

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD**

ORIGINAL APPLICATIONS 414 & 415 OF 2011

DISTRICT : DHULE

1) ORIGINAL APPLICATION NO 414 OF 2011

1. Shri Haribhau Aasaram Kolte,)
Pensioner, R/o: House no. 129,)
Raskar Nagar, Chitod Road,)
Dhule.)
2. Vijay Baburao Yadav,)
Occ ; Service as Dugdhashala)
Parichar, R/o: Plot no 82,)
Sudarshan Colony, Chakarbardi Rd))
Dhule, Dist-Dhule.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Secretary,)
Animal Husbandry, Fisheries and)
Dairy Development Department,)
Mantralaya, Mumbai.)

2. Regional Dairy Development Officer,)
 Nasik Divison, Trimbak Road,)
 Nasik.)
3. The General Manager,)
 Government Milk Scheme, Dhule,)
 Dist-Dhule.)
4. Salary Verification Squad,)
 O/o Assistant Director,)
 Assistant Directorate, Accounts)
 & Treasury, Nasik,)
 Collector Office Compound,)
 Nasik, Dist-Nasik.)...**Respondents**

2) ORIGINAL APPLICATION NO 415 OF 2011

Shri Vinod Babulal Pande,)
 Occ : service as Dairy Majur,)
 R/o: House No. 457, Plot no. 224,)
 Opp. Dr Siddique Railway Station Road,)
 Dhule, Dist-Dhule.)...**Applicant**

Versus

1. The State of Maharashtra)
 Through Secretary,)
 Animal Husbandry, Fisheries and)
 Dairy Development Department,)
 Mantralaya, Mumbai.)

2. Regional Dairy Development Officer,)
 - Nasik Divison, Trimbak Road,)
 - Nasik.)
3. The General Manager,)
 - Government Milk Scheme, Dhule,)
 - Dist-Dhule.)
4. Salary Verification Squad,)
 - O/o Assistant Director,)
 - Assistant Directorate, Accounts)
 - & Treasury, Nasik,)
 - Collector Office Compound,)
 - Nasik, Dist-Nasik.)...**Respondents**

Shri D.J Patil, holding for Shri N.B Suryavanshi, learned advocate for the Applicants.

Mrs Resha S. Deshmukh, learned Presenting Officer for the Respondents in O.A no 414/2011 & & Shri V.R Bhoomkar, learned Presenting Officer for the Respondents in O.A 415/2011.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri J.D Kulkarni (Member) (J)

DATE : 18.10.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri D.J Patil, holding for Shri N.B Suryavanshi, learned advocate for the Applicants and

Mrs Resha S. Deshmukh, learned Presenting Officer for the Respondents in O.A no 414/2011 & & Shri V.R Bhoomkar, learned Presenting Officer for the Respondents in O.A 415/2011.

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are identical.

3. Learned Counsel for the Applicants argued that the Applicants were appointed as Dairy Attendants (Group-D) on different dates. All of them were eligible to be granted Time Bound Promotion (T.B.P) in terms of G.R dated 8.6.1995, as they had completed 12 years of continuous and regular service on or before 1.10.1004. Accordingly, they were given benefit of Time Bound Promotion from 1.10.1994 in the pay scale of Rs. 1200-1800 by various orders issued in the year 2010. They were also given pay in the scale of Rs. 4000-6000 from 1.1.1996 in 5th Pay Commission. By order dated 26.5.2011 in both the Original Applications the orders granting pay in the scale of Rs. 1200-1800 was cancelled. Learned Counsel for the Applicants argued that this order is wrong. The excess payment made to the Applicants cannot be recovered. Learned Counsel for the Applicants further argued that the impugned orders both dated 26.5.2011, may be quashed and set aside and the Respondents may be directed not to make any recovery

from the Applicants on account of excess payment made to them.

4. Both the Learned Presenting Officers, argued as follows. It was argued that the Applicants were working in Group 'D' posts in the pay scale of Rs. 750-940 and on granting benefit of Time Bound Promotion, their pay was already fixed in the pay scale of Rs. 775-1650 from 1.10.1994 in terms of G.R dated 8.6.1995. They were given benefit of Time Bound Promotion second time w.e.f 1.10.1994 and their pay was fixed in the pay scale of Rs. 1200-1800. This was clearly a mistake as no employee can be given benefit of Time Bound Promotion twice from the same date. Learned Presenting Officer argued that both the impugned orders dated 26.5.2011 are valid and the Applicants are liable to refund the excess amount paid to them, as they are not eligible to get double benefit of Time Bound Promotion scheme from 1.10.1994.

5. It is seen that all the Applicants were purportedly given benefit of Time Bound Promotion by various orders issued by the Respondents in the year 2010. One such order dated 21.4.2010 in respect of the Applicant no. 2 in O.A no 414/2011 is at Exh. 'A' (page 11 of the Paper Book). This order clearly mentions that the Applicant no. 2 was working in the pay scale of Rs. 750-940 and was given pay scale of Rs. 775-1150

from 1.10.1994 by extending benefit of Time Bound Promotion. By order dated 26.2.2010, he was given pay scale of Rs. 1200-1800 from 1.1.1994. Evidently, the Applicants were given benefit of Time Bound Promotion in terms of G.R dated 8.6.1995 twice from 1.1.1994. In the Schedule to G.R dated 8.6.1995, a person working in the pay scale of Rs. 750-940 was eligible to get pay in the scale of Rs. 775-1150 only. The Applicants have relied on the following judgments, viz:-

- (i) Writ Petition no 7596/20108 in Aurangabad Bench of Bombay High Court dated 26.8.2009.

This judgment is regarding recovery of excess amount wrongly paid to the Petitioner. It was held that the Petitioner had admittedly discharged higher responsibility, and recovery was held not permissible. The Petitioner had not pressed the prayer that he be allowed to get his pension fixed on the basis of higher pay scale.

- (ii) Writ Petition no 3596/2009 dated 26.8.2009. Facts are similar to facts in W.P no 7596/2008.

- (iii) Writ Petition no 316/2010 dated 29.4.2010. In this case also, facts are more or less identical, as in the Writ Petitions mentioned above.

6. In all these Writ Petitions, the Petitioners on getting higher pay scales, were discharging higher responsibilities. In other words, they were given regular promotion wrongly. These cases are not of Time Bound Promotion, where there is no change in responsibilities. On that count, these judgments are not applicable in the present cases. However, Hon. Supreme Court in the case of **STATE OF PUNJAB & ORS etc Vs. RAFIQ MASHI (White Washer) etc. in CIVIL APPEAL no. 11527 of 2014** has held that no recovery is permissible from an employee if the excess payment as made without fraud and misrepresentation on the part of the employee.

7. In O.A no 415/2011, the Applicant has relied on the judgment of this Tribunal dated 29.9.2003 in O.A no 752/2001. In this case, the Applicant was working as 'Fitter' and he claimed that he should be granted the scale of Rs. 1200-1800 when given benefit of Time Bound Promotion, on the ground that other persons were given that pay scale. The order in O.A. No. 415/2011 is regarding 'helpers' working in various trades, who have technical qualifications. The present Applicants are simple dairy attendants (दुग्धशाळा परिचारक) and the aforesaid order is not applicable in their case. In any case, as held by Hon. Supreme Court in the case of **CHANDIGARH ADMINISTRATION Vs. JAGJIT SINGH : 1995 AIR SC 705**, we cannot order that the Applicants in these Original Applications be granted pay scales, which they

are clearly not entitled in terms of G.R dated 8.6.1995. Hon'ble Supreme Court has held that:-

“Generally speaking the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal and unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order.”

In the present case, it is evident that the Applicants are not entitled to get pay in the pay scale of Rs. 1200-1800 on being given the benefit of Time Bound Promotion in terms of G.R dated 8.6.1995 w.e.f 1.10.1994. We are, therefore, unable to give any such direction, as per law laid down by Hon. Supreme Court.

8. In the present case, there is no averment on the part of the Respondents that excess payment was made to the Applicant due to any fraud or misrepresentation on their part. As such, as per law laid down by Hon'ble Supreme Court in RAFIQ MASIH's case (supra), the Respondents cannot recover any excess payment made to the Applicants. However, the prayer to quash orders dated 26.5.2011 is not maintainable, except to the extent of recovery of the excess amount paid.

9. Having regard to the aforesaid facts and circumstances of the case, these Original Applications are partly allowed. Orders dated 26.5.2011 in both the Original Applications are held valid except regarding the excess payment made to the Applicants while granting them benefit of Time Bound Promotion second time in the pay scale of Rs. 1200-1800 w.e.f 1.10.1994. Such excess payment, if already made, cannot be recovered from the Applicants. These Original Applications are disposed of accordingly with no order as to costs.

(J.D Kulkarni)
Member (J)

(Rajiv Agarwal)
Vice-Chairman

Place : Aurangabad
Date : 18.10.2016
Dictation taken by : A.K. Nair.