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

WRIT PETITION NO.2186/2025

PETITIONER : Wanamala Murlidhar Gole
Age @ 58 yrs., Occ. Housewife,
R/o Aasara Colony, Akot, Tq. Akot,
Dist. Akola.

...VERSUS...

RESPONDENTS : 1. The State of Maharashtra
Through its Secretary For Rural
Development Department, Mantralaya,
Mumbai.

2. The Zilla Parishad, Akola,
Through its Chief Executive Officer, Akola,
Dist. Akola.

3. The Deputy Chief Executive Officer,
Zilla Parisad, Akola, Dist. Akola.

4. The Assistant Block Development Officer
(Panchayat) Zilla Parishad, Akola.

Mr. S.M. Vaishnav, Advocate for petitioner
Mr. N.R. Patil, AGP for respondent No.1
Mr. M.V. Bute, Advocate for respondent Nos.2 and 3

CORAM : NITIN W. SAMBRE AND
SACHIN S. DESHMUKH, JJ.
DATE : 20/06/2025

ORAL JUDGMENT : (PER : SACHIN S. DESHMUKH, J.)

1. Heard. Rule. Rule made returnable forthwith. Assistant Government Pleader Mr. N.R. Patil waives service of notice for the

respondent No.1 and Advocate Mr. M.V. Bute waives service of notice for the respondent Nos.2 and 3 on merits.

2. The only issue involved in this petition is in relation to the notice dated 10/01/2022, issued by the Deputy Chief Executive Officer, Zilla Parishad, Akola, whereby he has initiated the recovery of Rs.59,02,999/- from the petitioner, widow of deceased employee, taking recourse to the provisions of Rule 27 (5) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short hereinafter referred to as "Pension Rules, 1982").

3. Admittedly, the employee – Murlidhar Gole was superannuated on 30/06/2018, whereas the notice under challenge is issued on 10/01/2022 after severance of relationship as employer-employee. Learned Counsel for the petitioner is justified in relying upon the judgment passed by the Division Bench of this Court on 10/12/2021 in Writ Petition No.2412/2018 (Kavita w/o Anna Pendam Vs. Zilla Parishad, through Chief Executive Officer, Chandrapur and others), more particularly paragraph Nos.8 to 10, which are reproduced as under :

> *"8. Admittedly, while the petitioner's husband was alive and the relationship of employer-employee subsisted between the Parishad and the petitioner's husband, no departmental proceeding was initiated to recover the alleged misappropriated amount from him. Once the relationship ceased to exist, it is necessary to find outwith reference to the Pension Rules as to whether any power is conferred on the employer to proceed for recovery; and if yes,whether the*

procedure prescribed has been followed or not. Since our attention has been drawn only to Rule 134A of the Pension Rules by Shri Thakre, we propose to consider the same. For facility of convenience, Rule 134A of the Pension Rules is quoted hereunder :

> *"Rule 134-A - Recovery and adjustment of excess amount paid – If in the case of a Government servant, who has retired or has been allowed to retire, it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including service rendered upon re-employment after retirement or any amount is found to be payable by the pensioner during such period and which has not been paid by, or recovered from him, then the excess amount so paid or the amount so found payable shall be recovered from the amount of pension sanctioned to him :*
>
> *Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him :*
>
> *Provided further that, the amount found due may be recovered from the pensioner in instalments so that the amount of pension is not reduced below the minimum fixed by Government."*

9. The opening words of Rule 134-A would reveal that it is attracted when a Government servant has retired or has been allowed to retire. Thereafter, the rule provides for three contingencies on the fulfillment whereof excess amount so paid, amount so found payable or recoverable, shall be recovered from the amount of pension sanctioned to him. Here the pronoun 'him' in the singular would refer to the Government servant referred to at the beginning of the rule, who has either retired or has been allowed to retire and from whom excess amount that has been paid, or any amount that he is liable to pay or may be recoverable from him, can be recovered from the amount of pension sanctioned to him.

10. On and from 09.06.2007, the relationship of employer-employee between the Parishad and the petitioner's husband ceased to exist. There was, therefore, no question of the petitioner's husband retiring from service or being allowed to retire. We hold, on the basis of our reading and understanding of Rule 134A of the Pension Rules, that the same would be applicable only to a retired Government servant to whom pension is payable and that any

> *amount recoverable from such Government servant cannot be recovered, except in accordance therewith. On a plain and simple construction of Rule 134A of the Pension Rules, we see no reason to hold that the same confers power on the Parishad to recover any amount from the family pension that is payable to the widow of adeceased Government servant who had died-in-harness."*

4. In our considered view, the issue is clearly covered by the judgment of this Court in ***Kavita w/o Anna Pendam*** (supra) since Rule 134-A of the Pension Rules, 1982 provides for three contingencies on the fulfillment whereof excess amount so paid, amount so found payable or recoverable, shall be recovered from the employee. Thus, the relationship of employer and employee also ceased to exist after the retirement of the employee and here admittedly the employee is reported to be dead in 2018. Therefore, it is not open for the employer i.e. Zilla Parishad to proceed for recovery. In the light of operation of Rule 134-A of the Pension Rules, which contemplates prescribed procedure, in absence of same, we hold that issuance of impugned notice, is unsustainable and the same is liable to be quashed and set aside.

In view of the order dated July 1, 2025, order corrected.

5. In view of above, we allow the writ petition in terms of prayer clause (i) and (ii) of the petition.

6. Rule is made absolute in the above terms. No order costs.

(SACHIN S. DESHMUKH, J.) **(NITIN W. SAMBRE, J.)**

Wadkar