

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10023 OF 2017

Shivgir Hansgir Giri

.. **Petitioner**

Versus

The State of Maharashtra
and others

.. **Respondents**

Mr. Avinash S. Deshmukh, Advocate for the
Petitioner.

Mr. S. B. Joshi, A.G.P. for Respondent No. 1.

Mr. M. C. Swami, Advocate for Respondent Nos. 2
and 3.

CORAM: S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.

DATE: 19th October, 2018

PER COURT :

1. The petitioner assails the order passed by the Maharashtra Administrative Tribunal in Original Application No. 171 of 2015, and also the order passed by respondent no. 2 thereby negating the claim of the petitioner.

2. Mr. Deshmukh, learned counsel for the petitioner submits that the petitioner was appointed as 'Canal Inspector' in the year – 1981. The petitioner was promoted as a 'Junior Daftar Karkoon' on 01.12.1989. However, in the year – 2002 the petitioner was reverted back to the post of 'Canal Inspector'. His promotion as a 'Junior Daftar Karkoon' was cancelled. The petitioner in the year – 2006 was absorbed as 'Daftar Karkoon'. According to the learned counsel, since the date of absorption of the petitioner as 'Daftar Karkoon' till the date of his retirement in the year – 2015, he worked on the post of 'Daftar Karkoon'. Three months before his retirement the respondent passed an order thereby reverting the petitioner to the post of 'Canal Inspector', so also, cancelling second ACPS benefit. The petitioner assailed the said order before the Maharashtra Administrative Tribunal by filing Original Application No. 171 of 2015 immediately in the month of March – 2015. The tribunal stayed

the order dated 12.03.2015 reverting the petitioner. Pursuant to the order of stay the petitioner retired from the post of 'Daftar Karkoon' on or about 30.06.2015. The learned counsel submits that initially the order of promotion effectuated in the year – 1989 was cancelled under order dated 16.09.2002 and the excess salary paid of Rs. 17471/- was also recovered by the respondents. The petitioner was never promoted to the post of 'Daftar Karkoon' but having been declared as surplus 'Canal Inspector', the petitioner was absorbed to the post of 'Daftar Karkoon'. The learned counsel submits that the pay scale for the post of 'Canal Inspector' was Rs. 950-1400, whereas the petitioner's promotion order as a 'Junior Daftar Karkoon' dated 01.12.1989 prescribed pay scale of Rs.950-1500. There was difference of only Rs. 100, though, it was also recovered when the order of promotion was withdrawn in the year – 2002. The learned counsel submits that pay scale of Rs. 950-1400 and 950-

1500 were both revised in the same pay scale of Rs. 3050-4590. In view of that, even if the pay scale granted to the petitioner of Rs. 950-1500 was withdrawn, that would not have any effect on the first ACPS benefit granted to the petitioner in the scale of Rs.1200-1800. The pay scale was rightly revised. No illegality has been committed.

3. Mr. Swami, learned counsel for respondent nos. 2 and 3 and the learned A.G.P. submit that the absorption of the petitioner on the post of 'Daftar Karkoon' was erroneous. In fact, the post of 'Daftar Karkoon' can only be filled in by promotion or nomination. Under the erroneous belief that the petitioner is working as a 'Junior Daftar Karkoon' he was absorbed as a 'Daftar Karkoon'. The petitioner was paid wrong pay band. In fact, the petitioner would have been granted pay scale of Rs. 5200-20200 with Grade Pay of Rs. 1900 in the sixth pay scale. As he has granted benefit of ACPS, he is entitled for additional Grade Pay of Rs. 200 i.e. 2100. However, the

petitioner has been granted pay scale of Rs. 5200-20200 with Grade Pay of Rs. 2400, and upon being absorbed as a 'Daftar Karkoon' he has been given second ACPS benefit from 01.10.2006 and the pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4200 which is not available to the post of 'Canal Inspector'.

4. The petitioner cannot take the advantage of a wrong absorption order being issued in his favour. The tribunal has not committed any error. Pursuant to the observations of the tribunal application of the petitioner has been rejected and the impugned order is passed.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. There is no dispute that the petitioner was appointed as 'Canal Inspector' under order dated 23.11.1989, in the pay scale of Rs.250-435 and under the Fourth Pay Commission with effect from

01.01.1986 the scale was revised to Rs. 950-1400. On 01.12.1989 the petitioner was promoted as a 'Junior Daftar Karkoon' in the pay scale of Rs. 950-1500. He was given a higher pay scale of Rs. 100. It also appears that the scales of Rs. 950-1400 and Rs. 950-1500 were both revised in the same scale of Rs. 3050-4590 in the Fifth Pay Commission recommendations.

7. On or about 04.12.2002, the petitioner's promotion as a 'Junior Daftar Karkoon' in the pay scale of Rs. 950-1500 was cancelled, and the petitioner was reverted. The recovery order was also passed and an amount of Rs. 17471/- was recovered from the petitioner. The petitioner was given benefit of time bound promotional pay with retrospective effect from 01.10.1994 in the pay scale of Rs. 1200-1800. It is also not disputed that the pay scale of Rs. 1200-1800 revised to the scale 4000-6000 in the Fifth Pay Commission recommendations and the scale was further revised to 5200-20200 in the Sixth Pay Commission

recommendations. The only difference in the contention of the petitioner and the respondents is that the petitioner would be entitled for the Grade Pay of Rs. 2100 as per the respondents, and as per the petitioner Rs.2400. It also appears that the said benefit was extended to the petitioner upto 01.10.2006.

8. Thereafter from 01.10.2006 the petitioner started drawing pay in the scale of Rs. 9300-34800 with Grade Pay of Rs. 4200 upon getting the ACPS benefit.

9. We had specifically asked the learned A.G.P. and the learned counsel for respondent nos. 2 and 3 that ignoring the dispute with regard to the post the petitioner was holding, either as a 'Canal Inspector' and / or 'Daftar Karkoon', pay scale that would be applicable to the petitioner after the second ACPS benefit, it was categorically replied by the learned counsel for the respondents that pay scale which was granted

to the petitioner would not change.

10. In the light of that, practically there is no propriety in any dispute being raised except the nomenclature of the post.

11. It is the matter of record that the petitioner was initially appointed as 'Canal Inspector' and was promoted to the post of 'Junior Daftar Karkoon' in the year - 1989. In the year - 2002 was again reverted to the post of 'Canal Inspector' and the excess salary paid to him was recovered under the order dated 04.12.2002. Subsequently, in the year 2006 the petitioner was declared surplus as 'Canal Inspector' and was absorbed as 'Daftar Karkoon'. It is the contention of the respondents that the post of 'Daftar Karkoon' was not available for the petitioner. The said post had to be filled in by nomination and / or by promotion from amongst candidates working as Sectional Karkoons.

12. In the present matter, the petitioner was neither appointed by nomination nor by promotion to the post of 'Daftar Karkoon', but was absorbed on the post of 'Daftar Karkoon' having been declared as surplus 'Canal Inspector'. It is also not disputed that the petitioner from the year - 2006 on being absorbed as 'Daftar Karkoon' worked as 'Daftar Karkoon'. He officiated on the post of 'Daftar Karkoon' and did the work of 'Daftar Karkoon'. Three and half months prior to his retirement, the order impugned in the Original Application was issued. It was immediately stayed by the tribunal and the petitioner continued on the said post of 'Daftar Karkoon' till the date of his retirement. It was in peculiar circumstances the petitioner was declared surplus and absorbed as 'Daftar Karkoon' and officiated on the said post. Certainly it was not a case of promotion to the post of 'Daftar Karkoon' nor appointment by nomination but was of absorption.

13. Even assuming that the said absorption was not proper, but the absorption was on account of the act of respondents, on their own volition and not upon the misrepresentation of the petitioner. The petitioner since the date of absorption worked as 'Daftar Karkoon', officiated on the said post and coupled with above the pay band also would not be different as is accepted by the respondents. It would also be seen that in the year - 2012 the pay verification in the case of petitioner was done by the Pay Verification Unit, and was endorsed as such in the service book of the petitioner, holding that the Pay Band and the Grade Pay paid to the petitioner is proper.

14. Considering the aforesaid, there was no propriety in issuing the order impugned before the tribunal.

15. In view of the above, impugned order dated 08.03.2017 passed by the tribunal in Original Application No. 171 of 2015, so also, the order

dated 12.03.2015 passed by the respondent no. 2 and the order dated 09.05.2017 passed by the respondent no. 2 are quashed and set aside. The writ petition is accordingly allowed. The writ petition accordingly stands disposed of. No costs.

[R. G. AVACHAT, J.] [S. V. GANGAPURWALA, J.]

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