



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 WRIT PETITION NO. 8077 OF 2022
WITH
CIVIL APPLICATION NO. 7807 OF 2023
IN WP/8077/2022

SHIVAJI SHESHRAO SONWANE
VERSUS
THE STATE OF MAHARASHTRA THROUGH RURAL
DEVELOPMENT AND WATER CONSERVATION
DEPARTMENT AND OTHERS

...
Advocate for the Petitioner/ Applicant : Mr. D.R. Irale Patil
AGP for Respondent 1/State : Ms. Priya R. Bharaswadkar
Advocate for Respondents 2 to 4 : Mr. S.R. Dheple
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CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.

DATE :- 09th February, 2024

Per Court :-

1. The Petitioner has put forth prayer clauses B, B1
and C as under:-

“B) *The Hon'ble Court may be pleased to pass necessary order & quash and set aside the impugned revised pay fixation and proposed recovery of Rs. 1,79,443/- under Exhibit - H made by the Resp. No.3 and allow to process the pension papers to the finance department.*

B1) *Quashing & setting aside the revised pay fixation & proposed recovery of Rs. 1,79,5443/- under Exhibit - H & restore the original position as has been protected by this Hon'ble*

Court under order dt. 12.01.2021 in W.P. no. 354 of 2021 and accordingly pension be worked out with all consequential benefits from the retiring date of 31.05.2023

C) Pending hearing & final disposal of this writ petition the Hon'ble court may be pleased to pass prohibitory order and restrain the Respondents acting upon the revised pay fixation order & proposed recovery of Rs.1.79,443/- Exhibit - H & direct the respondents to accept the pension paper & pass necessary orders such as sanction the pension & pensionary benefits before due date of retirement i.e. 31.05.2023.”

2. There are two aspects involved in this case. Firstly, as regards purported erroneous grant of two advance increments for outstanding performance in service. For this purpose, no undertaking was taken from the petitioner. The second issue is as regards the pay fixation of the Petitioner and in connection with the same, an undertaking was taken from the Petitioner on 20.06.2009, clearly setting forth that, if it is found that excess payment has been made as a result of incorrect pay fixation, he would liable to repay the said amount and the amount would be adjusted towards the future payments.

3. Considering the first issue, when no undertaking was taken while granting two advance increments, the Employer

seeks to recover the amount paid in pursuance to the two advances increments, by the order dated 11.02.2022. The Petitioner superannuated on 31.05.2023. He belongs to Class III category. At the verge of his retirement, the amount is sought to be recovered. As such, in these circumstances and keeping in view that the Petitioner was granted advance increments for performing excellent work, it is too late for the Employer to take a stand that it was erroneously granted to him and his work was not outstanding.

4. In so far as the order of re-pay fixation is concerned, the Petitioner was not issued with any notice of hearing. After the pay fixation was done as long ago as in 2005 and since the same is now sought to be altered by resorting to re-pay fixation by which, salary pay scale of the Petitioner would be reduced with retrospective effect, we are of the view that the Petitioner should be granted an opportunity of hearing and a notice will have to be issued to the Petitioner to show cause as to why his pay scale deserves to be altered and why repay fixation exercise is required to be undertaken, only prospectively.

5. In view of the above, **this Writ Petition is allowed** in terms of prayer clause 'B' reproduced above. The impugned

order of directing re-pay fixation is quashed and set aside. Needless to state, the Employer is at liberty to issue a show cause notice to the Petitioner for granting him an opportunity as regards the proposed re-pay fixation. After the Petitioner's reply is received within the reasonable time stipulated, the Employer would pass a reasoned order. Needless to state, such re-pay fixation shall be prospective and not retrospective. So also, the Petitioner would be at liberty to assail the said order, of adverse to him, by approaching the appropriate forum for the redressal of his grievance.

6. The amount of Rs.1,79,443/-, if already recovered, shall be refunded to the Petitioner within 60 days, failing which, interest at the simple rate of 6% p.a. shall be paid to him.

7. The pending **Civil Application** would not survive and **stands disposed off**.

kps

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)