

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

WRIT PETITION NO. 8352 OF 2015

GORKHANATH PUNAJABA INGLE
VERSUS
THE CHIEF EXECUTIVE OFFICER AND ANOTHERS

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Advocate for Petitioner : Mr. Irale Patil D.R.
AGP for Respondents : Mr. M.B.Bharaswadkar
Advocate for Resp. nos. 1 and 2 : Mr. D.K.Rajput

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CORAM : S.V.GANGAPURWALA & K.L.WADANE, JJ.

DATED : 28th FEBRUARY, 2017

O R D E R :

The contention of the petitioner is that petitioner was absorbed as Civil Engineering Assistant in the year 2005. Vide order dated 18.7.2011 the petitioner was reverted as Mistri Grade I. The petitioner had challenged the same before the Industrial Court. The Industrial Court granted stay. During the operation of the

orders of stay, the petitioner retired on attaining age of superannuation on 31.7.2014.

2. Thereafter the Industrial Court directed the petitioner to avail the remedy of appeal before the Divisional Commissioner. The petitioner approached before the Divisional Commissioner. The Divisional Commissioner dismissed the appeal. The said order is assailed in the present petition.

3. Mr. Patil, learned counsel for the petitioner states that the petitioner was working as Mistri Grade I and was getting salary of Mistri Grade I even on 5.12.2003. Learned counsel submits that apart from the fact that the petitioner was working as a

Mistri Grade I even as per the Government Resolution dated 28.10.1994 the petitioner was eligible to be appointed as Civil Engineering Assistant. The petitioner possessed all the necessary qualifications. The said Government Resolution is also relevant. Learned counsel submits that while officiating on the post of Civil Engineering Assistant the petitioner had retired and even as per the Maharashtra Civil Services Rules the pension is to be fixed on the basis of last salary drawn. The last salary drawn by the petitioner was of the post of Civil Engineering Assistant.

4. Mr. Rajput, learned counsel and Mr. Bharaswadkar, learned A.G.P. for respondents submit that the petitioner was working on the post of Mukadam, however, as per the

Government Resolution dated 29.9.2003 the principle of 'Kamanusar Hudda and Huddyanusar Vetanshreni' was applied. Para 4 of the said Government Resolution is relevant which states that such a person would not be brought on regular establishment/cadre. Only the pay scale of Mistri Grade I is to be given and not actual posting of Mistri Grade I. The post of Mukadam was not one of the 7 cadres which were unified as Civil Engineering Assistant. As the petitioner worked as Mukadam he could not have been absorbed as Engineer. The order of absorption was wrongly passed. According to the learned counsel as the appointment/absorption of the petitioner as Civil Engineering Assistant was ab initio void, the petitioner was reverted. The said order is correctly passed. Even by the

Commissioner the said order is upheld. Under the Circular, dated 23.8.2010 the Government has clarified the said aspect that the persons who are working on the basis of the principle of 'Kamanusar Hudda and Huddyanusar Vetanshreni' are not to be brought on the establishment of Civil Engineering Assistant. Pursuant to the said clarification the action has been taken of reversion. The same is legal and valid.

5. We have considered the submissions. The Government Resolution dated 28.10.1994 clause I reads as under :-

“(१) दिनांक १.१.८९ रोजी शासन सेवेत कार्यरत आसलेल्या व शासकीय तांत्रिक संस्थेमार्फत (Govt. Technical Institute) घेण्यात आलेल्या स्थापत्य अभियांत्रिकी सहायकाला एक वर्षाचा अभ्यासक्रम ज्यांनी उत्तीर्ण केला आहे अशा सर्व इच्छुक कर्मचाऱ्यांचे पद अथवा आस्थापनेचे स्वरूप विचारात न घेता खास बाब म्हणून त्यांना स्थापत्य अभियांत्रिकी सहायक संवर्गात समाविष्ट करण्यात यावे.”

It appears that the petitioner was possessing the said qualification referred therein. It would appear that at the time of retirement the petitioner was working as a Civil Engineering Assistant and was drawing pay scale of Civil Engineering Assistant. The order of reversion was stayed and the Commissioner has dismissed the appeal after the petitioner had retired from service. The petitioner is entitled for pension on the basis of last salary drawn.

6. If the case of the respondent is accepted that the petitioner could not have been considered for the post of Civil Engineering Assistant as the petitioner was not given appointment in the cadre of Mistri Grade I but was only paid salary of Mistri

Grade I, then the order of reversion ought to be on the post of Mukadam, but the order of reversion also states that the petitioner is reverted to the post of Mistri Grade I. The post of Mistri Grade I along with other 6 posts were unified and formed one cadre of Civil Engineering Assistant. The clarification in the year 2010 is much later and the petitioner is absorbed as Civil Engineering Assistant. It is not disputed that in the year 2003 the petitioner was being paid pay scale of Mistri Grade I, but was also being considered as Mistri Grade I, may be on the principle of 'Kamanusar Hudda and Huddyanusar Vetanshreni'.

7. Clause (5) of the Government Resolution, dated 21.11.2003 relied by the respondents reads as under :

“(५) यावर होणारा खर्च संबंधित कर्मचाऱ्यांच्या वेतनावरील खर्च ज्या लेखाशिर्षाखाली खर्ची टाकला जातो त्या लेखाशिर्षाखाली मंजूर असलेल्या अनुदानातून भागविण्यात यावा.”

8. Considering all aforesaid conspectus of the matter, the impugned order dated 18.7.2011 reverting the petitioner and the subsequent order dated 7.5.2016 passed by respondent no.3 are quashed and set aside.

It is not disputed that till the retirement the petitioner was paid salary of Civil Engineering Assistant.

Respondents shall pay the pension and pensionary benefits to the petitioner as attached to the post of Civil Engineering Assistant.

9. Writ Petition accordingly allowed in above terms. No costs.