IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1347 OF 2024

Bhartiya Kamgar Karmachari Mahasangh ..... **PETITIONER**

: VERSUS :

The Maharashtra State Financial Corporation and Anr. .... **RESPONDENTS**

Mr. C.G. Gavnekar i/b. Mr. Rohit Parab, for the Petitioner.

Mr. Abhay Patki, for Respondent No.1.

Ms. Madhura Deshmukh, AGP for State-Respondent No.2.

CORAM : S.M. MODAK, &

SANDEEP V. MARNE, JJ.

DATED : 23 MARCH 2026.

P.C. :

1) The Petitioner-Union has invoked jurisdiction of this Court under Article 226 of the Constitution of India challenging the communication dated 13 September 2023 and Circular dated 2 February 2021 having the effect of denying implementation of recommendations of 7th Pay Commission to the employees of the Respondent-Corporation. By the impugned communication dated 13 September 2023, the Respondent-Corporation has expressed inability to implement recommendations of 7th

Pay Commission on account of its delicate financial position, accumulated losses and several liabilities.

2) Maharashtra State Finance Corporation **(MSFC)** is established under the provisions of the State Financial Corporations Act, 1951 and offers financial services and transacts the business of guaranteeing the loan and other services. According to the Petitioner, Government of Maharashtra has major shareholding in MSFC. Petitioner is a Trade Union registered under the provisions of the Trade Unions Act, 1926 representing the employees of MSFC. For implementation of recommendations of 6th Pay Commission, the Petitioner-Union had filed Writ Petition No. 1508 of 2013, which was disposed of holding that prior approval of the State Government was not necessary for implementation of Pay Commission recommendations by MSFC. Accordingly, decision was directed to be given effect to by this Court by order dated 17 December 2013. Accordingly, by order passed on 26 December 2013, benefits of 6th Pay Commission were accorded to the employees of MSFC w.e.f. 1 April 2012.

3) The Government of India constituted 7th Pay Commission whose recommendations have been implemented by the Central and the State Government. It appears that 3 employees of MSFC had filed Writ Petition No. 2626 of 2020 for implementation of 7th Pay Commission recommendations which was disposed of, directing consideration of the representation. By way of Circular dated 2 February 2021, the demand was already rejected by the Board of MSFC. By Government Resolution dated 4 August 2021, recommendations of 7th Pay Commission were also directed to be implemented by the public sector undertakings of the State of Maharashtra. Petitioner accordingly demanded implementation of 7th

Pay Commission recommendations vide letter dated 13 December 2021. This was followed by various reminders dated 19 September 2022, 23 December 2022, 22 February 2023, 22 May 2023 and 26 May 2023. However, by communication dated 13 September 2023, the MSFC has expressed inability to implement 7th Pay Commission recommendations on account of its weak financial position. Aggrieved by the communication dated 13 September 2023, the Petitioners have filed the present Petition.

4) We have heard Mr. Gavnekar, the learned counsel appearing for the Petitioner, Mr. Patki, the learned counsel appearing for Respondent No.1-MSFC and Ms. Deshmukh, the learned AGP appearing for Respondent No.2.

5) We have considered the submissions canvassed by the learned counsel appearing for the parties. We have also gone through the records of the case filed alongwith the petition and Affidavit-in-Reply.

6) Petitioner-Union is aggrieved by non-implementation of recommendations of 7th Pay Commission and have accordingly challenged the communication dated 13 September 2023. In the said communication, MFSC has cited several reasons for its inability to implement 7th Pay Commission recommendations. It would be apposite to extract the said reasons in the communication dated 13 September 2023 for facility of reference.

> You are well aware that the Corporation is continuously incurring losses since F.Y.1996-97 and present accumulated losses are more than Rs.800 Cr. The Corporation has stopped its prime business since 2005 and as such the Corporation is not "Going Concern". As the Corporation could not pay the Bond liabilities, it obtained loans from Government to the extent of Rs.136.49 Cr. Besides this the Corporation has not paid Guarantee Fee of Rs.32.98 Cr. to

the Government of Maharashtra and not refunded deposit amount of Rs.40 Cr. received from MMRDA. The total liabilities of these along with:interest upto March, 2022 was to the extent of Rs.672.76 Cr.

Though the Corporation has settled dues of SIDBI and IDBI under OTS, both the institutions have demanded delayed period interest of Rs. 7.29 Cr. and Rs. 1.77 Cr. respectively since the Corporation could not pay their OTS amount within stipulated period.

The Corporation has recently received notice from the Income Tax Department vide its letter dtd.14.08.2023 asking therein to pay outstanding penalty amount of Rs.16.37Cr. There is every likelihood of attachment on the properties of the Corporation if the Corporation fails to get decision in its favour in the court of law.

We wish to bring to your notice that since the employees of the Corporation have not taken timely follow-up and action for recovery of dues from the borrowers, the Corporation is still to recover total dues of more than Rs.2000.00 Cr. including interest. Since_the employees of the Corporation have not taken follow-up in the Court cases, the majority of the cases have been dismissed and the Corporation has lost opportunities in recovering the dues from the borrowers.

The employees of the Corporation have not paid GST amount though recovered from the clients with the results the GST registration of the Corporation was cancelled and the Corporation has so far paid penalty amount of about Rs.38.00 lakhs upto financial year 2018-19 and besides this, there will.be more penalty amount payable for subsequent financial years.

The employees of the Corporation have not finalized Balance Sheet and Profit & Loss Account from F.Y.2016-17 onwards with the results the Corporation was put up before pecuniary losses of about more than Rs.2.00 Cr. as the Corporation cannot now claim TDS amount deducted by its clients. The Corporation with the help of Contract employees have completed financial statement upto F.Y.2019-20.

The Corporation is not fulfilling any criteria of grant of 7" Pay Commission to the employees issued by the Government for the reasons that the Corporation has not submitted its Accounts to the Assembly upto F.Y.2017-18, the Corporation is not earning profit and there are no chances of earning profit after implementation of 7" Pay Commission, the Corporation is not declaring dividend at minimum 5% to its Shareholders and there is no relevance of the Corporation in the present scenario of having multiple options for availing loans to the borrowers.

The present monthly salary of 8 employees on the roll of the Corporation is Rs.7.27 lakhs. This means average salary of each employees is

Rs.0.91 lakh. Besides the salary, the Corporation is paying annually about Rs.15,000/- to each employees towards reimbursement of Medical Expenses, Mobile Bill, Tea expenses, Uniforms, Shoe and Umbrella allowances etc.

The recoveries from the borrowers have completely dried up as the employees of the Corporation have not taken proper follow-up in the past and the present Staff and Administrative cost is somehow arranged out of rent recoveries only.

We further wish to inform you that though the Board of the Corporation at its meeting held on 05.07.2015 decided to give retrenchment to all employees considering the financial position, the Corporation have on humanitarian ground continued the activities of the Corporation for more than 8 years. The Government of Maharashtra is time and again asking the Corporation to close its activities at earliest. With very delicate financial position, accumulative losses, various liabilities, the Corporation cannot continue the activities by sustaining further financial burden.

We therefore request you to impress upon the employees about the present precarious position of the Corporation and to dedicate their services with this quite reasonable average monthly salary of Rs.0.91 lakh plus other perks.

7) From the above reasons, it appears that there were only 8 employees on the rolls of the Corporation as on the date of issuance of communication dated 13 September 2023. MFSC is unable to implement Pay Commission recommendations even qua the said 8 employees. The reasons cited in the impugned communication depict precarious financial position of MFSC. It appears that the MFSC had already discontinued its prime business since the year 2005 and has not been able to pay the bond liabilities. It is continuously incurring losses since Financial Year 1996-97 with accumulated losses of more than Rs.800 crores. It has secured several loans from the Government and has not been able to repay the same. As on March 2022, liability to pay principal amount and interest was to the tune of Rs.672.76 crores. The MSFC has received notice from IT Department on 14 August 2023 for outstanding penalty amount of Rs.16.37 crores which MSFC is not in a position to pay. The MSFC is admittedly not earning any profits and as per the impugned communication, there is no likelihood of it earning any profits after implementation of the 7th Pay Commission. The Government of Maharashtra has time and again directed closure of activities of MSFC. For these reasons, MSFC has expressed inability to implement the recommendations of 7th Pay Commission.

8) By Government Resolution dated 4 August 2021, the State Government has directed implementation of recommendations of 7th Pay Commission by all public sector undertakings in the State. However, implementation of 7th Pay Commission recommendations is subject to various conditions, which are as under :

> (१) i) राज्य सार्वजनिक उपक्रमांपैकी वाणिज्यिक उपक्रम व शासनाच्या व्यवस्थापकीय अनुदानावर अवलंबून असलेल्या उपक्रमातील अधिकारी/ कर्मचारी यांना ७ व्या वेतन आयोगाप्रमाणे सुधारित वेतनश्रेणी लागू करण्याबाबत उपक्रमांच्या संचालक मंडळाने मान्य केलेल्या प्रस्तावावर प्रशासकीय विभागाने सहमतीने निर्णय घ्यावा.
> ii) राज्य सार्वजनिक उपक्रमांनी सन २०१७ - २०१८ पर्यंतचे लेखे विधानमंडळास सादर केलेलेअसावेत.
> iii) सार्वजनिक उपक्रम जे वाणिज्यिक स्वरूपाचे असून नफ्यात चालत आहेत व ७ व्या वेतन आयोगामुळे येणारा आर्थिक भार स्वबळावर भागवून पुढील ३ वर्ष नफ्यात राहतील अशी अपेक्षा आहे, अशा उपक्रमांच्या बाबतीत राज्य शासनाकडून कोणत्याही प्रकारची आर्थिक तरतूद उपलब्ध करून दिली जाणार नाही.
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> वाणिज्यिक स्वरूपातील नफ्यातील उपक्रमांनी लेखे अंतिम झाल्यानंतर संबंधित आर्थिक वर्षामध्ये प्राप्त झालेल्या नफ्याच्या किमान ५% अथवा त्यापेक्षा अधिक अश्या उचित दराने लाभांश जाहिर करणे बंधनकारक आहे.
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> (२) वरील (१) येथील निकषाच्या पूर्ततेच्या अधीन राहून राज्य सार्वजनिक उपक्रमांतील अधिकारी/ कर्मचाऱ्यांना ७ व्या वेतन आयोगाप्रमाणे सुधारित वेतनश्रेणी
> दि.१ जुले, २०२१ पासून अनुज्ञेय राहील.
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> (३) राज्य सार्वजनिक उपक्रमांस ७ वा वेतन आयोग लागू करताना येणारा आर्थिक भार पेलण्याची उपक्रमाची क्षमता, उपक्रमाची उपयुक्तता व कार्यक्षमता विचारात घेऊन प्रशासकीय विभागाने वित्त विभागाच्या सहमतीने उपक्रमनिहाय सुधारीत वेतनश्रेणी लागू करण्याचा निर्णय घ्यावा.

२. वरील परिच्छेदात नमूद केलेले निकष जे सार्वजनिक उपक्रम पूर्ण करीत असतील, अश्याच उपक्रमातील कर्मचाऱ्यांना सुधारीत वेतनश्रेणी लागू करण्याबाबतचे प्रस्ताव संबंधित प्रशासकीय विभागांनी तपासून, वित्त विभागाच्या सहमतीसाठी सादर करावेत.

9) Thus, one of the vital conditions for implementation of Pay Commission recommendations is that the concerned Corporation must be in profits and in a position to bear the financial burden arising out of Pay Commission recommendations and should also be in a position to remain in profits for the next 3 years. The State Government has clearly expressed inability to provide financial assistance for implementation of Pay Commission recommendations. Another important criteria prescribed under the G.R. dated 4 August 2021 is ability of the Undertaking to bear the financial burden.

10) If the current financial position of MSFC is considered in the light of criteria prescribed in the G.R. dated 4 August 2021, it is difficult to conclude that the impugned decision dated 13 September 2023 suffers any error.

11) Recommendations made by Pay Commission need not be accepted by the employer. The 7th Pay Commission was constituted by the Central Government and the recommendations were not binding even on the Central Government. It is another matter that the Central Government on its own had decided to implement most of the recommendations of the 7th Pay Commission. The State Government has also implemented Pay Commission recommendations in respect of its employees. However, this does not mean that there is any compulsion on State autonomous bodies to implement the Pay Commission recommendations. Though State Government has directed implementation of 7th Pay Commission recommendations in State PSUs, the same is subject to various conditions as discussed above. Since the said conditions are not fulfilled in the present case, this Court would not be justified in issuing writ of mandamus against MSFC directing implementation of 7th Pay Commission recommendations.

12) In this regard, reliance by Mr. Patki on judgment of the Apex Court in ***Officers & Supervisors of I.D.P.L. vs. Chairman & M.D., I.D.P.L. and Others***[1] is apposite. In paras-8, 9, 10 and 11 of the judgment, the Apex Court has held as under:

> **8.** We have carefully gone through the pleadings, the annexures filed by both sides and the orders passed by the BIFR and the judgments cited by the counsel appearing on either side. Learned counsel for the contesting respondent drew our attention to a recent judgment of this Court in *A.K. Bindal* v. *Union of India* [(2003) 5 SCC 163 : 2003 SCC (L&S) 620] in support of her contention. We have perused the said judgment. In our opinion, since the employees of government companies are not government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scales should be met by the Government. Being employees of the companies, it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners, in our view, cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. We are unable to countenance the submission made by Mr Sanghi that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay scales of the employees.
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> **9.** A Constitution Bench of this Court had examined the question of revision of wages of workmen in *Express Newspaper (P) Ltd.* v. *Union of India* [AIR 1958 SC 578] . This Court laid down the following principles for fixation of rates of wages: (AIR p. 605, para 73)
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> "(*1*) that in the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration

[1] (2003) 6 SCC 490

except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity;

(*2*) that the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross-section of the industry; and

(*3*) that the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest-paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product — no doubt against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business."

10. The same question was again examined in *Hindustan Times Ltd.* v. *Workmen* [AIR 1963 SC 1332] and this Court gave the following reasons: (AIR p. 1336, para 7)

"*7.* While industrial adjudication will be happy to fix a wage structure which would give the workmen generally a living wage economic considerations make that only a dream for the future. That is why the Industrial Tribunals in this country generally confine their horizon to the target of fixing a fair wage. But there again, the economic factors have to be carefully considered. For these reasons, this Court has repeatedly emphasized the need of considering the problem on an industry-cum-region basis, and of giving careful consideration to the ability of the industry to pay."

11. In our view, the economic capability of the employer also plays a crucial part in it, as also its capacity to expand business or earn more profits. The contention of Mr Sanghi, if accepted, that granting higher remuneration and emoluments and revision of pay to workers in other governmental undertakings and, therefore, the petitioners are also entitled to the grant of pay revision may, in our opinion, only lead to undesirable results. Enough material was placed on record before us by the respondents which clearly shows that the first respondent had been suffering heavy losses for the last many years. In such a situation the petitioners, in our opinion, cannot legitimately claim that their pay scales should necessarily be revised and enhanced even though the organization in which they are working are making continuous losses and are deeply in the red. As could be seen from the counter-affidavit, the first respondent company which is engaged in the manufacture of medicines became a sick industrial company for various reasons and was declared as such by the BIFR and the revival package which was formulated and later approved by the

> BIFR for implementation could not also be given effect to and that the modifications recommended by the Government of India to the BIFR in the existing revival package was ordered to be examined by an operating agency and, in fact, IDBI was appointed as an operating agency under Section 17(3) of SICA. It is also not in dispute that the production activities had to be stopped in the two major units of the company at Rishikesh and Hyderabad w.e.f. October 1996 and the losses and liabilities are increasing every month and that the payment of three instalments of interim relief could not also be made due to the threat of industrial unrest and the wage revision in respect of other employees is also due w.e.f. 1992 which has also not been sanctioned by the Government of India.

13) In our view therefore, the employees of MSFC do not have any vested right to demand implementation of recommendations of 7th Pay Commission. Considering the precarious financial position of MSFC, the demand of the Union has rightly been rejected vide communication dated 13 September 2023.

14) Reliance by Mr. Gavnekar on order passed by this Court on judgment dated 17 December 2013 in Writ Petition No. 1508 of 2013 does not cut any ice. The judgment is delivered in relation to implementation of recommendations of 6th Pay Commission. At that time, the Board of Directors of MSFC had adopted a Resolution for implementation of recommendations of 6th Pay Commission. However, approval of the State Government was sought for implementation of the said Resolution. Interpreting provisions of Section 23 of the State Financial Corporations Act, 1951, the Division Bench held that prior approval of the State Government was not necessary for implementation of the Board Resolution. However, in the present case, far from adopting any Resolution for implementation of 7th Pay Commission, the Board of MSFC has actually taken decision to the contrary. Therefore, reliance by Mr.

Gavnekar on judgment of the Division Bench dated 17 December 2013 is inapposite.

15) Considering the above position, we are unable to trace any illegality in the impugned communication dated 13 September 2023 and Circular dated 2 February 2021. The Writ Petition is devoid of merits. It is accordingly dismissed with no order as to costs.

[SANDEEP V. MARNE, J.] **[S.M. MODAK, J.]**