

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3991 OF 2020

Sunita Shripad Band,
Age-63 years, Occu-Retired Govt.Service,
R/o Bandwada, Shukleshwar,
Temple Road, Tq. Rahuri,
Dist.Ahmednagar

-- PETITIONER

VERSUS

1. State of Maharashtra,
Through its Rural Development Department,
Mantralaya, Mumbai,
2. Zilla Parishad, Ahmednagar,
Tal. and Dist. Ahmednagar,
Through its Chief Executive Officer,
3. The District Health Officer,
Zilla Parishad, Ahmednagar,
Tal. and Dist. Ahmednagar,
4. The Chief Accounting and Finance Officer,
Zilla Parishad, Ahmednagar,
Tal. and Dist. Ahmednagar,
5. The Block Development Officer (Class-I)
Panchayat Samiti, Rahuri,
Tal.Rahuri, Dist. Ahmednagar

-- RESPONDENT

Mr.Ashutosh S.Kulkarni, Advocate for the petitioner.
Mr.S.R.Yadav, AGP for respondent No.1.
Ms.Sonali Shahagadkar h/f Mr.PV.Tapse Patil, Advocate for respondent
Nos. 2 to 5.

(CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, JJ)

DATE : SEPTEMBER 30, 2021

1.

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth 5 prayers below paragraph No.8. He submits across the bar that he would be praying for prayer clause A & B, which read as under :-

“A. By issuing appropriate writ, order, direction or any other appropriate order in the nature of writ, Hon’ble High Court may be pleased to quash and set aside the communication dated 16/04/2019 issued by Respondent No.4 (Impugned Order-I) and order of recovery dated 18.04.2019 issued by Respondent No.5 (Impugned Order-II) and further direct the respondent to redeposit the amount recovered from the account of Petitioner in compliance of impugned orders alongwith 9% interest.

B-1. By issuing appropriate writ, order, direction or any other appropriate order in the nature of writ, Hon’ble High Court may be pleased to direct the Respondents to continue to act upon the Order dated 06.06.2017 (Annexure B) and fix the pension as per the said letter,

OR IN THE ALTERNATE ;

B-2. By issuing appropriate writ, order, direction or any other appropriate order in the nature of writ, Hon'ble High Court may be pleased to direct the respondents to give hearing to the petitioner before computing her pension in accordance with the Maharashtra Civil Services Pension Rules."

3. The learned AGP on behalf of the respondent/State and the learned Advocate on behalf of respondent Nos. 2 and 5, have strenuously opposed this petition. It is submitted on behalf of the ZP that the grounds for opposing the petition have been set out in the affidavit in reply. The learned Advocate has drawn our attention to the contents of the said affidavit.

4. We find from the record that the petitioner was before this Court earlier in WP No.9548/2017 (Single Judge Bench) and by order dated 05/07/2018, she accepted the punishment of stoppage of one increment and the Competent Authority consented for imposing the said punishment upon her. It was agreed that the competent authority would decide the proposal for grant of pensionary and retiral benefits within 4 weeks from the date of the order keeping in view that the provisional pension as per the rules was already being paid to the

petitioner.

5. The petitioner once again had to approach this Court in WP No.12245/2018, vide which she assailed certain communications and an order of recovery dated 18/09/2018 issued by the ZP. This Court noted that the departmental enquiry, that was conducted against the petitioner, was with regard to a misconduct and the said issue was given a quietus by imposing the punishment of stoppage of one increment. It was specifically observed in paragraph Nos. 3 and 4 as under :-

“3. It appears that departmental enquiry was initiated against the petitioner. The notice was issued to the petitioner of compulsory retirement. The petitioner assailed the proceedings before the Labour Court. The matter came up before this Court. The learned Single Judge of this Court on 05.07.2018 in WP No.9548/2017 observed that with a view to put an end to the litigation, the petitioner is awarded punishment of stoppage of one increment and all the impugned orders merged into the order of the learned Single Judge of this Court. It appears that thereafter the order is passed by respondent No.2 deducting 5% of the amount of pension for a period of one year claiming recovery from the gratuity amount and further treating the suspension period as suspension period.

4. After this order is passed by this Court it was not permissible for the respondent to pass any further order of punishment. Moreover, as far as the recovery is claimed on account of the excess amount legitimately paid, after retirement it will not be open for the respondent to claim the same. The petitioner was Class-III employee and already retired from service. The parameters as laid down by the Apex Court in case of State of Punjab Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334 would squarely apply.”

6. This Court finally allowed the petition by issuing the following directions in paragraph No.7 :-

“7. The impugned order claiming recovery from the petitioner from the gratuity amount deducting 5% from the pension and treating suspension period as such are quashed and set aside. The suspension period shall be treated as leave period with or without pay considering his balance leave. The petitioner, as such, shall be paid the pension and the amount of gratuity so also the retiral benefits accordingly. The same shall be paid within a period of three (3) months from today.”

7. Having considered the impugned communication dated 16/04/2019 and the consequential order dated 18/04/2019, we find that the calculations do not appear to have been arrived at properly by

the Zilla Parishad. The petitioner had approached the Labour Court by filing Complaint (ULP) No.44/2006 for challenging the second show cause notice in which the punishment of compulsory retirement was proposed. During the pendency of the complaint and further litigation before this Court, the petitioner superannuated on 31/01/2017. By the order of the learned Single Judge Bench of this Court dated 05/07/2018 in WP No.9548/2017 filed by the petitioner, the entire litigation was given a quietus and the petitioner as well as the Zilla Parishad agreed for the punishment of stoppage of one increment. With this consensus, the litigation was brought to an end. Needless to state, the punishment of stoppage of increment would date back to the date of the second show cause notice, which was assailed before the Labour Court, in view of the doctrine of “relation back”.

8. The petitioner has specifically set out ground (x) on page No.13 of the petitioner memo, which reads as under :-

“X. The Respondents have not stated anywhere as to which increment of the petitioner is stopped by them as an effect of order of this Hon’ble Court in WP no.9548/2017. In fact the respondents must stop increment coming immediately after the show-cause notice or after 2nd show cause notice after the Departmental Enquiry as a punishment to

the petitioner. The general rule in this regard is not followed by the Respondents.”

9. As such, the amount of one increment, stoppage of which was the punishment awarded to the petitioner, will have to be properly calculated from the date of second show cause notice and that portion of the payment can be considered to have been made in excess having regard to the fact that the Labour Court had interjected in the proposed punishment. Had there been no indulgence by the Labour Court, the petitioner would have been compulsorily retired way back in 2006.

10. In view of the above, this petition is partly allowed. We are quashing and setting aside the impugned orders dated 16/04/2019 and 18/04/2019 with the following directions :-

[a] We direct the petitioner to appear before respondent No.4 Chief Accounting and Finance Officer Zilla Parishad, Z.P. on 12/10/2021 at 12.00 noon. She is at liberty to present a written calculation of the stoppage of one increment from the date of the show cause notice to the assist the Zilla Parishad.

[b] Respondent No.4 would grant an opportunity of

hearing/explaining to the petitioner till 21/10/2021 and thereafter would be at liberty to pass a reasoned order on or before 30/10/2019.

[c] The amount computed by such order shall be deposited by the petitioner in the account of the Zilla Parishad on or before 30/11/2021, without prejudice to her legal rights.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)