

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

WRIT PETITION NO.6734 OF 2016

Pramod Shamrao Moje

.... Petitioner

Versus

The State of Maharashtra & Ors.

... Respondents

.....

Shri. Shivaji T. Shelke, Advocate for the petitioner
Shri. V. S. Bedre, learned counsel for Municipal Council
Shri. S. M. Ganachari, AGP for respondent/State

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE : 12TH FEBRUARY, 2019

ORAL ORDER:

1. The petitioner claims re-fixation of pay w.e.f. 01.02.2010 and seeks consequential monetary benefits to the petitioner so also challenges the order dt. 31.07.2013 fixing the pay of the petitioner.

2. We have heard Shri. Shivaji T. Shelke, learned counsel for the petitioner, Shri. V. S. Bedre, learned counsel for respondent No. 5/Municipal Council and Shri. S. M. Ganachari, learned Assistant Government Pleader.

3. Under order dt. 28.05.2012, the petitioner was absorbed w.e.f. 01.02.2010 in the pay scale of Rs. 4500-7000. Subsequently, the petitioner was posted as an Assistant Purchase Supervisor under order dt. 15.06.2012 in the pay scale of Rs. 4500-7000, however, till the date of posting given to the petitioner on 15.06.2012, the petitioner was working as a Clerk with Shrirampur Municipal Council.

4. The claim of the petitioner for the pay scale of Rs.4500-7000 from 01.02.2010 is negated on the ground that the posting has been given to the petitioner on 15.06.2012.

5. The petitioner relies on Rule 8 of the Maharashtra Municipal Council (Nagar Panchayat) Industrial Council Services, (absorption, entry in service and conditions of service) Rules, 2006 (hereinafter referred to as "Rules of 2006"), whereas the respondents rely on Rule 28 of the Rules of 2006.

6. Rule 8 of the Rules of 2006 reads thus:

8. **Fixation of pay of Absorbed Employee.**-(a) Notwithstanding the pay-scale of the post in the Services on which an Existing Employee is absorbed, the Existing Employee may either opt to be governed,-

- (i) for such period as he may specify in the option, by the pay-scale applicable to him immediately before absorption; or
 - (ii) by the pay scale of the post in which he is absorbed.
- (b). The Absorbed Employees shall exercise the option under clause (i) of sub-rule (a) in writing and communicate it to the Director within two months from the date of his absorption under Rule 5. If the option is not so communicated, the Absorbed Employee shall be deemed to have opted for the pay-scale of the Grade in which he is absorbed. Pay will be fixed as per the Maharashtra Civil Services (Pay) Rules, 1981. Option once exercised or deemed to have been exercised shall be final.

7. It is not disputed that the petitioner had not given option of the applicable pay scale to him. In view of that, Rule 8(b) of Rules of 2006 would apply. The order dt. 28.05.2012 very specifically states that the persons enlisted in the list are absorbed from 01.02.2010 in the pay scale of Rs. 4500-7000 though the posting is given to the petitioner on 15.06.2012 on the post of Assistant Purchaser Supervisor in the pay scale of Rs. 4500-7000 and prior to that the petitioner was working as a Clerk.

8. Considering the Rule 8(b) of the Rules of 2006, the petitioner would be entitled for the notional pay fixation in the pay scale of Rs. 4500-7000 from the date of his absorption i.e. 01.02.2010.

9. The respondents shall notionally fix the pay of the petitioner since 01.02.2010 in the pay scale of Rs. 4500-7000 for all the purposes. The same shall be done expeditiously, preferably within three months from today. We have not granted the benefits of arrears to the petitioner.

10. The Writ Petition is accordingly disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde