

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

WRIT PETITION NO. 8059 OF 2018

Bhaskar s/o Govindrao Deshkari,
aged about 66 years, Occ. Retired Person,
R/o Chikhali Ramnath, Tq. Darwah, Dist. Yavatmal.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
through its Secretary,
Department of Rural Development,
Mantralaya, Mumbai – 400032.
2. The Lokayukta,
Maharashtra State,
New Administrative Building,
First Floor, Madam Cama Road,
In front of Mantralaya, Mumbai – 400032.
3. The Additional Commissioner,
Amravati Division, Amravati Commissionerate Camp,
Amravati, Dist. Amravati.
4. The Chief Executive Officer,
Zilla Parishad, Yavatmal, Dist. Yavatmal.
5. The Block Development Officer,
Panchayat Samiti Arni, Dist. Yavatmal.

RESPONDENTS

Shri V.G. Bhamburkar, Advocate for the petitioner.
Ms. N.P. Mehta, Assistant Government Pleader for respondent Nos. 1 and 3/
State.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : 5 AUGUST, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
Counsel for the parties.

2. Despite grant of sufficient opportunity to respondent Nos. 4 and 5, no reply has been filed by them.

3. The petitioner was appointed as an 'Agricultural Assistant' with Panchayat Samiti - Mahagaon, Zilla Parishad – Yavatmal. It is the case of the petitioner that his date of birth is 7/12/1951 and he was entitled to continue in service till 31/12/2009 when he would have attained the age of 58 years. The Zilla Parishad while granting exemption from appearing in departmental examination issued an order on 18/12/2002 specifically referring to his date of birth as 7/12/1951. On 16/9/2008, the petitioner was issued a communication by the Block Development Officer stating therein that since he had attained the age of 58 years on 31/7/2007, he was treated to have retired on that date. On that premise, the payments made to him from 1/8/2007 to 16/9/2008 were recovered from the amount of gratuity payable to him.

Being aggrieved, the petitioner has filed this Writ Petition and has sought refund of the aforesaid amounts that have been recovered from his gratuity.

4. The learned Counsel for the petitioner submitted that the petitioner's date of birth was rightly recorded as 7/12/1951 in the records

of the Zilla Parishad. However, on 16/9/2008, the Block Development Officer wrongly passed an order holding that the petitioner could have continued in service only till 31/7/2007. Assuming that the said date of birth being 7/12/1951 was not acceptable to the Zilla Parishad, there was no reason to require the petitioner to superannuate with retrospective effect. The petitioner having worked till 16/9/2008, no amount of salary already paid was liable to be deducted from the amount of gratuity. Though the order passed on 16/9/2008 was confirmed in an Appeal by the Divisional Commissioner, the same would not permit retrospective retirement of the petitioner. It is thus prayed that the amounts deducted be repaid to the petitioner.

5. The learned Assistant Government Pleader for respondent Nos.1 and 3 has referred to the affidavit-in-reply. It is however submitted that the entire grievance of the petitioner is against the Zilla Parishad.

6. Having heard the learned Counsel for the parties and having perused the documents on record, it is clear that the petitioner's date of birth has been corrected in the service book as 7/12/1951. This is also certified by the Block Development Officer in the certificate issued by him. In the order passed by the Chief Executive Officer on 18/12/2002 granting exemption from appearing in the departmental examination, his

date of birth has been recorded as 7/12/1951. In that backdrop, there was no occasion for the Block Development Officer to pass the impugned order dated 16/9/2008 seeking to retire the petitioner with effect from 31/7/2007. The petitioner having served from that date till 16/9/2008, recovery of the salary and other emoluments paid to him till that date were not liable to be recovered from the amount of gratuity. The impugned order dated 16/9/2008 to that extent cannot operate to the prejudice of the petitioner.

7. For the aforesaid reasons, the following order is passed :

ORDER

i. It is held that the petitioner having discharged duty on the post of 'Extension Officer' (Panchayat Samiti) from 1/8/2007 to 16/9/2008, the salary and other emoluments paid to him are not liable to be deducted from the amount of his gratuity.

ii. The amounts so deducted from 1/8/2007 to 16/9/2008 shall be refunded to the petitioner within a period of six weeks from receipt of copy of this order. If the said amount is not repaid, the same would carry interest @ 4% per annum from the date of the judgment till realisation.

iii. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

Sumit