

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

WRIT PETITION NO. 5194 OF 2014

1. Narayan Vishram Chavan, Aged about 62 years, Occ-Retired, R/o Malegaon Dist. Washim. **Petitioner**

-Versus-

1. State of Maharashtra, through Secretary, Department of Rural Development, Mantralaya, Mumbai 32. **Respondents**
2. Divisional Commissioner, Amravati Division, Amravati.
3. Zilla Parishad, Washim Through its Chief Executive Officer.

Mr. A.B.Mirza, counsel for the petitioner.
Mr.M.K.Pathan, AGP for respondents-State.
Mr. K.S.Malokar, counsel for respondent No.3.

**CORAM : ROHIT B. DEO AND
M.W.CHANDWANI, JJ.**

DATE : 12TH JULY, 2023

JUDGMENT (Per : M. W. Chandwani, J.)

Heard the learned counsel for the respective parties.

2. The petitioner was appointed as Mistri Grade-II in respondent- Zilla Parishad. The grievance of the petitioner is that he has not granted higher pay scale upon completion of 12 years of service till attaining the age of superannuation.

3. The present petitioner is undisputedly senior to the employees who granted status of Civil Engineering Assistant with retrospective effect though these junior employees stood retired and more importantly the said status were given from 20/05/1999.

4. The above issue is covered by various decisions of this Court wherein the cadre of Mistri Grade-I, which subsequently came to be merged in the cadre of Civil Engineering Assistant. In these case, the Coordinate Bench of this Court held that such of the employees, who have been appointed as Mistri Grade-I upon completion of their 12 years' of continuous service in the said cadre and upon attaining age of 45 years are entitled to get higher pay scale in the cadre of the Junior Engineer. It has been further held that upon completion of 45 years, the Chief Executive Officer is empowered to relax the

condition of appearing in professional examination. Undisputedly, the present petitioner has not cleared the professional examination.

5. In that view of the matter, the petitioner is entitled to get the pay scale in Junior Engineer from the date on which he completes 12 years of service and attains the age of 45 years.

6. Learned AGP Mr. Pathan would submit that the petitioner approached after a long delay, therefore, he will be entitled to arrears for 3 years preceding to the date of petition. He seeks to rely on the decision of the Hon'ble Supreme Court in the case of *Rushibhai Jagdishchandra Pathak v. Bhavnagar Municipal Corporation* in *Civil Appeal No.4134 of 2022* and other connected appeals, wherein it was held that long delay in approaching the Court affected the consequential claim for arrears and the Court restricted the relief relating to arrears to three years preceding before the date of filing Writ Petition.

7. In view of law enunciated above, the petition is partly allowed. We direct the respondents to fix the pay of the petitioner notionally from the date of his entitlement referred above for the purpose of pension and other pensionary benefits. The petitioner shall be entitled to arrears for the difference in salary/pension for three years preceding to the date of filing of the writ petition.

8. Rule accordingly. There shall be no order as to costs.

(M.W.CHANDWANI, J)

(ROHIT B. DEO, J)