

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

BENCH AT AURANGABAD.

WRIT PETITION NO.1322 OF 2016

Ramesh S/o Narayan Chandanse ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.A.A.Yadkikar, advocate for the Petitioner.
Mr.S.W.Munde, A.G.P. for the State.
Mr.D.B.Pawar, advocate for Respondent Nos.3 and
4. ...

**CORAM : S.V.GANGAPURWALA AND
S.M.GAVHANE, JJ.**

Date : 09.10.2017.

PER COURT :

1. Mr.Yadkikar, learned counsel for the petitioner submits that the petitioner retired from service of Respondent Nos.3 and 4 on 30.4.2015. At the time of retirement, the petitioner was working as Civil Engineering Assistant. The learned counsel submits that the

last drawn salary of the petitioner was in the pay-scale of Rs.9,300-34,800 with grade pay of Rs.4,300/-. Now the pension is fixed on the basis of salary in the pay band of Rs.5,200-20,200 with grade pay of Rs.2,400/-. The learned counsel submits that while doing so, the Respondent Nos.3 and 4 have relied on the Government Circular dated 28.7.2014. According to the learned counsel, no notice is issued before passing the order of recovery against the petitioner. The amount paid as salary to the petitioner at the time of retirement and as per pay fixation done then is sought to be recovered on the basis of subsequent pay fixation. The same is not permissible. The learned counsel submits that the petitioner is challenging the recovery sought to be made from the petitioner and also the refixation of the salary done after the retirement of the petitioner. The same is not permissible. The learned counsel also relies on the Circular dated 19.12.2015 to suggest that no recovery can be made against a person who has retired from Class III and Class IV post. The recovery also could not have been

made without notice. The learned counsel submits that the petitioner at the time of retirement was working on Class III post and no notice was issued to the petitioner prior to the order of recovery being made or re-fixation of the salary.

2. Mr.Pawar, learned counsel for Respondentt Nos.3 and 4 states that petitioner has an alternate remedy under Rule 14(1)(f) of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964. The learned counsel further on instructions categorically and specifically states that though re-fixation of salary of the petitioner is being done at the time of issuance of pension order, the recovery is not being made from the petitioner for the excess amount paid to the petitioner till his retirement on account of wrong pay-fixation done. The said statement is accepted.

3. In view of the above statement made by the Respondent, the dispute then would be only to the extent of re-fixation of salary. In view of Rule 14(1)(f) of Rules, 1964 the petitioner can

agitate this aspect before the appropriate authority as laid down under Rule 14. In case such an appeal is filed before the appropriate authority within four (4) weeks, the same shall be considered within limitation and shall be decided on its own merits after hearing the petitioner expeditiously, preferably within four (4) months from the date of filing of the appeal.

4. The Writ Petition is accordingly disposed of. No costs.

(S.M.GAVHANE, J.)

(S.V.GANGAPURWALA, J.)

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