

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

WRIT PETITION NO. 3352 OF 2017

Bajirao Shamrao Kolte
Age : 62 years, occu.: retired
R/o N-11, Navjeevan Colony,
HUDCO, Aurangabad.

Petitioner.

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The Chief Executive Officer,
Zilla Parishad, Aurangabad.
3. Block Development Officer,
Panchayat Samiti, Soygaon,
District Aurangabad.
4. The Chief Accounts and Finance
Officer, Zilla Parishad,
Aurangabad.

Respondents.

Mr. V.H. Dighe, Advocate for the petitioner.
Mr. A.V. Deshmukh, A.G.P. for the State/respondent No.1.
Mr. Z.Y. Pathan, Advocate for respondent Nos. 2 to 4.

**CORAM : S.V. GANGAPURWALA &
SUNIL K.KOTWAL,JJ.**

Reserved on : 10th July 2018.

Pronounced on : 24th August 2018.

JUDGMENT : (PER SUNIL K. KOTWAL, J.)

1. Rule. Rule made returnable forthwith and with the consent of learned Counsel for the parties, the petition is taken up for final disposal at this stage.

2. By filing this writ petition, the petitioner seeks directions against the respondent No.2 to correct the date of grant of time bound promotional scale as 01.10.1994 instead of 01.05.2005 and further direction to release all the pensionary benefits and arrears of salary since 01.10.1994.

3. The undisputed facts in between the parties are that the petitioner was appointed as a Hand-pump Helper on 03.11.1981 and he retired on 30.06.2015. The first benefit of time bound promotional scale was given to the petitioner on 01.10.1994 and his pay-scale was fixed as Rs.775-12-995 in non-technical cadre. Subsequently as per 5th Pay Commission, he was placed in the pay-scale of Rs. 2610-60-2910-65-3300-70-4000/-. In the meeting dated 11.04.2005 of the Committee for time bound promotional scale, a decision was taken and the petitioner was placed in the technical cadre and his pay-scale was fixed in the pay band of Rs.4000-6000/-, w.e.f. 01.05.2005.

4. Learned Counsel for the petitioner submits that when the first time bound promotional scale was given to the petitioner w.e.f. 01.10.1994, the pay-scale of technical cadre in the pay band of Rs. 4000-6000/- should have been given w.e.f. 01.10.1994 instead of 01.05.2005.

5. His next submission is that after giving first time bound promotional scale, the petitioner is also entitled to second time bound promotional scale after completion of total 24 years service i.e. on 01.10.2006. However, respondent No.2, instead of giving the benefit of second time bound promotional scale, erroneously placed the petitioner in the pay-scale of technical cadre since 01.05.2005 and treated that date as first time bound promotional benefit to decline the grant of second time bound promotional scale since 01.10.2006.

6. Learned Counsel for the respondents admits that the first time bound promotional scale was granted to the petitioner on 01.10.1994 and even as per 6th Pay Commission he was placed in the pay-scale of Rs.5200-2000+Grade Pay of Rs.2400/-. He submits that though the petitioner is entitled to second benefit of time bound promotional scale on 01.10.2006, the post of the petitioner was non-promotional post and as per the Government

Resolutions dated 09.06.2009 and 05.07.2010 and for such isolated post only additional Grade Pay is admissible and not the time bound promotional scale. According to the learned Counsel for the respondents, the petitioner is entitled to pay-band of Rs.4440-7440 + Grade Pay of Rs. 1300/- and additional Grade Pay of Rs.200/-. His next submission is that as the Department has given technical cadre pay-scale of Rs. 4000-6000/- from 01.05.2005 to the petitioner ad first time bound promotional scale and the date of second time bound promotion would be 01.05.2017. However, as the petitioner retired on 30.06.2015, the second time bound promotional scale is not admissible to the petitioner.

7. In view of the above rival contentions of the learned Counsel for both the parties, the facts are absolutely clear that considering the date of appointment of the petitioner i.e. 03.11.1981 as Hand-pump Helper, the first benefit of time bound promotional scale was rightly given to the petitioner w.e.f. 01.10.1994 as per the order dated 06.03.1997. However, that time the pay-scale of petitioner was fixed in non-technical cadre, though petitioner had acquired qualification of Electrician in the year 1984/85. Though belatedly, the pay-scale of technical cadre for Hand-pump Helper i.e. Rs.4000-6000/- was given to the petitioner by the Committee dealing with time bound promotional scale in the meeting dated

11.04.2005, erroneously the scale of technical cadre i.e. Rs. 4000-6000/- was made applicable w.e.f. 01.05.2005. As the first benefit of time bound promotional scale was given w.e.f. 01.10.1994, since that date the pay-scale of technical cadre should have been made applicable to the petitioner and not from 01.05.2005. The contention of respondents is not acceptable that the date of first time bound promotional scale is 01.05.2005, because respondents cannot ignore that by order dated 06.03.1997 after completion of 12 years service, first time bound promotional scale was given to the petitioner by respondents on 01.10.1994. Thus, only because respondents corrected their mistake of placing the petitioner in non-technical cadre by placing him in technical cadre in the meeting dated 11.04.2005, the date of grant of first time bound promotional scale cannot be changed as 01.05.2005. We hold that first time bound promotional scale in the technical cadre should be given to the petitioner w.e.f. 01.10.1994 and to that effect re-fixation of pay-scale of the petitioner is to be made by the respondent No.2. In that event respondent No.2 is also liable to pay arrears of pay to the petitioner in the revised pay-scale w.e.f. 01.10.1994.

8. So also, after the next 12 years from 01.10.1994 i.e. on 01.10.2006 the petitioner is also entitled to second time bound promotional scale. However, by that time 6th Pay Commission was

implemented and the post of the petitioner being an isolated post i.e. non-promotional post, his second benefit of time bound promotional scale will be governed by the Government Resolutions dated 09.06.2009 and 05.07.2010. In accordance with this new Government Resolutions, as the benefit of second time bound scale, the petitioner will be entitled hike in the Grade Pay only as prescribed in the said Government Resolutions. In view of law settled by Apex Court in **“State of Punjab and others Vs. Rafiq Masih (White Washer)”** reported in **2015 (4) Supreme Court Cases 334**, the respondents cannot recover any excess payment made to the petitioner on account of erroneous fixation of pay-scale. Therefore, if the respondent No.2 has already recovered any amount from the petitioner, the same shall be refunded to the petitioner within a period of three months from the date of passing of this order.

9. In view of these findings of this Court, this Petition deserves to be partly allowed.

10. The respondents are directed to revise the pay-scale of petitioner in the technical cadre w.e.f. 01.10.1994 and to pay arrears of pay from 01.10.1994.

11. Respondent No.2 shall also give benefit of second time-bound promotional scale to the petitioner w.e.f. 01.10.2006 and shall fix the pay-scale of the petitioner in accordance with the Government Resolutions dated 09.06.2009 and 05.07.2010 and as observed in Para-8 above.

12. All retiral benefits of the petitioner be released within three months from the date of passing of this order.

13. Writ Petition is disposed of. Rule is made absolute in the above-said terms. No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

vdd/