

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12154 OF 2013

Subhash Pratapsing Pardeshi

...Petitioner
(Orig. Applicant)

Vs.

The State of Maharashtra & anr.

...Respondents
(Orig. Respondents)

.....

Mr. Sandeep V. Marne i/by Mrs. Rutuja Ambekar, Advocate for
the petitioner.

Mr. O.M. Kulkarni, AAGP for the State / Respondent Nos.1 & 2.

.....

**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 6th FEBRUARY, 2018.

ORDER (PER M.S.KARNIK, J.) :-

The petitioner has filed this petition under Article 226 and 227 of the Constitution of India challenge an order dated 5/12/2012 passed by the Maharashtra Administrative Tribunal, Mumbai Bench, Mumbai ('the Tribunal' for short) in O.A. No. 725 of 2007 thereby dismissing O.A.

2. The facts of the case in brief are as under :-

The petitioner was working as a Municipal employee with the then Ahmednagar Municipal Council. Sometime in the year 1972, the posts of Shop Inspector and Chief Shop Inspector were approved by the Government of Maharashtra in the Ahmednagar Municipal Council. In the year 1988, the petitioner was posted as Shop Inspector in the pay scale of Rs.1640-2900 in the Ahmednagar Municipal Council. As per 5th Pay Commission the aforesaid pay scale corresponds to Rs.5500-9000. Considering the performance and service record of the petitioner he was promoted as Chief Shop Inspector in the pay scale of Rs.2000-3500 and this pay scale corresponds to Rs.6500-10500 in the 5th Pay Commission.

3. The respondent issued a GR dated 5/1/1999 thereby approving the pay scale of the Shop Inspector as 6500-10500. By another GR dated 15/7/2002, the respondents decided to take over the functions of the local authorities under the Bombay Shops & Establishments Act, 1948. As per GR 27 posts

were created of the rank of Shop Inspectors, Grade-II in the pay scale of Rs.4000-6000. Thereafter, information was called from the Shop Inspectors for absorption. The petitioner pointed out that the service conditions to be fixed by the respondents are acceptable to him but in the process his present pay scale or the pay scale drawn by him at that time should not be affected. In other words his pay scale should be protected.

4. Learned Counsel for the petitioner submitted that at the time when the petitioner was employed with the Municipal Council as Chief Shop Inspector his pay scale was Rs.6500-10500. This factual aspect was brought to the notice of the respondents by Chief Officer of the Municipal Council by letter dated 9/4/2002. By GR dated 15/7/2002, the petitioner was absorbed with the respondent in the post of the Shop Inspector, Grade – II. It is the petitioner's case that he accepted the post of Shop Inspector with the respondents despite the fact that he was working as Chief Shop Inspector with the Municipal Council only because his last pay would be protected after absorption as

Shop Inspector, Grade II.

5. Learned Counsel for the petitioner states that no option was called for from him before he was absorbed. The order dated 8/11/2004 was issued without calling for any option. Learned Counsel submits that when he had shown his willingness to be absorbed as Shop Inspector only if his pay is protected, the action on the part of the respondents in then granting him lower pay scale is illegal and arbitrary. The petitioner having being placed in the lower pay scale of Rs.4000-6000 instead of fixing the pay scale as Rs.6500-10500 has suffered huge monetary loss. This would affect his pensionary benefits also.

6. The Tribunal was pleased to dismiss the OA by observing that the issue raised by the petitioner has been conclusively decided in OA No.52/2008 and other judgment in OA No.160/2008 on 8th December, 2010.

7. In our opinion, though the petitioner had given his

willingness to be absorbed as Shop Inspector only if his pay is protected, however, in the present fact and circumstances, it cannot be said that the action on the part of the respondents in not protecting the pay scale is arbitrary or illegal. In the order of absorption it was clearly mentioned that the petitioner is appointed as a Shop Inspector, Grade II in the pay scale of Rs.4000-6000. By issuance of GR the respondent had taken a policy decision to absorb Shop Inspector Grade II in the scale of Rs.4000-6000. It is not the case of the petitioner that any other Chief Shop Inspector who was receiving higher pay scale in the parent department, on absorption as Shop Inspector with the respondents was given the benefit of pay protection. The petitioner has voluntarily accepted the order of absorption. Merely because the petitioner imposed the condition of his willingness to join subject to protection of his pay will not in any manner help him as after the order of absorption the petitioner joined the services. The decision of the respondents to prescribe pay scale for the various posts and especially for the post of Shop Inspector, Grade II in the pay scale of Rs.4000-6000 upon

absorption is a policy decision and there is nothing on record which would suggest that the said absorption would be subject to protection of pay.

8. In this view of the matter, we do not find any infirmity with the view taken by the Tribunal. Consequently, we do not find any merit in this petition.

9. The Writ Petition is dismissed with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)