**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WRIT PETITION (S) NO. 2386 OF 2009**

Preetam Singh Rathore, S/o Shri Santram Rathore, aged about 61 years, Residing At Raghuvar Bhawan, Ward No.7, Purani Basti, Kharsia, Tahsil Kharsia, Distt. Raigarh (CG)

**…Petitioner(s)**

**Versus**

1. State of Chhattisgarh through the Principal Secretary, Department of Urban Administration and Development, Mantralaya, DKS Bhawan, Raipur (CG).
2. Municipal Corporation, Raigarh Through its Commissioner, Municipal Corporation Raigarh (CG).

**… Respondent(s)**

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| For Petitioner | : | Shri Sudip Agrawal, Advocate. |
| For State | : | Shri Jitendra Pali, Dy. Advocate General |
| For Respondent No.2 | : | Shri HB Agrawal, Sr. Advocate along with Smt. Prabha Sharma, Advocates. |

**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**02.08.2019**

1. The present writ petition has been filed seeking for quashment of Annexure P/1 dated 13.04.2009. Vide the said impugned order, the respondents have rejected the representation which the petitioner had made claiming for pay scale of Rs.2200-4000 w.e.f. 01.04.1993 onwards and thereafter granting the consequential benefits of subsequent revision of pay on the enhanced pay scale of Rs.2200-4000.
2. The facts relevant for consideration in the present writ petition is that, the petitioner herein was appointed as a Revenue Officer under the provisions of Chhattisgarh Municipalities Act, 1961 (in short, the Act, 1961) under the respondent No.2. The petitioner also retired from service on the post of Revenue Officer w.e.f. 31.05.2007. At the time of retirement, the petitioner

was infact discharging the duties of in-charge, Chief Municipal Officer (CMO) of the Municipal Council, Deepka, District Korba.

**3.** According to the petitioner, the post of Revenue Officer is at par with CMO Grade-B. It was the further contention of the petitioner that the pay scale of Revenue Officer was equivalent to pay scale which was being paid to CMO Grade-B. The State Govt. later on vide their order dated 31.03.1989 revised the pay scale of the CMOs and thereby CMO Grade-B were given pay scale of Rs.1820-3300 w.e.f. 01.04.1988. At this juncture, the pay scale of Revenue Officers were not revised. However, the State Govt., after some time, vide its order dated 30.11.1989 (Annexure P/7) revised the pay scale of the Revenue Officers working under different Municipal Councils and brought it at par with the CMO Grade-B and the petitioner as such was granted the pay scale of Rs.1820-3300. The State Govt. again vide its order dated 25.06.1994 revised the pay scales of CMOs and in the process revised the pay scale of CMO Grade-B at Rs.2200-4000. This revision was made effective from 01.04.1993.

**4.** The grievance of the petitioner is that, though the pay scale of CMO Grade-B and Revenue Officers of the Municipal Councils were at par all along, the State Govt. did not revise the pay scale for the Revenue Officers of the Municipal Council placing them at par with the CMO Grade-B after the order of revision dated 25.06.1994, thus, there arose a disparity in the pay scale.

**5.** The contention of the petitioner is that, the post of CMO Grade-B and the Revenue Officers in a Municipal Council is the feeder post for promotion to the post of CMO Grade-A. Further, as far as the gradation list is concerned, it is also a combined gradation list for the post of CMOs and the Revenue Officers which is maintained. Thus, there is no separate gradation list for CMOs or for the Revenue Officers for the purpose of promotion and promotion to the post of CMO Grade-A is made from among the senior most persons in the combined gradation list, irrespective whether he is a Revenue Officer or CMO Grade-B. On this ground also, the petitioner claims for parity of pay scale of the two posts.

**6.** The State counsel, however, opposing the writ petition submitted that the writ petition as such is not sustainable for the reason that the two posts are entirely different. The mode of recruitment to the two posts i.e. as Revenue Officer and as CMO Grade-B are entirely different. The Revenue Officer is recruited by the recruitment conducted by the District Selection Board whereas, CMO Grade-B is by way of a selection through Public Service Commission i.e. by the State Govt. Thus, it cannot be said that the two posts are equivalent. Moreover, the contention of the State is that, the Revenue Officer is a Class-III post and the CMO Grade-B is a Class-II post which itself would show the difference between the two posts and thus, the petitioners are not entitled for pay parity.

**7.** The State counsel also opposes the writ petition on the ground that the nature of duties exercised by the CMO Grade-B is entirely different than the nature of duties discharged by the Revenue Officers in the Municipal Council. According to him, merely because there is a combined gradation list for promotion by itself would not mean that the two posts are at parity. Thus, for all these reasons, the State counsel prays for rejection of the writ petition.

**8.** Having heard the contentions put forth on either side, what is relevant to be taken note of, is that, the two posts i.e. the post of CMO as well as Revenue Officer are one which is made under the provisions of the Act, 1961. If the contention of the petitioner is to be believed then right from 1961 till the order dated 25.06.1994 (Annexure P/8) was passed, the pay scale which the CMO Grade-B was drawing was the same that the

Revenue Officers in the Municipal Council were drawing. It is also not in dispute that the Revenue Officer and CMO Grade-B are the feeder posts for promotion to the post of CMO Grade-A. Another admitted factual position is that, the gradation list of two posts is also a combined gradation list. Since it is a combined gradation list, the promotion to the post of CMO Grade-A is made as per the seniority reflected in the combined gradation list. Thus, the Revenue Officer, as of now who is drawing a lower pay scale than that of CMO Grade-B is entitled to be promoted as CMO Grade-A ahead of all those CMOs Grade-B who are placed lower in the combined gradation list though drawing more salary.

**9.** During the course of argument, what is also revealed is that, as far as the CMOs and the Revenue Officers under the Municipal Corporation Act, 1956 are placed at par. Another aspect which has been brought to the notice of the court is that, the Revenue Officers of the Municipal Council, at times, are transferred to Municipal Corporation. So also the CMO Grade-B in the Municipal Corporation, on administrative exigency, at times, are sent on transfer to different Municipal Councils in the State. The pay scale of Revenue Officers and CMOs Grade-B in the Municipal Corporation being at par, whereas, the pay scale of the Revenue Officers and CMOs Grade-B in the Municipal Council is not at par. Moreover, the pay scale of the Revenue Officers and CMOs Grade-B in the Municipal Council had been at par all along till the order dated 25.06.1994 was passed, whereby for the first time the CMO Grade-B were granted a different pay scale higher than that of the Revenue Officers.

**10.** Considering the fact that there is a combined gradation list for promotion and the promotion to the post of CMO Grade-A is made strictly in accordance with seniority-cum-merit and the Revenue Officers who are senior in the gradation list though are drawing lower pay scale than that of the CMO Grade-B are being given promotion as CMO Grade-A, it appears that there is a genuine anomaly so far as pay scales of Revenue Officer and CMO Grade-B in the Municipal Council is concerned.

**11.** The Supreme Court in case of State of West Bengal Vs. Subhas Kumar Chatterjee & Others, 2010(11)SCC 694 in paragraph 14 dealing with on the issue of power of the courts in deciding the disputes pertaining to pay scale, held as under :

> "14. This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the Courts cannot compel the State to accept the recommendations of the Pay Commissions though it is an expert body. The State in its wisdom and in furtherance of its valid policy may or may not accept the recommendations of the Pay Commission. [See: Union of India V. Arun Jyoti Kundu1 and State of (2007) 7 SCC 472 Haryana & Anr. V. Haryana Civil Secretariat Personal Staff Assn.2]. It is no doubt, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State action or inaction while fixing the pay scale for a given post."

**12.** In the light of the factors which are undisputed as enumerated in the preceding paragraphs and also taking note of the principle of law laid down by the Supreme Court in the aforesaid judgment, this court is of the opinion that the findings given by the respondents in Annexure P/1, dated 13.04.2009, does not seem to have been taking note of the aforesaid undisputed factors and therefore it needs reconsideration and hence the same (Annexure P/1) being unsustainable deserves to be and is accordingly set aside.

**13.** The writ petition stands disposed of with a direction to the respondent No.1 to reconsider the claim of the petitioner so far as granting parity in pay scale to the Revenue Officers at par with the CMOs Grade-B under the Municipal Councils are concerned. Let a fresh decision be taken by the State Govt. in this regard within an outer limit of four months and thereafter appropriate steps be taken in terms of the decision.

**14.** The writ petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
**Judge**

inder