

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

941 WRIT PETITION NO. 9161 OF 2016

PRASHANT VASANTRAO GORDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Shri. Avinash Deshmukh, Advocate, for petitioner.

Shri. A.S. Shinde, Assistant Government Pleader,
for respondent No.1.

Shri. P.M. Shah, Senior Counsel instructed by
Shri. S.V. Adwant, Advocate, for respondent No.2
and 3.

**Coram: T.V. NALAWADE &
SANGITRAO S. PATIL, JJ.**

Date: 9 February 2017

ORDER:

The petition is filed for quashing and setting aside Circular bearing No.HR-10 dated 20-8-2016 issued by respondent No.3 and for restraining the respondents from taking adverse action which can be done due to the Circular against the petitioner. Both the sides are heard.

2) The petitioner had worked in Indian Navy as Sailor from 1992 to 2007. Thus he had rendered the service of 15 years and 17 days in Indian Navy. He appeared in the recruitment process started by respondent No.2 in the year 2010 and he was appointed on the post of Assistant Chief Vigilance Officer / Assistant Security Officer on 21-5-2010 in the pay scale of Rs.21170-845-25395-900-47895 on probation basis. In view of the administrative circular issued by respondent Nos.2 and 3, Corporation, according to the petitioner, he is entitled to get weightage in the present service and he is entitled to get one increment for every year of service rendered in the Indian Navy. This Circular of the year 1999 was withdrawn by these respondents on 1-11-2012. Amendments were made to the Circular dated 1-11-2012 on 16-5-2013 and 23-8-2013 by issuing administrative circulars.

3) In view of the aforesaid case of the petitioner, the petitioner was expected to show

that this prayer is as per service condition which was promised to him on the date of entry in the service, in the year 2010. Learned counsel for the petitioner took this Court through the Government Notification issued by the General Administration Department of the State Government on 16-11-1974. The learned counsel for the petitioner took this Court through the Government Resolution dated 4 October 1976 issued by the General Administration Department of the State Government. This Court has carefully gone through these two Resolutions and also the Resolution of the year 1993. These two Resolutions do not show that the Government had taken decision to give weightage to such employee in respect of the service rendered by him with Navy or other Forces of this country. It can be said that such concession was given to Emergency Commissioned Officers but not to employees of the rank of the petitioner. It is not disputed that respondent - Corporation, as a policy decision, in the year 1993 adopted the Circulars of the State

Government issued with regard to service conditions of ex-servicemen from time to time. There is no Circular of the State Government showing that such weightage could have been given to the petitioner or the employees of the rank of the petitioner.

4) It appears that there was some misconception with respondent-Corporation and due to that first time in the year 1999 a Circular came to be issued and decision was taken to give such weightage to all ex-servicemen and that was done on the basis of the Resolutions dated 16-11-1974 and 4-10-1976, the Resolutions which are already quoted. Thus, even when no such benefit was extended by the State Government to such employees, due to misconception and misreading of the Government Resolutions, Circular dated 30-10-1999 came to be issued. In the year 2012 the Corporation realized that mistake was committed and then Circular dated 1-11-2012, which is challenged, came to be issued. The subsequent

amendments to this Circular were issued only to see that if by mistake the pay was fixed on the basis of the circular of the year 1999 the amount already paid is not recovered from those employees. However, there was clear direction to make correction and refix the pay of such employees as such benefits could not have been given to them and also as no Department of the Government is giving such benefit.

5) Learned counsel for the petitioner submitted that the respondent-Corporation had framed Service Regulations, 2012 and in those Regulations also intention was shown to give some benefits to the ex-servicemen. On this point learned Senior Counsel appearing for respondent-Corporation submitted that these Regulations were not given effect and there is no intention of the respondent-Corporation to give such benefits. Learned Senior Counsel submitted that no Department of the State Government is giving such benefit. Learned Senior Counsel further

submitted that due to mistake committed, employees of the rank of the petitioner started getting salary which is more than the salary of the top officers of the Corporation.

6) The petitioner is bound by the service conditions which were promised to him on the date when he entered the service. Though, it is true that in the year 1999, though by mistake, one Circular was issued, this Circular was on the basis of the Resolutions issued by the State Government in the years 1974 and 1976 and there was no such benefit extended by these Government Resolutions to such employees by the State Government. In the year 1993 the Corporation took a decision to adopt the State Government's Resolutions/Circulars in this regard and it can be said that from the year 1993 the Corporation had started using the policy decision taken by the State Government with regard to the present matter. In view of these circumstances, not much can be made out in favour of the petitioner due

to the mistake committed by the respondent-Corporation of aforesaid nature.

7) The learned Senior Counsel for the respondent-Corporation submitted that the Corporation is entitled to recover the amount which is paid in excess due to the Circular of the year 1999. It appears that on 26-11-2013 even when there was the decision of 1-11-2012 again mistake was committed by the officer who fixed salary. In the month of June, on 1-6-2013, again one increment was given in the previous salary. Learned Senior Counsel for the respondent placed reliance on the the observations made by the Apex Court in the case reported as **(2012) 8 SCC 417 (Chandi Prasad Uniyal v. State of Uttarakhand)** and submitted that if any such amount is paid, it is recoverable from the employee. Though such observations were made by the Apex Court in this case, in subsequently decided case reported as **State of Punjab v. Rafiq Masih** reported as **(2015) 4 SCC 334** the Apex Court has laid down that if it

is mistake of the employer and no fraud was played by the employee, the amount paid by such mistake cannot be recovered from the employee. This Court holds that it is not desirable to ask the petitioner to return the amount which is paid by mistake by the respondent Corporation to him due to aforesaid circumstances.

8) Learned counsel for the petitioner placed reliance on the observations made by the Apex Court in the case reported as **AIR 1994 SC 2480 (Bhagwan Shukla v. Union of India)** and submitted that no show cause notice was issued to the petitioner before taking such action, issuing the Circular of 2012 and so the Circular needs to be set aside. This submission is not acceptable. It was only policy decision of the Corporation. It is already observed that the Corporation had already taken policy decision to use Circulars which the State Government is issuing from time to time with regard to the present matter and as the Circular of the year 1999 was issued due to

mistake, there was no necessity of giving hearing to individuals like present petitioner. The decision of withdrawal of the previous circular of the year 1999 was taken against all similarly placed ex-servicemen and it was a policy decision of the Corporation. In view of these circumstances, this Court holds that the observations made by the Apex Court in this reported case are of no help to the petitioner.

9) In the result, the petition stands dismissed. However it is made clear that the respondent Corporation is not entitled to recover the amount, if any, paid in excess by way of salary to the present petitioner due to aforesaid Circular of 1999 issued by the Corporation.

Sd/-
(SANGITRAO S. PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)