

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 373 of 2017 (S.B.)**

Mangesh Madhaorao Joshi,  
Aged 55 years, Occ. Retired,  
R/o Sinchan Nagar Part II, Lohara, Yavatmal.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary, Irrigation Department,  
Mantralaya, Mumbai-32.
- 2) Executive Engineer,  
Yavatmal Irrigation Division.
- 3) Accountant General  
(Pension Branch Office),  
Civil Lines, Nagpur.

**Respondents.**

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**Shri A.D. Girdekar, S.S. Bhalerao, Advocates for the applicant.**  
**Shri H.K. Pande, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,**  
**Vice Chairman.**

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**Date of Reserving for Judgment : 12<sup>th</sup> September,2022.**

**Date of Pronouncement of Judgment : 29<sup>th</sup> September,2022.**

**JUDGMENT**

**(Delivered on this 29<sup>th</sup> day of September,2022)**

Heard Shri S.S. Bhalerao, learned counsel for applicant  
and Shri H.K. Pande, learned P.O. for respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed on the post of  
Technical Assistant in the office of Executive Engineer, Appar

Wardha, Dhamangaon on 28/04/1982. After completing four years of service, the respondent no.2 by its order dated 19/04/1986 converted the service of applicant on regular temporary establishment.

3. After completing 12 years' service, the respondent no.2 granted time bound promotion to the applicant from 01/10/1994 on the post of Junior Engineer (Civil Engineer Assistant) and fixed the pay of applicant. In the year 2006, the respondent no.2 granted second time bound promotion and fixed the pay of applicant accordingly.

4. The applicant came to be promoted on the post of Junior Engineer by order dated 13/04/2013. The applicant has taken voluntary retirement from service on 07/09/2016, when he was working on the post of Junior Engineer and pay of the applicant at the time of voluntary retirement from service was Rs.21180-4400-AGP Rs.25580.

5. The respondent no.2 forwarded the pension case of applicant to the respondent no.3. However, the respondent no.3 fails to finalise the pension case of the applicant as the initial 4 years service of applicant was counted for the fixation of pension. The applicant personally made enquiry to the office of respondent no.3, and it was informed that as per the letter dated 19/05/2014 issued by respondent no.1, the service of the applicant cannot be considered from the date of his initial appointment. It is submitted that respondent

no.1 by its letter dated 18/06/1998 itself clarified that the time bound promotion should be granted from the date of initial appointment. The respondent no.2 again forwarded the pension case of applicant to respondent no.3 after reducing the period of work of four years service of CRTE. The respondent no.3 finalised the pension case of applicant thereby reducing the pay of the applicant and also withhold the amount of gratuity of Rs.3,86,560/-.

6. It is submitted that there are several other employees who have worked on the daily wages prior to their appointment on CRTE, the respondents have not taken any action against them and also considered their service prior to their appointment on CRTE for time bond promotion and for granting pension.

7. It is submitted that in view of the Judgment of Hon'ble **Hon'ble Apex Court in case of State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014** in Civil Appeal No. 11527 of 2014 (Arising out of SLP(C) No. 11684 of 2012), the respondents cannot recover the amount from the applicant. At last prayed to quash and set aside the order of recovery of Rs.3,86,560/- issued by respondent no.3 by its letter dated 17/01/2017 and direct the respondents to fix the pay of applicant by considering the service from the initial date of appointment, i.e., from 28/04/1982.

8. Heard Shri H.K. Pande, learned P.O. for respondents. The O.A. is opposed by the respondents. The respondent no.2 submitted that the pension case of applicant was forwarded to the respondent no.3 and it is found by respondent no.3 that the promotions given to the applicant were illegal and therefore the respondent no.3 submitted that amount of Rs. 3,86,560/- is to be recovered from the applicant. Inadvertently while counting the period of promotion, initial date of appointment was considered. In fact, in view of the Govt. letter dated 19/05/2014, the date when the employee was converted into regular establishment from temporary establishment, the date of regular establishment should have been considered and therefore from that date, the time bound promotions should have been counted. But in the present case, it has not been done and the mistake is found by respondent no.3 while finalising the pension case. Therefore, the contention of the applicant that the action of respondents is illegal and improper is unsustainable. Therefore, the O.A. is liable to be dismissed.

9. The respondent no.3, i.e. Accountant General, Nagpur has submitted that during the scrutiny of pension case, it was found that as per the clarification of Government of Maharashtra vide letter dated 19/05/2014, the earlier temporary service of the applicant should not have been counted for the purpose of granting first time bound

promotion. Hence, the action taken by respondent no.3 is perfectly legal and correct, therefore, the O.A. is liable to be dismissed.

10. Heard learned counsel for applicant Shri S.S. Bhalerao. He has pointed out the decision of the Maharashtra Administrative Tribunal, Principal Bench, Mumbai in O.A.No.238/2016. The same issue was involved in the said O.A. The first time bound promotion was given as per the Government decision vide letter dated 18/03/1998. The recovery was initiated on the basis of the Government letter dated 19/05/2014.

11. The Maharashtra Administrative Tribunal, Principal Bench, Mumbai has recorded its finding that conscious decision was taken by the Government of Maharashtra by letter dated 18/06/1998, benefit given as per the letter dated 18/06/1998 cannot be withdrawn and therefore allowed the O.A. with direction to release the pension etc. as per the pay scale on the date of retirement. The said order in O.A. No. 238/2016 was challenged in the Review Application No. 21/2019 with connected matters. The Maharashtra Administrative Tribunal, Principal Bench, Mumbai has held that the first time bound promotion given to the applicants by taking into account of their services on the work charged establishment as per the Govt. G.R. dated 08/06/1995 was perfectly legal and correct. There was no any error. Therefore, the Review Application came to be dismissed.

12. The order of The Maharashtra Administrative Tribunal, Principal Bench, Mumbai was challenged before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court in Writ Petition No.3118/2021 has held that the first time bound promotion considering the service from the initial date of appointment is perfectly legal and correct. In para-4 of the Judgment, the Hon'ble Bombay High Court has held that the initial appointment in May,1982 was taken for the first time bound promotion was perfectly legal and correct in view of the conscious decision of the Government to extend the benefit of first time bound promotion considering the earlier period of service rendered by the respondent as a Technical Assistant. The said Writ Petition came to be dismissed holding that the Maharashtra Administrative Tribunal, Principal Bench, Mumbai has not committed any error in not reviewing its earlier Judgment.

13. The fact in the present matter is the same. The applicant was initially appointed as a Technical Assistant on 28/04/1982. He was taken on regular temporary establishment on 19/04/1986. Thereafter, he was promoted on the post of Junior Engineer (Civil Engineer Assistant) w.e.f. 01/10/1994. The first time bound promotion was given to the applicant on 01/10/1994 taking his initial service into account from 28/04/1982. The respondents have also granted second time bound promotion in the year 2006. The pension case was also

submitted to respondent no.3. The respondent no.3 raised objection in view of the letter dated 19/05/2014 stating that as per this letter the initial service on the post of Technical Assistant should not have been taken into consideration to grant first time bound promotion.

14. The respondent no.3 not taken into consideration, the letter issued by the Government dated 18/06/1998. The material portion of the letter dated 18/06/1998 (P-44) is reproduced as under –

“संदर्भाकित शासन पत्रान्वये, पाटबंधारे विभागातील स्थापत्य अभियांत्रिकी सहाय्यक संवर्गातील कर्मचा-यांना त्यांची तांत्रिक सहाय्यक पदावरील पदस्थापना झाल्याच्या दिनांकापासून १२ वर्षे सेवा झाल्यानंतर कनिष्ठ अभियंताची वेतनश्रेणी लागू करण्यास शासन मान्यता देण्यात येत असल्याचे कळविण्यात आले आहे. तथापी, ज्या कर्मचा-यांची नेमणूक कार्यव्ययी आस्थापनेवर तांत्रिक सहाय्यक म्हणून झाली आहे. अशा कर्मचा-यांची १२ वर्षांची सेवा त्यांच्या कार्यव्ययी आस्थापनेवरील नियुक्तीच्या दिनांकापासून धरण्यात यावी किंवा कसे असा मुद्दा उपस्थित झाला होता त्या अनुषंगाने असे कळविण्यात येते की, स्थापत्य अभियांत्रिकी सहाय्यक संवर्गातील कर्मचा-यांच्या आस्थापनेचा विचार न करता त्यांची तांत्रिक सहाय्यक / मिस्त्री/कारकून/या पदावरील पदस्थापनेच्या दिनांकापासून १२ वर्षे सेवा झाल्यानंतर कालबद्ध पदोन्नती योजनेतर्गत कनिष्ठ अभियंताची वेतनश्रेणी लागू करण्यास शासन मान्यता देण्यात येत आहे.”

15. The letter dated 18/06/1998 is very clear. As per this letter, the Government has taken conscious decision to grant first time bound promotion from the date of their initial appointment. Therefore granting first time bound promotion to the applicant from his initial appointment on 28/04/1982 is perfectly legal and correct. The said issue is finally decided by the Maharashtra Administrative Tribunal, Principal Bench, Mumbai. The said decision was confirmed by the Hon'ble Bombay High Court in Writ Petition No. 3118/2021. Hence,

the recovery initiated by the respondents is not legal and correct. Moreover the applicant was not at fault, he has not committed any fraudulent act to get more pay. Hence, in view of the Judgment of Hon'ble Apex Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** decided on 18 December, 2014 in Civil Appeal No. 11527 OF 2014 (Arising out of SLP(C) No. 11684 of 2012), the recovery is not permissible. The Hon'ble Apex Court has given guidelines in para-12 which is reproduced as under –

*“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, summarise 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 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 employee, 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.”*

16. The applicant is a retired employee. The recovery is made in respect of the excess payment for a period in excess of five years. Therefore, the recovery initiated by the respondents is not legal and



correct. The first time bound promotion was correctly given to the applicant as per the Government letter / decision dated 18/06/1998.

Therefore, the following order is passed –

**ORDER**

- (i) The O.A. is allowed.
- (ii) The impugned order / letter dated 17/01/2017 issued by respondent no.3 for the recovery of Rs. 3,86,560/- is hereby quashed and set aside.
- (iii) The respondents are directed to fix the pay of applicant by considering his service from the date of initial date of appointment i.e. from 28/04/1982.
- (iv) The respondents are directed to pay pension and other service benefits by considering his date of appointment from 28/04/1982.
- (v) The respondents are directed to pay the amount of arrears to the applicant, if any.
- (vi) No order as to costs.

**Dated** :- 29/09/2022.

dnk.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 29/09/2022.

Uploaded on : 29/09/2022.

ok