

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.695 OF 2021**

**DISTRICT : KOLHAPUR  
SUBJECT : TIME BOUND  
PROMOTION**

Shri Rajendrakumar Sadashiv Patil )  
Age:- 59 yrs, Occ. Junior Engineer (Retired) )  
O/o. Executive Engineer, Mhaisal Pump House, )  
Division No.2, Sangli. )  
R/at 3/699, Godbole Wada, Zhenda Chowk, )  
Gujari Peth, Ichalkaranji, Tal. Hatkanangale, )  
Dist. Kolhapur 416 115. )... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through the Principal Secretary, )  
Water Resources Department, )  
Mantralaya, Mumbai-32. )
- 2) The Superintending Engineer, )  
Sangli Irrigation Circle, Sangli. )
- 3) The Executive Engineer, Mhaisal Pump )  
House, Division No.2, Waranali, Sangli. )
- 4) Accountant General (PR-7), 2<sup>nd</sup> floor, )  
Prathistha Bhawan, M.K. Road, Churchgate, )  
Mumbai 400 020. )... **Respondents**

**Shri Uday V. Bhosle, learned Advocate for the Applicant.**

**Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.**

**CORAM : A.P. Kurhekar, Member (J).**

**DATE : 12.04.2022.**

### JUDGMENT

1. The Applicant has challenged order of re-fixation of pay as well as recovery order dated 15.10.2021 whereby sum of Rs.10,74,139/- (Rupees Ten Lakhs Seventy Four Thousand and One Hundred and Thirty Nine Only) are sought to be recovered from the Applicant after his retirement.

2. The Applicant joined the service as Technical Assistant on work charged establishment on 28.06.1982 thereafter he was absorbed as Civil Engineering Assistant on 23.08.1989. He was given benefit of I & II Time Bound Promotion considering his joining on 28.06.1982 as Technical Assistant. Accordingly he availed benefits of Time Bound Promotion till his retirement. He stands retired on 30.06.2020 on attaining age of superannuation. It is only after retirement, Respondents revised pay scale and downgraded his pay as well as pension on the ground that benefits of I & II Time Bound Promotion was wrongly granted considering as date of Appointment as Technical Assistant. As such, after retirement the Applicant's pay was revised and recovery of Rs.10,74,139/- (Rupees Ten Lakhs Seventy Four Thousand and One Hundred and Thirty Nine Only) is sought from retiral benefits by order dated 15.10.2021. The Applicant has therefore filed this O.A. challenging order of re-fixation of pay as well as recovery of Rs. Rs.10,74,139/- (Rupees Ten Lakhs Seventy Four Thousand and One Hundred and Thirty Nine Only).

3. Today, matter is taken up for Final Hearing and at very outset Shri U.V. Bhosale, learned Advocate stated that his claim is totally based on decision rendered by this Tribunal in **O.A. No.238/2016, Shri Madhukar A. Patil v/s. The State of Maharashtra & 02 Ors.** decided on 25.06.2019 and confirmed by Hon'ble High Court by order dated 09.09.2021 passed in Writ Petition No.3118 of 2021. In that case also the Applicant therein was appointed as Technical Assistant on work charged establishment and later he was absorbed on the post of Civil

Engineering Assistant. However, benefits of Time Bound Promotion were given considering his services on work charged establishment. After retirement pay was revised and recovery was sought which was challenged before this Tribunal. O.A. was allowed thereby quashing impugned order of re-fixation of pay as well as recovery and the order of Tribunal has been maintained by Hon'ble High Court.

4. However, learned P.O. pointed out that the Government had preferred **Civil Appeal No.1985 of 2022, The State of Maharashtra & Ors. v/s. Madhukar A. Patil and Anr.** before Hon'ble Supreme Court and the impugned orders are set aside. Hon'ble Supreme Court held that the services rendered by employee as Technical Assistant on work charged establishment basis could not have been considered for the benefit of Time Bound Promotion. Para 5 & 6 of the Judgment of Hon'ble Supreme Court are as under:-

*“5. However, at the same time, as the grant of first TBP considering his initial period of appointment of 1982 was not due to any misrepresentation by the contesting respondent 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, we are of the opinion that 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 TBP from the year 1989, i.e., from the date of his absorption as Civil Engineering Assistant.*

*6. In view of the above and for the reasons stated above, the present appeal succeeds in part. The impugned judgment and order passed by the High Court as well as that of the Tribunal quashing and setting aside orders dated 6.10.2015 and 21.11.2015 down-grading the pay scale and pension of the contesting respondent are hereby quashed and set aside. It is observed and held that the contesting respondent shall be entitled to the first TBP on completion of twelve years from the year 1989, i.e., from the date on which he was absorbed on the post of Civil Engineering Assistant and his pay scale and pension are to be revised accordingly. However, it is*

*observed and directed that on re-fixation of his pay scale and pension, as observed hereinabove, there shall not be any recovery of the amount already paid to the contesting respondent, while granting the first TBP considering his initial appointment from the year 1982.”*

5. As such, the judgment passed by the Tribunal in ***Madhukar A. Patil's case (cited supra)***, which is the only foundation of the present O.A. being set aside, nothing more survives in this O.A. except impermissibility of recovery. The facts of the present O.A. and facts of the ***Madhukar A. Patil's case (cited supra)*** are exactly identical.

6. In view of above, Shri U.V. Bhosle, learned Advocate for the Applicant submits that O.A. be disposed of with direction that there shall be no recovery which is sought by impugned order dated 15.10.2021. As such, now grievance is restricted to the extent of recovery since the issue of re-fixation of pay is no more open to challenge. While deciding Civil Engineering Assistant, Hon'ble Supreme court also made it clear that there shall be no recovery of the amount already paid to the Government servant. Learned P.O. also fairly concedes this position in view of the judgment of Hon'ble Supreme Court.

7. As such, in present O.A. basically there are two issues one about re-fixation of pay and second impermissibility of recovery. First issue of re-fixation of pay and withdrawal of benefit of Time Bound Promotion considering initial date of appointment of work charged establishment now does not survives. Insofar as second issue of recovery is concerned it is squarely covered in view of decision rendered by Hon'ble Supreme Court in ***(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer)*** as discussed in O.A. No.238/2016 (in ***Madhukar A. Patil's case (cited supra)***) and reaffirmed by Hon'ble Supreme Court while deciding Civil Appeal No.1985 of 2022 preferred by

Government of Maharashtra in the matter of **Madhukar A. Patil's case (cited supra)**. Hence the following order.

**ORDER**

- A) The Original Application is allowed partly.
- B) Legality of re-fixation of pay is upheld.
- C) However, recovery of Rs.10,74,139/- (Rupees Ten Lakhs Seventy Four Thousand and One Hundred and Thirty Nine Only) by order dated 15.10.2021 is quashed and set aside being impermissible in law.
- D) No order as to costs.

**Sd/-**

**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 12.04.2022  
Dictation taken by: N.M. Naik.