

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

116 WRIT PETITION NO.11650 OF 2018

NARSINGH SARVOTTAMRAO PAITHANKAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioner : Mr Yuvraj S Choudhari
AGP for Respondents State: Mr S B Narwade
Advocate for Respondent No.2 : Mr K N Lokhande

**CORAM : S. V. GANGAPURWALA &
ANIL S. KILOR, JJ.**

DATE : 24th September, 2019

ORDER:

1. The petitioner assails the order passed by the Commissioner, thereby rejecting continuation of the petitioner on higher pay scale.

2. Mr. Choudhari, learned counsel for the petitioner submits that the petitioner possesses qualification of BAMS and was appointed as Deputy Health Officer on 04.11.1999. The petitioner is in Cadre-2. Salary of the petitioner ought to be paid of Cadre-2. Instead, the respondents paid salary to the petitioner of Cadre-3. Learned counsel submits that subsequently petitioner's designation changed to Health officer and was brought in Class-I, still he is paid salary of Class-3. The same is illegal.

3. The respondents are relying on award. The award is no longer in force. Even as per the award, salary is to be paid as per the Cadre and the petitioner being in Cadre-2, was, at the relevant time, entitled for salary in the pay scale of 2200-4000/- but was paid salary in scale of 2000-2300/-. Learned counsel submits that today also his salary ought to be in the scale of 15600-39100 grade pay 5400 but the petitioner is paid in pay scale of 9300-34800 grade pay 4200.

4. Mr. Lokhande, the learned counsel submits that as per the award the petitioner is rightly paid salary and pay band. Though grade of the petitioner has been changed, the pay band remains the same. As per order dated 21.08.2012 of the Municipal Council prescribing the pay scale for different posts along with grade pay are detailed. The same is as per the resolution passed by the selection committee dated 23.07.2012 and considering various Government Resolutions. For the post of health officer, the pay band is Rs.9300-34800 grade pay 5400. The petitioner is being paid Rs.9300-34800. The earlier award also makes distinctions between BAMS and MBBS. The same has been considered by the Commissioner while passing the impugned order.

5. It appears that the petitioner as on date would be entitled for the pay band of Rs.9300-34800. We do not find any error in the same. However, we could not get the manner of grade pay being considered of the petitioner. In the impugned communication of the Commissioner it is stated that the petitioner is entitled for grade pay of Rs.4400 whereas for the post of health officer, the grade pay shown is 5400 in the order dated 21.08.2012.

6. We conclude that the petitioner's pay band as Rs.9300-34800 is correctly calculated by the respondent. However, as far as grade pay is concerned, no further clarification is coming forth as to why the petitioner is not entitled for the grade pay of Rs.5400/-. The respondent municipal council shall consider the claim of the petitioner with regard to grade pay and take decision with regard to the grade pay within four months on its own merits.

7. Writ petition disposed of. No costs.

(ANIL S. KILOR, J.)

(S.V.GANGAPURWALA, J.)

JPC