

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

WRIT PETITION NO.8453 OF 2014

1. Atmaram Damu Patil,
Age 64 Years, Occu. Retired,
R/o. Plot No.24, Oswal Nagar
Near Satpuda High School,
Deopur, Dhule,
Taluka & District Dhule.
2. Ashok Pundlik Patil,
Age 65 Years, Occu. Retired,
R/o. Ranaiche, Taluka Amalner,
District Jalgaon.

.. PETITIONERS

Versus

1. The State of Maharashtra,
Through the Secretary,
Rural Development and
Water conservation Department,
Mantralaya, Mumbai.
2. The Chief Executive Officer,
Zilla Parishad, Dhule,
Tq. and District Dhule.

.. RESPONDENTS

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Mr. Amol S. Sawant, Advocate for Petitioners;
Mr. A.G.Magre, AGP for Respondent No.1 / State;
Mr. D.S.Bagul, Advocate for Respondent No.2;

...

**CORAM : S.S.SHINDE &
P.R.BORA, JJ.**

Date of Reserving Judgment : 11th February, 2016.

Date of Pronouncing Judgment : 17th February, 2016.

JUDGMENT (PER:-P.R.BORA,J.)

1) Heard. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties the petition is heard finally.

2) The petitioners have filed the present petition seeking directions against the respondents to make the payment of the amount of difference of the higher pay scale to the petitioners as per the order dated 29.02.2008 passed by the Chief Executive Officer, Zilla Parishad, Dhule (Respondent No.2).

3) The petitioners were in the employment of Zilla Parishad, Dhule. Both have retired from the services after attaining the age of superannuation. It is the case of the petitioners that, the time bound promotion scheme was made applicable to the employees of Zilla Parishad. As per the said scheme, after completion of twelve years in service, the employees were made entitled for higher pay scale. As averred in the petition, initially petitioners were appointed on post of Mistri Grade-II. As further averred, as per the resolution dated 20.05.1999 issued by the State Government (Respondent No.1) it was resolved that, all the employees working on the post of Assistant Jr. Engineer, Mistri Grade-I, Mistri Grade-II, Road Clerk, Muster Clerk, Time Keeper and Tracer shall be placed in one

cadre namely Assistant Civil Engineering. It was also resolved that, at the time of absorption of the employees, the seniority of the employees shall be maintained and considering the initial appointment of the employee, the seniority list was to be prepared.

4) It is the contention of the petitioners that, as per the aforesaid resolution, the pay scale of 1200-30-1440 was also made applicable to the petitioners. It is further contended that, on 22.06.2007, the Secretary, Rural Development and Water Conservation Department issued a communication to all the Chief Executive Officers of the Zilla Parishads in Maharashtra informing that, for applying the time bound promotion scheme to the employees working on the post of Assistant Civil Engineering, the initial appointment order on the post of Assistant Jr. Engineer, Mistri Grade-I, Road Clerk, Muster Clerk, Time Keeper and Tracer shall be considered. It was also informed that, for applying the time bound promotion scheme to the persons working on the post of Assistant Civil Engineering, the approval has been granted by the State Government. It was also informed that, after completion of twelve years from the date of initial appointment, the time bound promotion scheme will be made applicable.

5) It is the further contention of the petitioners that,

subsequently on 04.08.2007, the cadre of Mistri Grade-II was also included and made entitled for time bound promotion scheme. It is the further contention of the petitioners that, in view of the communication dated 22.06.2007, and the Government Resolution dated 08.06.1995 in respect of time bound promotion scheme, the respondent No.2 passed an order on 14.01.2008 and subsequently on 29.02.2008 and thereby approved that, the employees who were working on the post of Assistant Civil Engineering shall be eligible and entitled for getting the benefit of time bound promotion scheme considering the initial date of their appointment. In the said order, it was also mentioned that, the pay scale of Rs.5500-175-9000 as per the 5th Pay Commission would be applicable to Jr. Engineer and the same will be also applicable to the similarly situated employees with effect from 01.01.1996. It was also decided that, the difference of higher pay scale will be given to the employees. It is the further contention of the petitioners that, name of the both the petitioners were enlisted in the order so passed at Sr.No.12 and 14 respectively. It is the further contention of the petitioners that, pursuant to the aforesaid orders dated 14.01.2008 and 29.02.2008, funds were made available by the Government for making the payment of difference of higher pay scale to the employees of Zilla Parishad.

6) It is the case of the petitioners that, though their names were appearing in the aforesaid orders at Sr. No. 12 and 14 respectively, no difference of higher pay scale has been given to them, whereas to other similarly situated employees, such difference has been already paid. It is the specific case of the petitioners that, the employees who were working on the post of Mistri Grade-II, were extended the higher pay scale considering that they have put in 12 years of service from the date of their initial appointment.

7) It is the further contention of the petitioners that, in the meanwhile , the communication dated 13.05.2008 came to be issued by respondent No.1, whereby it was informed that, the higher pay scale of Jr. Engineer shall be applicable to the employees working on the post of Assistant Civil Engineering only from the said date and no difference of pay scale would be admissible. As is revealing from the contents of the petition, both the petitioners had retired in the meanwhile. Petitioner No. 1 got retired on 31.08.2008, whereas petitioner No.2 retired on 31.10.2007. It is the further contention of the petitioners that, in pursuance of the aforesaid letter dated 13.05.2008, the orders directing recovery from the concerned employees were issued by respondent No.2. Said orders were challenged by such employees by filing various writ petitions i.e. writ petition Nos.

3467/2011, 4396/2011, 10156/2012, 9397/2013 and 8888/2013

It is the further contention of the petitioners that, all the aforesaid writ petitions were allowed by this Court and the order of recovery was quashed and set aside. The Petitioners have further contended that, orders passed in Writ Petition Nos. 4096/2011 and 3476/2011 were challenged by Zilla Parishad before the Hon'ble Apex Court, however, both the Special Leave Petitions came to be dismissed and the orders passed by this Court were confirmed.

8) It is the further contention of the petitioners that, though they were consistently pursuing the authorities of Zilla Parishad seeking payment of difference of higher pay scale, no such difference has been paid to the petitioners. The Petitioners have also contended that, in fact, on 06.06.2013, the Block Development Officer, Panchayat Samiti, Dhule under whom the petitioners were working at the relevant time had forwarded a proposal to the Executive Engineer, Irrigation Department, Zilla Parishad, Dhule and had requested to make available the funds for making the payment of difference of higher pay scale to the petitioners in compliance of the order dated 29.02.2008 issued by the Chief Executive Officer, Zilla Parishad Dhule.

9) In the factual matrix as above, the petitioners have prayed for the direction to the respondents to make the payment

of amount of difference of higher pay scale to them as per the order dated 29.02.2008 passed by respondent No.2 .

10) Shri Dharmendrakumar Behere, the Deputy Executive Engineer serving with respondent No.2 has filed the affidavit on behalf of respondent No.2. It is the contention of respondent No.2 that, the petition is liable to be dismissed solely on the ground of delay and laches on the part of petitioners. It is contended that, on the strength of the order dated 29.02.2008, the petitioners are now claiming the difference after the period of 7 years without explaining the delay caused therefor. It is further contended that, in view of the subsequent letter dated 13.05.2008, the petitioners are not entitled for any difference as claimed by them.

11) Heard Mr. Amol Sawant, the learned Counsel appearing for the petitioners, Mr. A.G.Magre, the learned AGP appearing for Respondent No.1 and Mr. D.S.Bagul, the learned Counsel appearing for respondent No.2. Perused the documents filed on record by the petitioners. Respondents have not filed any document.

12) Respondent No.2 has not disputed the entitlement of the petitioners for the benefit of higher pay scale in view of the time bound promotion scheme introduced vide Government

Resolution dated 08.06.1995, after they had completed twelve years of service on the post of Mistri Grade-II. According to respondent No.2, the petitioners are dis-entitled for claiming any difference in the higher pay scale in view of the subsequent Government letter dated 13.05.2008. However, objection so raised by the respondent No.2 is liable to be rejected in light of the judgment of the Division Bench of this Court in Writ Petition No.10156/2012 (Vasant Arjun Patil and Ors. V/s. The State of Maharashtra & Anr.) delivered on 21.09.2013, copy of which is placed on record by the petitioners. In the said petition, the objection was raised to the communication dated 13.05.2008, whereby recovery of the difference of pay scale paid to the employees concerned in view of time bound promotion scheme was directed. The learned Division Bench referred to the orders passed in identical circumstances in earlier writ petition No. 3476/2011(Chandrawadan Lakmichand Gujrathi & Ors. V/s. The State of Maharashtra) and quashed and set aside the order of recovery. The observations made by the Division Bench in para 5 of the said judgment are relevant in the facts of the instant case, which read thus:

“5 The petitioners place heavy reliance on the judgment of Division Bench of this Court in Writ Petition No.3476/2011 decided on 11.09.2012, to which one of us (R.M.Borde,J.) was a member involving similar set of employees and similar circumstances. Subsequently, the

view taken by this Court in Writ Petition No.3476/2011 has been endorsed by an order dated 21.02.2013 passed in the Writ Petition No.4096/2011. This Court, while allowing writ petition No.4096/2011 has observed thus-

“5. In identical circumstances, while deciding Writ Petition No. 3476/2011, the Division Bench of this Court to which one of the members (R.M. Borde, J.) was party, has held that the Additional Secretary of the Government is not competent to render advice contrary to the policy of Government, reflected from Government Resolution dated 8-6-1995. Aforesaid writ petition came to be allowed and the order directing recovery of amount issued by respondent no.1 herein came to be quashed and set aside.

6. It is to be noted that Government Resolution dated 18.06.1995 prescribes that the employees categorised as Group ‘C’ and Group ‘D’ (erstwhile Class II and IV) are entitled to higher pay scale on completion of twelve years of regular service. Clause ‘A’ of paragraph no. 2 of the Government Resolution provides that the scheme came into operation from 1-10-1994 whereas clause ‘C’ of paragraph no.2 of the Government Resolution provides that direct recruits or employee appointed by way of promotion are entitled to receive benefits after completion of twelve years tenure on regularisation of their services. In the instant matter, petitioner is held eligible to draw benefits of higher pay scale on fulfillment of condition prescribed in paragraph no. 2 of the Government Resolution dated 8-6-1995. It also transpires that petitioner has been extended benefits after completion of twelve years continuous service on issuance of order of regularisation. It is thus clear that petitioner has been extended benefits in accordance with conditions laid down in Government

Resolution dated 8-6-1995. In these circumstances, relying on the advice rendered by the Additional Secretary, Government of Maharashtra, it was not permissible for Zilla Parishad to withdraw benefits extended to the employees. Advice rendered by the Additional Secretary in view of communication dated 13-5-2008 is in contravention of the policy of the Government contained in Government Resolution dated 8-6-1995. In this view of the matter, petition deserves to be allowed and the same is accordingly allowed. Respondent / Zilla Parishad, Dhule is directed to refund the amount wrongfully recovered from the pensionary benefits of petitioner. Respondents are directed to refund the amount as expeditiously as possible, preferably within four months from today. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs."

13) It is not in dispute that, the order passed by the Division Bench of this Court in Writ Petition No.3476/2011 (Chandrawadan Lakmichand Gujrathi & Ors. V/s. The State of Maharashtra) was challenged by respondent No.2 before the Hon'ble Apex Court by filing a Special Leave Petition, and the Hon'ble Apex Court declined to interfere in the order so passed by the Division Bench and dismissed the said Special Leave Petition.

14) In view of the above, we do not find any substance in the objection raised by respondent No.2 in his affidavit in reply that, the petitioners are dis-entitled from claiming any difference

of higher pay scale in view of Government communication dated 13.05.2008.

15) In so far as the objection raised by respondent No.2 as about the delay caused on part of the petitioners in approaching this Court is concerned, the same is also liable to be rejected in view of certain facts and documents brought on record by the petitioners. The petitioners have placed on record the order dated 29.02.2008, passed by respondent No.2 granting the higher pay scale to the eligible Civil Assistant Engineers, which contained the names of the present petitioners at Sr. No. 12 and 14 respectively. The petitioners have also placed on record the copies of certain communications made by them with the respondents seeking implementation of the aforesaid order dated 29.02.2008. More importantly, the petitioners have also placed on record the copy of the communication dated 06.06.2013 in between the Block Development Officer, Panchayat Samiti, Dhule and the Executive Engineer, Minor Irrigation Department, Zilla Parishad, Dhule, whereby the former has requisitioned the grants to the tune of Rs.9,69,902/- towards the difference of pay scale to be paid to the present petitioners. In the circumstances, it does not appear to us that, the claim raised by the petitioner can be rejected on the ground of delay in approaching this Court.

16) Having regard to the fact that, the petitioners were made entitled for the benefit of higher pay scale as per the time bound promotion scheme introduced vide Government Resolution dated 08.06.1995 and accordingly their names were also included in the list of such eligible employees, and further that, the similarly situated other employees whose names included in the said list dated 29.02.2008 have been already extended the said benefit, there seems no reason to deny the said benefit to the petitioners. We accordingly held the petitioners entitled for such benefit. Hence, the following order:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The respondents are directed to make the payment of the amount of difference of higher pay scale to the petitioners as per the order dated 29.02.2008 passed by respondent No.2, as expeditiously as possible and preferably within a period of six months from today.
- (iii) Rule is accordingly made absolute in the aforesaid terms. No order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE