



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

WRIT PETITION NO. 1875 OF 2025

PETITIONER : Pramod s/o Laxmanrao Hande,
Aged about 59 years, Occupation:
Retired, R/o Plot No. 18, MIDC Bypass
Behind Manor Mangal Karayalaya,
Hingaspure Nagar, Amravati.

..VERSUS..

RESPONDENTS : 1) Maharashtra Jeevan Pradhikaran,
through Member Secretary, CIDCO
Building, South Wing, Belapur, New
Mumbai.
2) Chief Engineer Maharashtra Jeevan
Prardhikaran, Regional Department,
Amravati.
3) Dy. Chief Accounts Officer (1),
Pension Branch, Maharashtra Jeevan
Pradhikaran, CIDCO Bhavan, Belapur,
Navi Mumbai.

Mr. S.D. Chopde, counsel for petitioner.
Mr. D.V. Mahajan, counsel for respondents.

CORAM : **Y.G. KHOBRAGADE AND**
SUSHIL M. GHODESWAR, JJ.
DATE OF RESERVE : **27/07/2026**
DATE OF DECISION : **04/08/2026**

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

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned counsels appearing for both the sides at the stage of admission.

2. By the present writ petition, the petitioner put forth prayer clause (a) and (b) as under :

a) Quash and set-aside the office communication dated 08.10.2024 and 20.02.2025 issued by office of respondent No.3 Deputy Chief Accounts Officer Maharashtra Jeevan Pradhikaran directing recovery alleged excess payment of salary to the petitioner (Annexure-I & K) in the interest of justice;

b) Consequentially direct the respondent to fix and pay the petitioner his pension as per his last drawn pay on the post of draftsman and also other benefits including gratuity and provident fund along with interest of 10% per annum for delayed period, in the interest of justice.

3. It is the case of petitioner that, on 07/06/1985, he was appointed with Respondents in the post of “Tracer” after following selection process. As per order dated 15-10-1991, he was promoted to the post of Assistant Draftsman in pay scale of

Rs. 4500-125-7000 as per G. R. Dated 28-11-2003 and Circular dated 19-12-2003 issued by the Respondent Authorities. Subsequently, on 26/04/2004, the Respondent no. 2 issued an order and granted him benefits of time bound promotion on completion of twelve years of service w.e.f. 28.10.2003 in pay scale of Rs. 5000-150-8000. Thereafter, on 31/05/2010, he was again granted promotion on the post of Draftsman in pay scale of Rs. 5200-20200. He was posted at Rural Water Supply Department, Z.P. Wardha on vacant post. However, vide office order dated 26-06-2010 pay scale to the post of Assistant Draftsman corrected in pay scale of Rs. 9300-34800 instead of pay scale of Rs. 5200-20200 as corrigendum letter dated 31-05-2010. On 28/03/2024, he superannuated on attending the age of superannuation. Accordingly, the proposal of his pension was submitted with the Respondent no. 3. However, on 20-09-2024, the Respondent No.3 issued a communication and fixed sanctioned pension of Rs. 33,950/- and Rs. 20,370/- toward normal family pension. Thereafter, on 08/10/2024, the Respondent No.3 issued the impugned communication to the

Respondent no. 2 Chief Engineer, Maharashtra Jeevan Pradhikaran (in shot MJP), Amravati, stating that, since the petitioner did not pass the Professional examination for promotional post of Assistant Draftsman, hence, the Petitioner's promotion to the Post of Assistant Draftsman is contrary to the Rules. Further, the Petitioner was granted time bound promotional benefits illegally and directed recovery of excess payment against the petitioner w.e.f. 28-10-1991.

4. On 28-11-2024, the Petitioner submitted representation with the Respondents and raised grievance that, he has drawn last salary of Rs. 37,100 + 18,550 D.A. = 55,650 applicable to the post of Assistant Draftsman, however, the Respondent no. 3 has sanctioned him pension considering his pay of Rs. 33,950 + 16,975 (D.A.) = 50,925. Therefore, he is receiving less pension of Rs. 4,725/- per month.

5. The learned Counsel appearing for the petitioner canvassed that, as per Government Notification dated 17/07/1976 exemption from passing the Professional

examination was granted and he was granted exemption from passing professional exemption as per order dated 14/07/2016 issued by the Superintending Engineer, P.W.D., Pune and granted him time bound promotional benefits, therefore, impugned Office communication dated 08.10.2024 and 20.02.2025 issued by office of respondent No.3 for recovery of excess payment of salary paid to the petitioner is illegal, bad in law. Further, the petitioner is entitled to receive the pension as per his last drawn pay on the post of Assistant draftsman and other benefits including gratuity and provident fund (P F) etc., with interest of 9% per annum for delayed period.

6. In support of these submission, Adv. Sandeep D. Chopade, the learned counsel appearing for the petitioner placed reliance of this Court 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 Prabhakar Rao 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 strongly resisted claim of the petitioner. Adv. D. V. Mahajan, the learned counsel appearing for the Respondents canvassed that, on 05-07-1985, the Petitioner joined in the post of Tracer and he was promoted to the post of Assistant Draftsman on 26-09-1991. Thereafter the petitioner was granted time-bound promotion w.e.f. 28-10-2003 and later on he was promoted to the post of Draftsman on 31-05-2010. Therefore, for the promotion of Tracer it is mandatory to pass Professional examination as per Appendix-IV, Rule 4 of the Qualification Examination Rules within period of six years from the date of said promotion. However, the petitioner was granted illegal promotion and his pay was fixed wrongly, hence, excess of payment of salary was made him. Therefore, the Respondents

are entitled to recover same.

8. It is further canvassed on behalf of the Respondents that, as per guidelines issued on 23-04-2012, the "Tracer" is not entitled for the exemption from passing the professional examination for the promotion to the higher post. However, the petitioner was granted promotion to Assistant Draftsman as well as time-bound promotion despite fact that he did not possess required qualification.

9. The learned counsel appearing for the Respondents further canvassed that, since the petitioner was holding I.T.I. Certificate in Civil Draftsman, and he was not exempted from passing the Professional qualifying examination, therefore, he was not entitled for the higher pay scale and his pay was erroneously fixed.

10. The learned counsel appearing for the respondents submits that, Rule 3 of the Public Works Department Manual, 1984 provides that, if the employee is appointed in the post of

Draftsman and he did not pass Professional promotional examination and no exemption has been granted from passing such examination, in that circumstances, said employee is required to pass the said examination for promotional post of Assistant Draftsman.

11. Mr. D.V. Mahajan, learned counsel appearing for the respondents canvassed that, Judgments in Writ Petition No. 5839 of 2018 and Writ Petition No. 1881 of 2018 (supra) are per-incuriam and sub-silentio, and therefore both these Judgments do not constitute binding precedents. However, the judgment passed in Writ Petition No. 5839 of 2018 in the peculiar facts of that case, wherein the petitioner was eligible for the grant of promotional payscale after qualifying the requisite examination. Therefore, above cited judgments are not applicable to the facts and circumstances of the present case, hence, prayed for dismissal of the petition.

12. 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 writ petition is identical to the issue decided by this Court on 07/02/2023 in ***Writ Petition No. 405 of 2022 (Gajanan Prabhakarrao 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 Prabhakarrao Pande Vs Maharashtra Jeevan Pradhikarn and others) the petitioner was also appointed as a Tracer and 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, said petitioner 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 Professional Qualifying Examination and was, therefore, not entitled to

exemption therefrom. While considering the provisions of Rule-4 of the Maharashtra Public Works Manual, 1984, and the law laid down in the case of *State of Punjab Vs Rafiq Masih (White Washer) [(2015) 4SCC 334]* as well as in case of *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.

13. In case in hand, it is an admitted fact that, in pursuance of appointment order dated 07/06/1985, the petitioner joined with the Respondent in the post of “Tracer” and vide order dated 15-10-1991, the petitioner was promoted to the post of Assistant Draftsman in pay-scale of Rs. 4500-125-7000 as per G. R. Dated 28-11-2003 and Circular dated

19-12-2003 issued by the Respondent Authorities. It also not in dispute that, on 26/04/2004, the Respondent no. 2 issued an order and granted time bound promotional benefits to the petitioner on completion of twelve years of service in pay scale of Rs. 5000-150-8000. Thereafter, on 31/05/2010, he was again granted promotion on the post of Draftsman in pay-scale of Rs. 5,200-20,200 and completion of age of superannuation, the petitioner superannuated on 28-03-2024. Therefore, it does not suggest that, due to wrong pay fixation, the petitioner was paid excess payment of salary due to his fault.

14. Needless to say that, the issue involved in the present case pertaining to recovery of excess payment of salary allegedly paid to the petitioner on account of incorrect pay fixation and promotional orders granted, is impermissible as per law laid down in Writ Petition No. 405 of 2022 (Gajanan Prabhakar Rao Pande Vs Maharashtra Jeevan Pradhikarn and ors., (supra)). In view of above discussion, we are inclined to allow this petition and proceed to pass the following order:

::ORDER::

- a) The impugned communications/orders dated 08/10/2024 and 20/02/2025 issued by the respondent No.3 are hereby quashed and set aside.
- b) The respondents are directed to fix and pay the petitioner's pension on the basis of his last drawn pay for the post of Draftsman and to release all consequential retiral benefits in his favour within a period of three months from the date of this judgment.
- c) It is made clear that, in case, the Respondents fails to pay said benefits within stipulated period, in that circumstances, the petitioner shall liable to recover said benefits with interest at the rate of 9% per annum for delayed period.
- d) Rule is made absolute in the aforesaid terms. No orders as to costs.

(JUDGE.)**(JUDGE.)***rkn*