



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 8315 OF 2018

Prabhakar S/o Krushnarao Burghate,
Aged about 60 years, Occ – Retired,
R/o.39, Rathi Nagar, Near ISKCON
Temple, Amravati.

..... PETITIONER

// VERSUS //

- 1) The State of Maharashtra through
Principal Secretary, Department of
Water Supply and Sanitation,
Mantralaya, Mumbai – 32.
- 2) The member Secretary,
Maharashtra Jeevan Pradhikaran,
Express Tower, 4th Floor,
Mumbai.
- 3) The Chief Accounts Officer,
Maharashtra Jeevan Pradhikaran,
CIDCO Bhawan, 3rd Floor,
South Block Belapur,
Navi Mumbai.
- 4) The Deputy Chief Accounts Officer,
Maharashtra Jeevan Pradhikaran,
CIDCO Bhawan, 3rd Floor,
South Block, Belapur,
Navi Mumbai.
- 5) Zilla Parishad, Amravati through
its Chief Executive Officer.

.... RESPONDENTS

Shri. P. D. Meghe, Advocate for petitioner.
Shri. S. M. Ukey, Addl. G. P. For respondent No.1/State.
Shri. D. M. Kakani, Advocate for the respondent Nos.2 and 4.
Shri. V. R. Chaudhari, Advocate for respondent No.3.
Shri M. G. Rathi, Advocate for respondent No.5.

**CORAM : AVINASH G. GHAROTE AND
URMILA JOSHI-PHALKE, JJ.**

RESERVED ON : 22.08.2023

PRONOUNCED ON : 12.09.2023

JUDGMENT : [PER: URMILA JOSHI-PHALKE, J.]

1. **RULE.** Rule is made returnable forthwith.
2. Heard finally with the consent of the parties.
3. The challenge is to the order dated 05.05.2017 passed by the respondent No.3 – Chief Accounts Officer, Maharashtra Jeevan Pradhikaran, Navi Mumbai and the order dated 09.06.2017 passed by the respondent No.4 – the Deputy Chief Accounts Officer, Maharashtra Jeevan Pradhikaran, Navi Mumbai, whereby the pensionable pay is considered as Rs.32,046/- instead of Rs.41,462/- which according to the petitioner he is entitled to receive as per average pensionable pay. The petitioner has also claimed his other retiral benefits.
4. The petitioner was initially appointed on 07.09.1978 as Junior Engineer by the Superintending Engineer, Environmental Engineering Circle, Akola. He had joined his duties on 18.09.1978. The Department of Environmental Engineering came to be converted as Maharashtra Jeevan Pradhikaran with effect from 10.03.1997. On 17.09.1985, the petitioner was upgraded as Sectional Engineer by

granting selection grade. On 29.11.1988, he was transferred to the office of Minor Irrigation, Zilla Parishad, Sub-Division No.2, Gondia. The petitioner vide order dated 27.05.1991 issued by the Desk Officer, Maharashtra Water Supply and Sewerage Board was permanently shifted to Zilla Parishad, Bhandara, as its employee from the Department of Maharashtra Water Supply and Sewerage Board from the date of his initial appointment. However, said order of shifting was not implemented for want of sanction of Government. On 30.08.1991, the petitioner was permanently absorbed in his original department and posted at Engineering Works Sub-Division, Akot, as Sectional Engineer. As per the pleading of the petitioner, since 07.09.1978 till 30.08.1991 he was posted and worked in Zilla Parishad, Bhandara. In the year 1985, when he was upgraded as Sectional Engineer, he was never asked to appear for or clear any professional examination for the purpose of grant of appointment on the post of Sectional Engineer by selection grade. After absorbing him in his original department in the year 1990, he appeared and cleared the professional examination on 20.10.1990. After absorption, he worked at various places and retired on 31.10.2016.

5. The petitioner had submitted all relevant papers for getting pension as he was due for retirement on 31.10.2016. He had also claimed all other pensionary benefits. Though he is entitled to receive

Rs.26,220/- towards the amount of Group Insurance but only an amount of Rs.6,883/- was disbursed to him towards the said Group Insurance. The respondent No.4 vide order dated 09.06.2017 fixed his pensionable pay by considering the amount of Rs.32,046/- as his last drawn pay instead of Rs.41,462/-. On filing of the application under the Right to Information Act, it was informed to the petitioner that when he was granted the grade of Sectional Engineer on 01.04.1984, the professional examination was not cleared by him. He cleared the said examination on 20.10.1990 and therefore, he is entitled to receive the grade of Sectional Engineer with effect from 01.04.1991. As per the petitioner, since his appointment dated 07.09.1978, he was posted in Zilla Parishad, Bhandara. When he received the grade pay of Sectional Engineer, he was working in Zilla Parishad, Bhandara. The recruitment Rules of Zilla Parishad do not require that he shall pass the professional examination before granting the grade pay of Sectional Engineer. First time in the year 1990, the petitioner was completely absorbed in the respondent No.2 Department and immediately on 20.10.1990, he qualified the professional examination. Therefore, his pension is required to be calculated by considering his last drawn pay as Rs.41,462/-. The respondent incorrectly calculated the amount of his pension contrary to the Rule 60 of the Maharashtra Civil Services (Pension) Rules, 1982. He made a representation which remained to be answered, therefore, he

approached to this Court and claimed retiral benefits as well as the benefit of the pension.

6. In response to the notice, respondent Nos.2 to 4 denied the claim of the petitioner on the ground that the petitioner was appointed on 07.09.1978 as a Junior Engineer on regular temporary establishment. As per the recruitment rules, it is mandatory for every Junior Engineer to pass the professional examination within three years from the date, which his service as Junior Engineer on probation or otherwise commences. Failure on the part of Junior Engineer to pass the professional examination within the prescribed time will result in withholding of his increment till he passes the examination. The increment withheld shall become payable to him with effect from the date on which he passes the examination and all future increment shall accrue, as if no increment is withheld. It is further contention of the respondents that Junior Engineer having diploma of three years who put in not less than five years of regular service in regular establishment and fulfilled the other conditions including that of passing the professional examination is given the status of Sectional Engineer and higher pay scale is made applicable to him. It is further contention of the respondents that the petitioner was inadvertently given status of Sectional Engineer on 01.04.1984. The recruitment Rules of Sectional

Engineer do not provide for passing of professional examination, however, passing of professional examination has been made mandatory for the Junior Engineer to have passed within three years from the date of appointment on 1978. The petitioner ought to have passed the professional examination in 1981, but he has passed the same on 20.10.1990, therefore, he got the status of Sectional Engineer on 01.04.1991 and therefore, his pensionable pay is considered as Rs.32,046/-. Thus, the petition is devoid of merits and liable to be dismissed.

7. Heard learned Counsel Shri P. D. Meghe, for the petitioner, learned Counsel Shri D. M. Kakani, for the respondent Nos.2 & 4 and learned AGP Shri Ukey for respondent No.1 and Shri M. G. Rathi for respondent No.5.

8. It is submitted by the learned Counsel Shri Meghe for the petitioner that the appointment order issued to the petitioner on 07.09.1978, nowhere discloses that the petitioner has to appear for professional examination and has to clear the said examination within three years. He invited our attention towards Clause 6 wherein it is only mentioned that the candidate will be required to pass the higher standard Hindi examination as per the rules in force. If the said

examination is mandatory for the Junior Engineer it ought to have mentioned in the appointment order, which is not mentioned. The Office order dated 17.09.1985 shows that the petitioner was upgraded as a Sectional Engineer. In view of the said order the Superintending Engineer Environmental Engineering Circle, Akola issued order and transferred the present petitioner in Minor Irrigation Zilla Parishad, Sub-Division, Gondia dated 29.11.1988. It is further apparent from the communication dated 27.05.1991 that present petitioner was transferred to Zilla Parishad, Bhandara as its employee from the date of his initial appointment, however, said order of shifting was not implemented for want of sanction of Government. He further invited our attention towards one letter which was issued by Commissioner, Nagpur to Chief Officer, Zilla Parishad, Chandrapur in respect of the another employee who was transferred to the Zilla Parishad, Chandrapur. The recitals of the letter shows that the professional examination is not mandatory to the employees who are Junior Engineers and serving in Zilla Parishad. He further submitted that Annexure – I is showing last pay of the petitioner which is Rs.41,462/-. In view of the pension Rules, said last pay is to be taken into consideration while calculating the pension. He further submitted that not only the pension but the amount of Group Insurance which is contributed by the present petitioner is Rs.26,220/-. However, by the letter dated 05.05.2017 only amount of Rs.6,883/- is

paid to the present petitioner. Thus, *prima facie* it shows that the pension was not calculated as per the Rule 60 of the Maharashtra Civil Services (Pension) Rules. The other retiral benefits are also not granted to the petitioner. The said act of the respondents is illegal and against natural justice, therefore the respondents be directed to pay the pension to the petitioner, in view of the Rules Maharashtra Civil Services (Pension) Rules.

9. Per contra, learned Counsel for the respondents reiterated the contention that as the present petitioner has not cleared the examination within three years after joining, and therefore, he is not entitled for revised pay by considering him as a Sectional Engineer and hence he is not entitled for any revised pay.

10. In support of the contention learned Counsel for the respondent No.4 placed reliance on Circular of the Department which shows that after joining the service in Maharashtra Jeevan Pradhikaran Department, the Junior Engineer ought to have passed the professional examination within three years, if he fails to pass the said examination within three years, his annual increment is to be withheld. He further placed reliance on PWD Manual and submitted in view of the provisions of the Manual also, the petitioners ought to have cleared the

examination within three years which he has not cleared and therefore, he is not entitled for any revised pay and prays for dismissal of the petition.

11. Before entering into the controversy involved in the present petition. It is necessary to understand the provisions of the Maharashtra Civil Services (Pension) Rules, 1982. The Rule 9(36) of Maharashtra Civil Services (Pension) Rule, 1982 (hereinafter referred as “Pension Rules, 1982”) defines ‘Pay’.

“9(36) Pay means the amount drawn monthly by a Government servant as-

(i) the pay (including special dearness pay) which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) personal pay, and special pay; and

(iii) any other emoluments which may be specially classed as pay by Government.

12. The Rule 9(38) of the said pension Rules defines “Pensionable pay” means the average pay earned by a Government servant during the last ten month’s service.

Note 1 – given under Rule 9(38) says that –

“The officiating pay/special pay/deputation (duty) allowance drawn from the Consolidated Fund of India by State Government employees on

deputation to the Government of India, shall be taken into account for calculating pensionable pay.

Note 2 - The pay drawn by a Government servant while on foreign service shall not count for pension. In such a case, the pay which the Government servant would have drawn under the Government had he not been sent on foreign service, will alone be taken into account while calculating pensionable pay.

13. Thus, the word pension though has not been defined anywhere, it has been held that it implies periodical payment of money to a pensioner. Two essentials are necessary in order to constitute a pension:- (1) it must be a periodical payment and (2) it must be a grant not in respect of any right, privilege, pre-requisite or office, but on account of past service, present infirmities or as a compensation, allowance. It is bounty for past service rendered to public or to the State. It is mainly designed to assist the pensioner in providing his daily needs. It is mere a bounty or gratuity given by the government in consideration of recognition of meritorious past services rendered by the pensioner, or by some kins-man or ancestor. Pension, Gratuity and Provident Fund are well known three different and distinct types of retirement benefits although the basis for calculating all of them is furnished by the salary or emoluments drawn by a government servant.

14. The contention of the learned Counsel for the petitioner is that fixing of the pension of the petitioner at a scale lower than 50% of

the last drawn pay is against the provision made in Rule 110 of the Pension Rules, 1982, and therefore, the calculation by which the amount of pension is fixed by the respondent is illegal. Whereas learned Counsel for the respondents submitted that since the petitioner has not cleared his professional examination and therefore, he was not entitled for any increment till 01.04.1991. He passed the said examination on 20.10.1990 and therefore, he is entitled to receive the grade pay of Sectional Engineer with effect from 01.04.1991, therefore he is not entitled for any revised pay, therefore, it cannot be said that impugned action of respondent is against the law.

15. Rule 110 of Rules of 1982 is relevant for deciding the controversy involved by this petition. Sub-rule (2)(a) of Rule 110 of the Rules of 1982 reads as under:

“(2)(a) In case of Government Servant retiring on superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules after completing qualifying service of not less than twenty years, the amount of pension shall be calculated at fifty per cent of the ‘Pensionable pay’ subject to maximum of Rs.67,000/- plus admissible grade pay”.

It would be clear from the above referred rule that amount of pension is required to be calculated at 50% of the pensionable pay subject to maximum of Rs.67,000/- plus admissible grade pay.

16. It would be clear from the above referred provisions of the Rules 1982 that for the purpose “pensionable pay”, consolidated salary lastly drawn by the employee is required to be taken and then, either the average of consolidated salary earned by the government servant during the last 10 months or the last months pay, whichever is more beneficial to the government servant, would be relevant for considering what would be the pensionable pay of the government servant. In short, it would be the consolidated salary drawn on an average basis during the last 10 months service or the last months consolidated salary, whichever is more beneficial, which would be the one to be counted as pensionable pay.

17. Thus, the pension required to be calculated would be in accordance with the definitions given in Rule 9(38) and Rule 9(36) read with Rule 110 of Rules, 1982 and that would mean that if the last drawn consolidated salary is more beneficial to an employee of the government, it would be that salary which would have to be taken into account for determination of the amount of pension payable to the employee.

18. In the present case, it is submitted by the respondents that the petitioner has not cleared the professional examination and grade pay was granted to him inadvertently. Admittedly, said grade pay was

not withdrawn by the respondents. It was granted to the present petitioner by issuing official communication. It is not in dispute that the present petitioner was appointed on 07.09.1978 and he joined the service on 18.09.1978. As per the Office order dated 27.05.1991, the petitioner had rendered his services from the date of his joining i.e. from on 18.09.1978 to 24.06.1990 in Zilla Parishad, Bhandara. It is further clear that in the appointment order it is nowhere mentioned that he has to appear for the professional examination and clear the said examination within three years, though the service Manual of PWD Department shows the provision that he has to clear the examination. It is specifically admitted by the respondents in their reply in para No.7 that the recruitment rules for Sectional Engineer do not provide for passing of any professional examination, however passing of professional examination has been made mandatory to the Junior Engineer to have passed within three years from the date of appointment. Admittedly, there was no communication to the present petitioner informing him that he has to pass the professional examination within three years.

19. There is no dispute about the fact that out of two options, one of last ten months average salary and last drawn salary the one which is more beneficial to the petitioner is to be taken into consideration while considering his pensionable pay. The last drawn

salary of the petitioner would be required to be taken into account for calculating the pension payable to the petitioner in terms of Rule 110 of the Pension Rules, 1982. Annexure – I is the calculation prepared by the respondent No.5, while calculating the pensionable pay of the present petitioner, which shows that the last drawn salary of the petitioner was Rs.41,462/-. However, his pensionable pay was considered as Rs.32,048/-. The impugned calculation is by ignoring the above referred provisions of law and fixes the amount of pension incorrectly by considering the amount of Rs.32,048/-, which is not consistent with the formula prescribed in Rule 110 of Rules, 1982. Thus, we find that the respondents have committed a serious errors of law in determining the amount of pension payable to the petitioner and by violating the provisions of Rule 110 read with Rule 9(36) and 9(38) of Rules of 1982.

20. Though, the respondents have placed reliance on the PWD Manual and the Circular and mentions that in view of that Circular and Manual as the petitioner has not cleared the professional examination, he is not entitled to receive any grade pay from 17.09.1985 but he is entitled for the grade pay of Sectional Engineer from 01.04.1991. As already observed that since the date of joining the petitioner has rendered his services in Zilla Parishad. As per the communication relied upon by the petitioner which is in respect of another employee which

shows that the Junior Engineer who are rendering the services in Zilla Parishad are not required to clear the said examination. It is admitted by the respondents that the recruitment rules for Sectional Engineer nowhere states that it is a mandatory for the Sectional Engineer for passing professional examination. Thus, it is crystal clear that recruitment rules nowhere says that the petitioner has to clear the professional examination. The appointment order issued to the petitioner though states about clearing of the Hindi language examination, but nowhere states about the professional examination. Therefore, the contention of the respondents that petitioner is not entitled for any grade pay since 17.09.1985 is not acceptable. It is further mentioned in the reply of respondent Nos.2 to 4 that said grade pay was granted to the petitioner inadvertently. Admittedly, no communication was issued to the present petitioner withdrawing the said grade pay, therefore, said contention of the respondents is also deserves to be rejected.

21. In fact, the pay scale of Junior Engineer was applied to the petitioner and grade pay was granted to him way back in the year 1985 and it continued till his retirement dated 31.10.2016. Even after his retirement, there was no revised pay scale made applicable to the petitioner and no recovery was ordered from the petitioner. It was only

at the time of fixation of pension amount that the mistake was realized and it was sought to be corrected not by notionally revising the pay scale of the petitioner, not by ordering any recovery from the petitioner but only by reducing the pension amount payable to the petitioner without giving any notice to the petitioner and that too not in accordance with law in terms of provisions made in Rule 110 of the Rules of 1982.

22. This issue was already dealt by this Court while disposing of the Writ Petition No.240/2018 (Mukund Pundlik Pahurkar Vs. Zilla Parishad, Nagpur through Chief Executive officer and others.) decided on 27.08.2018. In view of that for the aforesaid reasons, we find that the petition deserves to be allowed. Accordingly, we proceed to pass following order.

(i) The Writ Petition is allowed.

(ii) It is declared that petitioner is entitled to receive the pension by considering his last drawn pay therefore, the impugned communication dated 05.05.2017 issued by the respondent No.3 – Chief Accounts Officer, Maharashtra Jeevan Pradhikaran, Navi Mumbai and the order dated 09.06.2017 passed by the respondent No.4 – Deputy Chief Accounts Officer, Maharashtra Jeevan Pradhikaran, Navi Mumbai, is quashed and set aside.

(iii) It is declared that petitioner is entitled to receive his pension by considering his last drawn pay in view of Rule 110 of the Pension Rules, 1982.

(iv) The petitioner is entitled to receive the balance amount of his Group Saving Link Insurance along with the interest 12% per annum.

(v) Considering that the petitioner has challenged the communication dated 05.05.2017 after one year i.e. on 27.11.2018, he would be entitled for the arrears of such benefits for a period of three years preceding the date of this petition.

Rule is made absolute in above terms.

(URMILA JOSHI-PHALKE, J.) (AVINASH G. GHAROTE, J.)