

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

WRIT PETITION NO.3773 OF 2014

Dr.Sheshrao s/o Rajaram Hande
Age: 66 Yrs., occu. Pensioner,
R/o H.No.3-14, Dehadkarwadi,
Old Jalna, District Jalna.

- PETITIONER

VERSUS

- 1) The State of Maharashtra,
through Secretary,
Urban Development Deptt.,
Mantralaya, Mumbai.
- 2) The Secretary,
Urban Development Deptt.,
Mantralaya, Mumbai.
- 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 Dist. Aurangabad.
- 5) The District Collector,
Jalna, Dist.Jalna.
- 6) The Municipal Council,
Jalna, Dist. Jalna
Through its Chief Officer.

- RESPONDENTS

Mr.D.R.Irale-Patil, Advocate for Petitioner;
Mr.G.R.Ingole, AGP for State;
Mr.S.R.Bagal, Advocate for Respondent No.6.

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

DATE OF RESERVING JUDGMENT : 27th MARCH, 2015.

DATE OF PRONOUNCING JUDGMENT: 15th APRIL, 2015.

JUDGMENT (PER:-P.R.BORA, J.)

1) Heard. The petitioner has filed the present petition with following prayers, -

“(i) The Hon'ble court may be pleased to pass necessary order to quash and set aside the impugned order No. NPPS/Jalna/ShriHande/W.P.6275/2013/Desk-6, dated 15.1.2014, passed by the Director of Municipal Administration, State of Maharashtra, Mumbai-30;

(ii) Quashing and setting aside the impugned order No. NPPS/Jalna/ShriHande/W.P.6275/2013/Desk-6, dated 15.1.2014, passed by the Director of Municipal Administration, State of Maharashtra, Mumbai-30, with further direction to Respondent No./6 to submit a fresh proposal providing benefit of pay scale 2200-4000 under 4th Pay Commission and under pay scale of Rs.8,000-13,500 under 5th Pay Commission and Rs. 15,600-39,100 under 6th Pay commission from its applicability through

Collector Jalna to the Respondent No.3, who will accord approval and subsequently, recast the pension and pensionary benefits in time framed and provide all benefits with interest to the petitioner in the interest of justice;

(iii) Pending hearing and final disposal of this writ petition, the respondents may kindly be directed to provide the pensionary benefits based on the pay scale 2200-4000 under 4th Pay Commission and under pay scale of Rs. 8,000-13,500 under 5th Pay commission and Rs. 15,600-39100 under 6th Pay Commission, recasting the existing pension."

2) It is the case of the petitioner that since he possesses qualification of MBBS, the pay applicable to the post of Medical Officer in the pay scale of Rs. 8,000-13500 ought to have been made applicable to him while making fixation of his pay as per the recommendations of Vth Pay Commission. It is not in dispute that the petitioner entered into services of Jalna Municipal Council w.e.f. 15.6.1976 in the pay scale of Rs.325-880/-. There is further no dispute that in the year 1996, the petitioner got voluntary retirement after having served for more

than 20 years.

3) After the recommendations of Vth Pay Commission were accepted, the petitioner applied for re-fixation of his pay by making an application to Jalna Municipal Council and accordingly his application was favourably considered. The documents filed on record show that Jalna Municipal Council has passed certain resolutions, recommending pay scale of Rs.8,000-13500 to the petitioner as per Vth Pay commission. However, the said proposal was turned down by Collector, Jalna. The petitioner therefore filed an appeal before Director of Municipal Administration and the same also came to be dismissed on 15.1.2014. The said decision is challenged in the present petition and consequential reliefs are sought.

4) Shri Irale-Patil, Learned Counsel appearing for the petitioner invited our attention to Government Resolution dated 28th December, 1989, to urge that the Medical Officers possessing MBBS qualification were provided with revised pay scale in the pay scale of Rs. 2200-4,000/-, whereas, the

Medical Officers, possessing the degrees other than MBBS, like BAMS or equivalent to that, were provided the pay scale of Rs.2,000-3,500/- w.e.f. 1.1.1986.

. Learned Counsel submitted that since the petitioner was possessing qualification of MBBS, he was also entitled to pay scale of Rs.2200-4,000/- as per the aforesaid Government Resolution dated 28th December, 1989. Learned Counsel further submitted that accordingly, at the time of making applicable IVth Pay Commission, the pay of the petitioner ought to have been fixed in the pay scale of Rs. 2200-4,000/- and after the recommendations of Vth Pay Commission were accepted, the pay of the petitioner ought to have been fixed in the pay scale of Rs. 8,000-13,500/-. Learned Counsel further submitted that to the Health Officer working in Pandharpur Municipal Council, the pay scale of Rs. 8,000-13,500/- has been made applicable and as such the petitioner was also entitled for application of said pay scale. Learned Counsel submitted that on some wrong interpretation of the relevant Rules and recommendations of Pay Commission, Respondent Nos. 3 and 5 have wrongly revised such pay scale to the detriment of the petitioner. Learned Counsel

submitted that in view of Government Resolution dated 28th December, 1989 and considering the fact that in Ichalkaranji and Pandharpur Municipal Councils, the pay scale of Rs. 8,000-13,500 has been made applicable to the persons working on the post of Health Officer, the same pay scale may be made applicable to the petitioner and accordingly pay fixation be directed and further directions may be given to the Respondents for releasing said payment in favour of the petitioner.

5) Shri Nandkumar Deshpande, working as District Project Officer, District Municipal Administrative Authority in the office of Collector, Jalna, has filed affidavit in reply on behalf of Respondent Nos. 3 and 5. These respondents have denied the contentions raised in the petition and have supported the impugned order dated 15.1.2014.

6) Learned AGP appearing on behalf of Respondent Nos. 3 and 5 submitted that the post of Health Officer and the Medical Officer are two different posts and cannot be equated with each other. Learned AGP, therefore, submitted that the

petitioner is not entitled for any relief and his representation-cum-appeal has been rightly rejected by Respondent No.3.

7) We have carefully considered the submissions advanced on behalf of the parties. We have perused the material on record. It is not in dispute that the petitioner entered into services of Municipal Council, Jalna as the Health Officer and got voluntarily retired from the said post in 1996. In the entire arguments advanced on behalf of the petitioner, the main thrust was on Government Resolution dated 18th December, 1989 to urge that since the petitioner was possessing qualification of MBBS, he ought to have been provided with pay scale of Rs.2200-4,000/-. However, there is substance in the contention raised on behalf of Respondent Nos. 3 and 5, which has also been reflected in the impugned order that the said pay scale was never made applicable to the persons working on the post of Health Officer. The Government Resolution dated 28th December, 1989, reveals that the pay scale of Rs. 2200-4,000/- was made applicable to the persons working on the post of Medical Officers, falling in

category of class-II officers, possessing qualification of MBBS. As stated earlier, throughout the petitioner has admittedly worked as health Officer, which is a class-III post. The petitioner has not placed on record any material to show that any point of time any decision has been taken by the Government, giving equivalence to the post of Health Officers with the post of Medical Officer. In the circumstances, only on the ground that the petitioner was possessing qualification of MBBS, his claim for higher pay scale, which was admittedly made applicable to the persons working on the post of Medical Officer, in Class-II grade, cannot be accepted.

8) In the impugned decision, Respondent No.3 has aptly assigned the reasons for not accepting the contention of the petitioner. The discussion made in paragraph 7 of the impugned order reveals that the petitioner was initially appointed, vide order dated 16.8.1976, in the pay scale of Rs. 325-880/- on the post of Health Officer. It is further revealed that at the relevant time for the post of Health Officer, the said pay scale was applicable. Thereafter,

according to recommendation of Bhole Pay Commission, the pay scale of Rs.600-1150/- was made applicable vide order dated 1.6.1979. In the recommendations of 4th Pay Commission in the Book P.-3, the pay scale equivalent to pay scale according to Bhole Pay Commission, is provided. According to the said Book, the pay scale recommended is Rs.2,000-3,500/- to the post of Health Officer, which is in Bhole Pay commission was Rs. 600-1150. Accordingly, vide order dated 12.8.1991, the petitioner was given pay scale of Rs. 2,000-3,500/-. In Book No. 254 pay scale according to 5th Pay Commission for the post of Health Officer are provided. According to which, for the pay scale of Rs. 2,000-3,500/-, which were made applicable in 4th Pay Commission, equivalent pay scale at Rs. 6,500-10,500/- is provided. In the circumstances, vide order dated 25.1.2005, the pay in the pay scale of Rs. 6,500-10,500, was made applicable to the p. Against the said decision, the petitioner has also preferred an appeal to the Minister. However, the same was rejected by the Minister vide order passed on 21.11.2006.

9) Having gone through the particulars, as

above, we do not find that any mistake has been committed by Respondent No.3 in rejecting the request of the petitioner. In so far as attempt of the petitioner to urge that in certain municipal councils, more particularly in Pandharpur Municipal Council, pay scale of Rs.8,000-13,500/- has been made applicable to the post of Health Officer is concerned, it has to be stated that on the basis of decision taken by one Municipal Council, it cannot be accepted that the same is to be followed by all the Municipal Councils in the State. Had in majority Municipal Councils in the State, the said pay scale would have been made applicable, the petitioner would have certainly provided the said information also.

10) For the reasons stated herein above, we do not find any merit in the petition the same stands dismissed.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

bdv/

fldr 10.4.15