. Mabhava/1104/Pra.Kra.5/Seva-9 dated 19th July, 2004, and take the above two factors in to account while making the calculation of V.R.S. and release the arrears arised due to inclusion of I.R. and D.A. to the eligible employees, by issue of Writ of mandamus or any other writ or directions in the like nature.*
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> *C) The respondent no. 1 to 4 be directed, to pay an interest on arrears amount arised from the due date, in the event, the Hon'ble Court consider the prayer clause 'B'.*
>
> *C1) The respondent nos. 3 and 4 be directed not to sold the property of M.D.C. & subsidiaries, till the final disposal of this writ petition by this Hon'ble Court.*
>
> *OR*
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> *The respondent no. 1 and 2 are to be directed to give undertaking that, in case W.P. is allowed and relief sought is granted, Govt. shall bear the liability arised from this writ petition."*

3. This is a petition in the nature of representative petition being espoused by the association of employees of Marathwada Development

Corporation (MDC), which was a Government enterprise and which along with three other subsidiary enterprises were *defunct.* Under Section 13(2)(i) of the Maharashtra State Enterprises (Restructuring and Other Special Provisions) Act, 2000 (hereinafter the 'MSES Act') for winding up the public enterprises, a reference was made to the board constituted thereunder (MBRSE). By its report dated 19.07.2003, it disposed of the references with certain directions. The directions contained in paragraph no. 15, which are relevant and on which the petitioners' claim rests read as under:

> *"15. Based on the above conclusions, at the end of the hearing, the Board pointed out that within the frame work of the MBRSE Act revival of Ellora Milk Products Ltd., Aurangabad, Parbhani Krishi Gosamvardhan Ltd., Parbhani and Marathwada Ceramics Complex Ltd., Aurangabad is not possible. Considering the fact that in these companies there is no production activity for number of years and the inability of the Companies to pay even monthly salaries and statutory dues, the employees should address the question of what could be done by the State Government to improve their VRS package. A suggestion was made about improving the VRS on the basis of notional basis pay as if Fifth Pay Commission Report is implemented. The Board noted that in a disinvestment proposal, the approach of the State Government has always been to secure a better VRS package for the employees from the new owner and therefore in case of closure of a company, the State Government ought to go beyond the usual VRS scheme with a view to meet at least some of the concern of the employees. Having endorsed the proposal of the State Government for closure of the companies, the Board recommends that the management of these three companies and the Industries Department of the State Government should give a hearing to the employees of all the three companies with a view to understand specific suggestions, if any, in respect of VRS package and explore the possibility of framing a revised VRS and report back to the Board within four weeks from the date of this Order."*

4. The submission of Mr. Tandale for the petitioners placing emphasis on these directions that no opportunity of hearing was ever extended to the petitioners' members. They were threatened and were compelled to accept the 'voluntary retirement scheme' (VRS package), which they did under protest. He would submit that by virtue of Staff Rule 103 of MDC, the employees were entitled to claim dearness allowance in accordance with the rules applicable to the State Government employees. By virtue of Rule 108, the Maharashtra Civil Services Rules were made applicable in respect of conditions of service, fixation of pay, joining time etc. In spite of persistent demand starting from a communication dated 17.04.2000, the respondents failed to apply uniform policy in the matter of payment of three interim reliefs (IR) declared in the year 1994, 1995 and 1996, till implementation of the Central 5^{th} Pay Finance Commission Recommendations, which were otherwise extended to the State Government employees. Even the dearness allowance with effect from 01.08.2004 declared and paid to the State Government employees was not given to the petitioners' members.

5. Mr. Tandale submits that while indulging in calculations for extending the benefit pursuant to the VRS opted by the employees before 30.11.2003, these three interim reliefs were not taken into consideration. It is only after some persuasion, the employees who took VRS on or after 30.11.2003, the I and II interim reliefs were taken into consideration, but even they were not extended the benefit of the III interim relief. It is thus his stand that the employees, who had obtained VRS prior to 30.11.2003 were excluded from the benefit of I and II interim relief, whereas the employees, who took the VRS thereafter were extended that benefit and thus there was a discrimination and violation of Article 14 of the Constitution.

6. Mr. Tandale would further submit that the respondents had taken decision to merge 50% of the dearness allowance into the basic pay in the year 2004 in respect of its employees. But the petitioners' members were not extended that benefit. On repeated representations, petitioners' request on

behalf of employees was not considered and discriminatory treatment was extended to the employees of these State enterprises.

7. Mr. Tandale would also place reliance on the decision in the matter of **D.S. Nakara and others Vs. Union of India; AIR 1983 Supreme Court, 130.** He would submit that the classification treating the employees of the State enterprises differently from the State Government employees is not based on any intelligible differentia. There was no rationale. He would repeat differential treatment was given to such of the employees who retired voluntarily prior to 2003 from those who resorted to it thereafter.

8. Per contra, the learned A.G.P. and Mrs. Deshmukh learned advocate for respondent nos. 3 and 4 would refer to the affidavits in reply and would submit that the stand of the petitioners and the submission of their learned advocate that by virtue of the Staff Rules 103 and 108 applicable to the petitioners' members to make it mandatory to apply all the Government resolutions covering the State Government employees to be applicable to them automatically.

9. They submit that the Board of Directors of the State Public Enterprises prepared VRS scheme. It was submitted to the State Government. After some modification it was approved and was implemented. They deny about the employees having been compelled and coerced to receive the VRS package. They submit that nobody had raised any grievance. It was a matter of financial implication. As it is, the enterprises were defunct and the VRS package was evolved to meet the contingency.

10. They further submit that the interim reliefs extended to the State Government employees against proposed 5th Pay Revision were not *ipso facto* applicable to the employees of respondent nos. 3 and 4. They specifically denied to have indulged in any discrimination. Whatever was applicable to the employees was a part of the VRS calculations. It was uniformly followed. No one was treated discriminately. The employees, who accepted the VRS

prior to 30.11.2003 had done it voluntarily and are estopped from alleging any discriminatory treatment.

11. They would further submit that since recommendations of the 5th Pay Commission was never made applicable to the employees of respondent nos. 3 and 4, there was no question of merging the interim reliefs into the basic pay.

12. They would further submit that even the dearness allowance declared by the State Government to its employees was not automatically applicable. The respondent nos. 3 and 4 were not under any statutory obligation to extend that benefit under the Government resolution dated 09.07.2004. It was a matter of finance. The State Enterprises-respondent nos. 3 and 4 were running into huge losses for more than 15 years and the decision to close them down was taken way back in the year 1992.

13. The learned A.G.P. and Mrs. Deshmukh would further submit that no particulars have been given to demonstrate any discrimination or differential treatment. The allegations are vague. The VRS scheme was accepted unconditionally. The request of the employees was accepted and they were disbursed the benefit and the petition may be dismissed.

14. We have considered the rival submissions and perused the papers.

15. There is no dispute about the fact that the petitioners' members were the employees of the State enterprises which had become defunct after running into losses and steps were being taken to close them down under the MSEC Act. Though these were the State enterprises, they were supposed to be run independently. Their employees cannot be expected to be treated, and the State was not under any obligation to extend all the benefits extended to its employees, neither were the enterprises under any obligation. It would be a matter of financial condition. There is nothing to point out that the interim reliefs extended to the State Government employees and benefit

of dearness allowance declared by the State Government was applicable to the employees of these enterprises *ipso facto.* Consequently, it cannot be said that there is any error much less discrimination by making comparison with the employees of the respondent nos. 3 and 4 enterprises and the State Government employees.

16. If it was merely a matter of resorting to VRS package to the employees of these State enterprises, in the light of their poor financial condition and they were to be wound up, it was imperative for the petitioners to objectively demonstrate as to how different employees of these enterprises were treated unequally. There is a specific reference in the additional affidavit in reply filed by the Joint Director of Industries adverting to the Government resolution dated 26.07.2005 that 50% dearness allowance was to be merged with the basic only in respect of the employees of such public undertakings to whom the 5th Pay Commission was applicable. Admittedly, the benefit of 5th Pay Commission was never applied to the employees of respondent nos 3 and 4-enterprises, prior to 30.11.2003. Admittedly, it is in the wake of proposed 5th Pay Commission, as an interim measure, some installments were paid in the form of I to III interim reliefs. It has also been mentioned that by the State Government resolution dated 04.10.1996, it was expressly mentioned that the III interim relief should not be considered while calculating interim relief, pensionary benefits. Consequently, this III interim relief was not considered while undertaking calculation for VRS packages.

17. It will have to be understood that in the matter of implementation of any voluntary retirement scheme, it is the option of an individual employee to accept the package as it is. Assuming for the sake of arguments that the employees who had opted for VRS prior to 30.11.2003 were excluded from the I and II interim relief, it cannot be said that they were treated discriminately. It would be a matter of applicability of a particular decision to extend the benefits to its employees. If the employees, who had opted for VRS prior to 30.11.2003 had accepted it willingly, demanding some benefit

extended to the employees subsequently would be clearly an after thought. It cannot be said that it is a matter of discrimination.

18. If the petitioners are claiming that there was a discrimination, it was for them to have objectively demonstrated as to how in spite of entitlement, some one was excluded. It is not a matter of discrimination. The benefits as were available to be extended when the employees who had opted for VRS were extended to them. If the employees who opted for VRS after that date could derive the benefit of some subsequent package, it would not be a matter of discrimination.

19. In the absence of concrete material demonstrating discrimination when it is a matter of VRS policy and the employees opting therefor prior to 30.11.2003 would stand on a different footing and cannot claim parity with the employees, who opted for VRS according to the extant policy in future.

20. Reference to **D.S. Nakara (supra)**, in our considered view is misplaced. It is not a matter of payment of arrears of pension but a matter of a scheme for VRS which comes with a package and an employee is aware as to what actually he would get. Case of employees opting for VRS cannot be equated with the persons who stand superannuated. By accepting the VRS and the package available, it would be in the nature of a contractual obligation and the respective rights and liabilities will have to be considered from that angle. In the matter of employees, who superannuated, they still would be entitled to claim if something was declared subsequently by the employers. It is in light of such essential difference that the decision in **D.S. Nakara (supra)** will have to be understood. That was a case of meeting differential treatment, in the matter of pension when a liberalized pension scheme was made effective from a specific date and its benefit was not extended to such of the retirees who had retired before the cut off date.

21. Therefore, the petitioners are not entitled to claim and allege any differential treatment in respect of its members, who opted for VRS by

making comparison with the employees who opted for VRS at a later point of time and were extended the benefit in accordance with the extant policy.

22. There is no merit in the petition. It is dismissed.

23. Rule is discharged.

(PRAFULLA S. KHUBALKAR J.) **(MANGESH S. PATIL, J.)**

mkd/-