

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

WRIT PETITION NO.645/2021

Mohan Rajaram Patwari,
aged about 58 years, Occ.: Service.
R/o. Plot No. Buty Plots No.712,
Behind Sudhama Talkies,
Dharampeth, Tq. and District Nagpur.

..... **PETITIONER**

..V E R S U S..

- 1] Nagpur Improvement Trust,
through its Chairman,
Civil Line, Nagpur.
- 2] Establishment Officer,
Nagpur Improvement Trust,
through its Chairman, Civil Line,
Nagpur.
- 3] Chief Accountant and Finance Officer,
Nagpur Improvement Trust,
Civil Line, Nagpur.
- 4] Principal Secretary,
Ministry of Urban Development-2,
State of Maharashtra, Mantralaya,
Mumbai-32.

..... **RESPONDENTS**

Shri Vijaykumar Paliwal, Advocate for petitioner.
Shri G.A.Kunte, Advocate for respondent nos. 1 to 3.
Shri A.M.Deshpande, Additional Government Pleader for respondent no.4.

CORAM : A.S.CHANDURKAR and G.A.SANAP, JJ.
DATE : 17th FEBRUARY, 2022.

JUDGMENT (Per A.S.CHANDURKAR, J.)

2. **Rule.** Rule made returnable forthwith and heard the learned counsel for the parties.

3. The petitioner was appointed on the post of 'Coolie' with the Nagpur Improvement Trust on 12.12.1984. Thereafter his services were confirmed on the said post by the order dated 28.02.1986. Under the Modified Assured Career Progression Scheme - MACP Scheme the pay-scale of the petitioner was revised after rendering service for a period of 24 years. He was placed in the pay-scale of Rs.5,200-20,200 with grade pay of Rs.1,600/-. With the grant of annual increments the basic pay of the petitioner was Rs.9,570/- as on 01.01.2016. Thereafter by the order dated 29.04.2017 he was granted revised grade pay of Rs.2,000/- with effect from 06.09.2014. As per note sheets prepared by the Nagpur Improvement Trust the petitioner was entitled to the aforesaid pay-scale in the pay band S-7(15). It appears that while granting benefit on the basis of recommendations of the 7th Pay Commission, the pay band of the petitioner was changed from S-7(15) to S-4 without any notice to the petitioner. The petitioner got knowledge of the same when he received his pay slip in the month of April 2019. Hence on 22.05.2019 the petitioner made a representation for restoring his pay-scale of Rs.5,200-20,200 from 4,440-7,440 (6th Pay Commission) which was S-7(15). Yet another representation was required to be made by the petitioner on 29.06.2020. Since these representations were not adjudicated upon, the petitioner filed Writ Petition No.2024/2020 and by the order dated 24.08.2020 the respondents therein were directed to decide the petitioner's representations within a period of eight

weeks from the date of the order. It is thereafter that on 12.10.2020 the respondent no.1 passed an order holding that since the post of 'Coolie' was an isolated post, the pay-scale of S-4 was properly applied to the petitioner. Being aggrieved, the petitioner has challenged the aforesaid order.

4. Reply has been filed on behalf of the respondent nos. 1 to 3 and in paragraph 8 thereof a reference is made to the Office Circular dated 07.08.2009. As per that Circular the list of isolated and non-isolated posts has been published. It has been further stated that the post of 'Coolie' is not an isolated post for the reason that there is a promotional avenue to this post i.e. Notice Havildar, Ferro Attendant/Photocopy Operator. On this basis it has stated that the promotional posts are isolated and not the post of 'Coolie'.

5. We have the learned counsel for the parties and we have considered the documents placed on record. The reason for bringing down the petitioner to the pay-scale of S-4 is principally that the post of 'Coolie' is an isolated post with no avenue of further promotion. For that reason the respondent nos. 1 to 3 have relied upon the Government Resolution dated 01.03.2019. To consider the aspect as to whether the post of 'Coolie' is an isolated post or not, reference can be made to the Circular dated 07.08.2009 issued by the respondent nos. 1 to 3. In that Circular, it has been stated that the posts of Reja/Choukidar are isolated posts while employees working as Peon/Coolie/Khalashi are liable to be promoted as Notice Havildar/Gang Havildar and hence these posts are not isolated. Thereafter reference is made to eleven other posts which

are not isolated with which we are presently not concerned. Another Circular in that regard has been issued on 04.05.2019 but the same also does not refer to the post of 'Coolie' as being isolated. It is also necessary to refer to an order passed by the respondent nos. 1 to 3 dated 03.07.2019 which order was pursuant to the directions issued by this Court in Writ Petition No.7826/2017 (*Prakash Shankar Gokhale vs. Nagpur Improvement Trust, Nagpur and others*) decided on 09.07.2018. The respondent nos. 1 to 3 proceeded to promote about eight employees out of which three were holding the post of 'Coolie'. From these facts, it is evident that the post of 'Coolie' is not an isolated post. For the same reason the Government Resolution dated 01.03.2019 that has been relied upon in the impugned order insofar as it relates to isolated posts would not be attracted. The impugned order thus proceeds on an incorrect premise.

6. We find that as per the note-sheet dated 29.04.2017 prepared by the respondent nos. 1 to 3 the petitioner was granted benefit of 24 years service on 01.03.2014. Under the MACP Scheme his grade pay was fixed at Rs.1600 +300. Referring to the Government Order dated 01.09.2014 benefit of consolidated grade pay of Rs.1600 + 400 was granted from 06.09.2014. On 01.07.2016 grade pay was fixed at Rs.2,000/- and his basic pay was Rs.11,920/-. This was in pay-band PB1-Rs.5200-20200. The statement of pay-fixation dated 25.04.2019 shows that category S-7(15) of Rs.33,000/- has been applied to the petitioner from July 2018. Considering the fact that from 01.01.2016 the petitioner was already receiving the pay-scale as

admissible under the pay band S-7(15), there is no legal justification to alter his pay-scale to S-4 which is lower than the pay-scale to which the petitioner was already found entitled.

7. It is also to be kept in mind that the petitioner who is holding Class-IV post is to retire by the end of August-2022. His pay-fixation as done in April-2019 was not on account of any incorrect information being supplied by the petitioner and such pay-fixation was voluntarily done by the respondent nos. 1 to 3. In that view of the matter, we find that there was no legal justification in reducing the pay of the petitioner and bringing him to a lower pay-scale as per S-4(25). The petitioner is entitled to receive his salary under pay band S-7(15) for which he was already held entitled from 01.01.2016. Accordingly, the petitioner is entitled for relief consequent upon setting aside of the order dated 12.10.2020 passed by the respondent no.1. The pay band of the petitioner shall suitably corrected to S-7(15) and arrears of salary after such fixation be paid to him within a period of three months from the production of this order.

Rule is made absolute in aforesaid terms. No costs.

(G.A.SANAP, J.)

(A.S.CHANDURKAR, J.)

Andurkar..