

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6948 OF 2015

Suryakant S/o Sayajirao Ghorpade
Age : 53, Occu. Service
R/at : Vivekanand Nagar, Hingoli
Dist. Hingolie

.. Petitioner

Versus

- 1] The State of Maharashtra
through the Secretary,
Rural Development and Water
Conservation Department,
Maharashtra State, Mantralaya,
Mumbai – 32.
- 2] The Chief Executive Officer,
Zilla Parishad, Hingoli
- 3] The Executive Engineer (Z.P.),
Hingoli Tal and Dist. Hingoli
- 4] The Block Development Officer
Panchyat Samiti, Shengaon
Dist. Hingoli

.. Respondents

...
Advocate for petitioner : Mr. P.R. Bhumkar h/f.Mr. V.R.Bhumkar
AGP for the respondent – State : Mrs. R.P. Gour
Advocate for the respondents 2 to 4 : Mr. Vivek V. Bhavthankar
...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**
DATE : 28 JULY 2022

ORAL ORDER (PER – SANDEEP V. MARNE, J.) :

Heard.

2. Leave to amend. Amendment to be carried out forthwith.
3. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is heard finally at the stage of admission.

4. The petitioner was appointed on the post of रोड कारकून (Road Clerk) in the year 1987 and completed 12 years of service on 01-04-1999 and would have ordinarily become due for grant of upgradation in the scale of Junior Engineer on completion of 12 years of service i.e. on 01-04-1999. However, passing of departmental examination appears to be a pre-condition for being promoted to the post of Junior Engineer. The petitioner had not passed such departmental examination and was apparently granted the benefit of upgradation in the scale of Junior Engineer with effect from 01-04-1999, though he was not entitled to be granted the same. As per the Government resolution dated 23 August 2010, officer completing the age of 45 years are exempted from the requirement of passing the departmental examination and become eligible to be promoted as Junior Engineer without passing such examination.

5. The petitioner completed the age of 45 years on 01-08-2007 and became eligible for grant of financial upgradation in the scale of Junior Engineer with effect from 01-08-2007. By order dated 12-12-2012, the petitioner has been granted upgradation in the scale of Junior Engineer with effect from 01-08-2007.

6. Mr. Bhumkar appearing for the petitioner states that the petitioner is satisfied with the date of 01-08-2007 from which such financial upgradation is granted and does not want to create any dispute about the petitioner's entitlement for grant of such benefit from

01-04-1999. His only grievance is that by the order dated 12-12-2012, notional effect is granted to such financial upgradation from 01-10-2007 and actually the effect is given only from 12-12-2012. Another grievance of the petitioner is that in respect of erroneous grant of financial upgradation from 01-04-1999 up to 01-08-2007, the respondent have effected recovery of Rs.1,84,180/-.

7. Mr. Bhavthankar appearing for respondents no. 2 to 4 has submitted that the petitioner was not entitled to be granted the financial upgradation from 01-04-1999 and petitioner became eligible to be granted the same only after crossing the age of 45 years on 01-10-2007.

8. So far as the issue of notional grant of financial upgradation, the issue is no more *res integra* and is covered by judgment dated 26-11-2009 passed by this Court in the writ petition no. 13735 of 2017 (Shivaji S/o Sidram Tungenwar Vs. The State of Maharashtra and others) in which this Court, in paragraphs no. 9 and 10 has held as under :-

“9. In such a case, either way, actual benefits should not be detained and particularly when there is no plausible and equitable reason as to why such benefits should not be given to petitioners from the date they became eligible and qualified to under the policies of the State government.

10. Impugned order dated 12-12-2012 to that extent appears to be unreasonable and capricious. As such, following the decisions *hitherto*, we deem it appropriate that the petitioners should get benefit of promotional pay scale and would be entitled to the benefits of time bound promotional scale from the date on which they become

eligible and qualified for said benefits and as has been granted in many other cases.”

9. It is therefore directed that the petitioner be granted the actual benefit of the upgradation with effect from 01-08-2007.

10. So far as the aspect of recovery is concerned, in our opinion, the case of the petitioner is squarely covered by the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and others Vs. Rafiq Masih (White Washer)*; (2015) 4 SCC 334. Petitioner is a class-III employee and the period of recovery exceeds 5 years. Therefore, the recovery effected by the respondent is required to be quashed and set aside.

11. We, therefore, pass the following order :-

ORDER

- I) Writ petition is allowed.
- II) The respondents are directed to grant actual benefit of financial upgradation to the petitioner with effect from 01-10-2007.
- III) The respondents are directed to refund the recovered amount of Rs.1,84,180/- to the petitioner within a period of 8 weeks from today.
- IV) Rule is made absolute in the above terms.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/