

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

26 WRIT PETITION NO. 3831 OF 2006

**SUDHA SHIVAJIRAO MUNDHE
VERSUS
THE STATE OF MAH & ORS**

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Advocate for Petitioner : Mr.V D Gunale
AGP for Respondent No.1 and 2 : Mr. Y.G. Gujrathi
APP for Respondent No. 3 and 4 : Mr. V.B. Jadhav, Mr. V.D.Hon.

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**CORAM : R.D.DHANUKA, AND
SUNIL K. KOTWAL,JJ.**

DATED : 11th September, 2017

PER COURT :-

By this petition under Article 226 of the Constitution of India, the petitioner seeks writ of certiorari for quashing the impugned order dated 12th July-2005 passed by respondent No. 3 thereby cancelling her promotion from the period 21st October-1995 till 20th January-1999 and ordering recovery of the difference of salary of the said period, and also seeks that the order of Divisional Commissioner dated 22nd February 2006 confirming the order of respondent No.3 be quashed and set aside.

2. The petitioner was promoted 13th October 1995 and was holding the said promotional post till 20th January-1999. The respondent No. 3 has passed the order of cancellation of her promotion with retrospective effect. The petitioner was duly appointed to the said post and was allowed to work on the said promotional post till 20th January 1999. The respondent No. 3 also issued a recovery notice of the difference of the salary of the said period and in pursuance to the said directions, the Zilla Parishad has taken action for recovery of the said amount. Petitioner was long back appointed to the said promotional post. The said order passed by the respondent No. 3 came to be confirmed by Divisional Commissioner vide order dated 22nd February, 2006. These orders are impugned by the petitioner in this Writ Petition.

3. Learned counsel for the petitioner invited our attention to various annexures to the petition and would submit that, there was no examination conducted by the respondent No. 2 for a period of five years. The petitioner was required to complete the examination as per Rule 6 of the Maharashtra Zilla Parishad Post Recruitment Examination

Rules, within four years. The petitioner appeared for the examination, however, she attained the age of 45 years, hence she was exempted from passing the said examination. The necessary entry was also made in her service book to that effect. He submits that, respondent No. 3, all of a sudden issued an order of reversion to the said post from 13th October, 1995 till 21st January, 1999 and has issued recovery notice for the payment of difference to the said post. He submits that the order passed by the respondent No. 3 as well as by the Divisional Commissioner are totally illegal and without application of mind.

4. It is not in dispute that on 31st January, 1999 petitioner has already been paid the difference and all service benefits payable to the petitioner are already paid to the petitioner.

5. Learned counsel for the petitioner invited our attention to the order dated 11th September, 2006 passed by this Court granting ad-interim relief in terms of prayer clause (E) of this petition. The said order was continued by this Court

on 13th November 2006 by interim relief. In view of the said interim relief respondents were restrained from making any recovery of the difference of the salary from petitioner, in pursuance of the orders passed by the respondent Nos. 2 and 3 respectively.

6. Learned counsel Mr. V.B. Jadhav for respondent Nos. 3 and 4, and learned Assistant Government Pleader Mr. Y.G.Gujrathi for respondent Nos.1 and 2 could not justify the orders passed by respondent Nos. 2 and 3 and are unable to show any provisions of law to justify the said order of respondents of recovery after retirement of the petitioner from service.

7. After hearing the learned counsel for the parties, we are of the view that both the orders which are subject matter of this Writ Petition are erroneously passed and are totally illegal. Since the petitioner was already allowed to work in the said promotional post for several years, no such reversion order could be passed contrary to the Maharashtra Zilla Parishad Post Recruitment Examination Rules. The

impugned orders passed by the respondents are without application of mind and arbitrary. The petitioner has been already paid the retirement benefits on 20th January 1999 and was restrained by interim order passed by this Court from making any recovery. We are therefore, of the view that the petition deserves to be allowed in terms of prayer Clause 'C' and it is ordered accordingly. We therefore, pass the following order :-

O R D E R

1. Writ Petition is made absolute in terms of prayer Clause 'C'.
2. Rule is made absolute in aforesaid terms.
3. No order as to costs.

Sd/-

(SUNIL K. KOTWAL, J.)

sd/-

(R.D.DHANUKA, J.)

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shp/-