

ORIGINAL APPLICATION NO. 723 OF 2018
(Arjun Nagorao Kolmare Vs. State of Maharashtra & Ors.)

**CORAM : Hon'ble Shri V.D. Dongre, Member
(J)**

DATE : 17.04.2023

Speaking to Minutes Order

Heard Shri D.T. Devane, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondent authorities.

2. The applicant made application for speaking to minutes in order dated 13.04.2023 passed in O.A.No. 723/2018.

3. In order dated 13.04.2023 passed in O.A.No. 723/2018, the name of the respondent No.3 i.e. the "Deputy Director of Society Forestry" is to be corrected as "Deputy Director of Social Forestry". In para No.2 (ii), the word "retired" is to be corrected as "relieved" and in para No. 2 (iv), the sentence "the said W.P. No. 122/1987 was allowed and order dated 28.02.1991 (part of Annexure A-2 collectively) was set aside is to be substituted as follow:-

"The said W.P. No. 122/1987 was allowed by order dated 28.02.1991 (part of Annexure A-2 collectively)".

4. The Registrar is directed to correct the same and issue corrected certified copies to the parties.

MEMBER (J)

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

ORIGINAL APPLICATION NO. 723 OF 2018

(Subject - Directions / Benefit of Increments)

DISTRICT : NANDED

Arjun s/o Nagorao Kolmare,)
Age : 59 years, Occu. : Pensioner,)
R/o. Kathewadi, Post. Hottel, Tq. Degloor,))
District Nanded.)

.... APPLICANT

VERSUS

1. **The State of Maharashtra,**)
Through its Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai.)
2. **The Chief Conservator of Forest (Regional),**)
Aurangabad Vanbhawan, Osmanpura,)
Aurangabad.)
3. **The Deputy Director of (Society) Forestry,**)
Division, Nanded.)
4. **The Accountant General (A&E)-II,**)
Maharashtra, Nagpur.)

... RESPONDENTS

APPEARANCE : Shri D.T. Devane, Advocate for Applicant.

: Shri M.P. Gude, P.O. for Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **13.04.2023**

connected as
per order dt 17/4/23
P.W. Subhakar
Registrar
25/4/23

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ORDER

1. This Original Application is filed for grant of benefit of increments for the break period from 09.09.1986 to 25.02.2008 of the applicant for the grant of pensionary benefits to the applicant by making re-pay fixation.

2. The facts in brief of this case are as follows :-

(i) The applicant came to be initially appointed as Plantation Kotwal by respondent No. 3 i.e. the Deputy Director of Social Forestry Division Nanded on daily wages temporarily vide order dated 28.11.1984 (part of Annexure A-1 collectively). The applicant joined and continued on the said post for about four months. Thereafter, the respondent No. 3 again issued fresh appointment order vide order dated 11.4.1985 (part of Annexure A-1 collectively) appointing him on the same post on temporary basis until appointment of regular posting of Plantation Kotwal.

(ii) Thereafter the applicant was ^{relieved} retired from the said post of Plantation Kotwal on completion of the said work on 31.10.1985. However, the respondent No. 3 again posted the applicant vide order dated 4.2.1986 as Plantation Kotwal under the E.G.S.

Corrected
as per order
dt. 17/4/23.

P.W. Sankhade
Registrar
25/4/23

(iii) Thereafter having worked on the said post for some period i.e. about six months, the services of the applicant were terminated by the respondents illegally without any reason and without following due procedure of law.

(iv) The applicant and other such similarly situated employees filed W.P. No. 122/1987 before the Hon'ble High Court of Bombay Bench at Aurangabad and challenged the termination. The said W.P. No. 122/1987 was allowed and by order dated 28.02.1991 (part of Annexure A-2 collectively) ~~was set aside~~. The State of Maharashtra challenged the said order before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India decided the issue in Civil Appeal No. 11901/1995 in favour of the applicant and others in respect of their absorption vide order dated 7.12.1995 (part of Annexure A-2 collectively).

(v) In view of the order passed by the Hon'ble Supreme Court of India, the respondent No. 1- State of Maharashtra took a policy decision to absorb the applicant and others in the service by issuing G.R. dated 22.07.1997 (Annexure A-3). Accordingly the applicant was given reappointment order dated 25.02.2008 (part of Annexure A-4 collectively)

Corrected
as per order
dt. 17/4/23.

PWS Subhadra
Registrar
25/4/23

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by the respondent No. 3 as Forest Guard. The applicant joined on that post at Anandbori in Forest Range at Islapur as per joining letter dated 26.02.2008 (Part of Annexure A-4 collectively).

(vi) As per the said G.R. dated 22.07.1997 (Annexure A-3) after reappointment, the applicant and other were not entitled for the payment of period of 9.9.1986 to 25.02.2008. However, the said period would be considered for pension and other pensionary benefits purpose. Accordingly, revised pay fixation of the applicant was done and accordingly the applicant received regular pay till his retirement i.e. 29.02.2016.

(vii) However, the said period from 9.9.1986 to 25.02.2008 was not taken into consideration for grant of increments while granting pension and pensionary benefits to the applicant at the time of his retirement.

(viii) After retirement of the applicant on superannuation w.e.f. 29.02.2016, the respondent no. 3 passed an order dated 23.2.2017 (Annexure A-5) stating that pension proposal of the applicant would be temporarily sent to the respondent No. 4 i.e. Accountant General (A&E)-II, Nagpur

taking into consideration the date of re-appointment of the applicant and also mentioning that sanction order of Government would be necessary for grant of increment of break period. The said pension proposal was sent under covering letter dated 23.02.2017 (Annexure A-6) mentioning therein that revised pension proposal will be submitted after getting regular sanction from Government about grant of increments during break period.

(ix) It is the contention of the applicant that submission of pension proposal of the applicant without considering increment of break period is contrary to the order passed by the Hon'ble Supreme Court of India as well as policy decision taken by the Government vide G.R. dated 22.07.1997 (Annexure A-3). The applicant in fact is eligible and entitled for inclusion of benefits of increments of the break period for pensionary benefits.

(x) In the circumstances, the applicant is suffering of hardship by not getting his legal dues. Therefore, the applicant submitted representation dated 24.11.2014 (Annexure A-7) to the respondents raising grievance in that regard. But in vain.

(xi) Similarly situated employees in the Department namely Chandu Gangaram Waghmare, who was appointed on 28.04.1986 and retired on 31.07.2018 and Nagnath Gangaram Yambadwar, who was appointed on 4.1.1985 and retired on 30.06.2012 i.e. prior to the applicant have received their dues and they have got more pension and pensionary benefits than the applicant as per PPOs (Annexure A-8 collectively). Hence, the present Original Application.

3. The respondent No. 4 filed affidavit in reply (page No.40 to 45) of one Shri Sandeep Purushottam Waikar, working as Assistant Accounts Officer in the office of respondent NO. 4 i.e. the Accountant General (A&E)-II, Nagpur and resisted the present Original Application.

(i) It is thereby stated that the role of this respondent is limited to scrutiny of proposal received from Heads of officers of Government of Maharashtra / Pension sanctioning authorities in respect of persons, who retired from various State Government offices situated in Vidarbha and Marathwada regions with reference to the Rules of Maharashtra Civil Services (Pension) Rules, 1982. This respondent office does not act on its own volition, but

authorizes pensionary benefits only on receipt of proper pension papers.

(ii) It is further submitted that the applicant retired on superannuation w.e.f. 29.02.2016 and his pension proposal was received. While finalizing the applicant's pension case, the break in service period from 9.9.1986 to 25.02.2008 was considered as qualifying service only for pension purpose, however his increments were not released during his break period. The Pension Sanctioning Authority vide their letter dated 14.06.2017 has stated that the pension case of the applicant will be revised on receipt of necessary orders from Government of Maharashtra for fixing his pay notionally during break period.

4. Further affidavit in reply on behalf of respondent Nos. 1 to 3 (page Nos. 46 to 54) through one Kantrao s/o Pagoji Dhumale, working as Assistant Conservator of Forest Social Forestry Division Nanded, Tal. Nanded, Dist. Nanded . Thereby he denied all the adverse contentions raised in the present Original Application.

(i) It is specifically submitted thereof that in view of G.R. of the year 1997, applicant's services from the date of initial

appointment were considered at the time of granting pension and pensionary benefits. Pension is granted to him considering his last pay. Representation was made by the applicant only after grant of pension to him claiming all pensionary benefits afterwards.

(ii) It is admitted that the applicant was absorbed on 25.02.2008 by way of reappointment on the post of Forest Guard in the pay scale of Rs. 2750-70-3800-75-4400. His pay was fixed at the time of his absorption in the year 2008 and accordingly increments were granted to him from year to year. The applicant never raised any dispute about his absorption. The respondents rightly fixed the pay of the applicant for granting him pension. In view of that, the Original Application is devoid of merits and the same is liable to be dismissed.

5. I have heard the arguments advanced by Shri D.T. Devane, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer for the respondents on the other hand.

6. After having considered the rival pleadings, documents and submissions, admittedly what emerges before me is that in view

of G.R. dated 22.07.1997 (Annexure A-3) being issued in view of the decision of the Hon'ble Supreme Court dated 01.12.1995 in Special Leave Petition No. 638/1995 and Civil Appeal No. 11901/1995, the applicant was absorbed and re-appointed as per the order dated 25.02.2008 (part of Annexure A-4 collectively). On reappointment, the applicant joined on the same day.

7. In terms of the above-said G.R., the applicant was entitled for notional increments from the date of his termination i.e. from 09.09.1986. As per the said G.R., the applicant was not entitled for arrears of pay during the break period of 09.09.1986 to 25.02.2008 and accordingly on his reappointment on 25.02.2008, the applicant's pay fixation was done in the pay scales of Rs. 2750-70-3800-75-4400 as per 5th Pay commission by giving notional increments from 1986 to 2008 and in the pay scale of Rs. 5200-20200 with Grade Pay of Rs. 1800 from 01.01.2006 as per 6th Pay Commission. As per that as on 01.07.2009 his basic pay was Rs. 7760+290, which is reflected in copy of service book during the hearing of this O.A.

8. Further admittedly, the applicant retired on superannuation w.e.f. 29.02.2016. However, while submitting

pension proposal, the respondent No. 3 passed the order dated 23.02.2017 (Annexure A-5) stating that pension proposal of the applicant would be temporarily sent to the respondent No. 4 i.e. the Accountant General (A&E)-II, Nagpur taking into consideration the date of reappointment of the applicant and also mentioning that sanction order of the Government would be necessary for grant of increments during break period. Accordingly as on 01.07.2009 as per order dated 23.02.2017 (Annexure A-5) re-fixation of pay of the applicant as on 01.07.2009 in the pay scale of Rs. 5200-20200 Grade Pay Rs. 1800/- to the effect of basic pay of Rs. 5200+annual increment of Rs. 210/- as against earlier basic pay as on 01.07.2009 of Rs. 7760+annual increment of Rs. 290/-. In view of the same, as on 01.07.2015 basic pay of the applicant was Rs. 6580+annual increment of Rs. 260/-. Thereby monthly pay of the applicant was reduced. Consequently, his pension was also reduced.

9. Though the respondent No. 3 in order dated 23.02.2017 (Annexure A-5), as well as, contention in the affidavit in reply that pension proposal was submitted by reducing pay for grant of notional increments during the break period of 1986 to 2008, awaiting sanction of the Government and that after seeking such

sanction, they would resubmit the revised pension proposal, till date there is no progress in the matter on that count.

10. Admittedly in reappointment order dated 25.02.2008 (part of Annexure A-4 collectively) issued by the respondent No. 3 there is reference of G.R. dated 22.07.1997 (Annexure A-3). In the said G.R., clause (B) of the said G.R. regarding notional increment, which is as follows :-

“ब) त्यांना सेवा समाप्तीच्या दिनांकापासून ते पुनर्नियुक्तीच्या दिनांकापर्यंत त्यांनी प्रत्यक्ष कामे केलेली नसल्याने त्यांना त्या कालावधीचे वेतन देय होणार नाही. परंतु सदर कालावधी हा सेवानियुक्ती वेतन तसेच मृत्यू नि-सेवा उपदानासाठी अर्हताकारी सेवा म्हणून गणण्यात येईल.”

11. In view of the same, re-pay fixation done by the respondent No. 3 vide order dated 23.02.2017 (Annexure A-5) for fixation of pension is contrary to the above-said Clause-B of the G.R. dated 22.07.1997. Thereby the respondents have deprived the applicant of his due pension though assured by respondent Nos. 1 to 3 & they have failed to take any steps for modifying order dated 23.02.2017 and consequently granting final pension to the applicant as due to him in spite of lapse of more than 8 years. This shows lethargy on the part of respondents and more particularly respondent No. 3 while extending the retirement benefits of the applicant. In view of

the same, the present Original Application succeeds. Hence, I proceed to pass the following order :-

ORDER

(A) The Original Application is allowed in terms of prayer clauses 11 (B), (C) & (D), which are as follows :-

“(B) The respondent no. 1 to 3 may kindly be directed to grant the benefit of increments for the break period from 9.9.1986 to 25.2.2008 of the applicant for the purpose of pensionary benefits to the applicant.

(C) The respondents No. 1 to 3 may kindly be directed, to grant the benefit of increments for the break period from 9.9.1986 to 25.2.2008 for pension purposes and by making re-pay fixation of the applicant revised pension proposal may kindly be send to the respondent No. 4 A.G. Nagpur.

(D) That, after submitting the revised pension proposal the respondent No. 1 to 4 may kindly be directed to grant the authorization of revised pension and consequential revised pensionary benefits to the applicant.”

(B) The respondents are directed to comply with the above-said order within a period of three months from the date of receipt of certified copy of this order.

(C) There shall be no order as to costs.

**PLACE : AURANGABAD.
DATE : 13.04.2023.**

**(V.D. DONGRE)
MEMBER (J)**