

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1080 OF 2019

DISTRICT : JALGAON

Ravindra s/o Sitaram Patil,)
Age : 59 years, Occu. : Retired Jr. Engineer,)
R/o. At and post : Tandalwadi, Taluka Raver,))
District : Jalgaon -424102.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai.)
2. **The Superintending Engineer,**)
Jalgaon Irrigation Project Circle,)
Jalgaon.)
3. **The Executive Engineer,**)
Jalgaon, Medium Project Division No. 1,))
Hatnur Colony, Jalgaon 425002.)
4. **The Accountant General,**)
Maharashtra State Pratishta Bhavan,)
2nd Floor, 101 Maharshi Karve Road,)
Mumbai-400 020.)

... **RESPONDENTS**

APPEARANCE : Shri A.D. Sugdare, Counsel for Applicant.

: Shri B.S. Deokar, Presenting Officer for
respondent authorities.

: Smt. Sunita D. Shelke, counsel for respondent
Nos. 2 & 3.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

DATE : **12.01.2024**

ORAL - ORDER

1. Heard Shri A.D. Sugdare, learned counsel appearing for the applicant, Shri B.S. Deokar, learned Presenting Officer appearing for respondent authorities and Smt. Sunita D. Shelke, learned counsel for respondent Nos. 2 and 3.

2. The present Original Application is disposed of with the consent of parties at the admission stage.

3. By filing the present Original Application, the applicant is challenging order dated 08.11.2019 issued by the respondent No. 3 i.e. the Executive Engineer, Jalgaon Medium Project Division No. 1, Jalgaon, thereby directing recovery of excess amount of Rs. 4,78,621/- on account of revised pay fixation due to incorrect date of time bound promotion granted to the applicant and also prayed to direct the respondents to refund an amount of Rs. 4,78,621/- to the applicant.

4. Facts in brief as stated by the applicant giving rise to the Original Application are as follows :-

- (i) The applicant was appointed as Technical Assistant on work charge establishment in the office of the Superintending Engineer, Jalgaon Irrigation Project Circle,

Jalgaon vide office order No. 58/1982 dated 11.02.1982 (Annexure A-1) issued by the Superintending Engineer, Jalgaon Irrigation Project Circle, Jalgaon. Thereafter, vide office order No. 146/89, dated 09.10.1989 issued by the Superintending Engineer, Nashik Irrigation Circle, Nashik, the applicant came to be absorbed as Civil Engineering Assistant and accordingly respondent No. 3 issued order No. 81/99, dated 05.02.1999 fixation of his pay. (Annexure A-2)

(ii) It is further case of the applicant that the Superintending Engineer, Jalgaon Irrigation Project Circle, Jalgaon granted time bound promotion to the applicant as on 01.10.1994 by counting his service from the date of his initial appointment on Work Charged Establishment vide office order No. 309/1998, dated 29.08.1998 (Annexure A-3). The applicant was given second benefit of time bound promotion after completing 24 years' service as on 01.01.2006 vide office order No. 723/2009, dated 07.04.2010 (Annexure A-4) issued by the Executive Engineer, Minor Irrigation Division, Buldhana.

(iii) The applicant retired on superannuation on 31.07.2018 and accordingly his pension papers were

submitted to the Accountant General, Mumbai for grant of pension and pensionary benefits vide letter No. 1887, dated 11.07.2018 by respondent No. 3. The Accountant General, Mumbai raised objection vide his letter dated 13.08.2018 (Annexure A-7) that the services of the applicant on Work Charged Establishment cannot be counted for grant of time bound promotion and therefore, he refused to grant pension and returned his pension papers to the respondent No. 3. Accordingly, his pension case was reviewed and pension was reduced to that extent. Thus, the said order is challenged by the applicant before this Tribunal by filing O.A. No. 920/2018 and the same is pending for final decision.

(iv) In terms of the letter issued by the respondent No. 4, the order passed by the respondent No. 3 on 08.11.2019 and decided to recover an amount of Rs. 4,78,621/- from the applicant, which is now withheld. Hence, the present Original Application.

5. Learned counsel for the applicant submits that the objection raised by the Accountant General, Mumbai is incorrect as per the G.R. dated 13.01.1982. It is resolved that the

Technical Assistant on Work Charged Establishment may now provisionally be appointed as Technical Assistant in the Irrigation Department on regular establishment as well. Thus the appointment on work charged establishment is treated as regular appointment in the Irrigation Department. So far as instant Original Application is concerned, in terms of the ratio laid down by the Hon'ble Apex Court in a case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc., (2015) 4 Supreme Court Cases 334** and in view of the view taken by the Division Bench of the Hon'ble High Court, Bench at Aurangabad in **W.P. No. 14526/2016 (Ajabrao Rambhau Patil Vs. The State of Maharashtra and Ors.)**, the impugned order is liable to be quashed and set aside and the amount recovered from the applicant may be directed to refund him. Learned counsel submits that the aforesaid ratio laid down by the Hon'ble Apex Court is squarely applicable to the facts of the present case, since the applicant at the time of grant of time bound promotion was holding Class-III post and as such, his case is covered.

6. The respondents Nos. 1 & 3 have filed affidavit in reply separately. Learned Presenting Officer (for short P.O.) on the basis of affidavit in reply submits that the initial appointment of the applicant is purely on temporary basis on work charged

basis and he was appointed as Technical Assistant before issuance of G.R. dated 13.01.1982. In view of the same, reliance of the applicant on the G.R. dated 13.01.1982 is devoid of merit. Learned P.O. submits that the applicant was absorbed as CEA from 11.11.1989, however vide office order dated 30.12.1998 issued by the office of Superintending Engineer, Jalgaon Irrigation Project Circle, the applicant came to be absorbed as Civil Engineer Assistant in the pay scale admissible to the said post w.e.f. 01.01.1989. According, revised the pay fixation of the applicant considering his absorption in the cadre of CEA w.e.f. 01.01.1989 and the date of increment from 01.01.1989. Learned P.O. submits that after sanctioning the benefit of time bound promotion in the pay scale admissible to the post of Junior Engineer, it has been clearly mentioned that if the Pay Verification Unit raised its objection regarding said pay scale of Junior Engineer, then the amount would be recovered. Thus the action of respondents to recovery/withhold excess amount received by the applicant due to incorrect pay fixation as observed by the Pay Verification Unit, is absolutely correct and justified. The Pay Verification Unit already verified the pay fixation of the applicant on 02.05.2019 and 06.06.2019 as per Annexure A-9. Learned P.O. submits that the applicant misled

the Tribunal by showing that the Pay Verification Unit has not raised objection, however by order dated 02.05.2019, the Pay Verification Unit raised an objection to the pay fixation of the applicant and in view of the same, the respondent No. 4 has rightly followed the said instructions and correctly revised the pay of the applicant.

7. Learned Presenting Officer submits that the applicant is challenging the recovery order dated 08.11.2019. This order is issued only after considering and scrutinizing of service record of the applicant. He was not entitled for the benefit of time bound promotion in the year 1994 from the date of his initial appointment on work charge establishment and accordingly in the year 2006, for 2nd Assured Career Progress Scheme as per the respondent No. 1 letter dated 19.05.2014. The said O.A. No. 920/2018 was disposed of on 06.03.2020 with same directions. The order issued by this Tribunal on 06.03.2020 in O.A. No. 920/2018 is in the form of mere directions and as such, no case is made out in favour of the applicant.

8. Learned Presenting Officer submits that in terms of communication from respondent No. 1 to the respondent No. 4 dated 19.05.2014, the services rendered prior to bringing an

employee working on daily wages / work charge establishment on Converted Regular Temporary Establishment cannot be considered for counting the period of 12 years for the benefit of time bound promotion, because the same cannot be treated as regular service. On 11.02.1982, the present applicant was appointed as Technical Assistant on ad-hoc/ temporary basis. As per the G.R. dated 31.01.1989, all the Technical posts were converted into the cadre of "Civil Engineer Assistant" w.e.f. 01.01.1989 with deemed date 01.10.1989. Learned P.O. submits that in view of the same, time bound promotion scheme was applicable only after 12 years' service rendered after being brought on CRTE. Even after the Finance Department approved the proposal on 11.09.2014 and confirmed that counting of 12 years' service should be calculated from the date of absorption as CEA and not from the ad-hoc or temporary services. The clarification issued by the State of Maharashtra vide communication dated 19.05.2014 as discussed above, is in consonance with the decision of the Hon'ble Apex Court in the case of **Punjab State Electricity Board Vs. Jaggiwan Ram in Civil Appeal No. 890 of 2009**, dated 12.02.2009. Similarly this Tribunal at Nagpur Bench has also taken a similar view while

dismissing O.A. Nos. 900 & 901 both of 2017 by judgment and order dated 19.07.2019.

9. Learned Presenting Officer submits that subject matter of O.A. is letter dated 13.08.2018 issued by the respondent No. 4 raising objection thereby for time bound promotion and 2nd Assured Career Progress Scheme and as a consequence of the same, order of recovery issued by respondent No. 3 is correct and legal. Learned P.O. submits that in the year 1994 and 2006, the applicant was not eligible and entitled for time bound promotion and 2nd Assured Career Progress Scheme. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

10. The issue of recovery of excess payment is no more *res integra* and now the Hon'ble Apex Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc., (2015) 4 Supreme Court Cases 334**, in para No. 18 has laid down the following guidelines :-

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, 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 the 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 employees, 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."*

The Hon'ble Apex Court also made it clear that it is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement.

11. In a case of **State of Maharashtra and another Vs. Madhukar Antu Patil and another in Civil Appeal No. 1985 of 2022** the Hon'ble Apex Court has dealt with this issue in the identical facts. In the aforesaid case, the respondent therein was initially appointed as a Technical Assistant on work charge basis on 11.05.1982 and he was absorbed as Civil Engineering Assistant

in the year 1989. He was thus erroneously granted time bound promotion by considering date of his initial appointment as 1982.

In the backdrop of these facts, the Hon'ble Apex Court in para Nos. 3.1, 4 & 5 has made the following observations :-

“3.1 At the outset, it is required to be noted and it is not in dispute that respondent no.1 was initially appointed on 11.05.1982 as a Technical Assistant on work charge basis. It is also not in dispute that thereafter he was absorbed in the year 1989 on the newly created post of Civil Engineering Assistant, which carried a different pay scale. Therefore, when the contesting respondent was absorbed in the year 1989 on the newly created post of Civil Engineering Assistant which carried a different pay scale, he shall be entitled to the first TBP on completion of twelve years of service from the date of his absorption in the post of Civil Engineering Assistant. The services rendered by the contesting respondent as Technical Assistant on work charge basis from 11.05.1982 could not have been considered for the grant of benefit of first TBP. If the contesting respondent would have been absorbed on the same post of Technical Assistant on which he was serving on work 4 charge basis, the position may have been different. The benefit of TBP scheme shall be applicable when an employee has worked for twelve years in the same post and in the same pay scale.

4. In the present case, as observed hereinabove, his initial appointment in the year 1982 was in the post of Technical Assistant on work charge basis, which was altogether a different post than the newly created post of Civil Engineering Assistant in which he was absorbed in the year 1989, which carried a different pay scale. Therefore, the department was right in holding that the contesting respondent was entitled to the first TBP on completion of twelve years from the date of his absorption in the year 1989 in the post of Civil Engineering Assistant. Therefore both, the High Court as well as the Tribunal have erred in observing that as the first TBP was granted on the approval of the Government and the Finance Department, subsequently the same cannot be modified and/or withdrawn. Merely because the benefit of the first TBP was granted after the approval of the Department cannot be a ground to continue the same, if ultimately it is found that the contesting respondent was entitled to the first TBP on completion of twelve years of service only from the year 1989. Therefore both, the High Court as well as the Tribunal have

committed a grave error in quashing and setting aside the revision of pay scale and the revision in pension, which were 5 on re-fixing the date of grant of first TBP from the date of his absorption in the year 1989 as Civil Engineering Assistant.

5. However, at the same time, as the grant of first TBP considering his initial period of appointment of 1982 was not due to any misrepresentation by the contesting respondent and on the contrary, the same was granted on the approval of the Government and the Finance Department and since the downward revision of the pay scale was after the retirement of the respondent, we are of the opinion that there shall not be any recovery on re-fixation of the pay scale. However, the respondent shall be entitled to the pension on the basis of the re-fixation of the pay scale on grant of first TBP from the year 1989, i.e., from the date of his absorption as Civil Engineering Assistant.”

In the instant case, the facts are identical. The applicant was appointed as “Technical Assistant” on ad-hoc / temporary basis on 11.02.1982 and as per G.R. dated 31.01.1989, all the Technical posts were converted in the cadre of “Civil Engineering Assistant” w.e.f. 01.01.1989 with deemed date 01.10.1989. In view of the same, in terms of the ratio laid down by the Hon’ble Apex Court, time bound promotion scheme was applicable only after 12 years’ service rendered after being brought on CRTE.

12. It further appears that the applicant came to be retired on superannuation on 31.07.2018 and accordingly his pension papers were submitted to the Accountant General, Mumbai for grant of pension and pensionary benefits vide letter dated 11.07.2018 by the respondent No. 3. The Accountant General, Mumbai raised objection vide his letter dated

13.08.2018 (Annexure A-7) that the services of the applicant on Work Charged Establishment cannot be counted for grant of time bound promotion and therefore, he refused to grant pension and returned his pension papers to the respondent No. 3. In terms of the letter issued by the Accountant General, Mumbai, the pension case of the applicant was reviewed and pension was reduced. In view of the same, letter of respondent No. 4 in this regard came to be challenged before this Tribunal by filing O.A. No. 920/2018 and by order dated 06.03.2022 the said O.A. was disposed of by giving mere directions. Further in view of the letter issued by the respondent No. 4, the respondent No. 3 has issued letter No. 131/2019 dated 08.11.2019 and decided to recover an amount of Rs. 4,78,621/-, which is now withheld. It further appears from the facts of the present case that first time bound promotion was granted to the applicant on 01.10.1994 and second benefit of time bound promotion granted to the applicant after completing 24 years' service on 01.01.2006. It thus appears that corrective and coercive action is taken after a period of 24 years. It is not a case of the respondents that the applicant has made any representation for securing the excess payment. It was possible for the respondents to recover an amount when the petitioner was occupying Class-III post. In view of the same,

though the applicant is retired as Class-II officer, the ratio laid down in a case of **State of Maharashtra and another Vs. Madhukar Antu Patil and another** (cited supra) and **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc.** (cited supra) squarely applicable to the facts of the present case.

13. In a case of **Ajabrao Rambhau Patil Vs. The State of Maharashtra and Ors. in W.P. No. 14526/2019**, decided on 16.09.2022, the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in para Nos. 9,18 & 20 has made the following observations :-

*“9. Upon perusal of the principles laid down by the Apex Court in **Rafiq Masih** (supra), it is clear that the five situations summarized by the Court in para - 12 of the Judgment are not exhaustive. The Apex Court itself has made it clear that it is not possible to postulate all the situations of hardships, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer in excess of their entitlement. Thus, it cannot be stated that only in five situations summarized by the Apex Court, the recovery would be bad. It would always be open to the Courts to extend the benefit of protection from recovery in an appropriate case which is not covered by any of the five situations summarized in **Rafiq Masih** (supra).*

18. The recovery in the instant case has been effected after retirement of the petitioner. Nothing had prevented the respondents from correcting the mistake in grant of Time Bound Promotions to the petitioner during his service career. The re-fixation appears to have been done w.e.f. 01.10.1994 as the corrective action involved withdrawal of benefit of first Time Bound Promotion granted w.e.f. 01.10.1994. Thus, the corrective action is taken after a period of 23 long years and consequently, the recovery also appears to be in respect of 23 long years. Also, most of the period of recovery was when the petitioner was

occupying Class-III post. Admittedly, there was no misrepresentation on the post of the petitioner in securing the excess payment. We have two very strong reasons in the present case for arriving at a conclusion that the recovery would be arbitrary, viz. unduly long period of 23 years of recovery and retirement of the petitioner. After weighing these two positive factors against the negative factor of the petitioner retiring on Class-II Officer post, we find that the former would outweigh the latter. Undeniably, the case of the petitioner is similar to that of Madhukar Antu Patil (supra). The only distinguishing factor is the petitioner retired on Class-II post of Junior Engineer, whereas Madhukar Antu Patil (supra) retired on Class-III post of Civil Engineering Assistant. We find that the Apex Court in Madhukar Antu Patil (supra) without considering whether he belonged to Class-II or Class-III post extended the protection of recovery of excess payment. The protection is granted in the peculiar facts and circumstances of the case. Since the two cases are similar, we have no hesitation in following the judgment and applying the ratio of the judgment in Madhukar Antu Patil (supra) to the present case.

*20. Before parting, we would clarify that applicability of judgment of **Rafiq Masih** (supra) to the present case is on account of peculiar facts of this case and the same shall not be construed to mean that Class-I or Class-II Officer would be entitled to protection from recovery as per **Rafiq Masih** (supra).”*

14. In view of above discussions and considering the peculiar facts of this case, the present Original Application deserves to be allowed in terms of the prayer clauses. Hence, the following order :-

ORDER

- (i) The Original Application No. 1080/2019 is hereby allowed.
- (ii) The impugned order No. 131/2019 dated 08.11.2019 issued by respondent No. 3 is hereby quashed and set aside.

- (iii) The respondents are directed to refund an amount of Rs. 4,78,621/- (Four Lakhs Seventy Eight Thousand Six Hundred Twenty One only) to the applicant within a period of three months from the date of this order.
- (iv) In the circumstances, there shall be no order as costs.
- (v) The Original Application accordingly disposed of.

PLACE : Aurangabad.

DATE : 12.01.2024

(Justice V.K. Jadhav)

Member (J)

KPB S.B. O.A. No. 1080 of 2019 VKJ Recovery / refund of recovered amount