IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11739 OF 2018

Shri Dada Ananda Nalge
Age : 68 years, Occu. : Retired,
R/o Deulgaon, Taluka Shrigonda,
District Ahmednagar **...Petitioner**

Versus

Zilla Parishad, Ahmednagar
Ahmednagar
Through its Chief Executive Officer **...Respondent**

Shri Parag V. Barde, Advocate for the Petitioner
Shri S. T. Shelke, Advocate for the Respondent/State

CORAM	:	**S. G. MEHARE AND SHAILESH P. BRAHME, JJ.**
RESERVED ON	:	**31st JANUARY, 2025**
PRONOUNCED ON	:	**4th FEBRUARY, 2025**

J U D G M E N T [Per Shailesh P. Brahme, J.] **:-**

1. Rule. Rule is made returnable forthwith. Heard both sides finally.

2. By way of this petition filed under Article 226 and 227 of the Constitution of India, petitioner is seeking quashment of order dated

16.07.2018 issued by respondent/Zilla Parishad reducing his pension and order dated 07.09.2018 directing recovery of excess payment made to the petitioner. By earlier interim order the recovery of excess payment was stayed. The stay is still in operation.

3. Petitioner was appointed as Mistri Grade-II with the respondent/Zilla Parishad and he become permanent from 01.04.1987. He was promoted to the post of Civil Engineering Assistant. There was amalgamation of various cadres merging in Civil Engineering Assistant. He was superannuated on 30.09.2008. His pension was fixed on or about 03.12.2008. Thereafter, it was revised vide order dated 21.02.2011 to the tune of Rs. 7225/- per month. His claim was that it should have been fixed at Rs. 9015/- per month.

4. Being aggrieved, petitioner had approached High Court by filing Writ Petition No. 7776 of 2012. Division Bench partly allowed the petition vide order dated 11.12.2014, directing the respondent to reconsider claim of the petitioner and to revise the pension. As there was non-compliance, Contempt Petition No. 376 of 2015 was filed by the petitioner. By placing on record order dated 17.04.2018, Contempt

Petition was disposed of. To utter surprise of the petitioner, revised pension order was issued on 16.07.2018, fixing the pension to the tune of Rs. 5990/- per month. By further communication dated 07.09.2018, a recovery of excess payment was also directed.

5. Learned counsel for the petitioner submits that petitioner is entitled to revised pension for Rs. 9015/- per month, considering his last drawn salary. He would submit that it is perverse to reduce the pension to Rs. 5990/- per month. This action is against law laid down in the matter of ***Smt. Savitribai Narsayya Gudappa Vs. State of Maharashtra*** reported in ***2014(6) ALL MR 175.*** It is submitted that circular dated 28.07.2014 should not have been applied to the petitioner, as he superannuated on 30.09.2008. The cut-off date 27.02.2009, prescribed by Government Resolution dated 30.10.2009, was not made applicable to those who retired between January 2006 to 26th February, 2009. The decision of ***Savitribai Narsayya Gudappa*** (supra) was upheld by Supreme Court.

6. Learned counsel for the petitioner relied on the following judgments :

1. ***Vasant Arjun Patil and Others Vs. The State of Maharashtra*** reported in ***Writ Petition No. 10156/2012.***

2. ***Prakash Ratan Mali Vs. The State of Maharashtra and Others*** reported in ***Writ Petition No.9144/2016.***

3. ***Pandurang Kisan Wadnere and Others Vs. The State of Maharashtra and Others*** reported in ***Writ Petition No. 2017 DGLS (Bom.) 992.***

4. ***Nandkumar s/o. Bhagwanappa Mandge and Others Vs. The State of Maharashtra and Others*** reported in ***Writ Petition No. 9279/2016.***

7. Learned counsel Mr. Shivaji T. Shelke for the respondent opposes the submissions of the petitioner. He is relying on affidavit-in-reply filed on two different occasions. It is contended that petitioner was awarded benefit of time bound promotion/Assure Career Progressive Scheme vide order dated 24.03.2003 granting payscale of Rs. 4000-100-6000. The second benefit was to accrue after twelve years from 01.04.1999. But, the petitioner was superannuated on 30.09.2008 and second benefit was not admissible. When he retired, he was in pay scale of 5200-20200. At that time his basic pay was Rs. 11980/- per month. Hence, he was eligible for pension of Rs. 5990/-. It is further submitted that his pension was wrongly fixed at Rs. 7225/- per month vide order dated 21.02.2011. The mistake has been rectified and the impugned orders are passed. It is submitted that revision of the pension is in accordance with law and the petitioner is being excess paid Rs. 3,62,901/-. Our attention is adverted to the undertaking given by the petitioner on 01.09.2009 that he would refund the amount found excess due to wrong pay fixation.

8. Reliance is placed on judgment of ***Chandi Prasad*** reported in ***State of Uttarakhand*** reported in ***2012(6) Mh.L.J.***

9. The petitioner was in the cadre of Mistri Grade-II. Few such a cadres were amalgamated into cadre of Civil Engineering Assistant vide Government Resolution dated 20.05.1999. The petitioner was placed in pay scale of 4000-100-6000 which was the next higher pay scale. Order dated 24.03.2002 issued by the respondent placing the petitioner in the said pay scale shows that after completion of twelve years from his initial date of service i.e. 01.04.1987, higher pay scale was conferred. It is not possible to accept the submission of the petitioner that besides placing the petitioner under the higher scale independently he was entitled to receive first benefit of Assure Career Progressive Scheme from initial date of appointment.

10. As per the judgment in the matter of ***Savitribai Narsaiyya Gudappa*** (supra), the benefit of revision of pension was given to the petitioner. It is not that due to Government Resolution dated 30.10.2009 he was deprived of the benefits due to the retirement between 01.01.2006 to 26.02.2009. The revision done by order dated 21.02.2011, was not correct. The said mistake is rectified by the respondent by passing impugned orders. We do not find that there is any arbitrariness or illegality in the revision done by the respondent. Petitioner had given undertaking on 01.09.2009, assuring refund of excess amount. By the impugned orders, petitioner is shown to have been paid excess amount of Rs. 03,62,901/-. In view of the undertaking, the respondent is entitled to recover the amount.

11. Petitioner has placed reliance on judgment of ***Vasant Arjun Patil*** (supra). It was a case of recovery of excess amount. It is distinguishable on facts. It is not applicable to the present case. Further, reliance is placed on the judgment of ***Prakash Ratan Mali*** (supra). By the impugned notice, pay scale was revised as per circular dated 28.07.2014. The recovery was sought against the then petitioner.

We do not find any similarity in the circumstances. Hence, the judgment is of no avail to the petitioner.

12. Petitioner is also relying on the judgment of ***Pandurang Kisan Wadnere*** (supra). In that case, the petitioner's service as a Mistri Grade-II was not considered while granting time-bound promotion scale. Such is not the case in the present matter. The petitioner was actually given the benefit of his earlier services rendered from 1987. Hence, this judgment is also not applicable to the case.

13. Respondent places reliance on the judgment of ***Chandi Prasad*** (supra). In view of the ratio laid down in paragraph Nos. 16 to 18, if the excess payment is made to the petitioner due to wrong fixation of pension, it is liable to be recovered. It is not a case of extreme hardship in the present matter. Beside that the petitioner had furnished undertaking for refund of the excess payment. Similar is the situation in the judgment in the matter of ***High Court of Panjab and Haryana Vs. Jagdev Singh*** reported in ***AIR 2016 SC 3523.*** Due to the undertaking the officer in that case was held liable for refund.

14. We find no substance in the petition. The same is dismissed. Rule is discharged. There shall be no order as to costs.

[SHAILESH P. BRAHME]
JUDGE

[S. G. MEHARE]
JUDGE

15. After pronouncement of the judgment, the learned counsel for the petitioner prays that the stay which was operating to the recovery of excess amount shall be continued for a period of four (04) weeks from today so as to enable the petitioner to approach the higher Court. Learned counsel Mr. Wagh, holding for Mr. S. T. Shelke, learned counsel for the respondent opposes the prayer.

16. Considering the fact that stay is operating to the recovery of excess payment since 07.09.2018, we deem it appropriate to extend the stay for further period of four (04) weeks from today. It is made clear that after expiry of period of four (04) weeks, interim stay shall stand vacated automatically.

[SHAILESH P. BRAHME]
JUDGE

[S. G. MEHARE]
JUDGE

Komal Kamble/