

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.8429/2015

Shatrughna Latkan Patil.

...Petitioner..

Versus

The State of Maharashtra & others.

...Respondents...

.....

Shri Shrikant K. Patil, Advocate for petitioner.

Smt.M.A. Deshpande, AGP for respondent nos.1 & 2.

Shri M.K. Goyanka, Advocate for respondent nos.3 & 5.

Respondent no.4 served.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 20.09.2016

ORDER :

1] Learned counsel for the petitioner submits that the petitioner was appointed as Gram Sevak on 13.12.1978. As per the Government resolution dated 8.10.1995, which came into effect from 1.10.1994, the petitioner was entitled for time bound promotional pay-scale after completion of 12 years of his service for the first time and for the second time on completion of 24 years of service. The petitioner was entitled to the first promotional pay-

- 2 -

scale in the year 1991 and second in the year 2003. However, the petitioner was promoted for the first time on 20.2.2004 and thereafter he has been given the promotional pay-scale. The benefit of the Government resolution dated 8.6.1995 was never accorded to the present petitioner. The petitioner is entitled for the same. The learned counsel further submits that during the tenure of his service, the petitioner was never communicated about the confidential reports being poor or average. In absence of communication of the adverse CRs, the respondent cannot be allowed to take benefit of the same. The learned counsel further submits that disciplinary action was already taken against the petitioner, one increment was stopped and for the second time, recovery was directed. By not giving the time bound promotional pay-scale, the petitioner cannot be punished for the third time.

2] The learned counsel for the respondent – Zilla Parishad submits that for the first time, the petitioner cleared the efficiency bar in the year 1996 and the benefit of time bound promotional pay-scale has been given in the year 1996. Thereafter, in the year 2004,

- 3 -

the petitioner has been given the regular promotion. The petitioner has got the benefit. The Government resolution dated 8.6.1995 also speaks about clearing the efficiency bar for entitlement of the time bound promotional pay-scale. The learned counsel further submits that the stoppage of one increment so also recovery is a part of disciplinary action and has nothing to do with the time bound promotional pay-scale.

3] We have also heard the learned AGP.

4] The Government resolution dated 8.6.1995 itself laid down that for a person to be eligible for the time bound promotional pay-scale, the seniority, the passing of the qualifying examination and all such other conditions are required to be satisfied. The affidavit is filed by the respondent stating that the petitioner could clear the efficiency bar in the year 1996 only and from 1996, the said benefit has been given to the petitioner.

5] The order dated 25.7.2016 is placed on record wherein it is said that the petitioner has been given benefit of higher pay-scale from 1999. As far as confidential reports of the petitioner are concerned, the respondent on affidavit has stated that the petitioner

- 4 -

was not given time bound promotional pay-scale also considering his adverse CRs. It would be too late in the day for us to consider about the validity of the said CRs as the grievance is being made by the petitioner of non grant of time bound promotional pay-scale after 25 years i.e. after his retirement. The said aspect is also not insignificant. Considering the aforesaid aspects of the matter, it would not be possible to accept the contention of the petitioner for grant of higher pay-scale from the year 1991.

6] However, if any wrong pay fixation is done, the same would not be a ground to claim recovery after retirement of the petitioner. As is held by the Apex Court in a case of *State of Punjab & others v. Rafiq Masih (whitewasher) & others* reported in (2015)4 SCC 334.

7] In the light of the above, we pass the following order.

O R D E R

i] The claim of the petitioner for time bound promotional pay-scale is rejected.

ii] If any recovery is made by the respondents from the pension amount of the petitioner on

- 5 -

account of pay fixation, the same shall be refunded to the petitioner within a period of six months and no recovery shall be claimed on that count.

[iii] Writ petition is accordingly disposed of. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)