

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**AURANGABAD BENCH, AURANGABAD.**

**ORIGINAL APPLICATION NO.579/2016.**

**(S.B.)**

1. Dnyaneshwar Devidas Gavad,  
Aged about 35 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Beed.
2. Somnath Asaram Nande,  
Aged about 35 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Beed.
3. Sanjay Bhaurao Magar,  
Aged about 35 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Beed.
4. Kantilal Eknathrao Kshirsagar,  
Aged about 50 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Beed.
5. Vijay Raosaheb Girme,  
Aged about 42 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Beed.
6. Ramrao Limbaji Bangar,  
Aged about 42 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Ratnagiri.

7. Prashant Tukaram Khandekar,  
Aged about 40 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Nandurbar.
8. Sanjay Bhilaji Khairnar,  
Aged about 40 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Nandurbar.
9. Manish Prabhakar Bavskar,  
Aged about 36 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Jalna.
10. Anil Baburao Gupta.  
Aged about 34 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Jalna.
11. Bhaskar B. Chavan.  
Aged about 45 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Jalna.
12. Jalba Jaywant Chandanshivey,  
Aged about 40 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Osmanabad.
13. R.M. Kadare.  
Aged about 37 years,  
Occ- Service,  
R/o Local Fund (Audit) office,  
Osmanabad.

**Applicants.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Finance,  
Mantralaya, Mumbai-400 032.
2. The Director,  
Local Fund (Audit) Department,  
Maharashtra State, Mumbai.
3. The Joint Director,  
Local Fund Accounts (Audit),  
Aurangabad.
4. The Assistant Director,  
Local Fund (Audit, Beed.
5. The Assistant Director,  
Local Fund (Audit), Osmanabad.
6. The Assistant Director,  
Local Fund (Audit), Nandurbar.
7. The Assistant Director,  
Local Fund (Audit), Jalna.

**Respondents**

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Shri S.D. Dhongde, Ld. Advocate for the applicants.  
Smt. Sanjeevani Ghate, Ld. P.O. for the respondents.

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**Coram:- Shri J.D. Kulkarni, Vice-Chairman (J)**

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**JUDGMENT**

(Delivered on this 7<sup>th</sup> day of April, 2018.)

Heard Shri S.D. Dhongde, the learned counsel for the applicants and Smt. Sanjeevani Ghate, the learned P.O. for the respondents.

2. The applicants in this O.A. are working as Junior Auditors in the Local Fund (Audit) office of the respondents at various district places. As per the Fifth Pay Commission, they were drawing the salary in the pay scale of Rs. 4000-6000 and as per Sixth Pay Commission, they were drawing the salary in the pay scale of Rs. 7440/- plus grade pay of Rs. 2800/-.

3. The Government issued a Notification in the year 2009 whereby employees recruited on the post of Auditor were entitled to get the salary in the pay band of Rs. 8560/- plus grade pay of Rs.2800/-, thus totalling to Rs. 11,360/-. One Mr. Ugalmugle, an employee who joined the service in April 2005 i.e. after the applicants was getting salary in the higher scale than the applicants, though the applicants were senior to him. The applicants, therefore, made a representation to the Director of Local Fund (Audit) (M.S.), Mumbai and the said Director vide order dated 13.8.2013 directed that the applicants' pay shall be raised upto the level of Mr. Ugalmugle. Accordingly, the order was passed on 18.11.2013 and the applicants were also paid the arrears.

4. The Government of Maharashtra in its Finance Department has issued a Resolution on 9.2.2016 and clarified the pay fixation of the employees. In the said G.R. also, it has been

confirmed that if an employee is junior in service and gets more salary than his senior, the pay of seniors be brought up to the level of pay scale of newly recruited employee. However, clause 3 of the said G.R. prescribes that pay fixation of employees who are entitled to get rise in the pay between 1.1.2006 to 31.1.2016 be done raising their salary. But the benefit of increased pay shall be paid w.e.f. 1.2.2016. There is nothing in the said G.R. that those employees who have already been paid raised salary, will be liable to refund arrears etc.

5. Irrespective of the position as referred to above, the Joint Director of Local Fund (Audit), Aurangabad issued an order No.276 on 11.3.2016, directing recovery from the salary of employees who have been paid benefits during the period from 4.8.2006 till 31.1.2016. It is stated that the G.R. dated 9.2.2016 cannot be given retrospective effect from August 2006 and, therefore, the applicants have filed this O.A. The applicants have claimed that the impugned order dated 31<sup>st</sup> May 2017 (Annexure A-3), directing recovery of the amount from those employees, who got the benefit of raised salary in between 4.8.2006 to 31.1.2016 is illegal and, therefore, the same be quashed and set aside and the respondents be prohibited from making recovery from the salary of

the applicants pursuant to the G.R. dated 9.2.2016 and the respondents be directed to refund the amount, if recovered from the applicants.

6. The respondents have filed reply affidavit. The respondents admitted that the grievance of the applicants that they were getting less pay than their juniors, was sent to the Director of Local Fund (Audit), Aurangabad and the same was rightly addressed. It is stated that the Government directed to take action according to Rule 7 (1), Note 5 and 7 of the Government Notification dated 22.4.2009 which reads as under:-

“So Govt. directed to do necessary action according to Rule 7 (1) note 5 and 7 of Govt. Notification dated 22.4.2009.

**Note: 5-** Where in the fixation of pay under sub-rule (1), the pay of a Govt. servant, who in the existing scale was drawing immediately before 1<sup>st</sup> day of January 2006 more pay than another Govt. servant junior to him in the same cadre, gets fixed in the revised pay band at a stage lower than that of such junior.

**Note: 7-** In the case where a senior Govt. servant promoted to a higher post before 1<sup>st</sup> day of January 2006 draws less pay in the revised pay structure than his junior who is promoted to the higher post on or after 1<sup>st</sup> day of January 2006, the pay band of the senior Govt.

servant should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Govt. servant subject to the fulfillment of conditions, namely:-

- (a) Both the junior and the senior Govt. servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
  - (b) The pre-revised scale of pay and the pay band grade pay in the revised pay structure of the lower and higher posts in which they are entitled to draw pay should be identical.
  - (c) The senior Govt. servant at the time promoting should have been drawing equal or more pay than the junior.
  - (d) The anomaly should be directly as a result of the provisions of Rule 11 of the M.C.S. (Pay) Rules, 1981 or any other rule or other regulating pay fixation on such promotion in the revised pay structure. If even in the lower post, the junior Govt. servant was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provision of this note need not be invoked to step up the pay of the senior Govt. servant.
- (2) Subject to the provisions of rule 5, if the pay as fixed in the officiating post under sub-rule (1) is lower

than the pay fixed in the substantive post, the former shall be fixed at the same stage as the substantive pay.

But, this rule is not applicable to direct recruited employee. It is only applicable to such employees who are promoted on or after 1.1.2006.

As the pay fixation and pay parity are the subject in purview of Maharashtra Government took the decision of removing pay parity of such employees vide notification dated 9.2.2016. In the notification, Govt. has made it clear that as per the Govt. notification dated 22.4.2009, there were different criterion for fixation of pay of the employees employed before 1.1.2006 and those employed after 1.1.2006. It was observed that one employed before 1.1.2006 is drawing less salary than the one employed after 1.1.2006, therefore, it was decided that,

"कनिष्ठ कर्मचारी ज्या तारखेपासून जेष्ठ कर्मचाऱ्यांपेक्षा जास्त वेतन घेतो त्या तारखेपासून जेष्ठ कर्मचाऱ्यांचे वेतनब्यांडमधील वेतन कनिष्ठ कर्मचाऱ्यांच्या वेतनब्यांडमधील वेतनाइतके वाढविण्यात यावे, परंतु दि. १.१.२००६ ते ३१.१.२०१६ या कालावधीत जे जेष्ठ कर्मचारी वेतन वाढवून देण्यास पात्र आहेत, त्यांची संबंधित दिनांकापासून वेतन वाढवून वेतननिश्चिती करण्यात यावी मात्र वाढीव वेतनाचे प्रत्यक्ष लाभ दि. १.२.२०१६ पासून देण्यात यावेत. त्यापूर्वीच्या काल्पनिक वेतननिश्चितीची थकबाकी अनुज्ञेय राहणार नाही."

It is clearly mentioned in the Govt. notification that all those senior employees (employed before 1.1.2006), who are drawing less pay than the



junior who were employed after 1.1.2006 should be brought at par with the junior employees, but the pay fixation should be done in notional manner for the period 1.1.2006 to 31.1.2016. As the pay fixation is notional till 31.1.2016, therefore, such employees who are affected due to pay parity, will be entitled for the benefit after 1.2.2016 that is they are not entitled for any arrears between 1.1.2006 to 31.1.2016.”

7. It is stated by the respondents that the employees have given undertaking at the time of fixation of pay vide Sixth Pay Commission in the year 2009 (Annexure R-5) and also in 2013 at time of passing of the order of pay parity that on account of wrong pay fixation, if they received undue benefit, the same would be recovered from their pay. The respondents, therefore, justified the order.

8. The learned counsel for the applicants submits that this is not a case of wrong pay fixation. On the contrary, the applicants were getting less salary than their juniors and, therefore, their representation was allowed and their pay was raised to that of their juniors who were getting more pay than the applicants. The learned counsel for the applicants placed reliance on the order raising their

pay which is at Annexure A-1 at page Nos. 11 and 12 of the O.A. In the said order, it has been stated as under:-

“महाराष्ट्र शासन वित्त विभाग शासन अधिसूचना दि. २२.४.२००९ अन्वये महाराष्ट्र नागरी सेवा (सुधारित वेतन) नियम २००९ दि. १.१.२००६ पासून लागू करण्यात आले असून कनिष्ठ लेखापरीक्षक संवर्गातील कर्मचाऱ्यांचे रु. ५२००-२०२०० ग्रेड पे रु. २८०० या वेतनश्रेणीत वेतन निश्चिती करण्यात आली होती. तथापि श्री. के. डी. उगलमुगले, कनिष्ठ लेखापरीक्षक हे दि. ४.८.२००६ रोजी कनिष्ठ लेखापरीक्षक संवर्गात रुजू झालेले असून शासन अधिसूचनेतील जोडपत्र ३ अन्वये त्यांची वेतन निश्चिती उक्त वेतनश्रेणीत रु. ८५६० +२८०० (ग्रेड पे ) प्रमाणे करण्यात आल्याने त्यांच्यापेक्षा सेवाज्येष्ठ कर्मचार्यांनी श्री. के. डी. उगलमुगले, कनिष्ठ लेखापरीक्षक या कनिष्ठ कर्मचाऱ्यां इतके वेतन उंचावून मिळणेबाबत विनंती केली होती. त्याबाबत वाचा क्र. २, ६ व ७ नुसार मा. संचालक, स्थानिक निधी लेखापरीक्षा, महाराष्ट्र राज्य, मुंबई यांचेकडे मार्गदर्शन मागविण्यात आल्यानुसार वाचा क्र. ८ अन्वये वरिष्ठ कर्मचारी जरी दि. १.१.२००६ पूर्वी किंवा नंतर शासकीय सेवेत असेल तर त्या कर्मचाऱ्यांचे वेतन हे कनिष्ठ कर्मचाऱ्यांच्या वेतनाइतके वेतन निश्चित करण्याचे आदेशित करण्यात आल्यानुसार या द्वारे कर्मचार्यांचे तपशिलात दर्शविल्याप्रमाणे वेतन निश्चिती करण्यास या आदेशाद्वारे मंजूरी प्रदान करण्यात येत आहे.”

9. In view of the aforesaid order, pay of the applicants was fixed and even arrears were paid to the applicants. It is material to note that the order raising pay of the applicants has been passed on 18.11.2013, whereas the impugned order of recovery has been passed on 11.3.2016 (Annexure A-3) and the said order is

based on the G.R. dated 9.2.2016. The said G.R. is placed on record at page Nos. 13 to 15 (both inclusive). It is material to note that the Government agreed with the fact that those employees who were getting less salary than their juniors, who are directly appointed, were entitled to raise their salary upto the level of their juniors, subject to certain conditions as mentioned in Clause 2 of the G.R. Admittedly, the applicants fulfilled all these conditions. In fact, the applicants' cases are not at all covered by this G.R. dated 9.2.2016 and in fact their pay was already raised vide order dated 18.11.2013. The alleged recovery vide impugned is because of condition No.3 of the G.R. dated 9.2.2016 and the said condition reads as under:-

“दिनांक १ जानेवारी २००६ ते ३१ जानेवारी २०१६ या कालावधीत जे जेष्ठ कर्मचारी वेतन वाढवून देण्यास पात्र आहेत, त्यांची संबंधित दिनांकापासून वेतन वाढवून वेतननिस्चीती करण्यात यावी. मात्र वाढीव वेतनाचे प्रत्यक्ष लाभ दि. १.२.२०१६ पासून देण्यात यावेत. त्यापूर्वीच्या काल्पनिक वेतननिस्चीतीची थकबाकी अनुज्ञेय राहणार नाही.

या आदेशांच्या दिनांकापर्यंत सेवानिवृत्त झालेल्या पात्र कर्मचाऱ्यांच्या बाबतीतदेखील वरीलप्रमाणे कार्यवाही करून केवळ निवृत्तीवेतन सुधारित करण्यात यावे. सुधारित निवृत्तीवेतनाचे प्रत्यक्ष लाभ दि. १.२.२०१६ पासून देण्यात यावेत. त्यापूर्वीची थकबाकी अनुज्ञेय राहणार नाही. तसेच सेवानिवृत्तीवेतन सुधारित केले तरी, त्या अनुषंगाने सेवानिवृत्तीवेतनविषयक इतर लाभ सुधारित करण्यात येऊ नयेत.”

10. Plain reading of the aforesaid condition No.3 of the G.R. dated 9.2.2016, in fact justifies the order raising salary of the applicants dated 18.11.2013. The question is only about retrospective operation of the G.R. dated 9.2.2016. In the entire G.R., it is nowhere stated that the arrears paid to those employees, whose pay have been raised, shall be recovered. At the most, it can be said that those employees, who are legally entitled to get raised salary equivalent to their juniors, but did not get the same till 9.2.2016, their salary or arrears thereof, such employees will be entitled to notional pay fixation and they will not be entitled to arrears. But there is nothing in the G.R. to show that the Govt. has taken any decision to recover the amount of arrears paid to such employees prior to issuance of the G.R. dated 9.2.2016. As already stated, the applicants have received arrears of difference in view of the order dated 18.11.2013. The said order has not yet been cancelled by the Govt. and, therefore, in such circumstances, action of recovery vide impugned order dated 11.3.2016 (Annexure A-3) cannot be said to be legal and propr.

11. The applicants have given undertaking that any excess amount that may be found to have been paid to them as a result of incorrect fixation of pay, be deducted from their salary.

There is nothing on record to show that the pay fixation of the applicants vide order dated 18.11.2013 was wrong. On the contrary, said action has been ratified vide G.R. dated 9.2.2016. In view of the fact that the applicants were already paid arrears as per order dated 18.11.2013 and there is no mention of such orders being declared null and void by the Government, action of recovery with retrospective effect is not tenable, particularly when the applicants have already been paid arrears vide order dated 18.11.2013.

12. In view of discussion in foregoing paras, I am satisfied that the impugned order of recovery is illegal. Hence, the following order:-

**ORDER**

- (i) The O.A. is allowed in terms of prayer Clause 9
- (b) (C).
- (ii) No order as to costs.

(J.D.Kulkarni)  
Vice-Chairman(J)

