

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 5525 OF 2012

Shri Shantaram Shinde

... Petitioner

Vs

1. Principal District Judge, Satara & Ors.

... Respondents

Mr. Dilip Bodake for the Petitioner.

Mr. A.V. Bukhari, senior counsel with Mr. Vishwajeet S. Kapse for the Respondent Nos.1 and 2.

Mrs. M.S. Bane - 'B' Panel Counsel for the Respondent No.3.

***CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.***

THURSDAY, 09TH MARCH, 2017

P.C. :

1 By this petition under Article 226 of the Constitution of India, the petitioner challenges a show cause notice issued on 5th May, 2012, an order dated 22nd January, 2013 (Page 76A of the Paper-book) and the recovery that is effected from the petitioner in pursuance thereof.

2 The facts lie in a very narrow compass for appreciating only two submissions of the petitioner's advocate.

3 It is not disputed that the petitioner joined the District Court at Satara. The petitioner was appointed as a Peon on 9th July, 1979. He was promoted to the post of Bailiff in 1988. At the relevant time, he was posted as a Bailiff in the Civil Court, namely, the Court of Civil Judge, Senior Division, Karad. The petitioner also worked in the Court at Satara from 2005 to 2011. The petitioner does not dispute that a complaint was made by one Uttam R. Pawar alleging that the petitioner illegally helped other Bailiffs in delaying execution proceedings and tried to influence the proceedings themselves. In other words, post decree execution being a enormous problematic issue for the litigants, the staff like the petitioner is meant to assist them so that they enjoy the fruits of a decree of a Civil Court. The petitioner influenced the outcome of these execution proceedings and to the detriment of the litigant and the allegation is that the petitioner furnished a detailed explanation. Thereafter, an enquiry was held because the authority was not satisfied with this

explanation. He was given a warning and also directed to deposit his travelling allowance for the period from 20th January, 2011 to 22nd January, 2011.

4 The petitioner submits that prior to this warning in the year 2008 and by an order dated 20th November, 2008, he was granted an advance increment. On account of his performance, he was also granted a higher pay scale. The promotional pay scale was made available to him on 25th March, 2009. The petitioner submits that having been promoted on the post of Bailiff in 1988 and completing twelve years' of service, he was granted the benefit of Assured Career Progression Scheme (ACPS for short). The petitioner rightly understands this benefit as not occurring or capable of being obtained only because of the length of service, but because there are few promotional avenues. The entitlement to this benefit is on the same lines and on the same terms as the promotional benefits. Merely because the promotional posts are few and avenues are not available, employees like the petitioner should not stagnate in a pay scale. That is why this Assured Career Progression Scheme. However, this scheme was availed of and the petitioner was granted the

benefit with effect from 25th March, 2009. That was by an order dated 3rd February, 2010. In the meanwhile, there were vacancies in the post of Head Bailiff which is a promotional post. The petitioner, being senior and on account of his performance, was considered for such promotional benefit. However, the promotion was not granted to him. It was granted to a colleague junior to the petitioner in service.

5 The petitioner submits that a show cause notice dated 5th May, 2012, was issued, relying upon a Government Resolution dated 20th July, 2001. The petitioner does not dispute that his services are governed by the conditions of service applicable to Government servants. Equally, other emoluments and benefits are drawn by him on par with the Government servants. That is why the Civil Services Rules and the Government Resolutions in furtherance thereof or the Circulars in that regard are applicable to him. Relying upon this Government Resolution referred above of July 2001, a show cause notice was issued to him on 5th May, 2012.

6 It is the case of the petitioner that contrary to the

terms and conditions stipulated in the Government Resolution of 2001, recoveries were sought to be effected. The recoveries were of the sum which was paid as part and parcel of the ACPS. That was sought to be taken away on the footing that the promotional benefits could not be obtained by the petitioner, though he was duly considered, on account of his performance. It is thus the assessment of his performance which was made and the promotion was denied to him. That would enable the Government to recover the amounts under ACPS and obtained from 25th March, 2009, till the promotional order, namely, of August, 2011.

7 It is this recovery which is challenged in this writ petition and factually effected by the order of 23rd January, 2013.

8 Mr. Bodake would submit that the petitioner was eligible to obtain the benefit under the ACPS. Once he was held eligible for these benefits and they were extended to him, then, they cannot be withdrawn merely because at a later date a promotional exercise resulted in the petitioner being not promoted. Secondly, and in any event, the show cause notice at page 42 relies upon the Government Resolution dated 20th July,

2001. That itself clarifies [by para 2 sub-par(viii)] that if later on at a regular promotional exercise such of the candidates like the petitioner are found to be unfit or ineligible for promotion, then, their past ACPS benefits cannot be withdrawn. In the sense they could be only notionally said to be taken away, but actual recoveries in terms of money cannot be effected. Therefore, Mr. Bodake would submit that the order passed on 23rd January, 2013, omits to make a reference to this vital aspect. Thirdly, and alternatively, Mr. Bodake would submit that if this show cause notice is issued relying upon a further Government Resolution dated 1st April, 2010, and para 3 thereof appearing at page 100 of the paper-book, yet there is a further stipulation in the form of a Corrigendum dated 23rd December, 2015. That Corrigendum, copy of which is at pages 104 and 105 of the paper-book clarifies that such recoveries in terms of money should not be effected. This Government Resolution may say it has prospective effect, but it being clarificatory in nature, it would date back to the original position as emerging from the July, 2001 Resolution. For all these reasons, he would submit that the impugned order cannot be sustained.

9 Mr. Bukhari, learned senior counsel appearing on behalf of the contesting respondents, namely, respondent Nos.1 and 2 would submit that there is a basic fallacy in the argument of Mr. Bodake. Mr. Bukhari submits that on 5th May, 2012, the notice at page 42 was issued. On that date, the Government Resolution of 1st April, 2010, was very much in force. It may not have been referred in the show cause notice, but its operation cannot be denied. Secondly, in terms of that Government Resolution and paragraph 3 thereof, recoveries can be effected. If that is not disputed and the impugned order is passed on 23rd January, 2013, then, the Corrigendum issued on 23rd December, 2015, is a subsequent act and from which the petitioner can derive no assistance or benefit. That can have no application at all. If that has no application, then, whether it is prospective or clarificatory and, therefore, retrospective is an issue which need not be considered. Looked at from any angle, there is no error of law apparent on the face of the record or perversity in the impugned order and hence the Writ Petition be dismissed.

10 Having perused the entire position and emerging from the record of this writ petition, namely, the petition, its

annexures and all the affidavits, we find that the view taken by respondent Nos.1 and 2 is a possible and probable view of the matter. It is not entirely perverse or vitiated by any error of law apparent on the face of the record as contended by Mr. Bodake.

11 The petitioner should consider himself lucky that despite a warning issued to him because of the length of service and on account of non availability of the post of Head Bailiff at the relevant time, he was granted the benefit of ACPS. Meaning thereby, on the strength of his services rendered till that date which are considered satisfactory, the benefit of the Assured Career Progression Scheme in monetary terms was made available to him. Later on, he does not dispute that the promotional post fell vacant. In the ratio or in the zone of consideration that is mandated, the petitioner was considered along with others for this promotional post. The promotional post could not be offered to him. There was a specific exercise undertaken by the authorities which resulted in declaring the petitioner as unfit for promotion. A person junior to him Mr. Uttam G. Pawar was promoted. The petitioner was superceded by an order passed on 2nd September, 2011. The junior of the

petitioner assumed the charge of the promotional post on 12th September, 2011. With all this background, on 5th May, 2012, relying upon the Government Resolutions in the field, the show cause notice was issued. The show cause notice was issued without making any reference to the Government Resolution of 1st April, 2010, but from the Memo of the writ petition and the prayers therein, we do not find any challenge being raised to this Government Resolution or the authority of the State in issuing it or its applicability to the petitioner. All that the petitioner argues is that the ACPS benefits are made admissible by virtue of a Government Resolution dated 23rd July, 2001, and that does not contemplate any monetary recovery. However, this submission of Mr. Bodake overlooks the presence of the Government Resolution dated 1st April, 2010, with clause 3 thereof. If clause 3 thereof appearing at page 100 is perused carefully, it is apparent that the same permits such recoveries to be effected. If such recoveries have to be effected by those holding the responsible superior post and it is their obligation, then discharging it, that show cause notice of 5th May, 2012, was issued. It is in pursuance of this show cause notice and finding the petitioner's explanation thereto being unacceptable that the impugned order dated 23rd

January, 2013, was issued. When that was issued, there was neither any Corrigendum of 23rd December, 2015, nor any other clarificatory document. Once this is the admitted factual position, then, we do not think that the interpretation placed on all these Government Resolutions by the Principal District Judge, namely, the competent authority, can be said to be perverse. It is a possible and probable interpretation. The Principal District Judge and the High Court acted *bona fide* and in terms of the authority derived from this Government Resolution. Pertinently, the petitioner has been promoted subsequently as Head Bailiff. He has since superannuated from service. The pensionary benefits are computed on the basis of his last drawn pay and drawn as Head Bailiff. Therefore, even if a sum of Rs.53,953/- has been recovered from him in pursuance of the impugned order, that recovery is clearly off set by the subsequent pensionary benefits and in monetary terms obtained by the petitioner. Once the higher pay scale was earned and on that basis even the pensionary benefits, then, the petitioner suffers no monetary loss. Additionally, and all the more for this reason, therefore, we are not inclined to interfere in our extraordinary, discretionary and equitable jurisdiction under Article 226 of the

Constitution of India.

12 The writ petition, therefore, has no merit. It is dismissed, but without any order as to costs.

B.P. COLABAWALLA, J. S.C. DHARMADHIKARI, J.