



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO. 6259 OF 2020

Dr. Sunita Sidramappa Girwalkar

....Petitioner

VERSUS

The State of Maharashtra
Through the Secretary and Others

.....Respondents

.....

Mr. Yashodeep Deshmukh h/f Mr. Kawre Anand D., Advocate for
the Petitioner

Ms. P. J. Bharad, AGP for the Respondents - State

Mr. S. R. Bagul, Advocate for Respondent Nos.3 and 4

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**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**

DATE : 16.07.2025

PER COURT :

1. Heard all the sides finally at the stage of admission.
Perused the papers on record.

2. The Petitioner was appointed as a Lecturer in
Commerce for a period of two [2] years from 23/06/1990 with
Respondent No.4 - Institute. The Petitioner was thereafter
selected and appointed as the Lecturer in Commerce vide
appointment order dated 15/07/1992. The approval to the
appointment of the Petitioner as the Lecturer in Commerce was
granted till 1994. The post of Lecturer in Physical Education was
advertised in a daily news paper on 30/05/1994. The Petitioner
responded to the said advertisement and got selected by following
due procedure by Respondent No.4 - Institute. The Respondent
No.3 - University granted the approval to the Petitioner's
appointment as the Lecturer in Physical Education vide letter

dated 12/02/1996. The Petitioner was given Senior pay-scale with effect from 04/07/2001. The Petitioner was issued a communication dated 30/03/2016 by Respondent No.2 - Joint Director, Higher Education and another communication dated 16/04/2016 issued by Respondent No.4 - Institute, reducing the pay scale of the Petitioner and directing the recovery. The Petitioner approached this Court in Writ Petition No.7517/2016 challenging the said two communications. The said Writ Petition was decided on 15/01/2019, wherein, it was held that, the appointment of the Petitioner will have to be held proper from 1994 and it was observed that, the Petitioner will not be entitled for the Career Advancement Scheme (C.A.S.) benefits. Thereafter, by communications dated 14/02/2019, 20/02/2019 and 26/02/2019, a direction was issued to refund the excess amount of Rs.53,23,798/-. The Petitioner again approached this Court in Writ Petition No.6281/2019, which was disposed off by order dated 18/11/2019, since the said impugned communications were withdrawn by the concerned authorities. The Petitioner retired from the services on 31/08/2019. The Respondent No.4 - Institute had forwarded the Petitioner's proposal for pension to Respondent No.2 - Joint Director, which came to be returned on the ground that, there was wrong pay fixation and the recovery was due. The Respondent No.4 - Institute issued a communication / letter dated 29/06/2020 to the Petitioner for recovery of amount Rs.53,23,798/- towards excess payment. Hence, this Writ Petition.

3. It is the contention of the learned Advocate for the Petitioner that, this recovery is for the same amount, which was proposed to be recovered from the Petitioner by Respondent Nos.2 and 4 and which was subsequently withdrawn. He submits that, when the issue of recovery was closed, the issuance of the

impugned communication is liable to be quashed and set aside. He submits that, due to the impugned communication, the concerned authority has not processed the pension papers of the Petitioner, and though she has retired, she is deprived of her pension. Hence, the impugned communication be quashed and set aside.

4. The Petition is vehemently opposed by the learned AGP appearing for the Respondents – State. She submits that, the recovery, which the authority has now proposed against the Petitioner, is the defence of amount, which was paid to the Petitioner by way of cash. She submits that, the Senior pay scale was to be given to the Petitioner as per her entitlement from 2009, however, it was given to her from 1996. She submits that, the earlier recovery, which was proposed and withdrawn, was not for this purpose. She submits that, since the pay fixation was wrong, the said recovery is being made. She submits that, the Writ Petition be dismissed, with liberty to the authorities to again recalculate the amount, which is to be recovered from the Petitioner.

5. The learned Advocate for Respondent Nos.3 and 4 submits that, considering the records, appropriate order be passed.

6. It is a matter of record that, in the earlier round of litigation, this Court held that, the appointment of the Petitioner was proper from 1994 as the Lecturer Physical Education. It is true that, in the said Petition this Court observed that, the Petitioner was not entitled for the C.A.S. benefits. It is also a matter of record that, the communications dated 14/02/2019, 20/02/2019 and 26/02/2019, which were the subject matter of Writ Petition No.6281/2019, were in respect of the recovery of the amount of Rs.53,23,798/- towards

excess payment made to the Petitioner. There is no dispute on this aspect. The order dated 18/11/2019 passed in the said Writ Petition No.6281/2019 reads as under :

“Affidavit is filed by the Joint Director, Higher Education, Nanded Region, Nanded to the effect that, orders dated 30.03.2016 and 16.04.2016 have been withdrawn by the respondent No.2. The impugned orders in the present writ petition dated 14.02.2019, 20.02.2019 and 26.02.2019 are consequential to orders dated 30.03.2016 and 16.04.2016.

2. As the orders dated 30.03.2016 and 16.04.2016 are withdrawn by the authority, consequential orders as assailed in the present writ petition would not have any efficacy and effect. Same also would stand negated. The orders impugned in the present writ petition as such will not remain in force and cannot be acted upon.

3. With these observations the writ petition stands disposed. No costs.”

7. If we see the impugned communication at Page No.61 - Exhibit - T, it shows that, it was issued pursuant to the aforesaid communications 14/02/2019 and 20/02/2019. By the impugned communication, the same amount of Rs.53,23,798/- is sought to be recovered from the Petitioner towards the excess payment. The impugned communication nowhere speaks of recovery towards the excess amount paid towards C.A.S. for the period the Petitioner was not entitled. The impugned communication clearly shows that, the amount sought to be recovered is the very same amount, which the authorities had sought to recover from the Petitioner and subsequently, they withdrew the said communications. As the said communication directing recovery of the said amount was unconditionally withdrawn by the authorities as seen from the said order dated 18/11/2019, the issue of recovery of the said amount has been put to rest. Thus, the issue of the impugned communication towards recovery of the very same amount, cannot be allowed to sustain.

8. The learned Advocate for the Petitioner submits that, the authorities be directed to pay component of interest to the

Petitioner for delay in processing the pension case. He cites the Judgment of the Punjab and Haryana High Court in **J. S. Cheema Vs. State of Haryana and Others**, passed in Civil Writ Petition No.15867/2001, wherein, the Petitioner was held entitled for interest @ 8% p.a. on the delayed payment of retiral benefits. In the case at hand, it is clear that, the issue of recovery of excess amount from the Petitioner was under consideration with the concerned authorities and, therefore, the proposal was not processed finally. Therefore, we do not find ourselves in agreement with the contention of the learned Advocate for the Petitioner on the point of interest.

9. In view of the above, we proceed to pass the following order :

ORDER

- [i] The Writ Petition is partly allowed.
- [ii] The impugned communication dated 29/06/2020 is quashed and set aside.
- [iii] The Respondent No.4 shall process and forward the pension case of the Petitioner to the concerned authorities i.e. Respondent Nos.2 and 3 for further processing in accordance with law.
- [iv] The Petitioner shall not be entitled to the component of interest for the delay in processing his pension case, which was caused due to the said recovery that was sought to be made.
- [v] The pension case of the Petitioner shall be processed by the Respondents, within a period of three [3] months.
- [vi] Writ Petition stands disposed off accordingly.

[NEERAJ P. DHOTE, J.]

[R. G. AVACHAT, J.]