

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

WRIT PETITION NO.6977 OF 2015

Satyabhama Laxmikant Khose,
Age 61 years, Occ. Retired,
R/o. Plot No.71, Near Telephone Exchange,
Shivaji Nagar, Garkheda, Aurangabad.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai 32
2. The Under Secretary,
Law and Judiciary Department, M.S.,
Mantralaya, Mumbai 32.
3. The Principal District Judge,
District and Sessions Court, Aurangabad.
4. The Registrar,
District and Sessions Court, Aurangabad.

...RESPONDENTS

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Mr.A.C.Deshpande, Advocate, for petitioner.
ShriS.K.Tambe, A.G.P., for respondent State.
Shri C.K.Shinde, Advocate for respondent nos. 3
and 4.

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CORAM: S.S.SHINDE

AND

P.R.BORA, JJ.

Date: November 24th, 2015

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**Date of reserving
the judgment: 20.11.2015
Date of pronouncing
the judgment: 24.11.2015**

JUDGMENT: (Per P.R.Bora, J.)

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the parties.
2. Petitioner has filed the present petition seeking directions against the respondents to permit her to exercise the option to get fixed her pay in the promoted post of Superintendent with effect from the date of her next increment in the immediate previous post of Assistant Superintendent which was due in July, 2011 and to give her all consequential benefits.
3. The petitioner was in the employment of respondent no.3 and got retired after attaining the age of superannuation while on the post of Superintendent, District and Sessions Court, Aurangabad. In the present petition it is the case of the petitioner that when she was promoted to the post of Superintendent and joined the said promoted post on 12.5.2011, since she was not asked to exercise an option as regards to the fixation of her pay on the said promoted post, and consequently, therefore, as she did not exercise such option, her pay on the promoted post was fixed in the month of June, 2011, vide order dated 29.6.2011, issued by respondent

no.3. It is the further contention of the petitioner that if she would have given an option to fix her pay on the promoted post with effect from the date of her next increment in the old / lower post, her pay would have been fixed on higher side and consequently, on her retirement, her pension also would have been fixed on higher side. It is the further contention of the petitioner that the mistake so occurred was noticed when her pension papers were forwarded to the Office of the Accountant General.

It is the further contention of the petitioner that after noticing the aforesaid discrepancy, she immediately applied for permitting her to belatedly exercise the option for fixing her pay on the promotional post by condoning the delay which has occasioned in exercising such option and to revise her pay accordingly. It is the further contention of the petitioner that the representation so made by her in this regard was forwarded by respondent no.3 to the Government, however, the Government vide its communication dated 1.9.2014, has turned down the request of the petitioner. The petitioner has, therefore, filed the present petition.

4. Heard Shri Abhishek C.Deshpande, learned Counsel appearing for the petitioner , Shri S.K.Tambe, learned A.G.P. for

respondent nos. 1 and 2 and Shri C.K.Shinde, learned Counsel appearing for respondent nos. 3 and 4. Learned A.G.P. has supported the impugned order dated 1.9.2014. Shri C.K.Shinde, learned Counsel appearing for respondent nos. 3 and 4, submitted that since respondent nos. 3 and 4 do not possess the power to condone the delay caused in submitting the options for fixation of pay, the representation so submitted by the petitioner was forwarded to the Government for taking appropriate decision. The learned Counsel further submitted that the petitioner herself is responsible for not submitting the option for pay fixation within the prescribed time, and no blame in that regard can be attributed on the part of respondent nos. 3 and 4. Learned Counsel further submitted that the petitioner has spent more than 31 years in the Government service and during her service period she was promoted on thrice and in the circumstances, the contention raised by the petitioner that she was not aware regarding exercise of option for the purposes of fixation of pay cannot be accepted. The learned Counsel, therefore, prayed for passing of appropriate orders.

5. It is not in dispute that in the order of promotion dated 10.5.2011, by which the present petitioner was promoted

to the post of Superintendent from the post of Assistant Superintendent, nothing has been mentioned as regards to the exercise of option for fixation of pay in the promoted post. The contents of the letter dated 1.9.2014 issued by the Under Secretary, Maharashtra Government addressed to respondent no.3 reveals that vide Government Resolution (Finance Department) dated 11.12.1995, it has been mandated to incorporate the clause pertaining to exercising option for fixing of the pay in the promoted post, in the order of promotion itself. It appears that there is a Government circular dated 19.12.1995, in this regard and not the Government resolution dated 11.12.1995, as is stated in the aforesaid letter dated 1.9.2014. Copy of the Government Circular dated 19th December, 1995, is there on record. The aforesaid Government circular mandates incorporation of the clause as regards exercising option at the time of fixation of pay in the promoted post within stipulated period. The circular further provides that no request seeking permission to exercise such option at a later point of time shall be accepted even on the ground that the clause as mandated as regards exercising option is not incorporated in the order of promotion. It appears that, on the basis of the aforesaid Government circular dated 19.12.1995, the request of the petitioner has been turned down

by the Government vide its letter dated 1.9.2014.

6. As mentioned earlier, admittedly, the clause as mandated vide Government circular dated 19.12.1995 as regards exercising option for fixation of pay in the promotional post was not incorporated in the order of promotion dated 10.5.2011 by which the petitioner was promoted to the post of Superintendent. It is the precise contention of the petitioner that for want of any such clause in the order of promotion, she did not exercise option for fixation of her pay at the promotional post and resultantly her pay in the promotional post was fixed on lower side and consequently her pension has also been fixed on lower side. The question arises, in such circumstances whether the petitioner can be blamed and can she be subjected to suffer perennial monetary losses. No doubt, the Rules and Regulations are to be scrupulously followed; however, in certain circumstances, the Government possesses the power to relax the Rules if any of it is likely to cause undue hardship to the Government servant. Our attention was invited by the learned Counsel for the petitioner to Rule 4 of the Maharashtra Civil Services (Pay) Rules, 1981, which gives power of relaxation in the Rules to the Government.

7. After having considered the facts in the present case, it appears to us that the present is an appropriate case wherein the discretion ought to have been exercised by the Government in favour of the petitioner and the delay occasioned on the part of the petitioner in submitting the option as regards to the fixation of pay in the promoted post ought to have been condoned. In view of the fact that the petitioner has provided a cogent reason for not exercising the option at the relevant time, the delay occasioned in exercising such option by her deserves to be condoned and her pay in the promoted post needs to be fixed with effect from the date of next increment in the immediate previous post of Assistant Superintendent.

8. For the reasons stated above, the following order:

ORDER

- A) The petition is allowed.
- B) The respondents shall condone the delay that has occurred in exercising the option by the petitioner and

accordingly fix her pay in the promoted post with effect from the date of her next increment in the former post of Assistant Superintendent and extend her all consequential benefits.

C) Rule made absolute in above terms.

(P . R . BORA)
JUDGE

(S . S . SHINDE)
JUDGE

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