

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5839 OF 2018

PETITIONER :-

Vasanta Ramkrishna Ghogare,  
Aged about 62 years, occup. Retired  
Assistant Draftsman R/o Santosh Nagar,  
Near Sanegurji School, Khadki, Akola  
Tahsil and District Akola.

...VERSUS...

RESPONDENTS :- 1.

Administrative/Establishment Officer,  
Maharashtra Jeevan Pradhikaran, CIDCO  
Bhavan, Belapur, New Mumbai.

2. Superintending Engineer, Maharashtra  
Jeevan Pradhikaran Office, Near Nehru  
Park, Murtizapur Road, Akola Tahsil and  
District Akola.

3. Chief Account Officer, Pension Branch,  
Maharashtra Jeevan Pradhikaran ,  
CIDCO Bhavan, Belapur, Navi Mumbai.

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Mr.S.D.Chopde, counsel for petitioner.  
Mr. D.M.Kakani, counsel for respondent No.1.  
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**CORAM : SUNIL B.SHUKRE &  
ANIL S.KILOR, JJ.**

**DATE : 01.10.2021.**

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The petitioner was appointed as a Tracer on 25.03.1986 and was confirmed on that post on 31.08.1990. The petitioner was promoted to the post of Assistant Draftsman vide the order dated 04.06.1992 and was granted benefit of time bound promotion with effect from 01.07.2004 and was further granted Senior Grade Pay Scale with effect from 15.04.2005. The petitioner on reaching the age of superannuation retired on 31.01.2017. Initially his pension was fixed @ Rs.17,573/- considering the promotions and the Senior Grade Pay Scale granted to the petitioner. However, by the communication issued on 30.12.2017, the pension of the petitioner which was initially fixed, was reduced and recovery of the excess payment of pension was also directed. The Audit Officer held that the petitioner was not eligible for grant of any promotion and Senior Grade Pay Scale for the reason that the petitioner, during his tenure did not clear the professional examination. Learned counsel for the petitioner submits that it was not the requirement of the Maharashtra Jeevan

Pradhikaran that the petitioner should have passed the professional examination. In fact, he further submits that department had by an order dated 01.01.2008, declared that the petitioner having completed his training as tracer from ITI, Akola, was exempted from the requirement of passing of professional examination and this fact was also duly informed by the Department to the Audit Officer, but it was ignored by the Audit Officer and thus, an illegal order was passed by the Audit Officer. Before that even respondent No.1, by the communication dated 07.12.2017 took a stand that the petitioner was not eligible for promotion and therefore, his pension could not have been fixed by taking into consideration his promotional pay scale. This communication as submitted by the learned counsel for the petitioner is also illegal.

4. Learned counsel for the petitioner, further submits that the issue involved in this petition is squarely covered by the view taken by this Court in Writ petition No.1881 of 2018 (Vitthal Shaymrao Kute Vrs. Maharashtra Jeevan Pradhikaran and ors.) Decided on 09.07.2019 to which learned counsel for the

respondents agrees. In Writ Petition No.1881 of 2018, this Court had found that once promotion pay scale was granted to an employee like a Tracer by an order passed by its Superior Officer and such order has not been withdrawn by the Superior Officer, an Officer like the Account/Audit Officer cannot, in supersession of such an order direct that the pension of the employee be revised to a lower scale and recovery of the excess payment of pension to be made from such an employee.

5. In the present case, the petitioner's stand even on a greater footing. Here, the respondent No.2 has already by an order passed on 01.01.2008, exempted the petitioner from the requirement of passing of professional examination, and not passing of the professional examination was considered as a factor which was considered by any Audit Officer as a factor which made the petitioner as ineligible for being promoted to the higher post. Besides, the order of promotion granted to the petitioner has not been withdrawn, modified or cancelled. Therefore, we are of the view that this petition deserves to be allowed on similar lines as the Writ Petition No.1881 of 2018.

6. The Writ Petition is allowed. The order dated 30.12.2017, is hereby quashed and set aside. It is directed that the petitioner be granted pension as per rules, by considering his last drawn pay and all other benefits including gratuity and provident fund within four weeks from the date of receipt of the order of this Court. If any amount has been already recovered from the petitioner, it is directed to be refunded to the petitioner together with interest at the rate of 9% per annum from the date of recovery, till its payment within eight weeks from the date of this order.

7. Rule is made absolute in the above terms. No costs.

(ANIL S. KILOR,J)

(SUNIL B. SHUKRE,J)