

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7838 OF 2011

Association of College and
University Superannuated Teachers
(Maharashtra) A society registered
at No. MHA-853/2009 Under the
provisions of the Societies
Registration Act, having its
Heard Office at 20, Sawarkarnagar
N-5 (South) Cidco, Aurangabad
Through its President and
Convenor, Principal
Dr.M.A.Wahul ...PETITIONER.

VERSUS

The State of Maharashtra
Through its Secretary,
Higher and Technical
Education Department,
Mantralaya, Mumbai
and others. ...RESPONDENTS.

...

Shri S.V.Advant, Advocate for Petitioner.
Shri K.B.Choudhari, AGP for Resp. Nos. 1 & 2
Shri Alok Sharma, ASG for respondent No.5.

...

CORAM: B.P.DHARMADHIKARI AND
SUNIL P.DESHMUKH, JJ.

DATE : 04.07.2012

P.C.:

. Rule, Rule made returnable forthwith. Heard
learned counsel for the parties.

2. Advocate for the petitioner points out controversy is concluded in favour of the petitioners, by order dated 22.08.2011, delivered in Writ Petition No. 9054 of 2010 and 2868 of 2011 and that judgment was questioned by the State Government before the Hon'ble Apex Court in SLP(Civil) 8399-8400/2012. The Hon'ble Apex Court has on 09.05.2012 dismissed the SLP. He, therefore, submits that petitioners are entitled to refund in accordance with the directions contained in para No. 6 of that order.

3. The learned AGP is opposing the same, however, he is not in position to point out any factual error or mistake in the position disclosed by the Advocate Mr. Advant. Learned ASG states that though stagnation increment is not condition of service controversy appears to have been covered by the orders of this Court.

4. The question whether stagnation increment is condition or not condition of service is not relevant for adjudication of present controversy. The petitioners have been extended that benefit and after their retirement, its recovery was sought. Identical recovery was questioned in above mentioned two Writ Petitions and this Court has quashed the same, by order dated 22.08.2011.

5. The controversy involved in present Writ Petition is covered by said adjudication. Accordingly directions as contained in para no. 6 of the earlier order dated 22.08.2011 needs to be issued here also.

6. Thus, we hold that respondents are not entitled to recover the amount from pension of the petitioners. Amount already recovered shall be refunded to the concerned employees within a period from three months from today with interest @ 12% p.a.. Rule is made absolute in above terms. No order as to costs.

Sd/-

[SUNIL P.DESHMUKH, J.]

MTK

Sd/-

[B. P. DHARMADHIKARI, J.]