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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12153 OF 2022

Mr. Vinay s/o. Jagannath Mhatre.

Aged about 60 years, Occ. Retired,

R/o. Khochiwade (Bandar Aali)

Tah. Vasai, Dist. Palghar.

... Petitioner

V/s.

1. Administrative/Establishment Officer,
Maharashtra Jeevan Pradhikaran,
CIDCO Bhavan, Belapur, Mumbai.

2. Executive Engineer,
Maharashtra Jeevan Pradhikaran,
Water Management Department,
Virar, Vishnu Pratibha Hall,
2nd floor, Virar (West) 401 303.

3. Senior Accounts Officer,
Pension Branch, Maharashtra
Jeevan Pradhikaran, CIDCO
Bhavan, Belapur, Navi Mumbai.

... Respondents

Ms. Mohini Rehpade a/w. Mr. Vijay Singh, Smt. Daksha Madhav
Punghera, Mr. Karan Gajara, Mr. Digvijay Kachare, Ashlyn Almeida
i/b. Desai Legal LLP, Advocates for the Petitioner.

Mr. Tushar Sonawane, Advocate for Respondent Nos. 1 to 3.

CORAM : RAVINDRA V. GHUGE AND

ASHWIN D. BHOBE, JJ.

RESERVED ON : 11th September, 2025.

PRONOUNCED ON : 23rd September, 2025

JUDGMENT : (PER ASHWIN D. BHOBE, J.)

1. Heard Ms. Mohini Rehpade, learned Advocate for the Petitioner and Mr. Tushar Sonawane, learned Advocate for Respondent Nos. 1 to 3.

2. Rule. Rule made returnable forthwith and heard the Petition finally with the consent of the parties.

3. Grievance of the Petitioner in this petition filed under Article 226 of the Constitution of India is twofold: *firstly*, incorrect fixation of his pay and *secondly*, recovery of amount alleged to be excess payment of salary from his retiral dues.

4. Material facts in this petition are that the Petitioner was appointed to the post of “Tracer” in the Maharashtra Jeevan Pradhikaran {*then* Maharashtra Water Supply & Sewerage Project Board (MWS&SP)} and was confirmed in service after completing the probation period. Upon completion of continuous 12 years of regular service on the post of Tracer, Petitioner was granted time

bound promotion and higher grade pay scale of the promotional post of Assistant Draftsman, which was made effective from 26.08.1997. Petitioner was drawing pay scale and receiving the benefits of promotional post of Assistant Draftsman.

5. Petitioner was promoted to the post of Civil Engineer Assistant, w.e.f. 07.09.2017 (which date was subsequently rectified to 20.12.2001). Petitioner superannuated w.e.f. 31.08.2020. By order dated 04.12.2021 Respondent No. 3 fixed the monthly pension payable to the Petitioner @ Rs. 24,539/- per month.

6. Vide communication dated 24.11.2021, the Respondent No. 3 (Senior Accounts Officer, Pension Branch Maharashtra Jeevan Pradhikaran) called upon the Petitioner to pay an amount of Rs. 13,34,265/-, failing which the same would be recovered from the gratuity and pensionary benefits payable to the Petitioner. Reason put forth by the Respondent No. 3 for recovery of the said amount was that the Petitioner did not clear the departmental qualifying examination required for promotion as Assistant Draftsman.

7. Petitioner vide his representation drew the attention of the Respondent No. 2, to the fact of the Petitioner having passed the course of Civil Draftsman Examination from Government I.T.I and he by Office order No. 254 dated 27.09.1990 being exempted from the requirement of clearing the departmental qualifying examination.

8. Despite the above Respondents proceeded to recover amounts from the retiral dues of the Petitioner.

9. Petitioner is before this Court seeking the following substantive reliefs :

“a) quash and set aside the impugned communication dtd. 24.11.2021 issued by office of respondent no.3 Senior Accounts Officer Maharashtra Jeevan Pradhikarn directing recovery of alleged excess payment of salary (Exhibit 'H') in the interest of justice;

c) Restrain the respondents from making proposed recovery from the petitioner ;

d) direct the respondents to fix and pay the petitioner his pension as per his last drawn pay on the post of Civil Engineer Assistant and also other benefits including gratuity

and provident fund in the interest of justice;

d1. to direct the respondent to consider the last drawn salary of the Petitioner as per the increment order dated 01.07.2020.

d2. to direct the Respondent to recalculate and pay the Petitioner Pension and all other retirement benefits on the correct Grade pay of Rs. 4200/- instead of Rs. 2400/-.

d3. to direct the Respondent to release all withheld retirement dues of Petitioners, including but not limited to Gratuity, leave encashment and any other applicable benefit calculated on the basis of correct grade pay of Rs. 4200/-”.

10. Respondent Nos. 1 to 3 have filed their reply dated 16.07.2024, opposing the petition. They contend that the exemption on the basis of I.T.I. certificate was available to the employees who were appointed prior to coming into force of the Rules of 1977. They contend that the Petitioner was wrongly granted an exemption, consequently wrongly granted the promotional benefits. They submit that the Petitioner had given an undertaking dated 16.06.1999 stating that if any excess payment was made to the Petitioner due to incorrect fixation of pay, then the same would be refunded by the Petitioner. They submit that pursuant to the communication dated 24.11.2024, Respondent No.

3 had deducted an amount of Rs. 8,56,350/- from the gratuity payable to the Petitioner. They submit that the Petitioner had approached the office of the Lokayukta and Uplokayukta, State of Maharashtra making a grievance of the recovery made by the Respondents from the retiral benefits of the Petitioner. They submit that pursuant to the directions dated 21.03.2023, issued by the Lokayukta, the Respondents have returned the amount of Rs. 8,56,350/- to the Petitioner. They further contend that the Petitioner having failed to clear the Departmental qualifying examination, Grade pay of Rs. 2400/- would be applicable to the Petitioner.

11. Ms. Mohini Rehpade, learned Advocate for the Petitioner submits that the Petitioner was found to be eligible for being promoted as Assistant Draftsman and thus entitled to receive the benefits under the time bound promotion scheme, which were rightly granted to the Petitioner. She submits that upon grant of the promotion, Petitioner was drawing Grade pay of Rs. 4200/- and receiving all the benefits of promotional post of Assistant Draftsman. She relies on the pay slips in support of her contention

that the grade pay granted to the Petitioner was Rs. 4,200/-. She submits that the Office order No. 254 dated 27.09.1990 granting exemption from appearing in the departmental qualifying examination as well as the promotional orders are not cancelled as such there was no occasion, much less any reason for the Respondent No. 3 to order recovery of the amounts alleged to be paid in excess. She further submits that the promotional orders of the Petitioner being intact, the Petitioner is entitled to pay fixation in the grade pay of 4,200/-. She submits that the Petitioner having retired, any recovery from the retiral benefits of the Petitioner would cause loss and irreparable injury to the Petitioner. She relies on the decision of this Court in the case of *Vasanta Ramkrishna Ghogare v/s. Administrative/Establishment Officer & Ors.*¹ and *Vitthal Shyamrao Kute v/s. Maharashtra Jeevan Pradhikaran & Ors.*², to submit that the facts in the said case/s are similar to the facts in the present case.

12. Mr. Sonawane, learned Advocate for Respondent Nos. 1 to 3 submits that the Petitioner was wrongly given the promotional

¹Writ Petition No. 5839 of 2018 decided on 01.10.2021

²Writ Petition No. 1881 of 2018 decided on 09.09.2019

benefits. He submits that Petitioner having not cleared the mandatory examination which is pre-requisite for the post of Assistant Draftsman, the Petitioner is not entitled for the grade pay of Rs. 4,200/-. Mr. Sonawane submits that the Respondents have accepted, abided by the direction dated 21.03.2023 issued by the Lokayukta and complied with the said direction.

13. From the rival contentions of the parties, the questions that fall for determination are : (i) Whether the retirement dues of the Petitioner which include gratuity, pension etc. are required to be calculated on the basis of grade pay of Rs. 4,200/-? and (ii) Whether the recovery of the excess unauthorized payment made to the Petitioner from retiral benefits of the Petitioner would cause hardship to the Petitioner?

Point No. (I):

14. Records of the case bear out that the Petitioner was appointed by MWS & SP as Tracer on 26.08.1985. Petitioner was granted benefit of time bound promotion scheme after completion of 12 years of continuous service, since then Petitioner was

drawing pay scale and receiving the benefits attached to the promotional post of Assistant Draftsman, as submitted by learned Advocate Ms. Mohini Rehpade. Vide Office order No. 254 dated 27.09.1990 Petitioner was exempted from clearing the departmental qualifying examination. Petitioner's service book records the following :

“(ब) मुळ सेवापुस्तक

(१) श्री. विनय म्हात्रे, अनुरेखक यांनी, I.T.I. मुंबई द्वारे घेण्यात आलेल्या सिव्हील ड्राफ्टमन चे प्रशिक्षण पूर्ण केल्यामुळे अधीक्षक अभियंता, महाराष्ट्र पाणी पुरवठा जल निःस्सारण मंडळ क्र. १ यांचे कार्यालयीन आदेश क्र. २५४, दिनांक २७.०९.१९९० अन्वये त्यांना अनुरेखक पदाच्या अर्हता परिक्षा उत्तीर्ण होण्यापासून सूट देण्यात आली आहे. त्याची नोंद मूळ सेवापुस्तकाच्या पृष्ठ क्र.१९ वर घेण्यात आली आहे. (प्रत संलग्न).”

15. By order dated 24.02.2020 the Petitioner was promoted to the post of Civil Engineer Assistant, w.e.f. 20.12.2001. Petitioner superannuated on 31.08.2020.

16. Exemption granted to the Petitioner vide order 27.09.1990 and the promotion granted to the Petitioner in the year 1997 and 2020, respectively are neither cancelled nor revoked. Petitioner possessing qualification of Diploma of 2 years in Civil Draftsman from Government ITI, is not in dispute. It is not the case of the

Respondents that the Petitioner secured the promotion by practicing fraud or misrepresentation. It appears that the recovery and denial of the pay scale is not on the basis of incorrect fixation of pay, rather the same is on the basis that the promotions were wrongly granted to the Petitioner. The Senior Accounts Officer of Respondent No. 1 could not have looked into the issue of incorrect fixation of pay in view of the promotional orders continuing to hold the field. Issue of the validity of the order granting exemption and/or the issue of recovery was beyond the arena/jurisdiction of Respondent No. 3, moreso, in the absence of the promotional orders being revoked or cancelled by the Competent Authority.

17. In the case of *Vasanta Ramkrishna Ghogare (supra)* relied by learned Advocate Ms. Rehpade, this Court by referring to its earlier decision in the case of *Vitthal Shaymrao Kute (supra)* in paragraphs 4 and 5 has held as under :

“4. Learned counsel for the petitioner, further submits that the issue involved in this petition is squarely covered by the view taken by this Court in Writ petition No.1881 of 2018 (Vitthal Shaymrao Kute Vrs. Maharashtra Jeevan

Pradhikaran and Ors.) Decided on 09.07.2019 to which learned counsel for the Kavita respondents agrees. In Writ Petition No.1881 of 2018, this Court had found that once promotion pay scale was granted to an employee like a Tracer by an order passed by its Superior Officer and such order has not been withdrawn by the Superior Officer, an Officer like the Account/Audit Officer cannot, in supersession of such an order direct that the pension of the employee be revised to a lower scale and recovery of the excess payment of pension to be made from such an employee.

5. In the present case, the petitioner's stand even on a greater footing. Here, the respondent No. 2 has already by an order passed on 01.01.2008, exempted the petitioner from the requirement of passing of professional examination, and not passing of the professional examination was considered as a factor which was considered by any Audit Officer as a factor which made the petitioner as ineligible for being promoted to the higher post. Besides, the order of promotion granted to the petitioner has not been withdrawn, modified or cancelled. Therefore, we are of the view that this petition deserves to be allowed on similar lines as the Writ Petition No.1881 of 2018.”

18. From the above, it is apparent that employees of the Respondents, in identical circumstances have been granted relief as sought by the Petitioner. When facts and circumstances in the

case of *Vasanta Ramkrishna Ghogare (supra)* and *Vitthal Shaymrao Kute (supra)* are virtually identical and issue involved therein being akin to the issue involved in the present petition, the Petitioner herein would be entitled to benefit of the said decision.

19. For the aforesaid reasons, we hold that the Petitioner is entitled for Pension as per rules, by considering his last drawn pay (grade pay of Rs. 4200/-) and all other pensionary benefits.

Point No. 2

20. The Hon'ble Supreme Court in the case of *Sayyed Abdul Quadir & Ors. v/s. State of Bihar & Ors.*³, in paragraphs 57, 58 and 59 has enunciated the law as under :

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

3(2009) 3 SCC 475

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Gangaram v. Director, Col. B.J. Akkara [Retd.] v. Government of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank V. Manjeet Singh and Bihar SEB V. Bijay Bhadur.

59. Undoubtedly, the excess amount that has been paid to the appellants teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable

to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants teachers should be made.”

21. The position of law in this regards is made clear in the case of *State of Punjab and Ors. v/s. Rafiq Masih (White Washer)*⁴, wherein it is observed that excess unauthorized payment made to the employee, is not to be recovered from the retired employee or employee about to retire, as making of recovery would cause extreme hardships to the retired employee.

22. In the case of High Court of *Punjab and Haryana and other Versus Jagdev Singh*⁵, while deciding the issue with regard to the permissibility of the recovery of excess amount paid post

⁴AIR 2015 SC 696.

⁵(2016) 14 SCC 267

retirement, the Hon'ble Supreme Court has observed as under :

“10 In State of Punjab v. Rafiq Masih 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: (SCC pp.334-35).

(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 wrongfully 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).

23. Communication dated 24.11.2021 issued by Respondent No. 3 appears to be on an assumption that the promotion of the Petitioner is illegal. We have already concluded that Respondent No. 3 would lack jurisdiction in matters pertaining to recovery and re-fixation of pay scale.

24. Having considered the law settled by the Hon'ble Supreme Court with regard to recovery of any dues from retiral benefits of employee and having regard to the facts and circumstances of this case, we hold that the Respondents have no right to carry out any recovery from the retiral benefits of the Petitioners. Recovery is bound to cause extreme hardships to the Petitioner who has retired from service on 30.08.2020. We therefore, hold that the recovery made by Respondent No. 3 from the Petitioner is illegal.

25. Mr. Sonawane, learned Advocate for Respondent No. 3 has submitted that Respondent No. 3 has returned the amount which was deducted from the retiral benefits of the Petitioner, pursuant to the directions issued by the Lokayukta. He relies on the

paragraph 3(g) of the affidavit in reply dated 16.07.2024.

Paragraph 3(g) in the reply affidavit is extracted herein below:

“g. 21-03-2023 - Lokayukta Order: However, vide order of Lokayukta dtd.21/03/2023 wherein the order dtd.24/11/2021 has been aside. In terms of the said order, the respondent have returned /paid an amount of Rs.8,56,350/-to the petitioner in his account vide communication dtd.11-05-2023 annexed at Page no. 25 of IA. The respondent has not withheld any amount payable to the petitioner and nothing is remain payable as outstanding to the petitioner.

h. 20-09-2023 Lokayukta Order compliance Report: The respondents have complied with the order of Lokayukta and the report thereof given by the Lokayukta vide communication dtd. 20-09-2023.”

26. We have independently held the Petitioner to be entitled to the pension on the basis of his last drawn grade pay of Rs. 4200/- and that the Respondents are not entitled to recover any amount from the retiral benefits of the Petitioner. In such circumstances and more particularly the submissions made on behalf of the Respondents by Mr. Sonawane that the Respondents have accepted, abided and complied with the recommendations dated 21.03.2023 of the Lokayukta, reliance placed on the undertaking dated 16.06.1999 would pale into insignificance. We clarify that

we have not considered the legality and/or jurisdiction of the Lokayukta to make recommendations in service matters and leave it open for consideration in an appropriate case.

27. In view of the above, **the Petition is allowed in terms of prayer clauses (a), (d1) and (d2)**, by directing the Respondents to pay the pension as per rules by considering the last drawn pay (grade pay of Rs. 4,200/-) along with all other benefits including gratuity and provident fund within 60 days from the date of this order.

28. **Rule is made absolute** in the above terms with no order as to costs..

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)