

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.2685/2014
Vithoba s/o Madhao Gedekar Vs. Z.P. Chandrapur and another

Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

Shri P.D. Meghe, Advocate for petitioner
Shri M.M. Sudame, Advocate for respondent no.1.
Shri Kale, AGP for respondent no.2.

CORAM : B.P. Dharmadhikari &
A.P. Bhangale, JJ.
DATE : February 20, 2015.

The petitioner, a stagnating Mistri - Assisting Junior Engineer was given promotional pay scale of Rs.950-1400 by order dated 18.10.1996 from 1.10.1994. He retired after reaching the age of superannuation on 31st January, 2010.

On 12.2.2008 an order was passed for giving benefit of revised pay scales to stagnating employees. On 1.10.1994, they are placed in pay scale Rs. 1640-8900 and from 1.1.1996 consequential upon extension of 5th wage revision, in pay scale of Rs. 5500-9000.

The petitioner claims this later benefit after he completed 12 years i.e. w.e.f. 1.10.2006.

Advocate Sudame appearing for employer has relied upon reply-affidavit and communication dated 1st November, 2013. He submits that the benefit of order dated 12.2.2008 cannot be extended to petitioner, as the petitioner was not in employment on 1.7.2011. He submits that purpose of exercise was to make amends for stagnation and this decision was taken on 1.7.2011. As petitioner was already out of service on that date, said purpose could not have been achieved and hence benefit has not been extended. He also submits that petition is for a stale cause.

We have heard respective counsel for some time. The petitioner had approached this Court in Writ Petition No.322/2012. That writ petition was disposed of on 21st January, 2013 with a direction to employer to take suitable decision on his representation. Impugned communication dated 1st November, 2013 appears to be a decision taken accordingly.

The relevance of insistence that employee should be in service on a particular date with stagnation has been considered in Writ Petition No.1434/2009. In judgment dated 27th January, 2010 delivered therein, the Division Bench found that the retirement had no nexus. In those facts, it also directed absence of qualification to be ignored as employee had already crossed 45 years of his age.

Though impugned communication dated 1st November, 2013 mentions a G.R. dated 1.7.2011, copy of that G.R. is not produced before this Court. The said G.R. obviously is in furtherance of the policy decision dated 12.2.2008. By that policy decision, after noticing stagnation, the revised scale of Rs.1640-2900 has been made applicable from 1.10.1994. It is not in dispute that the petitioner was given pay scale Rs.950-1400 from the very same date. Hence, he could have been given second benefit after putting in 12 years from 1.10.1994. This is in furtherance of orders dated 12.2.2008. Petitioner was in employment on that date. G.R. dated 1.7.2011 was not in field either on 12.2.2008 or on 31.1.2010, when he superannuated. He completed 12 years on 1.10.2006 and hence was entitled to benefit as conferred by order dated 12.2.2008.

We, therefore, find that in terms of decision dated 12.2.2008 petitioner should have been given pay scale Rs.5500-9000 from 1.10.2006. His retirement on 31.1.2010 is not relevant for this purpose.

In this situation, we find impugned communication dated 1st November, 2013 unsustainable. It is quashed and set aside. The respondent no.1-employer is directed to release benefit accordingly in favour of the petitioner within a period of four months from today. If the benefit is not so released, petitioner shall be paid interest in terms of Rule 129-A and Rules 129-B of the Maharashtra Civil Services (Pension) Rules, 1982 on amount arrears till it is recovered by him in accordance

with law.

Petition is thus partly allowed and disposed of.

JUDGE

JUDGE

Ambulkar