

((1))

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO.7358 OF 2007 WITH
CIVIL APPLICATION NO.8779 OF 2012

Dnyaneshwar s/o Damu Bhangale
Age 41 years, Occu. Service,
R/o C/o Sanjay Bhole
Near Old Chawdi, Jahangirdar Wada,
Bhusawal, District Jalgaon ... PETITIONER

VERSUS

1. The State of Maharashtra,
through the Principal Secretary to
Rural Development & Water
Conservation Department,
Mantralaya, Mumbai - 400 032
2. The Chief Executive Officer,
Zilla Parishad, Jalgaon ... RESPONDENTS

.....
Shri S.T. Shelke, Advocate for petitioner
Shri M.M. Nerlikar, A.G.P. for respondent No.1/ State
Shri M.K. Goyanka, Advocate for respondent No.2
.....

CORAM: T.V. NALAWADE AND
 SUNIL K. KOTWAL, JJ.

DATED : 22nd MARCH, 2018.

ORAL JUDGMENT (PER T.V. NALAWADE, J.):

1. This petition is filed under Article 226 of the Constitution of India for directions to respondents like State Government and Zilla Parishad to see that the benefit of service

conditions are extended to the petitioner as per the work taken from him, the clerical or the work of Computer Operator. Relief is also claimed of setting aside the Government order dated 23.4.2007, by which a direction is given to see that excess amount of salary paid to the petitioner, which is a difference between the salary of Class IV employee and Class III employee is recovered from him. Both the sides are heard.

2. The submissions made and the record show that the petitioner came to be appointed in Class IV cadre in the year 1997 in the pay scale of Rs.750-940 in a project which was started with the co-operation of British Government by the State Irrigation Department. Subsequently, in the month of May 1997, the petitioner was deputed to work as Computer Operator in the Head Office of Irrigation Department on deputation basis. This was Class III post having higher and different scale. In the year 1999, he was deputed in Collector Office in Election Branch, which was also a Class III post. Accordingly, work was taken from him of Clerical post, of Class III cadre.

3. In the year 2003, the Government issued Government Resolution and gave directions to Zilla Parishad to supply information about the persons appointed on temporary establishment and the scale given to them. Direction was also given to see that the payment of salary was made to the

employees as per the appointment given on temporary establishment. A direction was given to see that no higher scale was paid to them if other work is obtained from them. Though the Government Resolution was of aforesaid nature, in the year 2004, the petitioner was appointed on the post of Junior Assistant even when his initial appointment was in Class IV cadre and the appointment was shown on deputation basis. On 23.4.2007, the Government realised that there was some mistake or wrong committed in respect of present petitioner and other two employees. As they were not entitled to get appointment on Clerical post, Class III cadre, the appointments were cancelled and direction was given to recover the excess amount paid to them. On the basis of this Government Resolution, the Zilla Parishad issued letter and directed the recovery of Rs.11,006/-.

4. Submissions made show that, even today the respondents are getting the work of Clerical nature from the petitioner when it was not permissible. There is possibility that even till today the petitioner is getting the scale of Class III cadre, because the respondents are taking the work of Clerical nature from him. As per the aforesaid scheme given in the two Government Resolutions, it can be said that attempt was made by everybody, the respondents, to see that the petitioner gets

Class III post even though he was appointed in Class IV cadre and he got that salary for many years. Learned counsel for the petitioner submits that, if the petitioner is otherwise promoted to the post of Clerk, he is entitled to get promotion as per service rules, then he can get that post. There is no dispute over this proposition.

5. Only because work of clerical nature was obtained from the present petitioner, this Court holds that recovery cannot be allowed in respect of the payment already made to the petitioner for the work done on clerical post. To that extent only the petition can be allowed.

6. In the result, the petition is allowed. Only the order of recovery of aforesaid amount of Rs.11,006/- is hereby set aside. However, it is made clear that the petitioner is not entitled to get the post of Clerk, Class III cadre post unless he gets promotion if permissible under Service Rules. Rule is made absolute in those terms. Civil Application also stands disposed of.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/