



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

WRIT PETITION NO.4981 OF 2023

Purushottam s/o Raghuji Wakade
Age about 58 years, Occ: Retired,
R/o Gulmohar Colony, Guddewar Layout
Armori Road, Gadchiroli, Tq. &
Dist. Gadchiroli.

...PETITIONER

...V E R S U S...

1. The Member Secretary,
Maharashtra Jeevan Pradhikaran,
Express Tower, 4th Floor, Nariman Point,
Mumbai.
2. Executive Engineer,
Maharashtra Jeevan Pradhikaran,
Chandrapur, Tah. & Dist. Chandrapur.
3. The Senior Accounts Officer,
Maharashtra Jeevan Pradhikaran,
CIDCO Bhavan, (South Wing),
Belapur, Navi Mumbai – 400614.

...RESPONDENTS

Shri S.D. Chopde, Advocate for petitioner.
Ms M.P. Munshi, Advocate for respondents.

CORAM :- VINAY JOSHI AND M.W. CHANDWANI, JJ.
DATED :- 30.07.2024.

ORAL JUDGMENT (PER : VINAY JOSHI, J.):

. **Rule.** Rule is made returnable forthwith. Heard finally
with the consent of both counsel.

2. The petitioner was appointed as Tracer on 07.04.1986 and was confirmed on the said post. The petitioner was promoted to the post of Assistant Draftsman. Benefits of the Assured Career Progression Scheme was accorded to the petitioner vide order dated 27.01.2012 w.e.f. 17.02.2024. The petitioner was retired by way of superannuation on 31.01.2023. The petitioner's pension papers were forwarded to respondent no.3. In the wake of said position, vide impugned communication on 13.06.2023, respondent no.3 – Accounts Officer has declined to fix the pension as per post held by the petitioner at the time of retirement i.e. the post of Assistant Draftsman. The reason was that the petitioner did not clear departmental examination and therefore Accounts Office has fixed the petitioner's pension in the lower scale of Tracer.

3. The petitioner's learned counsel would submit that the petitioner has undergone ITI course in the trade of Draughtsman Civil and therefore he has been exempted from departmental examination. The petitioner has produced a copy of trade certificate issued by the National Council for Vocational Training. Besides that, the petitioner has produced an office order dated 17.12.2021 clarifying that by virtue of petitioner passing

Draughtsman Civil course he was exempted from the departmental examination. In the circumstances, petitioner would submit that the Accounts Officer has erred in passing the impugned order without authority.

4. The petitioner relied on the decisions of this Court in the case of *Vasanta Ramkrishna Ghogare Vs. Administrative/Establishment Officer, Mumbai and others* [Writ Petition No.5839/2018 decided on 01.10.2021], *Vitthal Shaymrao Kute Vs. Maharashtra Jeevan Pradhikaran, New Mumbai and others*; and *Ramesh s/o Papalal Bagalekar Vs. Maharashtra Jeevan Pradhikaran, New Mumbai* of this Court and some other decisions to contend that the same issue was considered and concluded by this Court by way of holding that Account/Audit Officer cannot reduce the pension in lower scale. Relevant observations in paras 4 and 5 of the decision in *Vasant* (supra) have been extracted below:

“4. Learned counsel for the petitioner, further submits that the issue involved in this petition is squarely covered by the view taken by this Court in Writ petition No.1881 of 2018 (Vitthal Shaymrao Kute Vrs. Maharashtra Jeevan Pradhikaran and ors.) Decided on 09.07.2019 to which learned counsel for the respondents agrees. In Writ

Petition No.1881 of 2018, this Court had found that once promotion pay scale was granted to an employee like a Tracer by an order passed by its Superior Officer and such order has not been withdrawn by the Superior Officer, an Officer like the Account/Audit Officer cannot, in supersession of such an order direct that the pension of the employee be revised to a lower scale and recovery of the excess payment of pension to be made from such an employee.

5. In the present case, the petitioner's stand even on a greater footing. Here, the respondent No.2 has already by an order passed on 01.01.2008, exempted the petitioner from the requirement of passing of professional examination, and not passing of the professional examination was considered as a factor which was considered by any Audit Officer as a factor which made the petitioner as ineligible for being promoted to the higher post. Besides, the order of promotion granted to the petitioner has not been withdrawn, modified or cancelled. Therefore, we are of the view that this petition deserves to be allowed on similar lines as the Writ Petition No.1881 of 2018."

5. In response, learned counsel for the respondent would submit that at the time of pay fixation on account of implementation of 6th Pay Commission, the petitioner gave undertaking. In view of said undertaking, petitioner cannot raise

grievance about fixation in lower scale. The said submission has also been dealt by this Court in the case of *Charandas s/o Maroti Sangamwar Vs. Maharashtra Jeevan Pradhikaran and others* [Writ Petition No.526/2022 decided on 07.02.2023] of which para 14 reads as below:

“14] We have given anxious consideration to the submissions canvassed by learned Counsel Ms. Munshi for the respondents. The undertaking is given by the petitioner when the pay-scales prescribed by the 6th Pay Commission were made applicable to the employees of the respondent 1. In our considered view, the undertaking on which heavy reliance is placed, takes the case of the respondents no further. Learned Counsel Mr. Chopde for the petitioner is right in submitting that the order of recovery and reduction of pay-scale is not on the premise of incorrect fixation as such. The order of recovery and the reduction of pay-scale, which would have a cascading effect on pension, is as a fact on the assumption that the promotion of the petitioner as Assistant Draftsman in September 1999 and then as Draftsman in May, 2009 is illegal.”

6. Besides that, the undertaking was of general nature pertaining to fixation after implementation of new pay-scale as per 6th Pay Commission. The issue is not about fixation or wrong

fixation but is about fixing pension in the lower scale by ignoring the promotional post. Thus, we are not impressed by said position.

7. In view of above, writ petition is **allowed**. We hereby quash and set aside the impugned order dated 13.06.2023. We direct that the petitioner be granted pension as per Rules by considering his last drawn pay and accord all consequential benefits. The petitioner is also entitled for interest for delayed payment as per Maharashtra Civil Services (Pension) Rules, 1982.

Rule is made absolute in above terms.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

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