IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3102 OF 2023

Minakshi Dilip Nehete ... **PETITIONER**

VERSUS

1. The Hon'ble Principal District and Sessions Judge, Jalgaon

2. The Hon'ble Registrar General, High Court of Bombay, Appellate Side, Mumbai ... **RESPONDENTS**

...

Advocate for the Petitioner : Mr. Ankush N. Nagargoje
Advocate for respondent Nos.1 and 2 : Mr. Chandrakant K. Shinde

...

CORAM : NITIN B. SURYAWANSHI & ABASAHEB D. SHINDE, JJ.
Reserved on : 05.10.2026
Pronounced on : 22.10.2026

ORDER (PER: ABASAHEB D. SHINDE, J.) :

1. Heard.

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioner put forth the following prayers :

> "(a) by a suitable writ, order or direction this Hon'ble Court may be pleased to direct the Respondents to restore the promotion of the petitioner in the post of Senior Clerk on the establishment of the Hon'ble Principal District Judge, Jalgaon w.e.f. 25/05/2007 on having undergone punishment of reversion to the post of Junior Clerk for two years w.e.f. 24/05/2005 to

24/05/2007, and direct the Respondents to fix the pay of the petitioner in the post of Senior Clerk w.e.f. 25/05/2007;

(b) In the alternative to prayer clause (a) above, by a suitable writ, order or direction this Hon'ble Court may be pleased to direct the Respondents to make applicable to the petitioner the benefits of the Assured Career Progression Scheme and fix the pay of the petitioner in the post of Senior Clerk on the establishment of the Hon'ble Principal District Judge, Jalgaon from the date the petitioner has become eligible for the same."

3. It is the case of the petitioner that, on 21.01.1985, she was appointed as a Junior Clerk in the District and Sessions Court at Jalgaon. On 16.08.1986, her services were transferred to the Court of the Chief Judicial Magistrate, Jalgaon. In July 1986, she passed the Lower Standard Departmental Examination. She also passed the Higher Standard Departmental Examination in the year 1989, pursuant thereto, on 01.05.1989, she was promoted to the post of Senior Clerk.

4. In the year 1995 a criminal case was registered against her so also she was required to face a departmental inquiry in respect of the theft and misappropriation of muddemal property. On 29.04.2004, she was placed under suspension and, upon being found guilty in the departmental inquiry, she was dismissed from service with effect from 01.05.2004.

5. Against the penalty of dismissal, she preferred an Administrative Appeal. The appellate authority, by order dated 01.03.2005, modified the order of dismissal to reversion to the post of Junior Clerk, subject

to the condition that, she first has to complete probation period of two years, with a further rider that she would not be entitled to any pay or allowances. It was further directed that, before resuming the duty, she shall deposit an amount of Rs.18,950/- with the Government. According to the petitioner, she has already deposited the said amount.

6. Accordingly she was reinstated in service on 24.05.2005. Upon completion of the probation period, she submitted a representation to respondent No.1 seeking review of the orders dated 23.06.2006 and 19.07.2007 by which she was reverted to the post of Junior Clerk by treating the same as a fresh appointment on probation, so also by holding her disentitled to annual increments.

7. Since her request for restoration of her promotion to the post of Senior Clerk and fixation of her pay scale was not considered, the petitioner has approached this Court.

8. Learned counsel for the petitioner, relying on paragraph 625 of the Civil Manual, would submit that, after her reinstatement, the petitioner was eligible to appear for the Higher Standard Departmental Examination, however, even assuming though not admitting that, the earlier orders passed by learned District and Sessions Judge, Jalgaon, reverting her to the post of Junior Clerk treating the same as a fresh appointment and prohibiting her from appearing for the Higher Standard Departmental Examination, the petitioner, having attained

the age of 45 years, she is exempted from appearing for and passing the Higher Standard Departmental Examination. He therefore submits that, she is entitled for restoration of her promotion to the post of Senior Clerk. He would submit that, having regard to the said aspect, the petitioner is also entitled to the benefits under the Assured Career Progression Scheme and fixation of her pay scale. He, therefore, urged that, the writ petition deserves to be allowed.

9. Learned counsel appearing for respondent Nos.1 and 2 submits that the writ petition is not maintainable, as the prayers made in the present Writ Petition have already been rejected by this Court while deciding Writ Petition Nos.3435/2007 and 3937/2007, thereby dismissing both the writ petitions by order dated 11.07.2008. He further submits that, the orders passed by this Court have been upheld by the Hon'ble Apex Court, even the review petitions filed have also been rejected by the Hon'ble Apex Court. He, therefore, urged that the writ petition deserves to be dismissed.

10. We have heard learned counsel for the petitioner, learned counsel appearing for respondent Nos.1 and 2 and with their able assistance, we have perused the record.

11. Admittedly, a departmental inquiry was initiated against the petitioner as she faced the charges of theft and misappropriation. Though she was acquitted in the criminal cases in relation to the said

allegations, however, she was initially placed under suspension and thereafter was dismissed after having found that the charges were held to be proved against her, she was dismissed from services by order dated 01.05.2004. She preferred an appeal against the penalty of dismissal from service. The appeal came to be partly allowed by maintaining the findings recorded by the Inquiry Officer by modifying the penalty from dismissal to reversion from the post of Senior Clerk to that of Junior Clerk, by keeping her on probation. Accordingly, she was reinstated on the post of Junior Clerk on probation.

12. After her acquittal in the criminal cases, the petitioner submitted an application seeking fixation of her pay scale as well as treating her suspension period on duty. Her application was rejected on 05.10.2005. Thereafter, another application submitted by the petitioner seeking grant of annual increments and permission to appear for the Higher Standard Departmental Examination was rejected on 23.06.2006 by the learned District and Sessions Judge, Jalgaon. The petitioner being aggrieved by the order dated 23.06.2006 preferred Writ Petition No.3435/2007, whereas, against the order of imposing penalty of reversion, she preferred Writ Petition No.3937/2007 before this Court.

13. This Court refused to interfere with the punishment imposed on the petitioner. So also Writ Petition No.3435/2007 preferred by the

petitioner challenging the order dated 23.06.2006 also came to be dismissed with following observations.

> *"3. The next order which is impugned in the present petition is in respect of fixation of the salary of the petitioner. Initially the salary of the petitioner was provisionally fixed in the pay scale of Rs.3050-75-3950-80-4590 and the petitioner was provisionally paid Rs.3050. Thereafter the salary of the petitioner came to be fixed at Rs.3800.*
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> *4. At any rate, reasons have been given by the respondents in respect of fixation of the salary. The petitioner came to be appointed afresh and was placed as the juniormost Clerk in the cadre of Junior Clerk and was on probation for a period of two years. The aforesaid pay fixation has been done as per Rule 6.5 and we do not notice any illegality in the fixation of the pay of the petitioner in the cadre of Junior Clerk.*
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> *5. The next order which is challenged is that the petitioner was not allowed to appear for the departmental examination. We have also referred to the fact that the petitioner had been promoted as a Senior Clerk upon passing of a departmental examination. The petitioner, however, came to be proceeded against departmentally and came to be dismissed by the disciplinary authority. The appellate authority thereafter modified the quantum of punishment and reduced the petitioner to the post of Junior Clerk. The order which is impugned is Exhibit I, dated 6.6.2006, by which the District and Sessions Judge, Jalgaon declined to permit the petitioner to appear for the examination. The District and Sessions Judge not only did not permit the petitioner to appear for the examination, but it appears that, earlier result of the departmental examination came to be cancelled. The reasons which are given by the District and Sessions Judge are to be found at paragraph 2 of the aforesaid impugned order. The District and Sessions Judge has given reasons that the petitioner came to be appointed on an adhoc post on a probation for a period of two years. Since it was a fresh appointment, the earlier departmental examination stood cancelled and, therefore, the petitioner could not be permitted to appear for the higher standard departmental*

examination. We see no reason to fault the said order.

6. *The next challenge in the petition is the denial of increments to the petitioner. The order which is impugned in respect of this challenge is dated 23.6.2006 passed by the District and Sessions Judge, Jalgaon. At paragraph 7, the District and Sessions Judge has given the following reasons:*

> *"7. As per D.C.O.O. No.41/04, dated 29/4/04, Sau. M.D. Nehete, Senior Clerk was dismissed from Government service. The said order is modified by the District Court authority in response to the order passed by the Hon'ble High Court in administrative appeal of Sau. Nehete. As per modified Order i.e. D.C.O.O. No.59/05, dated 21/5/05 Sau. M. D. Nehete is re-instated in Government service on reversion as a Junior Clerk and posted at Civil Court, Bhusawal from 24/5/05 b.n. on probation period of two years. On 23/5/2006 Saú. Nehete has completed one years probation period. As per the provisions contained in Rule 39(1), Exception 1(a) the increment(s) of a Government servant appointed directly to a post on probation during the period of probation should be regulated as follows :- (1) The first increment should be released on completion of one year of his probationary period and the subsequent increment should be released on his completing the probationary period satisfactorily. The posting of Sau. Nehete, Junior Clerk is not a direct appointment to the post. Though, she is on probation period of two years, the aforesaid provisions can not be made applicable in her case. Therefore, she is not granted annual increment on her completion of one years probation period."*

14. The orders passed by this Court in both the writ petitions were subject matter of challenge before the Hon'ble Apex Court, however, the Hon'ble Apex Court dismissed both the Special Leave Petitions (SLPs) by order dated 18.09.2009. Though the orders dismissing the SLPs were sought to be reviewed, the Hon'ble Apex Court, by order

dated 16.07.2020, rejected the review petitions.

15. The petitioner thereafter submitted an application on 03.12.2020, by raising almost similar contentions seeking review of the orders dated 19.07.2007 and 23.06.2006. Learned Principal District and Sessions Judge, Jalgaon, by order dated 25.03.2022, rejected the said application.

16. In this view of the matter we find that, the present writ petition seeking directions for restoration of her promotion to the post of Senior Clear and fixation of pay scale in that regard as well as seeking benefit of ACPS on the post of Senior Clerk is misconceived. This Court has already rejected the prayer of the petitioner seeking challenge to the order dated 23.06.2006, meaning thereby, she is precluded from raising the grievance about refusal of permission to appear for Higher Standard Department Examination and promotion by seeking exemption from appearing for the said examination. We, therefore, find that the reliance placed on paragraph 625 of the Civil Manual is wholly misplaced.

17. Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Apex Court in case of **Gurpreet Singh Vs. State of Punjab and Others, (2002) 9 SCC 492**, to contend that once an employee is reinstated, he is entitled to all consequential benefits flowing from such reinstatement. With due respect, the said judgment

is not applicable to the facts of the present case, as the facts are quite distinguishable.

18. In the light of the aforesaid discussion since the prayers made in the present writ petition have already been turned down by this Court in the earlier round of litigation and has attained finality by virtue of dismissal of the SLPs and review petitions by the Hon'ble Apex Court, we do not find any substance in the writ petition. The writ petition sans merit is dismissed.

(ABASAHEB D. SHINDE, J.) (NITIN B. SURYAWANSHI, J.)

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