

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 248 OF 2016

1. Roshan P Baste,
Age: 32 years, Occ.:Service
residing at Flat No. 8, Gr. Floor, Asha Nagar,
Bldg. No. 1, B Wing, Bhayandar East, Thane.

2. Satyajit V. Bhosale,
Age 34 yrs., Occ. Service,
residing at B-207, Raj Mahal, Caves Road,
Near BMC Garden, Jogeshwari E,
Mumbai 400060.

3. Manojkumar P. Erande,
Age: 32 years, Occ. Service.
Residing at 202, 2nd floor, Officers Quarters,
Wadala Fire Station, Antop Hill,
Mumbai 400037.

4. Yogesh P. Mahajan,
Age: 34 yrs., Occ. Service,
residing at 106/B Wing, New Sanjay Apt.,
Ayare Road, Tukaram Nagar,
Dombivili(E), Thane 421202.

5. Chandrashekhar S. Gupta,
Age: 34 years, Occ: Service,
residing at at 1/23, 24, BMC Building,
Sion, (E), Mumbai -22.

6. Vithal Sukhdev Bandgar,
Age: 28 years, Occ. Service,
residing at 618, Shri Santoshi Mata CHS,
LBS Road, Mulund(W), Mumbai -80.

7. Amol Shashikant Khanolkar,
Age : 31 yrs., Occ. Service,
residing at Officers Quarter, Room No. 4,
Malvani Road, Malad Fire Station,
Malad(W), Mumbai.

... Petitioners.

V/s.

1. Municipal Corporation of Gr. Mumbai,
Through the Commissioner, Brihanmumbai
Mahanagar Palika, Mahapalika Marg,
Mumbai 400 001.

2. Chief Fire Officer,
Mumbai Fire Brigade HQ,
Byculla Command Center,
Bapurao Jagtap Marg,
Byculla(W), Mumbai 400008.

3. State of Maharashtra,
Urban Development Department,
Through Office of Government Pleader,
Bombay High Court.

... Respondents.

Mr. Rahul Nerlekar, advocate for petitioners.

Ms. Dhruti Kapadia a/w. Ms. Rupali Adhate, advocate for Respondent
Nos. 1 and 2 MCGM.

Mr. Abhay L. Patki, Addl. G.P. for Respondent No. 3.

Ms. Neeta Bhagwat, Accounts Officer, C.A. Department and Mr. S.D.
Sawant, Dy. Chief Fire Officer, C.C.F.O. Department, present.

**CORAM : SMT. SADHANA S. JADHAV &
SARANG V. KOTWAL, JJ.**

RESERVED ON : AUGUST 9, 2021.

PRONOUNCED ON : SEPTEMBER 9, 2021.

JUDGMENT: (PER SMT. SADHANA S. JADHAV, J).

1 Heard the learned Counsel for the petitioners, the learned
Counsel for Respondents and the learned Additional Government
Pleader.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 This is a petition under Article 226, 14, 16, 19 and 21 of the Constitution of India. The Petitioners are in the employment of the Respondent No. 1 Municipal Corporation of Greater Bombay as Assistant Station Officers in the Fire Brigade Department. The main contention of the petitioners is that there is disparity in the salary drawn by the petitioners as against the Assistant (Fire) Officers working in the other district in the state of Maharashtra. The Petitioners are aggrieved by the fact that they are drawing the Grade Pay in Pay Band I to the tune of Rs. 2,800/- since 2009 (with effect from 2006) although they are entitled to payment in Pay-Band II with payment of 9300-34800 and the Grade Pay of Rs. 4,300/-. The petitioners have prayed that they be placed in Pay Band II; Grade pay 4300/- with effect from 2006 with all consequential benefits.

4 According to the Petitioners, they have made a representation before the Anomaly committee of Respondent No. 1.

That the said representation was rejected vide order dated 31/10/2015 on the ground that the work of determining the pay scale as per the 7th pay commission was in progress. And till 17/6/2014 the Anomaly Committee had not received the representation and since there was a delay in filing the representation, the same cannot be considered. According to the learned Counsel for the petitioner, the order was passed on a ground which cannot be perceived and hence is not sustainable as it was passed on flimsy and unsustainable ground. The Petitioners had filed representation even thereafter, however, they were informed that their grievances would be placed before the subsequent Anomaly Committee who would duly consider their grievance. It is a matter of record that till today the grievances of the petitioners are not redressed by respondent No. 1. The Petitioners herein are persistently pursuing their claim before the respondents since 2009, however, of no avail and therefore, the matter is being decided at the stage of admission.

5 It is submitted by the Petitioners that they have been placed in Pay Band I; Grade Pay 2800/- since the implementation of 6th Pay Commission. However, prior to 2006 their salary and Grade Pay

was at par with all assistant station officers in the rest of Maharashtra, although Mumbai Fire Brigade department is the second largest department in the State of Maharashtra besides Maharashtra Industrial Development Corporation. It is also submitted that the criteria laid for the recruitment of assistant station officer in fire brigade department of respondent No. 1 is at par with the criteria prescribed for the recruitment of assistant station officer all over Maharashtra. Graduation with Chemistry is minimum qualification prescribed for the post of an assistant station officer and for all posts where same qualification is prescribed, the salary drawn is categorized in Pay Band II with payment of 9300-34800 with Grade Pay 4300/- and therefore, there is a disparity in salary drawn by the petitioners as against the others who are placed in the same category.

6 The Respondent No. 1 has filed an affidavit and has contended that the revised pay of the present petitioner is as per the 6th Pay Commission which was determined on the guidelines of State Government. It is further contended that the respondent No. 1 had issued a circular dated 30th September, 2011 bearing No. GAD/DY.CA. (ESTT.-II)/RG Cell/07 and fixed pay as per circular dated 30/9/2011

for the post of Assistant Station Officer as P.B-1 5200-20200 + 2800 GRP. It is further contended that the representation of the petitioners was placed before the first meeting of Anomaly committee on 16/5/2012 for fixing the Pay Band and Grade Pay and the decision was “no change” for the post of Assistant Station Officer. By an order dated 12/10/2015 and 7/4/2016 the Municipal Commissioner, MCGM has given a direction that the proposal of “pay anomaly” in case of petitioners shall not be considered in future. It appears that this was the reason which constrained the petitioners to approach this court.

7 According to the respondent No. 1, the post of Assistant Station Officer is not existing in the State of Maharashtra. The post enlisted with the State Government is “Assistant Fire Officer” and therefore, the representation of the petitioners working as assistant station officer in fire brigade department of the Respondent No. 1 seeking payment in Pay-Band II with Grade Pay of Rs. 4300 cannot be accepted.

8 Per contra, the learned Counsel for the Petitioners has denied the proposition that the post of assistant station officer in the

State Government is not in existence. To substantiate the said contention the petitioners have relied upon the chart filed by Respondent No. 3 State of Maharashtra showing existing posts of Assistant Station Officer and Assistant Fire Officer in Municipal Corporations/Municipal Councils/Nagarpanchayats in State (with pay scale of 6th Pay Commission) which reads as under :

Existing posts of Assistant Station Officer and Assistant Fire Officer in Municipal Corporations/Municipal Councils/Nagarpanchayats in State (with Pay Scale of 6th Pay Commission)

Sr. No.	Name of Municipal Corporation	Assistant Station Officer	Assistant Fire Officer
1.	Greater Mumbai (M.C.G.M.)	Post Existing (5200-20200 G.P.2800)	Post not Existing
2.	Pune	Post Not Existing	Post Not Existing
3.	Nagpur	Post Existing (9300-34800 G.P. 4300)	Post Not Existing
4.	Pimpri-Chinchwad	Post Not Existing	Post Not Existing
5.	Thane	Post Not Existing	Post Not Existing
6.	Nashik	Post Not Existing	Post Not Existing
7.	Kalyan-Dombiwali	Post Not Existing	Post Existing (9300-34800G.P.4400)
8.	Aurangabad	Post Not Existing	Post Existing (9300-34800G.P.4400)
9.	Vasai-Virar	Post Not Existing	Post Not Existing
10	Navi Mumbai	Post Existing (9300-34800G.P.4200)	Post Not Existing
11	Solapur	Post Not Existing	Post Not Existing
12	Kolhapur	Post Not Existing	Post Not Existing
13	Sangli-Miraj-Kupwad	Post Not Existing	Post Not Existing
14	Amravati	Post Not Existing	Post Not Existing
15	Mira-Bhaindar	Post Existing (9300-34800G.P.4200)	Post Not Existing

16	Ulhasnagar	Post Not Existing	Post Not Existing
17	Bhiwandi-Nijampur	Post Not Existing	Post Not Existing
18	Ahmednagar	Post Not Existing	Post Not Existing
19 *	Akola	Post Not Existing	Post Existing (9300-34800G.P.4400)
20 *	Jalgaon	Post Not Existing	Post Existing (5200-20200G.P.2400)
21 *	Nanded-Waghala	Post Not Existing	Post Existing (9300-34800G.P.4400)
22 *	Dhule	Post Not Existing	Post Existing (5200-20200G.P.2800)
23	Malegaon	Post Not Existing	Post Not Existing
24	Latur	Post Not Existing	Post Not Existing
25	Chandrapur	Post Not Existing	Post Not Existing
26	Parbhani	Post Not Existing	Post Not Existing
27	Panvel	Post Not Existing	Post Not Existing

9 On perusal of the chart, it is clear that the post of assistant station officers is provided in the Municipal Corporation of Mumbai, Nagpur, Navi Mumbai and Mira Bhander. There are municipal corporations where instead of Assistant Station Officer, there is a post of “Assistant Fire Officer” i.e. Akola, Nanded, Jalgaon, Dhule etc.

10 The learned Counsel for the petitioners has drawn our attention to the notification dated 21st August, 2018 issued by the Industry, Energy and Labour Department which has mentioned the post

of Assistant station officer. It is pertinent to note that in the said notification, salary prescribed for the post of Assistant Station Officer is 9300-34800 and Grade Pay 4300/-.

11 The learned AGP has filed an affidavit on behalf of the State of Maharashtra i.e. respondent No. 3 and has contended that the Government of Maharashtra has enacted “the Maharashtra Fire Prevention and Life Safety Measures Act, 2006(hereinafter referred to as the said Act.) in order to make effective the provisions of fire prevention and life safety measures. The learned AGP has drawn our attention to section 21 of the said Act which reads as follows :

21. Classification of Authorities and creation of posts in fire services. - (1) For the purpose of providing adequate number of officers and staff for meeting the needs of fire services within the jurisdiction of the local authorities and planning authorities having regard to the potential fire hazards in certain industries and large commercial and mercantile establishments and buildings and the number of fire stations required to be provided for and maintained within the respective areas of the local authorities and the planning authorities, such Authorities shall be classified as under:-

- (a) the Municipal Corporation of Brihan Mumbai;
- (b) Municipal Corporations having minimum population above fifteen lakhs to be classified as 'A' Class Municipal Corporations;
- (c) Municipal Corporations having population of five lakhs and above upto fifteen lakhs, to be classified as 'B' Class Municipal Corporations;
- (d) all other Municipal Corporations not covered by clauses (a), (b) or (c) to be classified as 'C' Class Municipal Corporations; and
- (e) Municipal Councils, Nagar Panchayats. Industrial Townships and planning authorities to be classified as 'D' Class Municipal

Councils, Nagar Panchayats, Industrial Townships and planning authorities.

(2) Subject to the directions, if any, as the Director may, with the approval of the State Government, by notification in the *Official Gazette*, issue from time to time, in this behalf, the existing pattern of the Fire Brigade including the qualification, pay, allowances and other conditions of service and method of recruitment of the officers and other staff engaged therein, in the Municipal Corporation of Brihan Mumbai shall continue.

(3) The Municipal Corporations and the Municipal Councils, Nagar Panchayats, Industrial Townships and the planning authorities may, and, if so required by the State Government, shall create all or any of the following posts, namely :-

(a) for Municipal Corporations of 'A', 'B' and 'C' Classes,-

- (i) Chief Fire Officer,
- (ii) Deputy Chief Fire Officer,
- (iii) Divisional Fire Officer,
- (iv) Assistant Divisional Fire Officer,
- (v) Station Officer,
- (vi) Assistant Station Officer,
- (vii) Sub-Officer,
- (viii) any other Fire Officer and Fire Personnel with such designations as the State Government may, by order, direct from time to time.

(b) for 'D' Class Municipal Councils, Nagar Panchayats, Industrial Townships and planning authorities,-

- (i) Chief Fire Superintendent or Fire Superintendent,
- (ii) Assistant Chief Fire Superintendent or Assistant Fire Superintendent,
- (iii) Station Officer,
- (iv) Assistant Station Officer,
- (v) Sub-Officer,
- (vi) any other Fire Officer and Fire Personnel with such designations as the State Government may, by order, direct from time to time.

(4) Without prejudice to the provisions of sub-section (2) but, subject to the provisions of section 22, the qualification, pay, allowances and other conditions of service and method of recruitment of the officers specified in sub-sections (2) and (3) shall be regulated by orders issued by the State

Government in this behalf.

(5) Subject to the provisions of section 22 or any order issued by the Director or the State Government in this behalf, the power of making appointment to the posts specified in sub-sections (2) and (3) shall vest in the Municipal Corporation, Municipal Council, Nagar Panchayats, Industrial Townships or planning Authority, as the case may be

12 It is specifically contended that section 21(3) of the said act provides for the post of Assistant Station Officer. However, there is no mention of the post of assistant fire officer. And yet post of assistant fire officer is in existence in some of the municipal corporations and municipal councils. Therefore, the basic premises on which the petitioners are denied their claim is factually incorrect. It is mentioned in the affidavit of Respondent No.1 thus :

“I say that the post of “Assistant Station Officer” is not in existence in State Government but the post of “Assistant Fire Officer” is in existence in State Government. I say that in State Government the post of “Assistant Station Officer” is not in existence, therefore, pay of “Assistant Station Officer” which are working in Fire Brigade Department of Municipal Corporation of Greater Mumbai has not changed.”

13 Upon considering the contention of the Respondent No. 3 it is more than clear that the contention of the Respondent No. 1 that there is no post of assistant station officer in the State Government

deserves to be rejected. It is a misconstrued contention which is raised in the affidavit in reply filed by the Respondent No. 1 without referring to the said Act. There is no further answer to this issue by the Respondent No. 1 with reference to the affidavit filed by the State of Maharashtra. The Grade Pay and payment for the Assistant Station Officer in the adjoining Municipal Corporation of Mira Bhayender and New Mumbai Municipal Corporation is 9300-34800 with Grade Pay of 4200/-. There is vast disparity in the Pay Band and in the payment and Grade Pay drawn by the present petitioners.

14 The post of an Assistant Station Officer is contemplated in the said act itself. At this stage, the contention of the learned Counsel for the Petitioners that the Assistant Security Officers on the establishment of Respondent No. 1 are receiving a higher pay scale than the petitioners although the duties, responsibilities, qualifications and fitness standards are much higher than those prescribed for Assistant Security Officers needs to be taken into consideration. The said contention is not denied by the Respondents.

15 The contention of the respondent No. 1 that the post of

Assistant Fire Officer does not exist in the State Government is falsified by the contention of the respondent No. 3 as the chart submitted by the respondent No. 3 clearly indicates that the post of Assistant Fire Officer is in existence in four Municipal Corporations and the Grade Pay in Pay Band (9300-34800) drawn by them is 4200/4300. The nomenclature or the designation of the post would be of no consequence. What has to be taken into consideration is the criteria, qualification for recruitment to that particular post and the nature of duties and responsibilities assigned to the said post. The first and foremost contention of the petitioners is that the duties and responsibilities assigned to them are higher in comparison to the same post in the adjoining corporations. It appears that the respondent No. 3 just for the sake of depriving the petitioners of their legal entitlement has stated on affidavit that the post of assistant fire officer is not equivalent or at par with the assistant station officer as contemplated under section 21(3) of the said Act. However, the respondent No. 3 has failed to demonstrate as to how the two posts are different. In fact, the annexures to their affidavit would contradict their contentions and hence, the contentions in the affidavit do not deserve to be taken into consideration.

16 The principle of doctrine of parity flows from the doctrine of equality as enshrined in Article 14 of the Constitution of India. The corollary that follows is that the Petitioners are entitled to exercise their fundamental right under Article 14 of the constitution of India and seek the Grade Pay in Pay Band II with payment of 9300-34800 with Grade Pay of Rs. 4300/-. There is no justification to deny the petitioners payment in Pay Band II with payment of 9300-34800 with the Grade Pay of Rs. 4300/- and denial of the same amounts to violation of Article 14 of the Constitution of India. Hence, the petition deserves to be succeeded.

17 Hence, following order is passed :

ORDER

(i) The letter/order dated 31/10/2015 bearing No. RG Cell/766 issued by the Deputy Chief Accountant (Estt. II) is set aside, vis-a-vis, the Petitioners.

(ii) The Rule is made absolute in terms of prayer clause (B), which reads as follows :

“(B) That this Honourable Court be pleased to direct the Respondents to place the Petitioners in the Pay Band II; Grade 4300/- with effect from 2006 with all

consequential benefits of fitment, increments etc.”

(iii) The Writ Petition is disposed of on the above terms.

(SARANG V. KOTWAL, J)

(SMT. SADHANA S. JADHAV, J)