
(2022) 09 BOM CK 0062
In the Bombay High Court
Case No : Civil Writ Petition No. 3434 Of 2008

Dr. Ujwal

APPELLANT

Vs

Commissioner

RESPONDENT

Date of Decision : 16-09-2022

Acts Referred:

Citation : (2022) 09 BOM CK 0062

Hon'ble Judges : Sunil B. Shukre, J;G. A. Sanap, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sunil B. Shukre, J

1. Nobody is present for either of the parties. This is an admitted matter and is pending for final hearing for long period of time, since 16.10.2008. Considering the long pendency of the matter and the nature of issue involved in this petition, we have decided to decide this petition on its own merits by taking into consideration the pleadings of the parties.

2. Upon consideration of the pleadings of the parties we find that the only issue involved in this petition is about the power and authority of the respondent-Corporation to withdraw the higher pay scale granted to the petitioner by correcting the pay scale applicable to the petitioner.

3. According to the petitioner, there is no such power vested in the Municipal Corporation and according to the respondent, the Corporation is required to obtain sanction from the Government for releasing the benefit to its employees in view of the recommendations of the 5th pay commission.

4. In this case, it is seen that the petitioner, the Health Officer, working in Municipal Corporation, Akola since 12.10.1994, was granted higher pay scale as per the resolution dated 10.02.2004 and it was made applicable by an order passed to that effect by the then Commissioner of Municipal Corporation on

09.07.2004. It is further seen that this higher pay scale of 8000-13,500 was made applicable to the petitioner as per the order dated 08.06.2007 with effect from 01.01.1996 and since then the petitioner was paid salary as per this higher pay scale. It is further seen that suddenly, the Corporation in its meeting, held on 22.10.2007, suo moto, took up the subject of stopping of the applicability of the higher pay scale to the petitioner on the ground that there was no sanction obtained from the Government and accordingly, it passed the resolution to the effect that the higher pay scale be made applicable to the petitioner after obtaining of sanction from the Government. This resolution was implemented by the Commissioner of Municipal Corporation when he passed an order dated 17.05.2008, whereby the applicability of the higher pay scale was stopped and direction was issued to recover the payment of excess salary. The resolution dated 22.10.2007 and the order dated 17.05.2008 are challenged for their legality or otherwise in the present petition.

5. In our view, the resolution dated 22.10.2007 and the consequent order dated 17.05.2008 both are illegal for two reasons. Firstly, no opportunity of hearing was granted to the petitioner before resolution for stopping of the applicability of the pay scale to the petitioner was passed. Secondly, the first resolution dated 10.02.2004, which granted higher pay scale to the petitioner, clearly mentioned that such grant of higher pay scale was only by way of correction as it was believed that the pay scale being applied to the petitioner till then was not in consonance with the pay scale applied to the similar post by other Municipal Corporations, particularly Amravati Municipal Corporation. Thus, this was really not the case of grant of higher pay scale but only of correction of pay scale for which no sanction in any case would have been required. The sanction of the Government is required only when something new is being granted to an employee of the Corporation. This was not the case here. As such, we find that the impugned resolution and also the impugned order both are illegal and are required to be quashed and set aside.

6. Accordingly, the writ petition is allowed in terms of prayer clauses (b) and (c).

7. Rule made absolute in the above terms. No costs.