



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13494 OF 2018

Padmanath S/o Gotiram Lande,
Age: 64 years, Occu: Nil,
R/o: Plot No. 24, Gajanan Colony,
Garkheda Parisar, Aurangabad.

....PETITIONER

-VERSUS-

1. The State of Maharashtra,
Through its Secretary, Water Supply
and Sanitation Department,
Mantralaya, Mumbai-32.
2. The Member Secretary,
Maharashtra Jeewan Pradhikaran,
Express Tower, Nariman Point,
Mumbai-32.
3. The Chief Administrative Officer,
Maharashtra Jeewan Pradhikaran,
CIDCO Bhavan, Belapur, New Mumbai.
4. The Superintending Engineer and
President Circle Committee,
Maharashtra Jeewan Pradhikaran,
Shantipura, Chavani, Aurangabad.
5. The Executive Engineer,
Maharashtra Jeewan Pradhikaran,
Rural and Urban Water Supply Scheme
Division Vedant Nagar,
Near Railway Station, Aurangabad,
Dist. Aurangabad.
6. The Dy. Chief Account Officer (II),

Maharashtra Jeevan Pradhikaran,
CIDCO Bhawan (South Wing),
Belapur, Navi Mumbai.

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Shri U.R. Awate, Advocate i/by Talekar and Associates, for the
Petitioner.

Shri S.K. Tambe, AGP, for Respondent No.1/State.

Shri S.S. Randive, Advocate for Respondent Nos.2 to 6.

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**CORAM : RAVINDRA V. GHUGE
&
R.M. JOSHI, JJ.**

DATE :- 02nd April, 2024

ORAL JUDGMENT (*Per Ravindra V. Ghuge, J.*):-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. At the outset, we need to record that though this matter is pending for almost 5 years and notice having been issued on 05.12.2018, the Respondents/ Maharashtra Jeevan Pradhikaran (MJP) did not file its affidavit in reply. After we gave an ultimatum notice to the MJP vide our order dated 28.03.2024, that the MJP has tendered an affidavit in reply across the Bar, dated 30.03.2024. Despite the strong objection of the

learned Advocate for the Petitioner, we are accepting the affidavit on record on the condition and with the consent of the Petitioner, that the MJP would donate an amount of Rs.5,000/- (Five thousand only) to the Advocates' Association of Bombay High Court, Bench at Aurangabad, on or before 15.04.2024, failing which, the said amount shall be recovered from the salary of the Executive Engineer Shri Deepak Hanumant Koli, who has sworn the affidavit.

3. We have considered the strenuous submissions of the learned Advocates for the respective sides and have perused the petition paper book. This is an open and shut case. The Petitioner has retired on 31.12.2012. The first order of recovery was issued by the employer on 14.12.2015. The Petitioner approached this Court in Writ Petition No.9423/2015 which was decided by an extensive order dated 15.07.2016. The impugned order was set aside and the MJP was directed to issue a notice of hearing to the Petitioner. The observations in paragraph Nos.8, 9 and 10 of the judgment dated 15.07.2016, read as under:-

“8. *For the reasons aforesaid, the impugned order dated 18th December, 2012, to the extent it has reduced the amount of gratuity stands quashed*

and set aside. The Respondents, in particular, Respondent Nos. 5 and 6 are directed to issue notice to the petitioner within two weeks from today, indicating therein particular date for appearance of the petitioner before Respondent No.5. The petitioner, after receiving the notice from the concerned Respondents, shall appear before the said authority and if necessary file his reply with documents in support of his contentions.

9. *Upon receiving such reply with documents, if any, the concerned Respondents shall take appropriate decision and pass order afresh, on its own merits, keeping in view the relevant rules, about the entitlement of the petitioner for pension and gratuity amount. In case the petitioner's contentions raised on merits are found to be correct, in that case, the Respondents shall resubmit the proposal of pension and also issue fresh order for payment of gratuity, as expeditiously as possible, and preferably, within two weeks from taking such fresh decision/passing the order. However, it will be open for the concerned respondent to adjust the amount already paid, if any, to the petitioner towards pension or gratuity.*
10. *We direct Respondent Nos. 2 to 6 to complete the entire exercise, as expeditiously as possible, and preferably within 10 weeks from today and communicate the said decision to the petitioner. We make it clear that we have not entered upon the merits of the contentions raised by the petitioner or by Respondent Nos. 2 to 6.”*

4. On 12.07.2017, the Deputy Chief Auditor (1) passed a short order concluding that excess payment was made to the Petitioner and the said amount deserves to be recovered. In

support of this order, the MJP has set out the reasons in it's affidavit in reply filed today in paragraph No.4 and an exercise for the recalculation of the dues payable and the excess amount to be recovered, are set out in paragraph No.5. The justification reason for concluding that excess amount was paid to the Petitioner, is set out in paragraph No.6, which reads as under:-

“6. It is submitted that, after the hearing to the petitioner and after considering his say, respondent reconsidered the case of the petitioner in the light of applicable Govt. Resolution pertaining to the time bound promotion scheme and assured carrier progression scheme, on merit and thus found that the earlier order passed in the matter needs no change hence, order dated 12.07.2017 has been passed. It is therefore denied that, order dated 12.07.2017 is just a reiteration of the earlier order dated 18.12.2012.”

5. It is, thus, apparent that the Petitioner has been subjected to recovery only on account of the stand taken by the MJP that excess payment was made to the Petitioner, calculations were incorrect and under a wrong belief, several monetary benefits were given to him. The fact remains that the MJP woke up from deep slumber in December 2015 after three years of retirement of the Petitioner. The law laid down by the

Honourable Supreme Court in *Syed Abdul Qadir vs. State of Bihar and others, 2009 (3) SCC 475* and *State of Punjab and other vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334 = AIR 2015 SC 696*, would squarely apply to this case.

6. In view of the above, **this Writ Petition is allowed** in terms of prayer clause B, C and D, which read as under:-

- “B. To quash the impugned order/communication dated 12.07.2017 issued by Dy. Auditor, Maharashtra Jeevan Pradhikaran, Mumbai by issuing a writ of Certiorari or any other order or direction of like nature.
- C. To direct the Respondents to fix the pension of the petitioner as per the last pay scale drawn by him and release the pension and the amount and other retiral benefits to the petitioner by issuing a writ of mandamus or any other order or direction of like nature.
- D. To direct the respondents to release the amount recovered from the petitioner from his pension and other retiral benefits as expeditiously as possible, pending hearing and final disposal of this petition.”

7. Rule is made absolute in the above terms.