IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 9423 OF 2015

Padmanath S/o Gotiram Lande
Age : 61 years, Occ : Nil (Retired),
R/o Plot No. 24, Gajanan Colony,
Garkeda Parisar, Aurangabad.

PETITIONER

VERSUS

1. The State of Maharashtra,
   Through its Secretary
   Water Supply and Sanitation Department,
   Mantralaya, Mumbai-32.

2. The Member Secretary,
   Maharashtra Jeewan Pradhikaran,
   Express Tower, Nariman Point,
   Mumbai-32.

3. The Chief Administrative Officer,
   Maharashtra Jeewan Pradhikaran,
   CIDCO Bhavan, Belapur,
   New Mumbai.

4. The Superintending Engineer and
   President Circle Committee,
   Maharashtra Jeewan Pradhikaran,
   Shantipura, Chavani, Aurangabad.

5. The Executive Engineer,
   Maharashtra Jeewan Pradhikaran,
   Rural and Urban Water Supply Scheme
   Division Aurangabad
   Vedant Nagar, Near Rail-Way Station,
   Aurangabad, Dist. Aurangabad.

6. The Dy. Chief Account Officer (II),
Maharashtra Jeewan Pradhikaran,
Cidco Bhuvan (Dakshin Kakshi),
Belapur, New Mumbai 400 614.

RESPONDENTS

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Mr.R.P. Bhumkar, Advocate for petitioner.
Mr. A.G. Magre, A.G.P. Respondent No.1.
Mr. D.P. Bakshi, Advocate for Respondent Nos. 2 to 6.

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CORAM : S.S. SHINDE &
SANGITRAO S. PATIL, JJ.

RESERVED ON : 30TH JUNE, 2016
PRONOUNCED ON : 15TH JULY, 2016

PER COURT :-

This petition is filed with the following prayers :-

> "B. By issuing writ of certiorari or any other appropriate writ, order or direction, or writ of certiorari like nature and to quash and set aside the letter dated 18/12/2012, PPO No. 8737 issued by the respondent No.6 and direct the respondents to release the pension and amount which is withheld by respondent No.6 and its consequential benefits to the petitioner within two months and

revise the pension of the petitioner."

C. By issuing writ of certiorari or any other appropriate writ, order of direction, or writ of certiorari like nature and to direct the respondent No.6 to release the amount which is withheld by the respondent, to the petitioner with @ 18% interest till the realization of amount and said be recovered from the official head of the respondent No.6."

2. The learned counsel appearing for the petitioner submits that without issuing any notice or assigning any reasons, the Respondents have withheld the amount payable to the petitioner towards pension and gratuity. It is submitted that the impugned order dated 18th December, 2012 issued by Respondent Nos. 5 and 6 withholding the amount of gratuity to the extent of Rs.2,20,000/- drastically affects his right to receive the entire payment of gratuity and

pension. Such an unilateral decision of Respondent Nos. 5 and 6, without affording opportunity to the petitioner to put forth his contention, is arbitrary exercise of powers. It is submitted that the petitioner retired from the service on 31st December, 2012 with unblemished record. The petitioner was promoted on 17th May, 2008 and was getting the pay scale of Rs. 5000-8000 and as per the Sixth Pay Commission, it comes to Rs.9300-38500, Grade pay Rs.4200/-. It is submitted that the pension proposal ought to have been prepared, keeping in view the length of service rendered by the petitioner and also last pay drawn. However, Respondent No.6 reduced the basic pay of the petitioner by Rs.1245/- from the pension of the petitioner. The pension proposal was not prepared as per last pay drawn, but considering the basic pay of Rs. 8,915/-. The gratuity amount of Rs.2,60,000/-, commutation of Rs.58,000/- and

pension difference of Rs.75,000/- is not paid to the petitioner. Therefore, the learned counsel appearing for the petitioner submits that the Petition deserves consideration.

3. On the other hand, the learned counsel appearing for Respondent Nos. 2 to 6, relying upon the averments made in the affidavit-in-reply submits that when the petitioner retired on 31st December, 2012 on attaining the age of superannuation, his pension papers were scrutinized by Respondent No.6 and it was noticed that the petitioner was eligible for time bound promotion, as per the Government Resolution dated 8th June, 1995, on 19th December, 1994, when he was working on the post of Pump Operator. However, at that time no time bound promotion was given to him, but instead of that he was given the regular promotion to the post of Electrician by order dated 8th January, 1996

and further on completion of 12 years on the post of Electrician, the petitioner was given benefit of Assured Career Progression (ACP) scheme as per Government Resolution dated 20th July, 2001, and was granted higher pay scale of the post of Electrical Supervisor i.e. Rs. 9300/- Grade Pay of Rs. 4200/- as per the Sixth Pay Commission Report, by way of ACP Scheme. It is submitted that had the time bound promotion been given to the petitioner in the year 1994 (i.e. 19th December, 1994) after completion of 12 years on the post of Pump Operator, he would have not been eligible for getting the benefit of ACP Scheme for second time to the post of Electrical Supervisor for the reason that the benefit of time bound promotion is to be given only once in the entire service tenure of the employee. It is submitted that so far the scheme of giving again benefits of assured promotion after completion of 24

years of service as per Government Resolution dated 1st April, 2010 has not been made applicable to the employees of the Respondents.

4. It is further submitted that in order to correct the mistake made by the Respondents, the benefit of time bound promotion was given to the petitioner with effect from 19th December, 1994 and the benefit of ACP Scheme that was given to him for the post of Electrical Supervisor was withdrawn, since the benefit of ACP Scheme can not be given for second time to the employees, during his entire tenure of service, as far as the Respondent - establishment is concerned. As a result of withdrawal of the benefit of second ACP Scheme with effect from 17th May, 2008, it was found that the excess amount of Rs.2,10,465/- has been paid to the petitioner due to this

wrong action. Hence the said amount of Rs.2,10,465/- was ordered to be recovered from the gratuity payable to the petitioner as per Rule No.132(3b) of the Maharashtra Civil Services (Pension) Rules, 1982, vide order No. 13347, dated 25th January, 2016. As a result of withdrawal of the benefit of second ACP Scheme, his pension is also required to be revised on the basis of last pay drawn. Accordingly the pension has been revised and fixed as Rs. 7,670/- vide PPO No. 8737 dated 18th December, 2013.

5. It is submitted that as per Rule 132(3b) of the M.C.S. (Pension) Rules, 1982, which are applicable to the Respondent – establishment and employees working under the Respondent, the over payment/excess payment towards pay and allowances, are liable to be adjusted against the death-cum-retirement gratuity, payable to the retiring employee.

The learned counsel further submits that as per amendment to the said Rules, it is specifically provided that if it is found that during the service period of the retiree, any amount over/in excess paid to him for whatsoever reason, such over payment can be recovered from the pension of the retiree. The learned counsel invited our attention to the said amended portion of the Rules. He submits that the action of recovery over the payment made to the petitioner to the tune of Rs.2,10,465/- and/or revising/re-fixing his pension to that effect is perfectly legal and in consonance with the prevailing pension rules, hence the Petition is liable to be rejected.

6. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner, the learned A.G.P. appearing for Respondent No.1

and the learned counsel appearing for Respondent Nos. 2 to 6. With their able assistance, we have perused the pleadings/grounds taken in the Petition, annexures thereto, reply filed by Respondent Nos. 2 to 6, and we are of the opinion that without entering into the merits of the Petition, in the peculiar facts and circumstances of this case, since an action of Respondent No.2 to reduce the basic pay of the petitioner by Rs. 1245/- from the pension of the petitioner is without issuing notice to the petitioner and seeking his response to such reduction, either in the basic pay or withholding the gratuity amount, this Petition can be conveniently disposed of by quashing the impugned order and directing to the respondents to take decision afresh.

7. It is well settled that the right to pension is recognized as a right to property.

There is no manner of doubt that unilateral decision of Respondent No.6 reduction in the basic pay scale and withholding of the gratuity amount, drastically affected the right of the petitioner to receive the full pension and gratuity amount, as contended by him. Therefore, in our considered view, the Respondents ought to have afforded an opportunity of hearing to the petitioner and ought to have allowed him to submit the documents, if any, in support of his contention that he is entitled for full pension, keeping in view the last pay drawn at the time of retirement from the service and also full amount of gratuity.

8. For the reasons aforesaid, the impugned order dated 18th December, 2012, to the extent it has reduced the amount of gratuity stands quashed and set aside. The Respondents, in particular, Respondent Nos. 5

and 6 are directed to issue notice to the petitioner within two weeks from today, indicating therein particular date for appearance of the petitioner before Respondent No.5. The petitioner, after receiving the notice from the concerned Respondents, shall appear before the said authority and if necessary file his reply with documents in support of his contentions.

9. Upon receiving such reply with documents, if any, the concerned Respondents shall take appropriate decision and pass order afresh, on its own merits, keeping in view the relevant rules, about the entitlement of the petitioner for pension and gratuity amount. In case the petitioner's contentions raised on merits are found to be correct, in that case, the Respondents shall resubmit the proposal of pension and also issue fresh order for payment of gratuity, as

expeditiously as possible, and preferably, within two weeks from taking such fresh decision/passing the order. However, it will be open for the concerned respondent to adjust the amount already paid, if any, to the petitioner towards pension or gratuity.

10. We direct Respondent Nos. 2 to 6 to complete the entire exercise, as expeditiously as possible, and preferably within 10 weeks from today and communicate the said decision to the petitioner. We make it clear that we have not entered upon the merits of the contentions raised by the petitioner or by Respondent Nos. 2 to 6.

11. The Petition is partly allowed and the same stands disposed of. No costs.

Sd/- Sd/-

(**SANGITRAO S. PATIL, J.**) (**S.S. SHINDE, J.**)

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