

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

**ORIGINAL APPLICATION NO. 766 OF 2016
(Subject – Recovery)**

DISTRICT : JALGAON

Rambhau Thakaji Jadhav,)
Age : 59 years, Occu. : Junior Engineer (Retired),)
R/o : Gurukul Colony, Chandwad,)
Behind Bus Stand, Near Ghodkenagar,)
Taluka : Chandwad, District : Nashik.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Principal Secretary,)
Water Resource Department,)
Mantralaya, Mumbai.)
2. **The Superintending Engineer and**)
Administrator, Command Area Development)
Authority, Girna Bhavan, Opp. Akashwani,))
Jalgaon.)
3. **The Executive Engineer,**)
Jalgaon Irrigation Division, Jalgaon,)
District : Jalgaon.)
4. **The Accountant General,**)
101, Maharshi Karve Road,)
Maharashtra State, Mumbai.) ... **RESPONDENTS**

APPEARANCE : Shri A.D. Sugdare, Advocate for the Applicant.

: Shri D.R. Patil, Presenting Officer for
Respondent Nos. 1 & 4.

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

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

DATE : **08.09.2022.**

ORDER

1. The present Original Application is filed seeking following reliefs :-

“A. *By order or directions the respondent No. 3 may be directed to pay an amount of Rs. 7,18,630/- (Rupees seven lacks Eighteen thousand six hundred thirty) to the applicant.*

A-1 *By order or direction of this Tribunal, the order No. 224 of 2016 issued by the respondent No. 3 in respect of Recovery of excess amount of Rs. 7,18,630/- (Rupees seven lacks Eighteen thousand six hundred thirty) be quashed and set aside.*

B. *By order or directions the respondent No. 3 be directed to pay pensionary benefits such as DCRG, GPF, Gratuity, GIS and Leave Salary to the applicant immediately.*

C. *Pending hearing and final disposal of this Original Application Order No. 224 of 2016 dated 01.08.2016 issued by the respondent No. 3 in respect of recovery of excess amount of Rs. 7,18,630/- (Rupees seven lacks Eighteen thousand six hundred thirty) be stayed.*

D. *By order of directions the order dated 08.07.2015 issued by the respondent No. 4 the Accountant General,*

Mumbai re: time bound promotion (1st ACP) as on 17.03.1998 from the date of appointment on CRT, and 2nd ACP second benefit from 17.02.2000 be declared illegal and same is deserves to be quashed and set aside.

E. By order of directions the re fixation of pay on grant of time bound promotion (1st ACP) as on 17.03.1998 by order No. 65/2016 dated 08.03.2016 and 2nd ACP as on 17.03.2000 by order No. 66/2016 dated 08.03.2016 issued by the respondent No. 2 be quashed and set aside.

F. By order or directions the respondent No. 3 may be directed to submit re-revised pension case counting his service from his date of initial appointment on work charge as if he was appointment on regular establishment from 17.03.1982 and grant him all consequential benefits arising out it.

G. The Hon'ble Tribunal may passed any other suitable order as deemed fit in favor of the applicant in the interest of justice.”

2. During course of arguments, the following is recorded in the farad sheet order dated 21.06.2022 :-

“ Heard Shri A.D. Sugdare, learned Advocate for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent Nos.1 & 4 and Smt. Sunita D. Shelke, learned Advocate for the respondent Nos.2 & 3.

2. Learned Advocate for the applicant submits that the applicant would restrict only to original prayer clauses 'A' and 'A-1' which are as follows:-

“A. By order or directions the respondent no.3 may be directed to pay an amount of Rs.7,18,630/- (Rupees Seven lacks Eighteen thousand six hundred thirty) to the applicant.

A-1. By order or directions by this Tribunal, the Order No.224 of 2016 issued by the respondent No.3 in respect of Recovery of excess amount of Rs.7,18,630/- (Rupees Seven Lack Eighteen thousand six hundred thirty) be quashed and set aside.

2. Learned Advocate for the applicant further submits that the relief sought in prayer clause ‘B’ as follows is already satisfied.

“B. By order or directions the respondent no.3 be directed to pay pensionary benefits such as DCRG, GPF, Gratuity, GIS and Leave Salary to the applicant immediately.”

Hence, he does not wish to press for the said relief.

3. He further submits that he does not wish to continue with the prayer clauses D, E, F and G which are pertaining to revise pay fixation order.

4. Learned P.O. for the respondent Nos.1 & 4 and learned Advocate for the respondent Nos.2 & 3 submit that they do not have to submit anything in this regard.

5. In view of above, the Original Application to proceed only in respect of prayer clauses A and A-1.

6. By consent of all the parties, S.O. to 04.07.2022 for final hearing. ”

3. Therefore, the present O.A. proceeded only in respect of prayer clause A and A-1, which prayers are as follows :-

“A. By order or directions the respondent No. 3 may be directed to pay an amount of Rs. 7,18,630/- (Rupees seven lacks Eighteen thousand six hundred thirty) to the applicant.

A-1 By order or direction of this Tribunal, the order No. 224 of 2016 issued by the respondent No. 3 in respect of Recovery of excess amount of Rs. 7,18,630/- (Rupees seven lacks Eighteen thousand six hundred thirty) be quashed and set aside.

4. The facts in brief giving rise to this application are as follows :-

(a) The applicant was appointed as Technical Assistant vide order No. 117 dated 03.03.1986 issued by the respondent No. 2 i.e. the Superintending Engineer and Administrator, Command Area Development Authority, Jalgaon on the temporary establishment in the office of the Executive Engineer, Upper Godavari Land Development Division, Nashik. He joined his duties on that post on 17.03.1986. Subsequently, the post of Technical Assistant was abolished and on amalgamation, new cadre of Civil Engineering Assistant was created by the Government. In view of the same, the respondent No. 2 issued the order No. 14 dated 09.10.1989 in favour of the applicant on the post of Civil Engineering Assistant. The applicant reported to his duties on 01.11.1989.

(b) It is further submitted that the applicant was granted 1st time bound promotion as on 01.10.1994 and 2nd time

bound promotion as on 30.09.2006 in view of the G.R. dated 08.06.1995 and in view of the G.R. dated 01.04.2010 respectively vide order No. 10 of 2011, dated 12.06.2012 (Annexure A-1) issued by the respondent No. 2. The said benefit was granted considering his initial appointment as Technical Assistant on 03.03.1986. The applicant thereafter was promoted to the post of Junior Engineer vide order dated 17.08.2009 (Annexure A-2) issued by the respondent No. 1, thereby the applicant was posted in the office of respondent No. 3 i.e. The Executive Engineer, Jalgaon Irrigation Division, Jalgaon. The applicant retired on superannuation on 31.03.2015 from the post of Junior Engineer from the office of respondent No. 3 as reflected in the extract of service book Annexure A-3.

(c) It is further submitted that after his retirement on superannuation, his pension case was prepared and it was submitted to the Accountant General, Mumbai for approval and sanction. The Accountant General, Mumbai, however, returned the pension papers with the remarks that the applicant was eligible for grant of benefits of 1st time bound promotion benefit as on as on 01.10.2001 and 2nd time bound promotion benefit as on 01.11.2013. In view of the

same, the respondent No. 2 issued revised order of 1st time bound promotion being order No. 65 of 2016 and 2nd time bound promotion being order No. 66/2016, both are dated 08.03.2016 (Annexure A-8 collectively). Accordingly, in revised pay fixation order, the recovery of excess amount of Rs. 7,18,630/- was ordered vide order No. 224 of 2016 dated 01.08.2016 (Annexure A-4) against the applicant. The said excess payment was on account of alleged earlier wrong dates of 1st and 2nd time bound promotional benefits. In the circumstances, the applicant has filed the present Original Application seeking various reliefs as listed above. However, as stated earlier, prayer clause-B is already granted to the applicant and the said prayer does not survive and the applicant does not wish to proceed with the prayer clauses D, E, F & G seeking to challenge the revised orders of 1st and 2nd time bound promotion and seeking pension and pensionary benefits on the footing that he has entered in the service on 17.03.1982.

(d) In nutshell, it is the contention of the applicant that entry into service of the applicant was in Group-C. The recovery of the excess amount is of the period when he was working on the post of Civil Engineering Assistant in

Group-C category. There was no misrepresentation or fraud played by the applicant seeking 1st and 2nd time bound promotion benefits on the basis of his entry into service on 17.03.1986. The said recovery is impermissible in view of the law laid down by the Hon'ble Apex Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.)** reported at **AIR 2015 SC 596**. Hence, the present Original Application.

5. The affidavits in reply pre and post amendment are jointly filed on behalf of respondent Nos. 1 and 2 and separately on behalf of respondent Nos. 3 and 4 contending *inter-alia* that the applicant is admitting excess payment on account of wrong dates of entitlement of 1st and 2nd time bound promotion. Amount of excess payment is withheld rightly, as the applicant is not entitled for the said amount legally, as he is entitled for the benefits of 1st and 2nd time bound promotion only from his absorption in the cadre of Civil Engineering Assistant w.e.f. 01.11.1989 as per the order No. 14 dated 09.10.1989 in that cadre. In the circumstances, according to the respondents, the applicant is not entitled for any of the reliefs as sought for in the

present Original Application. Hence, the present Original Application is liable to be dismissed.

6. The applicant filed his affidavit in rejoinder thereby denying all the adverse contentions raised in the affidavits in reply and reiterating the contentions raised in the present Original Application.

7. I have heard the arguments at length advanced by Shri A.D. Sudgadre, learned Advocate for the applicant on one hand, Shri D.R. Patil, learned Presenting Officer for the respondent Nos. 1 and 4 and Smt. Sunita D. Shelke, learned Advocate for respondent Nos. 2 and 3 on the other hand.

8. Considering the rival pleadings, it is evident that the recovery of excess amount of Rs. 7,18,630/- is computed because of the wrong pay fixation of giving 1st time bound promotion benefits to the applicant w.e.f. 01.10.1994 and 2nd time bound promotion on 30.08.2006. Both the said time bound promotion benefits were given by considering the initial entry of the applicant into service on 17.03.1986 on the post of Technical Assistant. However, it is a fact that the applicant has been absorbed in the permanent employment in the cadre of Civil Engineering Assistant on 01.11.1989 in terms of office order No.

14 dated 09.10.1989 in view of the G.Rs. dated 20.07.2001 and 01.04.2010 (Annexure A-1). Admittedly, the post of Technical Assistant was abolished and on amalgamation, new cadre of Civil Engineering Assistant was created. Accordingly, the respondent No. 2 issued the order No. 14 dated 09.10.1989 in favour of the applicant on the post of Civil Engineering Assistant and the applicant reported to his duties on 01.11.1989 in the office of Sub Engineer, Upper Godavari Land Development Division, Nashik. However, after retirement of the applicant on superannuation w.e.f. 31.03.2015, the Accountant General, Mumbai while scrutinizing the pension papers noticed that the applicant was eligible for grant of 1st time bound promotion benefit only on 01.11.2001 and second time bound promotion benefit only on 01.11.2013 instead of 01.10.1994 and 30.09.2006 respectively. In view of the same, while re-fixing the pay of the applicant, recovery of excess amount of Rs. 7,18,630/- was computed and it was ordered to be recovered from the pensionary benefits of the applicant. The said orders granting 1st and 2nd time bound promotion benefits are the office order No. 65 of 2016 and order No. 66/2016 both are dated 08.03.2016 (Annexure A-8 collectively). Though the applicant initially challenged the said orders, subsequently, the applicant has

confined only to the quashing of recovery of an amount of Rs. 7,18,630/- in view of wrong pay fixation and seeking refund of the said amount, which amount is to be recovered by withholding the pensionary benefits to that extent.

9. In view of above, it would be just and proper to cursorily refer to Rule 132 of the Maharashtra Civil Services (Pension) Rules, 1982 relating to recovery and adjustment of Government dues and Rule 134 (A) of the said Rules relating to recovery and adjustment of excess amount paid. The said provisions if read together, would reveal that the same would empower the respondents Government to recover the government dues and / or recovery of excess amount paid. It is to be seen as to whether the applicant in the given circumstances is entitled for refund of the said recovered amount.

10. In this regard, the learned Advocate for the applicant placed reliance on the citation of the Hon'ble Apex Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.)** reported at **AIR 2015 SC 596**, as well as, the decision of the Hon'ble Apex Court in **Civil Appeal No. 1985 of**

2022 in the matter of **the State of Maharashtra and Another Vs. Madhukar Antu Patil and another** decided on 21.03.2022.

11. In the case in hand, the applicant was working as Civil Engineering Assistant, which falls under group-C category. The applicant was subsequently promoted to the post of Junior Engineer (Group-B category) vide order dated 17.08.2009 (Annexure A-2) issued by the respondent No. 1. The recovery of excess amount is pertaining to the period from 01.10.1994 to 01.11.2001 on account of wrong date of 1st time bound promotion benefit on 01.10.1994 and for the period of 30.09.2006 till 01.11.2013 on account of 2nd time bound promotion benefit on the basis of wrong pay fixation.

12. In this background, it would be just and proper to reproduce the ratio laid down by the Hon'ble Apex Court in the matter of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (cited supra). Para No. 12 of the said judgment is as follows :-

“12. 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."

13. From the ratio laid down in the above-said citation, it is crystal clear that only clause (i) as above from the said citation refers to the Government servant belonging to Group-C and Group-D category. Clause (ii), (iii) & (v) thereof do not speak of Group-C and Group-D category employees. In view of the same, the ratio laid down as regards impermissibility of recovery of excess amount on account of wrong pay fixation would be application to the Government servant belonging to Group-A and

Group-B category in terms of clauses (ii), (iii) & (v) thereof. In the case in hand, the recovery of excess amount on account of wrong pay fixation is beyond the period of five years from the date of the order of recovery is issued, which attract the clause (iii) of para No. 12 of the said judgment. Apart from that even clause (v) would also attract since the recovery is iniquitous, as well as, arbitrary. There is nothing on record to show that the wrong pay fixation was done due to misrepresentation or fraud pleaded upon by the applicant. In view of the same, in my considered opinion, the applicant would be entitled for refund of the recovered withheld amount of Rs. 7,18,630/- from the pensionary benefits of the applicant.

14. Learned Advocate for the applicant has further placed reliance on the case law of the Hon'ble Apex Court in **Civil Appeal No. 1985 of 2022** in the matter of **the State of Maharashtra and Another Vs. Madhukar Antu Patil and another** decided on 21.03.2022. In the said citation case, the respondent No. 1 was initially appointed on 11.05.1982 as a Technical Assistant on work charge basis and was continued on the said post till absorption. By G.R. dated 26.09.1989, 25 posts of Civil Engineering Assistants were created and respondent no.1 was absorbed on one of the said posts. Respondent no.1 was

granted the benefit of first Time Bound Promotion considering his initial period of appointment of 1982 on completion of 12 years of service and thereafter he was also granted the benefit of second Time Bound Promotion on completion of 24 years of service. Respondent No.1 retired from service on 31.05.2013. After his retirement, pension proposal was forwarded to the Office of the Accountant General for grant of pension on the basis of the last pay drawn at the time of retirement. The Office of the Accountant General raised an objection for grant of benefit of first Time Bound Promotion to respondent no. 1 considering his date of initial appointment dated 11.05.1982. It was found that respondent no.1 was wrongly granted the benefit of first Time Bound Promotion considering his initial period of appointment of 1982 and it was found that he was entitled to the benefit from the date of his absorption in the year 1989 only. Vide orders dated 06.10.2015 and 21.11.2015, his pay scale was down-graded and consequently his pension was also re-fixed. Feeling aggrieved and dissatisfied with the said orders dated 06.10.2015 and 21.11.2015 down-grading his pay scale and pension, respondent no.1 approached the learned Tribunal by way of Original Application No. 238/2016. By judgment and order dated 25.06.2019, the Tribunal allowed the said original application

and set aside orders dated 06.10.2015 and 21.11.2015 and directed the appellants herein to release the pension of respondent no.1 as per his pay scale on the date of his retirement. Appellant herein challenged the said order before the Hon'ble High Court of Judicature at Bombay by filing Writ Petition No. 3118 of 2021, which W.P. came to be dismissed by the judgment and order dated 25.06.2019. The appellant challenged the said order before the Hon'ble Apex Court by filing Civil Appeal No. 1985 of 2022. It is observed that initial appointment of respondent No. 1 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 benefit of first Time Bound Promotion on completion of 12 years from the date of his absorption in the year 1989 in the post of Civil Engineering Assistant. Therefore, the Hon'ble Apex Court was pleased to set aside the orders of the learned Tribunal and the Hon'ble High Court. However, the Hon'ble Apex Court was further pleased to observe that grant of first Time Bound Promotion considering his initial period of

appointment of 1982 was not due to any misrepresentation by the respondent No. 1 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, 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 Time Bound Promotion from the year 1989, i.e., from the date of his absorption as Civil Engineering Assistant.

15. Considering the above-said facts, it is crystal clear that the facts of the present case are similar in nature. In view of the same, recovery ordered and implemented against the applicant is not legal and proper. The ratio laid down by the Hon'ble Apex Court in the above-said citation of **the State of Maharashtra and Another Vs. Madhukar Antu Patil and another** (cited supra) is aptly applicable to the present case. The prayer clause A and A-1 are duly covered by the said citation. Hence, I proceed to pass following order :-

ORDER

(A) The Original Application No. 766 of 2016 is allowed in terms of prayer clause A and A-1, which are as follows :-

“A. *By order or directions the respondent No. 3 may be directed to pay an amount of Rs. 7,18,630/- (Rupees seven lacks Eighteen thousand six hundred thirty) to the applicant.*

A-1 *By order or direction of this Tribunal, the order No. 224 of 2016 issued by the respondent No. 3 in respect of Recovery of excess amount of Rs. 7,18,630/- (Rupees seven lacks Eighteen thousand six hundred thirty) be quashed and set aside.*

(B) The respondents are directed to refund the said recovered amount to the applicant within a period of two months from the date of this order.

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

PLACE : AURANGABAD.
DATE : 08.09.2022.

(V.D. DONGRE)
MEMBER (J)