

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

WRIT PETITION NO. 8907 OF 2018

**SHANSUNDAR RAMRAO PANDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.A.S. Deshmukh, Advocate for the petitioner.
Mr.S.P. Sonpawale, AGP for the respondents.

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

DATED : 11.10.2018

P.C. :-

1. The petitioner had filed original application before the Maharashtra Administrative Tribunal, Aurangabad assailing the order withdrawing the benefits of second ACPS given to the petitioner.

2. Mr.Deshmukh, learned Counsel submits that promotion orders were never issued to the petitioner. The petitioner was given benefit of second Assured Career Progression Scheme (for short "ACPS") in the year 2010. In the year 2014 the petitioner retired from service on attaining the age of superannuation and in the year 2017

recovery was claimed on the ground that the petitioner is responsible in not getting the order of promotion issued. The learned Counsel submits that the departmental inquiry is initiated by the respondents in November, 2017. Same is not concluded. The impugned order of the Tribunal is illegal.

3. The learned AGP submits that the petitioner was working as the Senior Clerk. He was responsible for not placing the file for getting the order issued. Because of the act of the petitioner, the second ACPS benefit was given to him. Subsequently it is found that it is the petitioner who has erroneously not moved the files. In view of that the order of recovery is rightly passed. The Tribunal has rightly considered the same.

4. It is not disputed that the petitioner is granted second ACPS benefit in the year 2010. On attaining the age of superannuation, the petitioner has retired in the year 2014 and in the year 2017 the order

is passed claiming recovery on the ground that erroneous pay fixation was done.

5. It is also not disputed that the departmental inquiry under Rule 27 of the Maharashtra Civil Services (Pension) Rules has been initiated against the petitioner in November, 2017, in which one of the charge is that the petitioner was required to send his service book, other documents and information to the Mechanical Division of Irrigation Office, Osmanabad. However, the petitioner did not send the same and because of that the order of promotion could not be issued to the petitioner. It is precisely on the same ground the impugned order was passed cancelling the second ACPS benefit given to the petitioner. Without concluding the departmental inquiry, the impugned order would be putting cart before the horse. On one hand inquiry has been initiated against the petitioner, on the same charge, benefit given to the petitioner is withdrawn. The Tribunal, it appears that, failed to consider the said aspect. Passing any

order with regard to guilt of the petitioner would be preempting decision in the departmental inquiry. The respondents as such ought to have passed appropriate orders after concluding the departmental inquiry.

6. In the result, the impugned order of the Tribunal is quashed and set aside. The order dated 09.05.2017 (Exh."L") issued by the respondent No.3 cancelling benefit of the second ACPS given to the petitioner is also quashed and set aside.

7. The respondents may take decision with regard to the second ACPS benefit given to the petitioner upon conclusion of the departmental inquiry.

8. The petitioner has already retired in the year 2014. The departmental inquiry has also been initiated almost one year back. Considering the above, the respondents shall conclude the departmental inquiry

against the petitioner expeditiously, preferably within 7 (seven) months. The petitioner shall co-operate in expeditious disposal of the departmental proceeding.

9. With these observations, the writ petition is disposed of. No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]