

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 533/2011

Gyaniram Hari Bramhankar,
Aged about 57 years, Occ. Service,
R/o Vidyanagar, Near Shiv Mandir,
Gondia.

Applicant.

Versus

- 1) State of Maharashtra
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
- 2) Commissioner/ Director,
Directorate Municipal Administration,
3rd floor, Sir Pochkhanwala Road, Worli,
Mumbai.
- 3) Chief Officer,
Municipal Council, Gondia.

Respondents

Shri S.P.Palshikar, Advocate for the applicant.

Shri M.I. Khan, P.O. for the respondents.

Coram :- Hon'ble Shri R.B. Malik, Member (J).

Dated :- 20/02/2017.

ORAL ORDER -

The applicant having been appointed in Nagar Parishad, Gondia and having been absorbed in the State Government was initially getting the Pay Scale of Rs.5000-8000 (Grade C-I). On his

representation it was revised to Rs.6500-10500 but by the impugned order dated 29-1-2011 made by the Commissioner and Competent Authority of the establishment of Nagar Parishads was revised back to Rs.5000-8000 and that is the order stung where by this O.A. is brought by the applicant.

2. I have perused the record and proceedings and heard Shri S.P. Palshikar, Id. counsel for the applicant and Shri M.I. Khan, Id. P.O. for the respondents.

3. The basic facts as such are not in dispute. Under the relevant provisions of Municipal Law the applicant who was initially appointed in the Gondia Nagar Parishad was absorbed in the State Government and in Maharashtra State Municipal Fire Services, Grade-A he was working as Fire Officer. He was initially getting the Pay Scale of Rs.5000-8000. He made representation there against and his Pay Scale was revised to Rs.6500-10500. By the impugned order it was again revised to the old Pay Scale and directions were given to recover the excess amount paid to the applicant. As a result of what has been mentioned hereinabove, the Division Bench of this Tribunal here at Nagpur by its order dated 20-3-2012 granted stay to recovery of the alleged excess payment and also directed that thereafter the respondents would continue to pay the applicant salary in the pay scale of Rs.5000-8000.

4. Appendix-I of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships State Services (Absorption, Recruitment and Conditions of Service) Rules,2006 (hereinafter "Rules") has the various columns namely Sr.No., Service, Grade, Pay Scale and Posting. The relevant item is item no.5 which is Maharashtra Municipal Fire Service, on selection grade. The pay scale was Rs.8000-13500 and to Municipal Fire Officer, Class-A the pay scale of Rs. 6500-10500 and to the post of applicant C-I the scale was Rs.5000-8000. In Appendix-I (2) thereof (under rule 5 of the rules) the various items have been divided into Sr.No., Service and Grade, Qualification and Experience. At 5 (b) one finds Maharashtra Municipal Fire Service, Grade-A. The said item deserves to be fully quoted herein below :-

(b)	<i>Maharashtra Municipal Fire Service Grade-A</i>	<p><i>For absorption in Grade A of the Service, the Existing Employee in Municipal service should,</i></p> <p><i>(i) Hold a Degree in any faculty; And, Passed Station Officers and Instructors course from National Fire Service College, Nagpur.</i></p> <p><i>(ii) Have passed MS-CIT exam 4("or a certificate in computer specified by the Directorate of Information Technology")</i></p> <p><i>(iii) Be working on the post of Municipal Fire Officer and drawing a scale of pay equal to or higher than that prescribed for Municipal Fire Officer Grade A for</i></p>
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		<i>at least 3 years experience from the date of regular appointment of the existing post;</i>
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5. Although the learned counsel for the applicant Shri S.P. Palshikar and learned P.O. for the respondents Shri M.I. Khan made elaborate submissions from various facets, the significance of the issue is that when on the application of the applicant his pay scale was revised upwards, he had not completed three years experience from the date of his regular appointment to that post. In my opinion this concludes the matter against the applicant. Shri S.P. Palshikar, Id. Counsel for the applicant however told me that the stipulation with regard to the experience of three years cannot be studied in isolation but it has to be read in conjunction with the other requirements and should be read in harmonious manner.

6. No doubt for some obscure reason the respondents raked up the issue of educational qualification of the applicant. That however is beyond dispute. The educational qualification of the applicant is exemplified by the documents like degree etc. annexed to the affidavit-in-rejoinder. That is not his undoing.

7. However, in so far as the experience is concerned in as much as I have reproduced the entire item from the appendix and its language is so clear as it is I do not think there is any scope for

interpretation. The applicant lacked in experience at the time the higher pay scale was given to him and therefore that is it. In so far as the recovery aspect of the matter is concerned, the applicant must have thought that it was consequential in nature and therefore no specific prayer is made in that behalf. There is a stay to the operation of the impugned order and even while dismissing this O.A. I am going to continue it for six weeks. It is however made clear that the authorities will have to now consider recovery aspect of the matter in the light of the Judgment of the Hon'ble Supreme Court in a matter whereby a number of Civil Appeals came to be decided by a common Judgment by the Hon'ble Supreme Court the leading one being Civil Appeal No.11527/2014 (arising out of SLP (c) No. 11684/2012) **State of Punjab and others Vs. Rafiq Masih.** Without taking guidance from **Rafiq Masih,** no recovery could be made. In fact it is quite clear that the recovery cannot be made now. But the upward revision of pay so as to appreciate the pension as asked for by Mr. Palshikar, Advocate for applicant also cannot be made. In the above background therefore the O.A. stands hereby dismissed with no order as to costs. The interim order till now in force shall continue for a further period of six weeks from today.

(R.B.Malik)
Member (J).