

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4095 OF 2016

1. Pandurang Kisan Wadnere,
Age: 65 Years, Occu.: Retired,
R/o.: TV Centre, HUDCO, Aurangabad,
Tal.: and District.: Aurangabad
 2. Chandrabhan Baburao Kawade,
Age: 65 Years, Occu.: Retired,
R/o.:TV Centre, HUDCO, Aurangabad,
Tal. and District: Aurangabad
 3. Harischandra Kisanrao Pawar,
Age: 65 Years, Occu.: Retired,
R/o.: TV Centre, HUDCO, Aurangabd,
Tal. and District: Aurangabad
 4. Khan Manzoor Ahmed Abbaskhan,
Age: 65 Years, Occu.: Retired,
R/o.: Baijipura, Aurangabad,
Tal. and District: Aurangabad
- .. **Petitioners**

Versus

1. The State of Maharashtra,
Through its Secretary,
Rural and Urban Development Department,
Mantralaya, Mumbai-32
 2. The Zilla Parishad, Aurangabad,
Through its Chief Executive Officer,
Aurangabad, District: Aurangabad
- .. **Respondents**

Shri V. D. Sapkal, Advocate for the Petitioners.
Shri S. W. Mundhe, A.G.P. for Respondent No. 1.

Shri P. P. More h/f Shri Nandkishor U. Yadav, Advocate for Respondent No. 2.

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

DATE : 4th December, 2017

ORAL JUDGMENT (*Per: S. V. Gangapurwala, J.*) :

1. Rule. Rule returnable forthwith. With the consent of learned counsel for respective parties taken up for final hearing.

2. Mr. Sapkal, learned advocate submits that the order is passed by the Zilla Parishad on 18.12.2007 granting pay scale of Rs.5500-175-9000 with effect from 1.10.1994. The said pay scale is not being considered by the respondent though the order is passed way back in the year 2007. The petitioners have retired. On 1.10.1994 all these petitioners have crossed 45 years of age. The learned advocate relies on the various judgments passed by this court which are annexed to the petition.

3. Mr. Mundhe, learned A.G.P. submits that the service rendered as Mistry Grade - I or II are not to be considered while computing 12 years of service. The 12 years of service is only to be computed after the petitioners are absorbed as Civil Engineering Assistant. Learned A.G.P. refers to the Circular dated 28.7.2014 and Government Resolution dated 20th July, 2001 and 8th June, 1995.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. The Zilla Parishad has filed an affidavit admitting that when the petitioners were given the benefit of first time bound promotion the petitioners had completed 45 years of age and were exempted from passing departmental examination. The relevant averments in the affidavit are reproduced as under:

“8(d) I say and submit that, as per the Circular dated 28/07/2014 issued by the Rural Development and Water Conservation Department vide No. Padni-2012/P.K.229/Astha-10 the employees who have completed twelve years service as a Civil Engineering Assistant and those who have complied the terms and conditions of G.R. dated 08/06/1995 those employees are entitled for the benefit of pay scale for the post of Junior Engineer. It is true to say that the petitioners admittedly has not passed professional examination but they have completed the age of 45 years therefore they are given the benefit of first time bound promotion. But in view of Circular dated 08/06/1995 and 28/07/2014 the petitioners are not entitled for the pay scale/time bound promotion. Hereto annexed and marked as ANNEXURE R-5 is the copy of Circular dated 25/07/2014.”

6. The basic contention is that the service rendered by the petitioner as Mistry Grade-I or II would not be considered while considering 12 years service for time bound promotion pay scale. The Division Bench of this court in Writ Petition No. 5182 of 2012 under Judgment dated January 30th, 2014 had reproduced

the observations of Writ Petition No. 6212 of 2011 which reads thus:

“11. Perusal of various Government circulars including Government circular dated 21st March, 2006 and 23rd August 2010 would reveal that the Chief Executive Officer, Zilla Parishad has been empowered to grant exemption to the employees from appearing into the professional examination on their completion of 45 years of age. Perusal of the communication addressed by the State of Maharashtra to all the Chief Executive Officers, would also reveal that the State of Maharashtra has approved granting of pay scale to Junior Engineers to the persons, who are absorbed as Civil Engineering Assistants from the post of Mistry Grade-I, Mistry Grade-II, Tracer etc. upon completion of 12 years of their service.

12. In that view of the matter, we find that the Chief Executive Officer-respondent no. 1 had rightly passed the order dated 13th April, 2010 of granting higher pay scale to the petitioners upon completion of 12 years of service in the cadre of Mistry Grade-I, Mistry Grade-II, Muster Clerk, Time Keeper, Draftsman, Tracer etc. and attaining the age of 45 years. It is to be noted that upon completion of 45 years of age the Chief Executive Officer is empowered to grant exemption from appearing in the professional examination.”

7. The Division Bench of this court has further held in Writ Petition No. 5182 of 2012 that the petitioner is entitled to the pay scale of Junior Engineer upon completion of 12 years service on the post of Mistry Grade-I. The same view is taken by various Division Benches, reference can be had to the Judgment dated

August 12, 2014 in Writ Petition No. 1495 of 2014 with connected writ petitions. The Judgment and order dated 19.9.2013 in Writ Petition No. 4915 of 2012.

8. In view of the above, no error was committed in giving the benefit of time bound promotional pay scale to the petitioners with effect from 1.10.1994, considering that the petitioners were appointed in the year 1977 to 1981.

9. In light of the above, Rule is made absolute in terms of prayer clauses 'B' and 'C'. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

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