

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9516/2014

- 1] Bhagwat s/o Balu Bhalerao
age 57 years, Occ-Service,
R/o Plot No.24/1, Tryambaknagar
Jalgaon.

Versus

- 1] The State of Maharashtra
Through General Administration
Department, Mantralaya Mumbai
(Copy will be served to learned AGP
Bombay High Court Bench at
Aurangabad.)
- 2] Dept. Chief Auditor,
Local Funds Audit Department
Nasik.
- 3] The Chief Executive Officer,
Zilla Parishad, Jalgaon
- 4] The Chief Executive Officer,
Zilla Parishad, Nandurbar.

..RESPONDENTS.

...
Shri S.G.Shinde, Adv. for petitioner
Shri, A.S.Shinde, AGP for respondent State
Shri Vijay Sharma, Adv. for respondent no.3
Shri P.S.Patil, Adv. For respondent no. 4.
...

**CORAM : S.V.GANGAPURWALA &
V.L.ACHLIYA,JJ.**

DATE : 28th January, 2015.

ORAL JUDGMENT : [PER S.V.GANGAPURWALA,J.] :

Rule. Rule made returnable forthwith. With consent of parties, Petition is taken up for final hearing.

2] Mr.Shinde, learned counsel submits that the petitioner was promoted as an Assistant Accountant on 16/12/1996 subject to passing the Departmental Examination. Objection was raised in 2005-06 by respondent no.2 that the petitioner has not passed the Departmental Examination within specified period i.e. within two years and as such, petitioner should have been reverted back.

3] Respondent no.3 gave explanation that proper opportunity has not been given to the petitioner. Thereafter, on 13/8/2014 the respondent no.3 directed respondent no.4 to recover the excess salary as per the objection raised by respondent no.2. The learned counsel submits that the petitioner has worked on the promotional post for all these years. In 2002, petitioner on attaining age of 45 years, is exempted from passing the Departmental Examination and as such would be entitled to be retained on the promotional post. The petitioner at no point of time was reverted from his promotional post. The salary paid to the petitioner on the promotional post as such is not illegal.

4] The learned counsel submits that even otherwise the

petitioner is nearing his retirement and as such recovery cannot be claimed in view of the judgment of Apex Court in the case of **Syed Abdul Qadir and others V/s State of Bihar and others reported in 2009 (3) S.C.C.475.**

5] Mr.Sharma, learned counsel for the respondents submits that the petitioner could not have been retained on the promotional post. Approval was given to the petitioner subject to the condition of passing Departmental Examination within 2 years. As the petitioner did not pass the Departmental Examination within 2 years, the petitioner could not have been retained on the said post, however, by mistake, the petitioner was paid the salary of the promotional post upto the year 2002.

6] In the year 2002, the petitioner on attaining the age of 45 years is granted exemption from passing Departmental Examination, as such for the years 1998-2002, the recovery is rightly ordered to be made vide order dated 13/8/14.

7] We have considered submissions canvassed by learned counsel for respective parties. It is not disputed fact that petitioner today is in the evening of his service career. It is also fact that the petitioner was promoted in the year 1996 and actually worked on the said post. The period for which the recovery is claimed would not be a case of wrong fixation of salary or pay scale. As the petitioner has already worked on the said post, the salary has been paid for the said post that is for the year 1998 to 2002 and in 2002, petitioner is exempted from passing the Departmental Examination. After a long slumber of 12 years the impugned order

is passed for recovery of amount.

8] For all the aforesaid reasons, the impugned order cannot be sustained and as such is quashed and set aside. Rule accordingly made absolute. No costs.

V.L.ACHLIYA,J.

S.V.GANGAPURWALA,J.

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