

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 986 / 2017 (S.B.)**

1. Suresh S/o Vitthal Joshi,
Aged about 69 Yrs., Occupation : Retired,
R/o C/o S.K.Sonar, New Bhartiya Colony,
Chhatri Talao Road, Dastur Nagar,
Amravati.
2. Bhaskar S/o Shankarrao Kokate,
Aged 70 years, Occupation-Retired,
R/o Narendra Nagar, Wardha
Road, Ring Road, Nagpur.
3. Pralhad S/o Mahadeo Kamble,
Aged 70 yrs, Occupation-Retired,
R/o C/o Shriram Govindrao Dharme,
Plot No. 7, Eknath Vihar,
Shankar Nagar, Rajapeth, Amravati.
4. Janardhan S/o Laxmanrao Lande,
Aged 69 yrs., Occupation-Retired,
R/o Plot No. 5, Eknath Vihar,
Shankar Nagar, Rajapeth, Amravati.
5. Navneetlal S/o Narayandas Malviya,
Aged 69 yrs., Occupation-Retired,
R/o Resident of 99, Farmland,
Dev Ashish Society, Near Dagdi Park,
Ramdaspath, Nagpur.
6. Ashok S/o Dinkar Pawar,
Aged 70 yrs., Occupation-Retired,
R/o C/o P.S., Kharasane. 180. Shri Nagar
Opposite Narendra Nagar, Ring Road,
Nagpur.
7. Raosaheb S/o Bhau Patil, Aged 70 Yrs.,
Occupation-Retired, R/o C/o Yashwant Gujar, Punyai,
Rathi Nagar, Amravati.

8. Dasaram S/o Govindji Sawarbandhe,
Aged about 69 yrs., Occupation-Retired,
R/o 6/A, Deo Ashish 99, Farmland,
Ramdeshpeth, Nagpur.
9. Kashinath S/o Appayya Shintre,
Aged 69 yrs., Occupation-Retired,
R/o C/o B.B.Gaiki, 'Lilai',
Near Akashganga Appartment,
Behind Varhad S.T. Scan Centre,
Shanstri Nagar, Akola.
10. Ashok S/o Tukaram Sawashe,
Aged about 70 yrs., Occupation-Retired,
R/o C/o M.C.Pawar, Plot No. 83, Saisheela Appartment,
Nagar Vikas Society, New Manish Nagar,
Railway Gate, Somalwada, Nagpur.
11. Anand S/o Sadashivrao Tayade,
Aged 69 yrs., Occupation-Retired,
R/o 'Yash', 43, Bhumiputra Colony,
Old bye pass road, Amravati.

Applicants.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Medical Education & Drugs Department,
Mantralaya, Mumbai- 400 032,
- 2) The Commissioner,
Food and Medical/ Drug Administration,
Maharashtra State, Bandra Kurla Complex,
Mumbai-51.

Respondents

Shri A.D.Dangore, the Id. Advocate for the applicant.

Shri V.A.Kulkarni, the Id. P.O. for the respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.

JUDGMENT**PER : VICE CHAIRMAN****Judgment is reserved on 29th July 2019.****Judgment is pronounced on 03rd January, 2020.**

Heard Shri A.D.Dangore, Id. counsel for the applicant and Shri V.A.Kulkarni, Id. P.O. for the respondents.

2. Facts of the case:-

1972-73:- The applicants were working with the respondents as Food Inspector and retired as such on completion of their age of superannuation. The post on which they were appointed is of Food Inspector. The next promotional post is 'Food Supervisor'. However, this post came to be abolished by the State Government and the same was upgraded to "Assistant Commissioner of Food". The same carries different pay and other benefits, being upgraded and promotional post to the post of Food Inspector.

That, applicants being in government service with the respondents, were entitled to be promoted to the said post. However, in absence of the number of posts, they were not promoted though they have completed more than 12 years of service in one cadre. The Government of Maharashtra has formulated a policy wherein due to stagnation of post, the employee should not be made to suffer and this scheme is named as Assured Career Progression Scheme. Under this scheme, for want of required number of post, the employee

though could not be promoted to the said post, but can be given the benefit of higher pay scale of superior post, as per Assured Career Progression Scheme.

The applicants have accordingly completed their required number of service on one post i.e. Food Inspector for 12 years prior to the year 1984, however, they were given the benefits of the aforesaid time bound pay scheme in the year 1994 only.

All the applicants have completed more than 33 years of service with the respondent Department, and thus are entitled to the benefits to be conferred to the said post under the aforesaid scheme.

On 09.12.16, the applicants learnt that the respondent no.2 was preparing a list of employees similarly placed with them for conferring the benefits of the second time bound scale. The applicants thus were hopeful that they would be placed accordingly in the said list, since they have completed more than 24 years of service. However, when this list is published by the respondent no.2, shockingly and to the utter surprise of the applicants, their names did not figure in the said list.

In Nov.17, Thereafter another list is prepared by the respondents, showing eligible employees for getting 12 years service benefits. The names of the applicants are also not included in the said list since they were retired prior to the cut of date i.e. 01.10.2006. The aforesaid resolution is against

the public policy and discriminatory in nature as the employees who are retired after 01.10.2006 till 2010 are giving benefits of two time bound promotional pay scale as per the direction of **Hon'ble High Court** and, therefore, the applicants though have completed 33 years of service are denied the 2nd time bound promotional pay scale by adopting the cut of date 01.10.2006. Aggrieved with this situation, the applicants have approached to this Tribunal.

3. In Reply the Id. P.O. mainly relied on the below paras:-

3. The respondents nos.1 and 2 are most respectfully and humbly submitting their Preliminarily Objection in respect of the prayers made in the original application filed by the applicant as follows: -

(i). The applicants have prayed for hold and declared that the applicants are entitled to the benefit of 2nd time bound pay scale on completion of 24 years of service on one post from the date of their joining in the respondents department and accordingly direct the respondents to grant the benefits thereof in their favour and accordingly pay all arrears and fix the pension and release all the benefits and quash and set aside the condition imposed in the Government Resolution dated 09.12.2016 so far it relates to implementing the scheme laying down cut of date i.e. 01.10.20006 if fixed by the Finance Department . It is submitted that the prayers had made by the applicants in the nature of directions to the State Government, much less the Legislature to legislator or take a policy decision in respect of the particular subject, in a particular direction. It is further submitted that the reliefs claiming the applicants are purely an Act of Government and which is within the domain of the Government exclusively and the applicants does not have enforceable rights to make such prayers. Hence, the respondents are praying for dismissal of the present original application. The Government is entitled to make pragmatic adjustments and policy decisions, which may be necessary or called for under the prevalent peculiar circumstances. It is settled law that the Court or Tribunal may not strike down a policy decision taken by the Government merely because it feels that another decision would have been more fair or wise, scientific or logical. The principle of reasonableness and non-

arbitrariness in governmental action is the core of our constitutional scheme and structure. The fixation of pay and determination of parity is the function of Executive, Financial capacity of Government and priority given to different types of posts and employees, under prevailing policies of Government are also relevant factors, Court should not interfere with administration decision pertaining to pay fixation and pay parity. In view of the above the original application filed by the applicants needs to be rejected.

9. It is submitted that the applicants enclosed with the present application the Chart shows the details of each applicant Date of Appointment and Date of Retirement. The respondents respectfully submit that the date of Retirement mentioned in this Chart of the applicant no.1 viz. Shri. Suresh Vithal Joshi is intentionally mentioned wrong, and thereby mis-pleaded and deceived to the Hon'ble Court from the date of applicant no.1 retirement date. The actual date of retirement of the applicant no.1 is 17.04.2006 and not 30-04-2007. The applicant no.1 is voluntarily retired on 17.04.2006. To support this, the copy of the letter issued by the Account Officer of Indian Audit and Accounts Department, Office of the Principal Accountant General, Maharashtra, Mumbai dated 15.12.2011 2011 is annexed as **Annexure-R-IV**. Again further to adduce additional documentary evidence to this submission of the respondents, the pages of service book of the applicant no.1, Page Nos. 1 and 31, are annexed as **Annexure-R-V**. The actual date of retirement of the applicant no.1 is 17.04.2006, the concerned pages of his Service Book Page Nos. 1 and 31, wherein it is specifically mentioned that;

Ikkhy oruok-hpk fnukd o oru cmm@ oruJskh e/khy oru vkf.k xll oru fn- 01-07-2006	fn-17-04-2016 jksth ldkfuorR ¼ LoPNkl ddkfuorR½
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Thus, the applicants have not come with clean hands before the Hon'ble Court, and on a this alone ground, the present application needs to be rejected. After perusal of Annexure A-1; filed by the applicants wherein shown details of dates of appointments and dates of retirements of all remaining applicants i.e. applicants No.2 to 11 founds retired prior to 01.10.2006, and hence, they are not eligible and entitled to achieve the benefits of second Assured Career Progression Scheme, as sought reliefs in the present original application.

10. It is submitted that for implementation of the second Assured Career Progression Scheme in the Food Drugs Department took place, accordingly the

respondent no.2 prepared First list of employees for conferring the benefits of the second time bound scale, wherein the names of these applicants were excluded because of the cut off date given in the Government Resolution dated 09.12.2016. Likewise second list was prepared in the month of November, 2017 of the employees, who are eligible as per the provisions and terms and conditions mentioned in the above Government Resolutions and Circulars. As these applicants were retired prior to 01.10.2006 no question arises to consider their respective plea, as they were not entitled to the said benefit because of the cut-off date.

11. *It is submitted that the applicants themselves admit that all the applicants had retired prior to 01.10.2006 before the cut off date. The respondent no.2 while preparing both lists for giving benefits of 2nd phase of Assured Career Progression Scheme observed all criteria mentioned in the above Government Resolutions and Circulars. As these applicants are not eligible to achieve benefits of 2nd the second time bound scale scheme, their names were not came/mentioned in the both lists prepared by the respondent no.2 being all these applicants had retired prior to 01.10.2006 before the cut-off date. It is submitted that there cannot be a direction to the Government to enact on a particular think in a particular manner. It is the settled law that the scope of judicial review in the matter of policy decision of the State Government or in the nature of Government/Legislatures policy is minimal. In view of the above the present original application filed by the applicants needs to be rejects.*

12. *It is submitted that the contentions raised herein are totally denied by the respondents though they had joined the services in the year 1972, as the aim of the bound scale Scheme, is to provide benefits to the employees who have not received promotions, being unavailability of the upgrade posts, the other contentions of the applicant is respect of scheme pertains to the Finance Department, hence no comments are offered from the respondents nos.1 and 2.*

4. The Id. Counsel for the applicant has filed following chart showing date of appointment and date of retirement of the applicants, which is reproduced below:-

CHART

(Showing the date of appointment and date of retirement of the applicants)

Sr. No.	Name	Date of Appointment	Date of Retirement
1	Suresh Vitthal Joshi	01.12.1972	30.04.2007
2	Bhaskar Shankarrao Kokate	01.12.1972	31.05.2006
3	Pralhad Mahadeo Kamble	01.12.1972	30.05.2005
4	Janardhan Laxmanrao Lande	01.03.1973	31.07.2006
5	Navneetlal Narayandas Malviya	01.12.1972	31.10.2005
6	Ashok Dinkar Pawar	01.12.1972	31.01.2005
7	Raosaheb Bhau Patil	01.12.1972	31.05.2006
8	Dasaram Govindji Sawarbandhe	01.03.1973	31.08.2005
9	Kashinath Appayya Shintre	01.12.1972	05.06.2006
10	Ashok Tukaram Sawashe	01.12.1972	31.12.2005
11	Anand Sadashivrao Tayade	01.12.1972	31.05.2006

5. In reply para no. 13 respondents have contended that retirement date of applicant no. 1 is 17.04.2006 and not 30.04.2007.

6. The G.R. dated 09/12/2016 (Annexure-A-3, P.B., Pg. No. 22) in which references have been given of G.R. dated 01/04/2010,

05/07/2010 and 01/07/2011 again in G.R. dated 01/04/2010 (Annexure-A-5, P.B., Pg. No. 28) G.R. dated 08/06/1995 and G.R. dated 20/07/2001 have been mentioned at the top. So, it is crystal clear that G.R. dated 09/12/2016 has considered all previous G.Rs. right from 08/06/1995 till date. In view of this following orders:-

ORDER

1. The respondents are directed to decide the representations of the applicants **within three months** from the date of this order as per the provisions of G.R. dated 09/12/2016.
2. With the above direction, O.A. is disposed of with no order as to costs.

**(Shri Shree Bhagwan)
Vice Chairman**

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 03/01/2020.
and pronounced on

Uploaded on : 04/01/2020.