

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3270 OF 2013

Prasad s/o Mahadeo Sutar

- PETITIONER

VERSUS

The State of Maharashtra & Ors.

- RESPONDENTS

Mr.Anant R.Devkate, Advocate for Petitioner;

Mr.DV Tele,AGP for Respondent-State.

Mr.ST Shelke, Advocate for Respondent Nos.3 & 4;

**CORAM : S.S.SHINDE &
P.R.BORA,JJ.**

DATE : 7th April,2015.

PER COURT:

1) Heard. This writ petition is filed with
following prayers, -

“(B) To quash, declare and set
aside the decision of the
Respondent Nos. 3 and 4 to extend
the probation of the petitioner for
one year on count of unsatisfactory
performance and to hold him
ineligible for annual increments
for such extended period of
probation, by issuing writ of

certiorari or any other writ or any other order;

(C) To direct the Respondent Nos. 3 and 4 to grant/pay the increments for the period of probation to the petitioner in accordance with prevailing pay scale, by issuing writ of mandamus or any other writ or any other order."

2) Learned Counsel appearing for the petitioner invited our attention to provisions contained in Rule 39(1)(a)(iii) of The Maharashtra Civil Services (Pay) Rules, 1981 (for short, the said Rules.) He submits that the impugned order refers to Rule 39(1) of the said Rules, however, it ignores Rule (iii) of the said Rules. It is submitted that the petitioner has satisfactorily completed his probation period and, therefore, he was entitled to receive 2nd increment. It is further submitted that the Respondent/College has also assessed performance of the petitioner, as reflected in the reports forwarded by it to the respondents/authorities.

He has also invited our attention to Exhibit-D at pages 22 to 28 of the petition and submits that, in fact, there was no reason for extending the probation period of the petitioner. He further submits that the college authorities have also certified that performance of the petitioner was satisfactory. Therefore, relying upon the pleadings/grounds raised in the petition, annexures thereto, the counsel for the petitioner submits that the petition deserves to be allowed.

3) On the other hand, learned Counsel appearing for Respondent Nos.3 and 4, inviting our attention to the impugned communication and the reasons assigned therein, submits that the impugned order is a reasoned order and, therefore, this court may not interfere with the impugned communication, in extra-ordinary writ jurisdiction. He further invited our attention to clause 5 of the appointment letter and submits that since the petitioner even till date did not possess/acquire the degree of M.E./M.Tech. so also, the petitioner did not acquire the said

qualification within a period of five years from the date of his appointment, he is not entitled for grant of increment. He also invited our attention to the averments set out in the affidavit in reply; Exhibit-D and in particular page 26, relating to portion of adverse remarks against the petitioner, and submits that the probation period of the petitioner was rightly extended by the respondents.

4) We have given careful consideration to the submissions advanced by the counsel for the petitioner and counsel appearing for the respondents. Upon perusal of the provisions contained in Rule 39(1)(a)(i) of the said Rules, which provides that the 1st increment should be released on completion of one year of candidate's probation period and the subsequent increment should be released upon completion of the probation period satisfactorily.

5) In the present case, as rightly contended by Learned Counsel appearing for the

respondents, that on 1st July, 2009, 1st increment was granted in favour of the petitioner. Since the probation period of the petitioner was extended, the petitioner was not granted increment in the year 2010 and thereafter another increment was granted to the petitioner on 1st July, 2011 and on 1st July, 2012 subsequent increment was granted to the petitioner since the petitioner successfully completed the probation period. Therefore, in our opinion, the respondents have taken appropriate decision to release/grant the annual increments in favour of the petitioner on completion of the probation period.

6) The contention of the counsel for the petitioner that the college authorities have also certified satisfactory performance of the petitioner and, therefore, the respondents/authorities ought not have extended the probation period, has to be considered in the light of document at Exhibit-D from pages 22 to 28 of the compilation of the writ petition. It

appears that the college has certified satisfactory performance of the petitioner and at some time, there are adverse remarks against the petitioner in the same document. On perusal of page 26, it appears that the college itself has recommended to extend the probation period of the petitioner. Apart from that, the petitioner did not perform the examination duty assigned to him.

7) In view of the discussion made herein above, the petition sans merit, hence rejected.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/