IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2945 OF 2011

Dr. Vasant Bhanudasrao Kulkarni
Age: 72 Years, Occupation: Pensioner,
R/o Plot No. 38, Sarthak, Vasundara Coloney,
N-7, CIDCO, Aurangabad. ... **PETITIONERS**

V/s.

1. State of Maharashtra
Through the Secretary,
Animal Husbandry Department,
Mantralaya, Mumbai.

2. The Live Stock Development Officer,
At Post Pishor, Tq.: Kannad,
Dist: Aurangabad.

3. The District Animal Husbandry Officer,
Zilha Parishad, Aurangabad.

4. The Chief Executive Officer,
Zilha Parishad, Aurangabad.

5. The Account General (A & E), Nagpur. ... **RESPONDENTS**

...
Dr. Vasant Bhanudasrao Kulkarni, Petitioner in Person
Mr. P.S. Patil, AGP for Respondent-State
Mr. U.B. Bondar, Advocate for Respondent Nos.3 & 4
...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.
RESERVED ON : 8th September, 2023
PRONOUNCED ON : 03rd October, 2023

JUDGMENT (Per: Y.G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith. With the consent of Petitioner in person and the learned AGP, the matter is heard finally at the stage of the admission.

2. By the present petition under Article 226 & 227 of the Constitution of India, the Petitioner has prayed as under:

> *"A. Write Petition kindly be allowed with cost.*
>
> *B. The impugned judgment and order dated 11-11-2010 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad in Original Application No. 995 of 2009 may kindly be quashed & set aside.*
>
> *C. The order passed by the respondent No. 2 dated 10-06-1997 and respondent 3 dated 13-8-2002 may kindly be quashed and set aside, directing to retain his earlier pay fixation since 1-1-1986 and calculate his subsequent Pay fixation based on the earlier pay fixed and to direct refund of the recovery already made of Rs. 25100/- from the petitioner with 16% interest p.a., and be further directed to grand the correct pay scale of the petitioner and grant correct modified pension to the petitioner."*

3. Facts giving rise to the petition are that, the Petitioner was appointed to the post of Live Stock Supervisor with Respondent No. 3 on 11.08.1959 in the pay scale of Rs.290/- to 540/-. He voluntarily joined the Indian Army during the India-China war and served during the period from 15.04.1963 to 27.09.1963. On 01.07.1982, he was promoted to the post of

Assistant Live Stock Development Officer in the pay scale of Rs. 335/- to Rs. 680/-. On 21.08.1986, he was promoted to the post of Live Stock Development Officer Class -II in the pay scale of Rs. 600/- to Rs. 1150/-. He drew pay of Rs. 720 and Rs. 750 with the annual increments on 01.08.1987 and 01.08.1988. With the revision of pay scale declared on 01.10.1988 as per the 4th Pay Commission, he gave 2nd preference on 04.11.1988.

4. According to the Petitioner, under 4th pay commission, his pay was fixed @ Rs. 2000 to Rs. 3500/- on 01.08.1987. Subsequently, his pay was fixed @ Rs. 2120/- and he drew regular pay till his retirement i.e. 31.12.1997. The Petitioner further contended that, the Respondent no. 3 fixed his wrong Pay scale of Rs. 1400/- to 2300 w.e.f 01.01.1986 and after one annual increment on 01.07.1986 his pay was fixed @ Rs.1850/-. The Petitioner further contended that, the Respondent No.5 wrongly made his pay fixation to Rs. 1900/- w.e.f. 01.07.1986, Rs. 2000/- w.e.f. 21.08.1986 and Rs. 2060/- w.e.f. 01.08.1987 and thereafter, Rs. 2120/- on 01.08.1988. On the basis of wrong pay fixation, a recovery of Rs. 16,877/- was wrongly directed against him. Being aggrieved by the said action, the Petitioner filed Original Application No. 995 of 2009 u/s 15 of the Administrative Tribunal Act, 1985 and prayed for quashing and setting aside the Order / communication dated 09.06.2009 passed by the Deputy Secretary, Animal Husbandry Department, Mantralaya, Mumbai and to direct to

retain his option dated 04.11.1988 w.e.f. 01.08.1987 and to refund the amount recovered from him. The Petitioner further prayed for issuance of directions against the Respondents to release his pensionary benefits based on the fixation of his pay dated 04.11.1988 as per his option.

5. The Petitioner-in-person vehemently canvassed that, on 01.10.1988, the State Government declared revision of pay scale under the 4th pay Commission. He gave opted for preference no. 2 on 04.11.1988. His pay was fixed @ Rs. 2000 to Rs. 3500/- on 01.08.1987 from old pay scale of Rs. 720/-. However, while fixation of his pension, the Respondent no. 4 under the wrong conception felt that the pay fixation done on 01.08.1987 was wrong in the revised pay scale as he was Class 3 employee on 1-8-1986, while his promotion on 2.08.1986 was in Class- 2 post. Therefore, his pay scale @ Rs. 1400 to 2300/- on 01.01.1986. So also, when his second pay fixation was done on 10.06.1997 to Rs.2120, it was reduced to Rs. 2060. Respondent No. 3 sent proposal for verification of his pay scale to the Respondent No. 5. Thereafter, on 03.12.1997, Respondent No.5 returned said proposal on the ground that the Petitioner's revised pay scales Rs. 2000-60-2300 EB 75-3200-100-3500 has not been verified by the pay verification Unit.

6. The Petitioner-in-person further submits that he had lost his duplicate service book in the year 2006, but he had obtained xerox copy of his

service book from Respondent no. 3, wherein he found an entry dated 20.12.1999 about revision of his pay scale on 01.08.1997, by the pay verification Unit Aurangabad. According to the Petitioner, pay of Rs. 620 as on 01.01.1986 was for substitution of Class- 2. While he was in pay scale of Rs. 335 to 680, he was promoted in the pay scale of Rs. 600-1150 on 21.08.1986. His pay was fixed on 01.08.1986 as Rs. 640-20-690, which was equivalent to pay scale i.e. 600-630-660-720–1150.

7. Under the 4th pay commission there were two options, i.e. adoption of revised pay scale w.e.f. 1.1.1986 or w.e.f. 1.7.1986, which was the date of increment available to the Petitioner in the cadre ALSDO, which post he held on 01.01.1986. The Petitioners contends that on 11.11.2010, learned Tribunal passed impugned Judgment & order wrongly holding that the Petitioner vacated the post of "ALSDO" as he was promoted as "LSDO" on 21-8-1986. He ceased to draw in the existing scale on 20.08.1986. Therefore, by virtue of said fact the Petitioner prohibited from giving any date beyond 20.08.1986 as the option for adoption of revised pay scales. Therefore, the Petitioner prayed for quashing and setting aside the impugned judgment and order.

8. On the other hand, the learned AGP supported the findings recorded by the learned Member, Maharashtra Administrative Tribunal and

submitted that the Petitioner was serving as an Assistant Live Stock Development Officer (ALSDO) on 01.01.1986, the date since when recommendations of 4th pay Commission are accepted and implemented. The pay scale of Government employees of Rs. 335-15-520-580-20-680 was revised to Rs. 1400-40-1800 EB-50-2300. The Petitioner was promoted as LSDO (Live Stock Development Officer) on 21.08.1986. His pay scale of Rs. 600-30-750-40-1150 was revised to Rs. 2000-60-2300-EB-75-3200-100-3500. The Petitioner chose the 2nd option. Since pay scale of the Petitioner was Rs. 690 as on 21.08.1986 and in revised timescale for LSDO, the Petitioner opted to draw the same timescale till the date of his next increment which was due on 01.08.1987. His salary would have been Rs. 720/- had he desired fixation of pay according to 4th pay commission recommendations on 01.08.1987 in the revised time scale available in LSDO. Accordingly, Petitioner's basic pay was fixed @ Rs. 2120/- as LSDO on 01.08.1988. However, on 01.08.1991, the Respondent No. 3 has wrongly fixed pay scale of the Petitioner taking into consideration the pay as on 01.08.1991 as Rs. 2375 instead of Rs. 2300/- and had wrongly released the increment up to 01.08.1995, which resulted in recovery of excess payment of one increment and allowance. So also, on 11.06.2001, the Respondent No. 5 - Accountant General Officer raised an objection that, the Petitioner's pay fixation was done as on 01.01.1996 by taking into consideration his last pay as on 01.08.1995 of Rs. 2675/- instead of

Rs. 2600/-. Therefore, as per G.R. dated 10.12.1998, the pay fixed on 01.01.1996 at Rs. 8100/- instead of Rs. 7900/- in the revised scale of Rs. 6500-200-10500, seems to be incorrect. Therefore, as per the recommendations of Respondent No. 5, pay scale of the Petitioner was fixed @ Rs. 6500-200-10500. The learned Member, Maharashtra Administrative Tribunal has very well considered all material available on record and dismissed the application of the Petitioner, which does not require interference at the hands of this Court. Hence, he prayed for dismissal of the writ petition.

9. Having regard to the rival submissions, we have gone through the record. The main grievance of the Petitioner is in respect of purported wrong fixation of pay scale on the part of Respondent no. 3. It is a matter of record that, on 01.01.1986, the Petitioner was working as Assistant Livestock Development Officer (in short "ALSDO") with the Respondent No. 3 under the control of the Respondent No.4. On 01.10.1988, the State Government issued a G.R. and implemented the recommendations of 4th Pay Commission w.e.f. 01.1.1986, on which date the Petitioner was holding the post of "ALSDO". The Petitioner has not disputed that pay scale Rs. 335-15-500-20-580-20-680 was made available to his post "ALSDO" and said pay scale was revised under the 4th pay commission to Rs. 1400-40-1800-EB—50-2300. It is a matter of record that vide order dated 14.07.1987, the Petitioner was promoted to the post of

Livestock Development Officer (in short “LSDO”). On 21.08.1986, the Petitioner took charge of the promotional post. The pre-promotional post carried revised pay scale of Rs. 600-30-750-EB-40-1150, which was revised under 4th pay commission to Rs. 2000-60-2300-EB-75-3200-100-3500.

10. It would be appropriate to mention here that, due to the Petitioner’s promotion, his basic pay was fixed @ Rs. 690/- in the pre-revised scale as per Rule 11 (1) (a) of the Maharashtra Civil Services (Pay) Rules, 1981 though the recommendation of 4th pay commission were given effect from 01.01.1986 because orders to that effect were passed in the year 1988. Therefore, it became clear that when the petitioner was promoted to the post of “LSDO” in the month of August, 1986, he drew pre-revised pay scale for said promotional post from “ALSDO”. The record itself speaks that on 04.11.1988, the options were called from the Government Employees for fixation of pay scales in accordance with the revision due to 4th pay commission’s recommendations. On 04.11.1988, the Petitioner submitted option in prescribed format (Annexure-III) under Rule 6(1) “Exhibit C” attached with the present petition and opted revised pay scale of Rs. 720/- w.e.f. 01.01.1986 till the date of next increment or till he reaches in the pay scale of Rs. 600-30-750-EB-40-1150. The Petitioner’s pay was to be revised in terms of 4th pay commission w.e.f. 01.08.1987. Accordingly, the Respondent No. 3 fixed the

basic pay of the Petitioner @ Rs. 2120/-, which resulted in recovery of excess pay, due to wrong pay fixation. The issue about recovery of pay due to wrong fixation, was already adjudicated upon vide order dated 7-10-2010 passed by the learned Tribunal, which is re-produced in sub-para 3 of the impugned order.

11. It is needless to say that the Petitioner was serving as Assistant Live Stock Development Officer (ALSDO) on 01.01.1986 on which date recommendations of 4th pay commission were accepted and implemented. It is matter of record that on 01.01.1986, the Petitioner's pay scale was @ Rs. 335-15-520-580-20-680 which was revised to Rs. 1400-40-1800 EB-50-2300 under the 4th pay commission. No doubt, the Petitioner was promoted to the post of LSDO (Live Stock Development Officer) on 21.08.1986. The pay scale of the Petitioner was revised to Rs. 2000-60-2300-EB-75-3200-100-3500 from Rs. 600-30-750-40-1150. As Per Annexure "C" to the petition, he gave the 2nd option. Since pay scale of the petitioner was Rs.690 as on 21.08.1986 and it was revised in timescale for LSDO, the Petitioner opted to draw the same timescale till the date of his next increment which was due on 01.08.1987 when his salary would have been Rs. 720/- and he desired for fixation of pay according to 4th pay commission recommendations on 01.08.1987 in the revised time scale available in LSDO.

12. On the face of the record, it apparently appears that the Petitioner's basic pay was fixed @ Rs. 2120/- as LSDO as on 01.08.1988. However, on 01.08.1991, Respondent No.3 had wrongly fixed pay scale of the Petitioner taking into consideration his pay as on 01.08.991 as Rs. 2375 instead of Rs. 2300/-. The wrong pay was released in favour of the Petitioner till his last increment up to 01.8.1995 which resulted in recovery of excess payment and allowance. On 11.06.2001, the Respondent No.5 - Accountant General Officer had raised an objection that, the Petitioner's pay fixation was done as on 01.01.1996, by taking into consideration his last pay as on 01.08.1995 which was Rs. 2675/- instead of Rs. 2600/-. Therefore, Respondent No. 5 directed Respondent No. 3 to revise the pay scale of the Petitioner to Rs. 6500-200-10500 instead of Rs. 7900/- as per G. R. dated 10.12.1998.

13. On 11.11.2010, the learned Member, Maharashtra Administrative Tribunal delivered the impugned judgment and order and dismissed the original application of the Petitioner, which is sustainable. The Petitioner has not brought any such material on record, which would persuade us to conclude that the findings recorded by the learned Member are illegal and perverse. Therefore, **this Petition is dismissed**. **Rule is discharged**.

[Y.G. KHOBRAGADE, J.] **[RAVINDRA V. GHUGE, J.]**

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