



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4782 OF 2023

PETITIONER : Gendlal s/o Urkuda Dharkar,
Aged about 59 years,
Occu: Retired,
R/o Ring Road, Kudwa Naka,
Behind Shivam Hotel,
Hanuman Nagar, Gondia

..VERSUS..

RESPONDENTS : 1) Member Secretary,
Maharashtra Jeevan Pradhikaran,
Express Tower, 4th Floor, Nariman Point,
Mumbai-400021.
2) Executive Engineer, Maharashtra Jeevan
Pradhikaran, Division Office, Gondia, Tq.
& Dist. Gondia-441614.
3) Senior Accounts Officer, Pension Branch,
Maharashtra Jeevan Pradhikaran, CIDCO
Bhavan (South Wing) Belapur, Navi
Mumbai-400614.

Mr. S.D. Chopde, counsel for petitioner.

Mr. Avinash Y. Kapgade, counsel for respondent Nos. 1 and 2.

Non for Respondent No. 3

CORAM : **Y.G. KHOBRAGADE AND**
SUSHIL M. GHODESWAR, JJ.

DATE OF RESERVE : **21/07/2026**

DATE OF DECISION : **04/08/2026**



JUDGMENT : (Per. Y.G. KHOBRADE, J)

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally with consent of learned counsel appearing for the respective parties. The matter is taken up for final hearing at the stage of admission.

2. By the present writ petition, the prayer clause (i) to (vi-a) as under :-

i) quash and set aside the office communication dated 8.4.2022 issued by the respondent No.3 Senior Accounts Officer, Maharashtra Jeevan Pradhikaran, directing recovery alleged excess payment of salary from the petitioner (Annexure-J), in the interest of justice consequentially direct the respondent to fix and pay the petitioner his pension as per his last drawn pay on the post of Junior Engineer and also other benefits including gratuity fund, in the interest of justice;

ii) also direct the respondent authorities to protect the payscale granted to the petitioner of Rs. 4500-125-7000 while granting him time bound promotional pay scale w.e.f. 5.10.2003 and further direct the respondent authorities to grant the benefits of Govt. Resolution Annex-G dated 28.07.2009, thereby refixing the pay scale from 4500-125-7000 to 5000-150-8000 (as per 5th pay commission) and 9300-34400/- Grade Pay 4200 (as per 6th Pay Commission)



and further benefit 7th pay scale, in the interest of justice.

iii) Direct the respondent authority to grant benefit of one increment as office order dated 6.4.2006 (Annexure-F)

iv) also direct the respondents to grant all benefits to the petitioner as per re-fixation of his salary;

v) by way of interim direction restrain the respondents from making proposed recovery from the petitioner;

vi) grant ad-interim relief in terms of prayer clause (c);

vi.a) Direct the respondent to pay the 7% interest on delayed payment of arrears of pensionary benefits and also 10% of interest on delay payment of gratuity.

3. It is an undisputed fact that, initially, the petitioner was appointed to the post of Tracer with the respondents Authorities on 27/09/1991 after following the due process of recruitment. Thereafter, by order dated 21/05/2004, respondent No.2 issued an order and granted benefits of time bound promotion on completion of twelve years of service in pay scale of Rs.4500-125-7000 under the 5th Pay Commission with effect from 05/10/2003. According to the petitioner, the said benefit was granted as he possessed the requisite qualification of I.T.I. in Civil Draftsman, which was prescribed qualification for the promotional post of Assistant Draftsman. Subsequently, vide order dated 21/12/2005, the



petitioner was absorbed on the post of Civil Engineer Assistant, which was equivalent to the post of Tracer, with effect from 20/12/2001. Thereafter, the State Government issued a Government Resolution dated 26/03/2004, providing that where an employee is absorbed on an equivalent post after having been granted the pay scale of the promotional post, his pay shall be protected. Pursuant thereto, respondent No.2, by office order dated 06/04/2006, granted the petitioner one additional increment with effect from 01/10/2003. Subsequently, in terms of the Government Resolution dated 28/07/2009, the pay scale of Rs.4,500-125-7,000 under the Fifth Pay Commission was revised to Rs.5,000-150-8,000, which was revised to Rs.9,300-34,400 as per the Sixth Pay Commission.

4. Learned counsel appearing for the petitioner canvassed that, though the petitioner was entitled for the benefit of fixation of pay-scale in terms of the Government Resolution dated 28/07/2009, the respondents/authorities failed to extend the said benefit to the petitioner. Consequently, the petitioner submitted several representations to the respondent/authorities seeking grant of the said benefit. However, the respondents failed to consider the



petitioner's representations. Thereafter, vide order dated 06/07/2021, the petitioner was promoted to the post of Junior Engineer upon attaining the age of 45 years of service in accordance with the policy of the State Government. The petitioner attained the age of superannuation and retired from service on 31/12/2021. However, by communication dated 08/04/2022, respondent No.3 informed the petitioner that, since he had not passed the prescribed departmental/professional qualifying examination, he was not entitled to the benefit of the Time-Bound Promotional Pay Scale of Rs.4,500-125-7,000 under the Fifth Pay Commission and, consequently, respondent No.3 directed recovery of the alleged excess salary paid to him with effect from 05/10/2003.

5. Learned counsel appearing for the petitioner further submitted that, while calculating petitioner's pensionary benefits, the respondents calculated his pension by taking into consideration the pay scale applicable to the post of Civil Engineer Assistant instead of the pay last drawn by him on the post of Junior Engineer. Therefore, the proposed recovery on the ground of erroneous pay fixation is wholly illegal and unsustainable in law. The petitioner, therefore, seeks fixation of his pension on the basis of the last pay



drawn by him on the post of Junior Engineer, together with all consequential retiral benefits, including gratuity and other admissible pensionary benefits.

6. In support of his submission, the learned counsel appearing for the petitioner placed reliance on the following case laws:-

(1) Vasanta Ramkrishna Ghogare Vs Administrative/Establishment Officer, Maharashtra Jeevan Prardhikaran, CIDCO Bhavan, Belapur, New Mumbai and others, in Writ Petition no. 5839 of 2018 decided on 01/10/2021.

(2) Vitthal Shyamrao Kute Vs Maharashtra Jeevan Pradhikaran and others in Writ Petition No. 1881 of 2018 decided on 09/07/2019 .

(3) Gajanan Prabhakarrrao Pande Vs Maharashtra Jeevan Pradhikaran and others, in Writ Petition No. 405 of 2022 decided on 07/02/2023 .

7. The respondents have failed affidavit-in-reply and have strongly opposed the writ petition. Mr. A.Y. Kapgate, the learned counsel appearing for the Respondents 1 & 2 canvassed that, vide communication dated 13/06/2024, respondent No.2 informed the petitioner that his representation seeking the benefit of an additional increment had been submitted after a lapse of about 18



years and, therefore, the said claim was barred by limitation. He further contended that, in terms and conditions of his appointment, the petitioner was required to pass the prescribed departmental examination as well as the Hindi/Marathi language examination. According to the respondents, Rule 8 of the Public Works Department Manual, 1984 stipulates that Tracers appointed after 17/07/1976 are not entitled to exemption from passing the prescribed departmental qualifying examination merely on attaining the age of 45 years. Since the petitioner was appointed as a Tracer on 27/09/1991, the provisions of the Public Works Department Manual, 1984 are applicable to the petitioner. As the petitioner did not pass the prescribed qualifying examination for the promotional post, he was not entitled to exemption from the said examination. Consequently, the benefit of the time-bound promotional pay scale granted to the petitioner with effect from 05/10/2003 under office order dated 21/05/2004 was erroneously extended.

8. Mr. A.Y. Kapgate, the learned counsel appearing for the Respondents 1 & 2 canvassed that, the Petitioner has furnished undertaking from time to time that, any over payment can be recovered from him, if any excess payment is made to him due to



wrong pay fixation. Therefore, the petitioner is bound by said undertaking, hence, Respondents are entitled to recover said over payment from the petitioner.

9. To buttress this submission, he relied on ***Walmik Sitaram Sirsath-vs-State of Maharashtra, 2018 (4) Mh. L.J. 490***, wherein coordinate bench of this Court considered the case of ***High Court Punjab & Haryana-Vs- Jagdev Singh, (2016) 14 SCC 267*** and observed in para 14 to 16 as under:

14. We have carefully perused the ratio laid down by the Supreme Court in the case of State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc., relied upon by learned counsel appearing for the Petitioner. However, in support of his submissions, learned Additional Government Pleader has placed reliance upon the exposition of law laid down by the Supreme Court in the recent Judgment in the case of High Court of Punjab and Haryana and others vs. Jagdev Singh 2016 MhLJ Online (S.C.)62= (2016) 14 SCC 267, wherein in Paras 10, 11 and 12 of the Judgment it is observed that:

"10. In State of Punjab and Ors. etc. v. Rafiq Mashi (White Washer) etc.2014 Mhlj Online (S.C.) 47= MANU/SC/1195/2014: (2015) 4 SCC 334 this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

(i) Recovery from employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or



employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongly been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover. (emphasis supplied).

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years."

15. The facts in the present case are similar to that of the facts in the case of High Court of Punjab and Haryana and others vs. Jagdev Singh, cited supra and, therefore the ratio laid down is squarely applicable. In the present case in hand also the Petitioner was put on notice that any payment found to have been made in excess would be required to be refunded. The Petitioner has furnished an undertaking while opting for the revised pay-scale and therefore he is bound by the said undertaking.



16. The recovery of the excess amount paid to the Petitioner has already been made from the retirement dues payable to the Petitioner. The action taken by the Respondents for recovering the excess amount is in accordance with the policy and guidelines laid down by the Government of Maharashtra in that behalf. No case is made out by the Petitioner for interference in exercise of writ jurisdiction of this Court. There is no merit in the Writ Petition.

10. The learned Counsel for the respondents further canvassed that, while processing the petitioner's pension, the Senior Accounts Officer verified the correctness of the petitioner's pay fixation in accordance with the requirements of the office of the Accountant General (Accounts). During such verification, it was noticed that the petitioner had been wrongly granted the time-bound promotional pay scale. Accordingly, the respondents contend that they are legally entitled to recover the excess salary paid to the petitioner on account of the wrongly pay fixation, hence, prayed for dismissal of the petition.

11. Mr. A.Y. Kapgate, learned counsel appearing for the respondents further submitted that, the judgments in Writ Petition No. 5839 of 2018 and Writ Petition No. 1881 of 2018 relied by the learned counsel for the petitioner are per-incuriam and sub-silentio, and therefore, do not constitute binding precedents.



12. He further submitted that, the judgment passed in Writ Petition No. 5839 of 2018 was rendered in the peculiar facts of that case, wherein the petitioner had become eligible for the grant of promotional pay-scale after qualifying the requisite examination. Consequently, the said judgments are not applicable to the facts and circumstances of the present case because the petitioner was holding I.T.I. Certificate in Civil Draftsman. The petitioner was not exempted from passing the departmental qualifying examination. Therefore, the higher pay scale granted to the petitioner on the basis of erroneous pay fixation.

13. Learned counsel for the respondents submitted that as per Rule 3 of the Public Works Department Manual, 1984, where an employee appointed to the post of Draftsman has neither passed the prescribed departmental promotional examination nor exempted from such examination, such employee is required to pass the said examination for promotion to the post of Assistant Draftsman. Therefore, the respondents rightly issued impugned communication dated 08/04/2022 directing recovery of the excess salary paid to the petitioner on account of the erroneous fixation of pay under the



time-bound promotional scheme, hence, prayed for dismissal of the writ petition.

14. Having considered the rival submission canvassed by the learned counsel appearing for the respective parties and upon perusal of the record, we find that, the issue arises in the present petition is identical to the issue already decided by this Court on 07/02/2023 in Writ Petition No. 405 of 2022 (*Gajanan Prabhakar Rao Pande Vs Maharashtra Jeevan Pradhikarn and others*), wherein one of us (Coram: Y.G. Khobragade, J) was a member of the Bench. In the said case, in Writ Petition No. 405 of 2022 [*Gajanan Prabhakar Rao Pande Vs Maharashtra Jeevan Pradhikarn and others*], the petitioner therein was also appointed as a Tracer similar to the petitioner in case in hand. The said Petitioner Gajanan Pande was subsequently promoted to the post of Assistant Draftsman by order dated 22/2/1990. Upon completion of twelve years of service, he was granted the benefit of the time-bound promotional pay scale. Thereafter, he was promoted to the post of Draftsman vide order dated 28/05/2009 and he was superannuated on 31/10/2020. Subsequently, he was served with a communication directing recovery of the alleged excess salary paid to him on the



ground that, although he possessed an I.T.I. qualification, he had not passed the prescribed Departmental Qualifying Examination and was, therefore, not entitled to exemption therefrom. After considering the provisions of Rule-4 of the Maharashtra Public Works Manual, 1984 as well as the law laid down in *State of Punjab Vs Rafiq Masih (White Washer) [(2015) 4SCC 334]*; *High Court of Punjab and Haryana and others Vs Jagdeo Singh [(2016) 14 SCC 267]*, this Court held that, in view of the fact that promotional orders continued to hold the field, the issue of recovery was beyond the domain of the Audit Officer, and in the absence of any order passed by the competent authority reviewing or recalling the promotional orders, the audit objections could not have been made the basis for recovery and re-fixation of the pay-scale.

15. Since the issue involved in the present case about recovery of excess payment of salary allegedly paid to the petitioner on account of incorrect pay fixation and promotional orders granted to the petitioner continue to hold the field, in view of the promotional orders, the recovery of alleged excess payment is impermissible. Nonetheless, the undertaking furnished by the Petitioner on 15-09-2009 and 3 (Three) other undertakings (undated) will have



no sanctity because those undertakings might have obtain on verge of superannuation, which are under compulsion. Therefore, to our judicious conscience, the impugned communication dated 08-04-2022 directing recovery of excess payment of salary against the petitioner needs to be quash and set aside and the petitioner is entitled for fixation of his pension on last drawn pay on the post of Junior Engineer as well as other benefits including gratuity etc..

16. Needless to say that, the petitioner claimed about his entitlement for pay scale of Rs. 4500-125-7000 w.e.f. 5.10.2003 towards time-bound promotional benefits and re-fixation of pay scale Rs. 4500-125-7000 to 5000-150-8000 (as per 5th pay commission) and 9300-34400/- Grade Pay 4200 (as per 6th Pay Commission) and further benefit 7th Pay Commission. In regard it is submitted that, the petitioner superannuated w.e.f. 31-12-2021 and he has claimed time bound promotional benefits w.e.f. 5.10.2003, which shows that, the petitioner claiming such benefits after laps of 18 years, hence, said claim is barred by limitation.

17. In view of above discussion, we proceed to pass the following order:

**ORDER**

- a) The writ petition is allowed.
- b) The impugned communication/order dated 08/04/2022 (Annexure-J) issued by respondent No.3 is hereby quashed and set aside.
- c) The respondents are directed to forthwith refund the amount, if any amount is already recovered from the petitioner's retiral benefits like gratuity or pension pursuant to the impugned order dated 08/04/2022.
- d) The Respondents are directed to calculate the petitioner's pension as per his last drawn pay on the post of Junior Engineer and other retiral benefits within a period of three months from today.
- e) The respondents shall pay interest at the rate of 10% per annum on all delayed payment of gratuity, if not paid earlier.

18. Rule is made absolute in the aforesaid terms. No order as to costs.

(JUDGE)

(JUDGE.)