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

WRIT PETITION NO. 1864 OF 2024

1. Mrs. Shanta w/o Shivdas Ukey
   Aged about : 74 Years, Occu : Retired; R/o House No. 10, Sadhu Mohalla, BTC : Bezonbagh, S. O. Nagpur 440004.

2. Mrs. Shakuntala w/o Shashikishor Wasnik
   Aged about : 74 Years, Occu : Retired; R/o New Indora, Sadhupura, Bezonbagh, S. O. Nagpur 440004.

3. Mrs. Sushila w/o Rupmangal Nandeshwar
   Aged about : 71 Years, Occu : Retired; R/o House No. 55, Near Rahul Sports Library, Kashmiri Lane, Khalasi Line, Mohan Nagar, Nagpur – 440001.

4. Mrs. Leela w/o Anandrao Lokade
   Aged About : 75 Years, Occu : Retired; R/o Plot No. 59, Shree Hari Nagar-1, Manewada, Bhagwan Nagar, Parvati Nagar, Nagpur – 440027.

5. Smt. Pushpamala wd/o Jagdish Janbandhu
   Aged about : 65 Years, Occu : Retired, R/o Plot No. 45, Near New Garden Lay Out, Bezanbagh, Kamptee Road, Nagpur 440004.

6. Mrs. Nina w/o Ashok Badge
   Aged about : 60 Years, Occu : Retired; R/o LIG-2, Quarter No. 6/1021, Near Buddha Vihar, Hudco Colony, Nara Road, Jaripatka, Nagpur – 440014.

7. Punjabrao s/o Chindhuji Mandavkar
Aged about : 74 Years, Occu : Retired; R/o Plot No. 586/13, Rani Durgavati Nagar, Gond Mohalla, Dr. Ambedkar Marg, S.O. Nagpur – 440017.

8. Mrs. Shirin w/o Ramesh Bagade
Aged about : 73 Years, Occu : Retired; R/o C/o N. D. Sontakke, Lashkari Bagh, New Nakasa, Nagpur – 440017.

9. Ku. Dewangani d/o Namaji Motghare
Aged about : 69 Years, Occu : Retired; R/o C/o Ramaji Motghare, House No. 586/6, Gond Mohalla, Rani Durgavati Nagar, Dr. Ambedkar Marg, S. O. Nagpur – 440017.

10. Smt. Shashikala wd/o Prithviraj Dongre
Aged about : 74 Years, Occu : Retired; R/o Plot No. 391-D, Near Lal School, Model Town, Indora, Bezanbagh, S. O. S, Nagpur 440004.

11. Mrs. Chandrarekha w/o Damodhar Behere
Aged about : 70 Years, Occu : Retired, R/o Plot No. 272, Near Lal School, Empress Mill Quarter, Bezanbagh, S. O. Nagpur 440004.

12. Ramesh s/o Laxman Umredkar
Aged about : 64 Years, Occu : Retired; R/o Plot No. 123, New Amar Colony, Near Prerana Convent, Nagpur – 440034.

13. Premraj s/o Narayan Kawade
Aged about : 63 Years, Occu : Retired; R/o C/o Near Char Nal, Lalganj, Gujjari, Itwari, Nagpur – 440002.

14. Narendra Punjabrao Konge
Aged about : 57 Years, Occu : Retired; R/o 5, Kasturba Lay-out, Near Dharampeth Science College, Ambazari, Nagpur 440017.

15. Shashikant Shyamrao Hastak
Aged about : 66 Years, Occu : Retired; R/o Plot No. 641, Near Hotel North View, Chotti Dhantoli, Nagpur 440012.

16. Prakash Dashrath Urade
Aged about : 65 Years, Occu : Retired; R/o Plot No. 43, Central Excise Colony, Wardha Road, Nagpur.

17. Alka Premdas Borkar
Aged about : 73 Years, Occu : Retired; R/o Plot No. 147, Lane No.4, Kasturba Nagar, Zaripatka, S. O. Nagpur 440014.

18. Bhagwan s/o Timaji Marbate
Aged about : 60 Years, Occu : Retired; R/o C/o V. N. Pandey, Plot No. 1429, Nandanwan Colony, Behind Hasanbagh Police Chowki, Nagpur 4400024. ... **PETITIONERS**

VERSUS

1. State of Maharashtra, through Secretary, Urban Development Department, 4th Floor, Bhanushankar Yagnik Road, Beside Escalator, Mantralaya, Churchgate, Mumbai 400020.

2. Nagpur Municipal Corporation, through Municipal Commissioner, Civil Lines, Nagpur. ... **RESPONDENTS**

WITH
WRIT PETITION NO. 7531 OF 2023

1. Shriram s/o Manoharrao Bhoyar
Aged About : 64 Years, Occu : Retired; R/o Chhitnispura, Mahal, Nagpur – 440032.

2. Arun s/o Bapurao Mogarkar
Aged about : 65 Years, Occu : Retired; R/o 205, Lendra Park Near Nandaji Mandir, Ramdaspeth, Nagpur.

3. Angad s/o Baliramji Landge
Aged about : 66 Years, Occu : Retired; R/o Shree Colony, Near Mahalghi Nagar, Nagpur.

4. Rajendra s/o Santoshrao Dhakare
Aged about : 62 Years, Occu : Retired; R/o Vasant Nagar, Near Rameshwari, Nagpur.

5. Sadashiv s/o Vithalrao Bhende
Aged about : 66 Years, Occu : Retired; R/o Bhosale Nagar, Plot No. 51, Near C. P. and Berar, Mahal, Nagpur.

6. Sitaram Madhavrao Dhaalkar
Aged about : 66 Years, Occu : Service; R/o Plot No. 66, Aradhana Nagar, Mayur Peth, Nagpur.

7. Sheikh Kasim Sheikh Dayud
Aged about : 60 Years, Occu : Retired; R/o Near Badi Masjid, Siddharth Nagar, Tekanaka, Nagpur.

8. Smt. Tahera Parveen w/o Abdul Rafeeque
Aged about : 59 Years, Occu : Retired; R/o Plot No. 1850, Bismillah Complex, Yashodra Chowk, Kamptee Road, Nagpur 4400026.

9. Smt. Shahnaz Begum w/o Mohd. Shafi Razvi, Aged about : 61 Years, Occu : Retired; R/o Plot No. 78, Near A-3 Restaurant, Thakur Plot, Bada Tajbagh, Umred Road, Ayodhya Nagar, Nagpur 440024.

10. Krushnakumar Chintamanji Hedau
Aged about 59 Years, Occu : Retired; R/o Plot No. 14, Nagar Vikas Society, Narendra Nagar Extension, Somalwada, Nagpur 440015.

11. Mukund Maruti Gadpayle
Aged about : 61 Years, Occu : Retired; R/o Near Pachpaoli Police Station, Lashkaribagh, Nagpur.

12. Suresh Chhajan Ratnaparkhi
Aged about : 55 Years, Occu : Retired; R/o C/o Ramkrushna Nimkar, Near Railway Gate No. 69, Baba Farid Nagar, Koradi Road, Mankapur, Nagpur – 440030.

13. Mrs. Pallavi w/o Purushottam Girhe
Aged about : 61 Years, Occu : Retired; R/o Koti Road, Mahal, Nagpur.

14. Ishwar s/o Nattuji Nikose
Aged about : 61 Years, Occu : Retired; R/o Plot No. 33, MIDC Area, Hingana Road, Durga Nagar, Nagpur – 440016.

15. Mrs. Pratibha w/o Prafulla Diwate
Aged about : 59 Years, Occu : Retired; R/o Plot No. 641, Near Hotel North View, Chotti Dhantoli, Nagpur – 440012.

16. Smt. Ishratjahan w/o Sayyed Mansoor Ali
Aged about : 60 Years, Occu : Retired; R/o Flat No. 101, Samaj Bhushan Society, Ayyappa Nagar, Katol Road, Nagpur – 440013.

17. Israeel Khan s/o Kareem Khan
Aged about : 62 Years, Occu : Retired; R/o Plot No. 20/D, Near Hanuman Temple, Darashan Colony, Vrundavan Nagar Road, Hasanbagh, Nagpur – 440009.

18. Smt. Shaheeda Mallik w/o Abdul Mannan Malik, Aged about : 61 years, Occu : Retired, R/o Plot No. 257/B, Eros Co-operative Housing Society, Ohm Nagar, Koradi Road, Mankapur, Nagpur – 440030.

19. Smt. Mandabai wd/o Manoharrao Bhoyar
Aged about : 75 Years, Occu : Retired, R/o Chhitnispura, Mahal, Nagpur – 440032.

20. Mrs. Vidhya Vinod Singh Chandel
Aged about : 68 Years, Occu : Retired; R/o 439/A Old Police Chowki, Sadar, Nagpur 440001.

21. Subhash s/o Ramrao Laghave
Aged about : 60 Years, Occu : Retired; R/o Near Dalvi Hospital, Telephone Chowk Square, Garoba Maidan, Nagpur.

22. Rakesh s/o Beniprasad Sahu
Aged about : 60 Years, Occu : Retired, R/o Loharpura, Back Side of Arya Samaj Mandir, Nagpur.

23. Smt. Khilat Jehan w/o Riyaz Ahmed
Aged About : 63 Years, Occu : Retired; R/o E6,22, Venkatesh Nagar, Near KDK College, Nandanvan, Nagpur.

24. Ku. Jai d/o Umashankar Dave
Aged about : 59 Years; Occu : Retired; R/o C/o Jyoti Umashankar Dave, Flat No. 601, Plot No. 92, Amrit Sarita Apartment, Shivaji Nagar Park, Shivaji Nagar, Nagpur. ... **PETITIONERS**

VERSUS

1. State of Maharashtra, through Secretary, Urban Development Department, 4th Floor, Bhanushankar Yagnik Road, Beside Escalator, Mantralaya, Churchgate, Mumbai 400020.

2. Nagpur Municipal Corporation, through Municipal Commissioner, Civil Lines, Nagpur. ... **RESPONDENTS**

Mr. A. P. Raghute, Advocate for Petitioners in both the Petitions.
Mr. Abhay Sambre, Advocate for Respondent No.2 in both the Petitions.
Ms. D. V. Sapkal, AGP for Respondent No.1/State in both the Petitions.

CORAM : SMT. M. S. JAWALKAR AND PRAVIN S. PATIL, JJ.

ARGUMENTS HEARD ON : AUGUST 21, 2025.
PRONOUNCED ON : SEPTEMBER 15, 2025.

COMMON JUDGMENT [PER PRAVIN S. PATIL, J.]

. Heard. **Rule.** Rule made returnable forthwith by consent of the parties.

2. By way of the present Petition, the Petitioners are seeking direction against the Respondent No.2 to pay arrears of difference of salary as per recommendation of 6th Central Pay Commission *(for short, 'the CPC')* from 1/1/2006 till 31/10/2010 and further to pay the arrears of salary *plus* pension as per the recommendation of 7th CPC from 1/1/2016 till 31/7/2019 with interest. In addition to this, the Petitioners also seek declaration that salary and pension which was granted as notional from 1/1/2006 to 31/10/2010 and from 1/1/2016 till 31/7/2019 be declared as violate of Articles 16 and 21 of the Constitution of India.

3. Since the issue involved in both the Petitions is similar, both the Petitions are decided by way of common Judgment and the facts of Writ Petition No. 1864/2024 are taken into consideration for disposal.

4. In the present matter, before considering the nature of grievance raised by the Petitioners, it will be necessary to consider the reply filed by the

Respondent No.2/Nagpur Municipal Corporation, which is not disputed by the Petitioners in the matter.

5. The Respondent No.1/State Government vide its Resolution dated 29/4/2009 revised the pay scale of its employees as per the recommendation of 6th Pay Commission with effect from 1/1/2006, however, its actual implementation was done from 1/4/2009. The Respondent No.1, by its Resolutions dated 4/5/2006 and 10/8/2009 directed to all Municipal Corporations for implementation of recommendations of 6th Pay Commission to keep their establishment expenses within the limit of 35% of their income and if it is more than 35%, then to verify the same and in any case control the expenses within the limit of 35% as one of the condition precedent for implementation of 6th Pay Commission to employees of Corporation.

6. It is stated that the establishment expenses for the financial years 2007-08, 2008-09 and 2009-10 were 47%, 44.71% and 41.19% respectively in the percentage. As such, same was higher than the limit prescribed as per the Government Resolution dated 10/8/2009. However, the Respondent No.2, vide its letter dated 8/2/2010 requested the Respondent No.1 to permit the Respondent No.2/Corporation to implement the recommendations of the 6th Pay Commission as per Government Resolution dated 29/4/2009 by relaxing

the condition of 35% of establishment expenses. The said request was made twice by issuing further letter dated 7/4/2010, but there was no response from the Respondent No.1.

7. The General Body of Respondent No.2, vide Resolution No. 96 dated 12/4/2010 granted its sanction for implementation of the recommendations of 6th CPC to the employees of Respondent No.2/Corporation. Accordingly, sanction of Respondent No.1 was again sought vide letter dated 19/4/2010, but no sanction was received from Respondent No.1.

8. It is stated that Respondent No.2 through its Municipal Commissioner vide order dated 15/6/2010 constituted a Committee under the chairmanship of the then Additional Municipal Commissioner to suggest the measures to decrease the establishment expenses and to increase the income of Respondent No.2 during the financial year 2010-11. The said Committee, through its detail study, suggested different measures to reduce the establishment expenses and to enhance the income for the financial year 2010-11. Accordingly, the Respondent No.2 was in process to accept the recommendation of the Committee.

9. In between the said period, the Respondent No.1, vide its letter dated 8/7/2010 refused the sanction as sought by the Respondent No.2 vide its communication dated 4/2/2010 for implementation of 6th CPC. It is further pointed out by the Respondent No.2 that during the pendency of decision on implementation of 6th CPC recommendation, one Kruti Samiti of the Unions issued a notice to the Respondent No.2 for indefinite strike, and therefore, there was a meeting to negotiate as to how to implement the recommendation of 6th CPC. Accordingly it was decided to implement the recommendation of 6th CPC with effect from 1/1/2006 by giving tentative effect till December-2010 and the actual monetary benefit would be given from December-2010 paid in January-2011 with clear understanding that no arrears for the period from 1/1/2006 to 30/11/2010 would be paid to the beneficiaries. This fact was also brought to the notice of Respondent No.1 by the Respondent No.2 vide communication dated 3/11/2010.

10. In the above circumstances, the question was raised in the General Body Meeting of the Respondent No.2 vide question No.31 dated 25/3/2013. Accordingly, the ruling was given by the then Mayor of the Respondent No.2 to submit the report to the General Body of Nagpur Municipal Corporation in respect of the payment of arrears of 6th CPC for the period from 1/1/2006 to

30/11/2010. The then Municipal Commissioner directed the then Chief Accountant and Finance Officer (CA & FO) to submit the report accordingly in the matter. The report submitted by the said Authority depicted the fact that establishment expenses of the Respondent No.2 were above 50% of its income though it was essential to keep the same within the limit of 35%. Report further stated that if Respondent No.2 is intended to give the arrears of 59 months to the employees for the period from 1/1/2006 to 30/11/2010, for which the Corporation has to bear the expenses of Rs.180.00 Crores. It is further mentioned in the report that due to implementation of Government Resolution dated 1/4/2013, the Local Body Tax was introduced in lieu of the Octroi and due to this change in the taxation the income of the NMC would be reduced by about Rs. 250.00 Crores, and therefore, it was not feasible for Respondent No.2 to pay arrears of 59 months to its employees.

11. In view of this factual position, Standing Committee of Respondent No.2 in its Resolution No. 409 dated 28/6/2019 resolved that looking to the financial position, it was not possible to disburse the arrears of 6^{th} CPC of 59 months to its employees.

12. It is specifically pointed out by the Respondent No.2 that State Government vide its Gazette Notification dated 30/1/2019 brought in force

Maharashtra Civil Services (Revision of Pay) Rules, 2019 with effect from 1/1/2016 in view of 7th Central Pay Commission. According to this Notification, the benefit of revision of pay as per 7th CPC was extended to the employees of the State Government with effect from 1/1/2016. However, the State Government, vide its Resolution dated 2/8/2019, laid down certain guidelines as to how the procedure for implementation of 7th CPC recommendation to the employees of Municipal Corporations in the State of Maharashtra be implemented.

13. According to Government Resolution dated 2/8/2019, the Municipal Commissioner was required to put the proposal before the General Body of the Corporation after due verification of the financial status of the Corporation. Thereafter the General Body had to take decision in respect to the proposal submitted by the Municipal Commissioner. In case Resolution had been passed by the Corporation, the then Municipal Commissioner had to submit detailed and complete proposal for its sanction to the Respondent No.1. Only after receipt of sanction from the State Government, the Corporation could implement the 7th CPC to its employee strictly in accordance with the sanction so granted. It is also stated in the said resolution that decision in respect of arrears to be paid to its employees should be after taking into

consideration its financial position. Accordingly, it was essential to enhance the sources of income within a period of three years to keep the establishment expenses within a limit of 35% of its total income.

14. In pursuance of the guidelines framed by the State Government vide its resolution dated 2/8/2019, the then Municipal Commissioner vide its letter dated 8/8/2019 submitted the proposal to the Respondent No.1 stating that General Body of the Corporation granted its sanction to the proposal and Standing Committee vide its Resolution dated 28/2/2019 proposed for implementation of 7th CPC recommendations to its employees with effect from 1/1/2016 notionally till 31/7/2019. It is further stated that same will be paid with effect from 1/8/2019 paid in September-2019 and no arrears for the period from 1/1/2016 to 31/7/2019 would be payable. According to the Respondent No.2, for implementation of this scheme the Respondent No.2 had to bear the expenses to the tune of Rs.11.00 Crores per month, and accordingly, requested for grant of sanction of the said proposal.

15. The State Government, vide its Government Resolution dated 29/8/2019 provided the revised directions for submission of the proposal by the Municipal Commissioner for implementation of 7th CPC to its employees. As per the said revised directions, it was mandatory for the Respondent No.2

to submit the resolution passed by the Corporation along with the opinion of the Municipal Commissioner for implementation of 7th CPC to its employees. It is also necessary to submit the establishment expenses position along with the proposal and increase, if any, in the same after the implementation of 7th CPC.

16. In view of revised directions and letter issued from the Respondent No.2 dated 29/8/2019, the Respondent No.2 submitted detailed proposal to the Respondent No.1 vide communication dated 5/9/2019. Accordingly, the Respondent No.1 conveyed a meeting on 4/2/2020 and 7/2/2020 to enable the Respondent No.2 to submit the presentation before them regarding grant of sanction for implementation of 7th CPC. The Respondent No.2, accordingly, attended the meeting and submitted its proposal.

17. After completing all these exercise, the Respondent No.1 vide communication dated 8/12/2020 granted its sanction for implementation of 7th CPC recommendations to the employees of Respondent No.2, subject to the conditions stipulated therein. According to the said communication, one of the most important condition was that arrears for the period from 1/1/2016 to 31/8/2019 was not payable to any of the employees of Respondent No.2. It is

further made clear that Government will not disburse any aid or fund to meet expenses likely to be raised due to the payment of 7th CPC recommendations.

18. The Respondent No.2, accordingly, in pursuance to Government Resolution dated 8/12/2020 implemented the 7th CPC with effect from 1/1/2016 notionally and its actual benefit was paid from 1/9/2019 vide Nagpur Municipal Corporation Circular dated 8/1/2021 to its on-service employees, however, no arrears was paid to them from 1/1/2016 to 1/9/2019. The Respondent No.2 also categorically stated that arrears of 7th CPC for the period from 1/9/2019 to 31/12/2020 (total 16 months) was being paid by the Respondent No.2 in 16 equal instalments to the employees in service.

19. In respect of the implementation of 7th CPC to its retired/deceased employees, permission was sought from the Respondent No.1. Accordingly, Respondent No.1 vide communication dated 16/6/2021 granted its sanction for implementation of 7th CPC to the retired/deceased employees during the period from 1/1/2016 to 7/12/2020 notionally with strict rider that no arrears would be paid to those employees for the period from 1/1/2016 to 31/8/2019. In addition to this, Respondent No.1 has directed the Respondent No.2 that those employees, who were retired or expired after 1/9/2019, shall be entitled for arrears from the last date of their retirement/death only.

20. In pursuance of the sanction of Respondent No.1, Respondent No.2 vide Circular dated 7/7/2021 implemented recommendations of 7th CPC to its retired/deceased employees notionally with effect from 1/1/2016 and actually with effect from July-2021. So also vide Circular dated 3/11/2023 started payment of arrears to the retired/deceased employees during the period from 1/9/2019 to 30/6/2021. This factual position, which Respondent No.2 has narrated in his reply is undisputed, because Petitioners neither denied all these factual aspects nor contravened the submission stated herein above. In the light of the said factual position, the Petitioners approached to this Court for releasing the arrears of salary in their favour.

21. The first ground raised by the Petitioners is that the Respondent No.2 in meeting dated 30/12/1972 stated that the Respondent No.2/Corporation will pay the enhancement of Dearness Allowance and other allowances by the Respondent No.1 as and when made applicable to the employees of Respondent No.2. Accordingly, it is the submission of the Petitioners that as the Respondent No.1 has declared the benefit of 6th CPC and 7th CPC, Petitioners are entitled for the same without any cut-off date or a rider of notional salary or pension. In this regard, we have perused the resolution dated 30/12/1972 and from its perusal it is clear that it was only in respect to

the allowances, like Dearness Allowance, City Living Allowance, House Rent Allowance enhanced by the Respondent No.1 from time to time. Resolution no where states in respect of revision of pay scales under the recommendations of the Pay Commissions would be payable to it's employees irrespective of it's financial condition. Therefore, considering the resolution of the Corporation dated 30/12/1972, it is clear that the said resolution cannot be made applicable for implementation of the 6th CPC and 7th CPC. According to us, the implementation of 6th and 7th CPC was required to be implemented as per the guidelines framed by the State Government. Therefore, resolution of Respondent No.2 dated 30/12/1972 is not applicable in the matter.

22. The second ground which Petitioners have raised in the Petition is that in case of Amravati Municipal Corporation, Respondent No.1 has taken the decision to pay the arrears of employees therein as per the 7th CPC for the period from 1/1/2016 to 31/7/2019 in three instalments, whereas in case of Respondent No.2, the Respondent No.1 has taken a decision that employees of Respondent No.2 shall not be entitled to receive arrears from 1/1/2016 to 31/7/2019. In this regard, it is seen from the record that implementation of the 7th Pay Commission was on the basis of financial condition of the Municipal Corporation as laid down in the revised guidelines by the State Government

vide its Resolution dated 29/8/2019. Therefore, Amravati Municipal Corporation, who may have in a strong financial condition, has taken a decision to grant the arrears to its employees. But, in the present case, from the facts stated above by the Respondent No.2, which are not disputed in the matter, the decision of the Respondent No.1 cannot be said to be at fault in the facts and circumstances of the case.

23. It is further pertinent to note that if the Petitioners are making grievance that Respondent No.1 has done wrong while issuing the order dated 8/12/2020 and 16/12/2020 while sanctioning 7th Pay Commission and not acceptable to them, they have a choice to challenge the said communication before the competent court of law. However, we had seen from the record that there is no challenge to the communication of Respondent No.1 to Respondent No.2 dated 8/12/2020 and 16/12/2020 at the instance of Petitioners in the matter. Hence, in absence of the same, Respondent No.2 who has to implement the same, cannot be said to be at fault in the matter.

24. It is pertinent to note that there is no provision under the Maharashtra Municipal Corporations Act, Rules and Regulations made thereunder which restrain the Corporation from implementing the pay commissions with notional scheme/increment. Furthermore, from the facts of

the present case, it is clear that due to financial condition of the Respondent No.2, the decision has been taken in the matter after deliberation and negotiation between the Respondent Nos.1 and 2. Hence, considering these peculiar facts of the matter and the decision taken by the Government in consonance with the guidelines framed vide Government Resolution dated 29/8/2019, we find no merit in the submission of the Petitioners in this regard.

25. One more ground has been raised by the Petitioners that undertaking taken from the Petitioner is illegal to the effect that they will not claim the pension as per the pay scale of 6th CPC and 7th CPC. In this regard it is stated that the said undertaking was taken, considering the financial status of the Corporation. Furthermore, if the Petitioners have any grievance of obtaining the undertaking by the Respondent No.2, the Petitioners were at liberty to raise their grievance against the notional implementation of pay commissions and should not have furnish the undertaking at the relevant time. But, after taking notional benefit and the arrears, Petitioners are making this grievance, which according to us, is not acceptable in the facts and circumstances of the matter.

26. It is further pertinent to note that the Respondent

No.2/Corporation obtained an undertaking due to settlement between the recognised Union and its employees with Respondent No.2/Corporation. As per the said settlement, the Union of the employees accepted the proposal, and accordingly, the benefits were released in favour of the employees. If the Petitioners are having any grievance in this regard, then recognised Union of the employees should have impleaded as a necessary party to the present proceeding to throw light on this material aspect. However, Petitioners did not implead the Union as a necessary party in the matter and raising the grievance behind its back. Hence, in absence of the necessary party, with whom the settlement was taken place, we are not in a position to accept the submission of the Petitioners.

27. In the present Petition, the entire issue of granting notional benefit was arise due to the policy of the State Government. It is seen from the record and the statement made by the Respondent No.2 that in the proposal of Nagpur Municipal Corporation, there was not a single averment that it has no money to implement the alleged Pay Commissions. Only condition stipulated was that Respondent No.2 should grant its sanction by relaxing the condition of maintaining the establishment expenses to the limit of 35% of its total income. However, the Respondent No.1 was not ready to accept the said

condition, therefore, the Respondent No.1 has taken the decision. Therefore, the submission of the Petitioners that financial condition of Respondent No.2/Corporation is very strong is immaterial, because unless the Petitioners demonstrate that its establishment expenses are below the limit of 35%, the policy framed by the State Government cannot be implemented as it is. However, the Petitioners failed to point out from the documents placed on record that the establishment expenses of the Respondent No.2/NMC was within a limit of 35% of its total income. Therefore, we are not agreeable to the submission of the Petitioners.

28. The Petitioners stated that pension is a fundamental right of the Petitioners and the retired employees of the Respondent/Corporation are entitled for the same. Firstly, we want to clarify that Petitioners are receiving pension as per revised pay scale. What is affected is that they were not granted monetary benefit for the period from 1/1/2006 till 31/10/2010 and from 1/1/2016 till 31/8/2019. Therefore, the submission of the Petitioners that their fundamental right is violated, is not the correct factual position. Furthermore, non-receipt of arrears of revised pay scale cannot be said to be the infringement of fundamental rights. According to us, Respondent No.2 is bound by policy decision of Respondent No.1, and accordingly, the policy

decision has been taken by the Respondent/Corporation. Therefore, it was necessary for the Petitioners to challenge the policy decision of State Government. But, the Petitioners failed to challenge the same. Hence, in absence of said challenge, we found no fault in the decision taken by the Respondent No.2/Corporation.

29. The Petitioners have relied upon the Judgment of the Hon'ble Supreme Court in ***Civil Appeal No(S). 778 of 2023 (Maharashtra State Financial Corporation Ex-Employees Association & Ors. V/s State of Maharashtra & Ors.)*** to support their submission that Respondents cannot fix a date for implementation of pay commission while applying to the Respondent/Corporation.

We have perused this Judgment and found that the facts of the said case are not applicable in the matter, because in that case, the decision was taken not to grant revision of pay scale of those employees, who were not in service when the order implementing the pay revision was issued and confining it to those only who are in employment. This fact is clear from the observation made by the Hon'ble Supreme Court in paragraph No.36, which is as under :

> *"36. In the present case, too, there is no denial that the employees who retired prior to 29.03.2010 discharged the same duties as in the case of those who did thereafter. The quality and content of responsibilities assigned to them were the same. The respondents' decision not to grant arrears prior to 01.01.2006 cannot be found fault with; however, not to grant any revision to those who were not in service when the order implementing the pay revision was issued and confining it to those, in employment is clearly discriminatory. The rationale that granting such pay revision only to existing employees would be to enthuse them to recover NPA amounts payable to MSFC has no rationale nexus with the object sought to be achieved by the pay revision, which is to benefit employees and protect them from the rise in the cost of living."*

From this observation, it is clear that same is not applicable to the present case, because here in the present Petition, 6th CPC and 7th CPC was made applicable to its employees who were working as well as retired or died. Only the arrears were not paid to them for a particular period. In the above referred Judgment also the Hon'ble Supreme Court has categorically stated that Respondent's decision not to grant arrears prior to 1/1/2016 cannot be found faulted with. Hence, considering this factual position, we are of the opinion that this Judgment is not helpful to the Petitioners.

30. The Petitioners further relied upon the Judgment in ***Writ Petition No. 8985 of 2011 (Smt. Savitribai Narsayya Guddapa V/s The State of Maharashtra & Ors.)***. Here also the factual position was that the cut-off date

prescribed by the State Government for payment of revised pension made applicable to those employees who are retired from 27/2/2009 and not to the employees, who retired in between 1/1/2006 to 26/2/2009. In view of this controversy, this Court made applicable the revised pension to all the employees by declaring the cut-off date as unconstitutional. But, here in the present case, this factual matrix is altogether different. While implementing the pay commissions no discrimination of any nature was made by the Respondent No.2. Therefore, according to us, the Judgment relied upon by the Petitioners is not applicable in the present matter.

31. In the abovesaid factual position, it is clear from the record that the Respondent No.1, vide its resolution dated 29/8/2019, framed the guidelines as to how the proposal is to be submitted for implementation of 7th CPC and in adherence of the same, proposal was submitted and the same was sanctioned by the Respondent No.1 vide order dated 8/12/2020. Accordingly, the Respondent No.2, by its circulars dated 8/3/2021 and 3/11/2023 took the necessary steps in the matter. Hence, we do not find any illegality, unless the order of Respondent No.1 dated 8/12/2020 is questioned by anyone and the same is set aside by the competent court of law.

32. Therefore, we find no merit in the submission of the Petitioners, and accordingly, both the Petitions being devoid of merit, are dismissed. No order as to costs.

[PRAVIN S. PATIL, J.] **[SMT. M. S. JAWALKAR, J.]**

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