

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3176 OF 2014

Sandu s/o Balaji Salve,
Age 68 years, Occ. Pensioner
R/o. House No.169, Nutan Vasahat
Ambad Road, Jalna
Tq. and District Jalna

...Petitioner

versus

1. The State of Maharashtra
Copy to be served with G.P.
High Court of Bombay, Bench
at Aurangabad, for Secretary
Urban development Department,
Mantralaya, Mumbai – 32.
2. The Secretary,
Urban Development Department,
Mantralaya, Mumbai 32.
3. The Director of Municipal Administration
Government Transport Service Building
3rd Floor, Sir Gouskhanwala Marg,
Worli, Mumbai 30.
4. The Divisional Commissioner and
Regional Director of Municipal
Corporation, Delhi Gate,
Aurangabad
Tq. and District Aurangabad
5. The District Collector, Jalna
District Jalna
6. The Municipal Council,
Jalna, District Jalna
Through its Chief Officer

...Respondents

...
Advocate for Petitioners : Mr. Irale Patil D. R.
AGP for Respondents: Mr. K.G. Patil
Advocate for Respondents : Mr. S.R. Bagul

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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 22nd JUNE, 2015

JUDGMENT (PER S.V. GANGAPURWALA, J.):

1. Mr. Irale Patil, learned counsel for the petitioner submits that the petitioner was initially appointed under the Zilla Parishad. In the year 1978, his services were transferred to the Municipal Council, Jalna as per the option given by him. The petitioner was promoted as Head Master in the year 1980. Thereafter, the petitioner was promoted as Assistant Deputy Education Inspector. The petitioner was drawing salary on the post of Assistant Deputy Education Inspector in the pay scale of Rs.395-800 and thereafter the petitioner was paid salary in the pay scale of Rs.1640-2900. The said pay scale was as per the 4th Pay Commission and as per the 5th Pay Commission the salary of the petitioner was fixed in the pay scale of Rs.5500-9000. According to the learned counsel, on attaining the age of superannuation, the petitioner retired on 31.3.2004. The learned counsel submits that after retirement and after 16 years of the petitioner being given the pay scale of Rs.1640-2900, the respondents reduced the pay scale to Rs.1400-2600.

According to the learned counsel the order passed by the respondent authorities reducing the pay scale is illegal. The said order could not have been passed as the same is not in consonance with the relevant Government Resolutions. The Government Resolution dated 4.4.2000 would not apply, as the same is subsequent in point of time.

2. Mr. Patil, the learned Additional Government Pleader submits that as per the Government Circular dated 12.10.1998 the scale of the petitioner ought to have been in the pay scale of Rs.1400-2600. According to the learned A.G.P. the Collector has sanctioned the said post but the approval of the Director has not been taken. The learned A.G.P. submits that the pay scale was wrongly fixed by the Municipal Council and the same has been rightly corrected. In fact, the said post was to be filled in by nomination, however it was filled in by promotion. The same is irregular.

3. We have also heard Mr. Bagul the learned counsel for respondent Municipal Council.

4. We have considered the submissions canvassed by the learned counsel for the respective parties. It is not disputed by any of the parties that the petitioner was promoted as Assistant Deputy Education Inspector in the pay scale of Rs.395-800. The same is

also clear from the reply filed by the State. In the year 1991 the petitioner was brought in the pay scale of Rs.1640-2900 and thereafter in the pay scale of Rs.5500-9000 and the same is continued till the date of retirement of the petitioner on attaining the age of superannuation. The respondent relies on the Circular dated 12.10.1998 to state that the person working as Assistant Deputy Education Inspector would draw salary in the pay scale of Rs.335-680 and revised pay scale would be Rs.1400-2600 and the same is sought to be made applicable to the petitioner.

5. The petitioner was already brought on the pay scale of Rs.395-800. Even as per the Government circular dated 12.10.1998, relied upon by the respondents, for the person in pay scale of Rs.395-800 revised pay scale of Rs.1640-2900 was applicable. The petitioner undisputedly was drawing salary in the pay scale of Rs.395-800 and naturally revised pay scale was of Rs.1640-2900 and the same could not have been reduced. The pay scale of Rs.1400-2600 is for the employee who was earlier in the pay scale of Rs.335-680. The petitioner admittedly was drawing the pay scale of Rs.395-800 so naturally his revised pay scale was fixed at Rs.1640-2900. The petitioner has retired on attaining the age of superannuation in the month of March, 2004 and for almost 15 years, he was paid revised pay scale as per the Circular. For the first time in 2005 his pay scale

is sought to be reduced.

6. The question of filling up of post by nomination would not be germane at this stage. The petitioner was already promoted in the year 1991 and had worked up to 31.3.2004 i.e. till the date of his retirement on attaining the age of superannuation. It is not disputed by the respondents that the petitioner was working on the said post. Considering all aforesaid conspectus of the matter, the impugned order cannot sustain and the same is hereby set aside.

7. Rule is accordingly made absolute in terms of prayer clause "B" and "B-1". Writ petition stands disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

rlj/

