

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

WRIT PETITION NO.5949 OF 2014

Kiran s/o Ramlal Thole,
Age 58 Years, Occu. Service,
Member, District Consumer Dispute
Redressal Forum, Collector Office,
Aurangabad.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Food, Civil Supplies & Consumer
Protection Department, Mantralaya,
Mumbai - 32
2. The Registrar (Admn.)
State Consumer Forum,
Maharashtra Mumbai.

...RESPONDENTS

...

Mr.Pradeep Deshmukh, Adv., h/f Mr.Y.P.Deshmukh,
Adv., for the petitioner.

Mr. D.V.Tele, AGP for respondent State.

...

CORAM: S.S.SHINDE

AND

P.R.BORA, JJ.

Date of reserving
the order: 27.4.2015.

Date of pronouncing
the order: 12-6-2015

...

PER COURT:-

1. The petitioner has filed the present petition seeking directions against respondents to fix his pay / remuneration as per Rule 157 (2) of the Maharashtra Civil Services (Pension)

Rules, 1982. The petitioner has also prayed for setting aside order dated 11.3.2014, passed by respondent no.2.

2. The petitioner is presently working as Non Judicial Member of the District Consumer Dispute Redressal Forum, Aurangabad. He has been appointed vide order dated 31.1.2013. Petitioner is a former employee of the Industrial Development Bank of India (hereinafter referred as 'IDBI'). He took voluntary retirement from the said Bank while he was working as Assistant General Manager in the said Bank. The petitioner is presently receiving honorarium at the rate of Rs.400/- (Rs. four hundred) per sitting while working as a Member, District Consumer Dispute Redressal Forum, Aurangabad. It is the case of the petitioner that since he has retired from I.D.B.I. from the post equivalent to the post of Under Secretary in the State Services, he is entitled to receive salary in the pay scale applicable to the post of Under Secretary, and his pay is required to be fixed as per Rule 157(2) of the M.C.S. Pension Rules, 1982. It is further case of the petitioner that one Shri R.K.Patil, who is working as a Member, District Consumer Dispute Redressal forum, Amravati, and who is the former employee of Bharat Sanchar Nigam Limited (B.S.N.L.), is receiving pay in the pay scale and the same has been made applicable to him as per Rule 157(2) of the MCS (Pension) Rules, 1982. It is, therefore, the case of the petitioner that since he stands at par with Shri R.K.Patil, the pay scale needs to be made applicable to him also.

3. Shri Mohan G.Chavan, Registrar (Legal), State Consumer Disputes Redressal Commission, Aurangabad Circuit Bench, has filed affidavit in reply on behalf of respondent nos. 1

and 2. The respondents have opposed the submission made in the petition and the prayer made therein. The respondents have contended that the pay of the petitioner cannot be fixed as per the provisions made in Rule 3(1) (a) of the Maharashtra Consumer Protection Rules, 2000, since the petitioner has not been retired from the services of the Government of Maharashtra. It is specifically contended that Rule 3(1)(a) applies only to the Member selected from the retired Under Secretaries or its equivalent posts in the Government of Maharashtra.

In so far as pay fixation of Shri R.K.Patil, Member, District Consumer Redressal forum, Amravati, is concerned, it is contended that the case of said Shri R.K.Patil is being re-examined, and if the pay fixation is found not in consonance with the provisions of Maharashtra Consumer Protection Rules, 2000, necessary action will be taken.

4. The petitioner has filed rejoinder to the affidavit in reply filed on behalf of respondent nos.1 and 2. In the rejoinder, the petitioner has raised a specific contention that the respondent has fixed the salary of at least eight members as per the provisions of Rule 3(1)(a) who were not holding the post of Under Secretaries but the posts held by the members were considered to be equivalent on the basis of comparison of their pay scales with the pay scale of Under Secretary. It is further contended that salary of the aforesaid eight members has been fixed as per Rule 3(1)(a) because their pay scales were found to be similar or more than that of the Under Secretaries. In so far as appointments of Shri R.K.Patil and Shri S.R.Sanap are concerned, the petitioner has contended as below:

"1. Mr. R.K.Patil, who was working as Sub-Divisional Engineer with BSNL, a company owned by Govt.of India. BSNL is a company formed as per Companies Act and since its majority shareholding belongs to Central Govt. it is a company belonging to the Central Govt. BSNL is a company owned by Central Govt and it is not a govt as such. Further, it is a company, therefore it is instrumentality of Central Govt. In this case also, the member is not retired from Govt.of Maharashtra but from a company belonging to Govt.of India.

2. Mr. S.R.Sanap who was working as Dy.Chief Regional Auditor with Bruhanmumbai Mahanagar Palika, Bruhan Mumbai Mahanagarpalikka is a local self-govt.body and not a Govt.of Maharashtra as such. This Mahanagarpalika is not a part of Govt.of Maharashtra. It's functions are carried out in name of Mahanagarpalika and not in name of Government of Maharashtra. But same is rightly considered as 'State' within the meaning of 'State' as contemplated under Article 12 of Constitution and therefore the pay is fixed as per provision referred above. "

Further, the petitioner has reiterated that the IDBI Bank is a Government Bank. The said contention has been elaborated by the petitioner and he has also placed on record certain documents evidencing that the IDBI Bank is a subsidiary of R.B.I. looking after industrial finances of the entire country and is, therefore, a Central Government undertaking.

5. Subsequently, the petitioner has also filed two additional affidavits wherein he has reiterated the facts stated in the petition as well as in the rejoinder.

6. Shri Pradeep Deshmukh, learned Counsel appearing for the petitioner submitted that though a specific order was passed by this Court on 3rd March, 2015, directing learned A.G.P. to explain as to how the petitioner who retired as an employee of the IDBI Bank would not be on the same pedestal as that of an employee retiring from BSNL or any other Government institution, the respondents have failed in providing such explanation. Learned Counsel further

submitted that though in the reply filed on behalf of respondent nos. 1 and 2 on 26th August, 2014, it has been stated that the pay fixation of Shri Ramdas K.Patil, Member of the District Consumer Dispute Redressal Forum, Amravati, is being re-examined and further that if the said pay fixation is not found in consonance with the provisions of Rule 3(1)(a), necessary action will be taken, no further progress has been brought on record by the respondents whether the said aspect has been examined by the respondents and, if yes, what was the outcome of it. Learned Counsel further submitted that the ground on which the respondents have rejected the claim of the petitioner for making him applicable the pay scale are erroneous, irrational and unsustainable. Shri Deshmukh further submitted that though Shri R.K.Patil and Shri S.R.Sanap have not been retired from the services of the Government of Maharashtra, they have been appointed as members of the Amravati and Mumbai Up-Nagar Consumer forums, respectively, and their pay has been fixed in the pay scale taking into account their basic pay at the time of their retirement. Learned Counsel submitted that the same criteria needs to be applied in the case of the present petitioner and his salary needs to be fixed in the pay scale applicable to him considering the pay which the petitioner was drawing at the time of his retirement.

7. Shri D.V.Tele, learned AGP appearing for respondents submitted that Rule 3(1)(a) of the Maharashtra Consumer Protection Rules, 2000, prescribes fixation of pay as per Rule 157(2) of the Maharashtra Civil Services (Pension) Rules, 1982, only in respect of the members who may be selected from the retired Under Secretaries or its equivalent

posts in the Government of Maharashtra on full time basis. Learned A.G.P. submitted that since the petitioner has not retired from the services of the Government of Maharashtra, he cannot seek his pay to be fixed as per Rule 3(1)(a). Learned A.G.P. therefore prayed for dismissal of the petition.

8. The request of the petitioner to make him applicable the pay scale has been rejected by the respondents vide their communication dated 11.3.2014 on the ground that the post which the petitioner was holding before his appointment to the post of Member, District Consumer forum, Aurangabad, is not equivalent to the post of Under Secretary, in the services of the Government of Maharashtra. The petitioner has filed copy of the office order by which the pay scale of Ramdas Kisanrao Patil, Member, District Consumer Forum, Amravati, was fixed. In the said order, the pay scale of Under Secretary in the services of Government of Maharashtra is mentioned. It is shown as Rs.15,600-39,100 with grade pay Rs.6600/-. The aforesaid order reveals that Shri Ramdas Kisanrao Patil was receiving the pay, at the time of his retirement and before joining the post of Member, District Consumer Forum, in the pay scale of Rs.24,900-Rs.50,500/- while he was in service of BSNL. The aforesaid order further reveals that considering the fact that the pay which was being drawn by said Shri Ramdas Kisanrao Patil at the time of his retirement was higher than the pay scale being drawn by the Under Secretary in the services of the Government of Maharashtra, said Shri Ramdas Kisanrao Patil was held to be entitled for application of the pay scale in accordance with Rule 3(1)(c) and, accordingly, his pay has been fixed taking into account pay of Rs.46,880/- which said Shri Patil was drawing on the date of his retirement from the

services of BSNL. Said Shri Ramdas Kisanraao Patil was admittedly not in the services of the Government of Maharashtra. In spite of that, his pay has been fixed taking into account the fact that on the date of retirement he was drawing the salary in the pay scale higher than that of Under Secretary in the Government of Maharashtra.

9. Similar appears to be the case of Shri S.R.Sanap who has been appointed as a Member on the District Consumer Forum, Mumbai Upnagar. Shri Sanap was working in Greater Bombay Corporation on the post of Deputy Chief Regional Auditor. Pay of Shri Sanap has also been fixed in the pay scale, obviously, for the reason that he was drawing wages in the higher pay scale than that of Under Secretary on the date of his retirement.

10. From the facts which have come on record, it is evident that though Shri Ramdas Kishanrao Patil and Shri S.R.Sanap have not retired from the services of the Government of Maharashtra, they have been appointed as the Members, respectively, on Amravati and Mumbai Upnagar District Consumer Redressal Forums and their pay has been fixed under Rule 157(2) of the Maharashtra Civil Services (Pension) Rules, 1982. It is further evident that both these members are held to have held the posts in their respective departments from where they got retirement equivalent to the post of Under Secretary in the Government of Maharashtra on the basis of the pay which they were drawing on the date of their retirement.

11. In the above circumstances, we find substance in the contention raised by the present petitioner that his case also needs to be considered on the similar lines and at par with said Shri Ramdas Kishanrao Patil and Shri Sanap. The documents placed on record by the petitioner sufficiently show that the IDBI Bank is the Central Government undertaking as is BSNL. It is not disputed that the petitioner was drawing his salary in the pay scale of Rs.25,700/- 1000(9)-26700-1100 (12)-39900-1250(6)-47400 while working as Assistant General Manager, IDBI. The aforesaid pay scale is definitely higher than the pay scale of the Under Secretary in the services of the Government of Maharashtra. As such, it prima facie appears that the request of the petitioner deserves to be considered for making him applicable the pay scale as has been applied in the case of Ramdas Kishanrao Patil and Shri Sanap. We, therefore, find it appropriate to direct the respondents to consider the case of the present petitioner as has been done in the cases on the lines of Shri Ramdas Kisanrao Patil and Shri S.R.Sanap and to take appropriate decision. Hence, the following order:

ORDER

a) The respondents shall consider the request of the present petitioner for fixing his pay under Rule 157(2) of the Maharashtra Civil Services (Pension) Rules, 1982, as was done in the cases of Shri Ramdas Kishanrao Patil and Shri S.R.Sanap and take appropriate decision within two months from the date of this order.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

...

AGP/-