

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No.445 of 2015 (S.B.)**

Dr. Avinash s/o Narayanrao Kale,
Age 61 years, Occu: Retired Medical Officer,
R/o 66-B, New Colony, Dastur Nagar, Amravati-444 606.

Applicant.

Versus

1. State of Maharashtra through its Secretary,
General Health Department, Mantralaya, Mumbai-32.
2. Director of Health,
Arogya Bhawan, Near Saint George Hospital,
Chatrapati Terminus, Mumbai-32.
3. Dy. Director of Health Service,
Circle Akola, Tah. & Dist. Akola.
4. The Chief Executive Officer,
Zilla Parishad, Akola.
5. Sr. Accountant General Office (Pension),
Civil Lines, Nagpur.

Respondents.

Shri N.B. Bargat, Advocate for the applicant.

Shri M.I. Khan, P.O. for respondent nos.1 to 3 and 5.

Shri Mangesh Bute, Advocate for respondent no.4.

WITH**ORIGINAL APPLICATION No.446 of 2015 (S.B.)**

Dr. Surendra s/o Ramrao Deshmukh,
Age 58 years, Occu: Retired Medical Officer,
R/o Vidya Colony, Naya Press, Akot
Tah. Akot, Distt. Akola.

Applicant.

Versus

1. State of Maharashtra through its Secretary,
General Health Department, Mantralaya, Mumbai-32.
2. Director of Health,
Arogya Bhawan, Near Saint George Hospital,
Chatrapati Terminus, Mumbai-32.
3. Dy. Director of Health Service,
Circle Akola, Tah. & Dist. Akola.
4. The Chief Executive Officer,
Zilla Parishad, Akola.
5. Sr. Accountant General Office (Pension),
Civil Lines, Nagpur.

Respondents.

Shri N.B. Bargat, Advocate for the applicant.

Shri M.I. Khan, P.O. for respondent nos.1 to 3 and 5.

Shri B.N. Jaipurkar, Advocate for respondent no.4.

WITH

ORIGINAL APPLICATION No.447 of 2015 (S.B.)

Dr. Narendra s/o Gulabrao Hanwante,
Age 59 years, Occu: Retired Medical Officer,
R/o Sankalp Colony, Akot, Distt. Akola

Applicant.

Versus

1. State of Maharashtra through its Secretary,
General Health Department, Mantralaya, Mumbai-32.
2. Director of Health,
Arogya Bhawan, Near Saint George Hospital,
Chatrapati Terminus, Mumbai-32.
3. Dy. Director of Health Service,
Circle Akola, Tah. & Dist. Akola.
4. The Chief Executive Officer,
Zilla Parishad, Akola.

5. Sr. Accountant General Office (Pension),
Civil Lines, Nagpur.

Respondents.

Shri N.B. Bargat, Advocate for the applicant.

Shri M.I. Khan, P.O. for respondent nos.1 to 3 and 5.

Shri B.N. Jaipurkar, Advocate for respondent no.4.

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

Date of Reserving for Judgment : 12th January,2024.

Date of Pronouncement of Judgment : 7th February, 2024.

COMMON JUDGMENT

(Delivered on this 7th day of February,2024)

Heard Shri N.B. Bargat, learned counsel for the applicants,
Shri M.I. Khan, learned P.O. for respondent nos.1 to 3 and 5 and Shri
B.N. Jaipurkar, learned counsel for respondent no.4 in O.A.Nos. 446
and 447 of 2015. None for respondent no.4 in O.A.No.445 of 2015

2. All the O.As involved common fact and common relief and
therefore decided by common Judgment.

3. The case of applicant in O.A.No.445 of 2015 in short is as
under –

The applicant was appointed on the post of Junior Medical
Officer on 01/12/1982 and was posted at Tondgaon, Tah. Washim,
District Washim. The applicant was due for promotion w.e.f.

01/12/1994 after completion of 12 years service. However, the respondents have promoted the applicant on the post of Medical Officer and extended all the benefits from 01/12/1994, as per order dated 04/05/2006. Despite the said time bound promotion w.e.f. 01/12/1994, the actual promotion was given to the applicant on 01/08/2007. The applicant was drawing the pay scale of Rs.15600-39100 p.m. The respondent no.4 forwarded the case of present applicant for fixation of pay scale as he was due for retirement as per order dated 05/12/2012. Respondent no.4 passed the order of retirement of the applicant. The applicant is retired on 30/06/2013. The Zilla Parishad forwarded the N.O.C. to the Accountant General (R/5) informing thereby no any departmental enquiry or disciplinary inquiry pending against the applicant and there is no any outstanding / recovery against him. The Accountant General office fixed the pay scale and granted pension of Rs.16,265/- as per order dated 23/01/2024. The Zilla Parishad forwarded the entire service record to the Accountant General office. The respondent no.5, Accountant General considered the non-practising allowance (NPA) of the applicant and thereafter revised the pay scale of applicant and granted the pension of Rs.21,958/- p.m. along with the gratuity amount as per revised pay scale.

4. The Zilla Parishad, Akola however contrary to the provisions of law and without giving any opportunity of being heard to the applicant, had forwarded a proposal for revising the pay scale of applicant and directed to consider the applicant that he came to be promoted from 01/08/2001 and not from 01/10/1994. The said proposal was sent on 28/10/2014. Therefore, the applicant has filed the present O.A. for the following reliefs –

“(9) 1. Quash and set aside the impugned official correspondence dtd. 28/10/2014 bearing no. जावक क्र./जीप/आवी/राजप/७६३६/२०१४ (Annexure-A-1) forwarded by the respondent no. 4 (C.E.O. Zilla Parishad) to the respondent no. 5 (Accountant General, Nagpur) and the impugned action dtd. 26/05/2015 (Annexure-A-2) taken by the respondent no. 5 (Accountant General).

3. Direct the respondent no. 4 & 5 to release the difference of Gratuity amount of present applicant as determine by the respondent no. 5 (Accountant General, Nagpur) on 27/06/2014 alongwith interest @ 18% per annum from the date of withholding till its realization.

4. Allow the application with cost.

5. Grant any other relief, which this Hon'ble Tribunal deems just and proper in the interest of justice.

10. Interim relief sought:

1. By way of interim relief may kindly please to stay the effect, operation, execution, implementation of official correspondence dtd. 28/10/2014 (Annexure-A--1) forwarded by the respondent no. 4 to the respondent no. 5.

2. Grant ad-interim relief in terms of prayer clause No. (1).

3. *Grant any other relief, which this Hon'ble Tribunal deems just and proper in the interest of justice.*”

5. The O.A. is strongly opposed by the respondents. It is submitted that as per G.R. of 2001, the applicant was not entitled to get his time bound promotion w.e.f. 01/10/1994 and he should have been given w.e.f. 01/08/2001. Therefore, the pay scale is to be revised and excess amount is to be recovered from the applicant. Hence, the O.A. is liable to be dismissed.

6. In O.A.No.446 of 2015, the applicant was appointed on the post of Junior Medical Officer on 26/11/1982. He was due for promotion on 26/11/1994. The said time bound promotion was granted to the applicant as per order dated 04/05/2006 from 1994. Thereafter the applicant was promoted on the post of Medical Officer in the year 2013. The applicant obtained V.Rs. w.e.f. 01/10/2013. There was no any departmental enquiry, nothing was outstanding against him. The respondents have granted pension to the applicant, but thereafter respondent nos.4 and 5 submitted proposal / communication to revise the pay scale of the applicant and the recovery against him.

Therefore, he approached to this Tribunal for the following reliefs –

“(9) 1. *Quash and set aside the impugn official correspondence dtd. 24/06/2014 bearing no. जावक क्र. /जीप/आवी/राजप/३९३८/२०१४ (Annexure-A-1) and the deduction order of respondent no. 5 (Accountant General) dtd.*

24/09/2014 (Annexure-A-2), in the all above mentioned facts and circumstances in the interest of justice.

3. Direct the respondent no. 1 to 5 to refund the deducted amount of pension and gratuity to the present applicant alongwith interest @ 18% per annum thereon from the date of 24/09/2014 till its realization.

4. Direct the respondent no. 1 to 5 to review the pay scale of present applicant and pay the pension and gratuity by taking into consideration his time bound promotion from 26/11/1994 in the all above mentioned facts and circumstances, in the interest of justice.

5. Allow the application with cost.

6. Grant any other relief, which this Hon'ble Tribunal deems just and proper in the interest of justice.

10. Interim relief sought:

1. By way of interim relief may kindly please to stay the effect, operation, execution, implementation of official correspondence dtd. 24/06/2014 (Annexure-A-1) and order of respondent no. 5 dtd. 24/09/2014 and may kindly direct they not to make any further deduction from the pension and gratuity of applicant.

2. Grant ad-interim relief in terms of prayer clause No. (1)

3. Grant any other relief, which this Hon'ble Tribunal deems just and proper in the interest of justice.”

7. In the reply, it is submitted that time bound promotion was wrongly granted to the applicant from 1994. It should have been from 2001, as per the G.R. of 2001, therefore, the pay scale is to be revised and excess amount is to be recovered from the applicant.

8. In O.A.No. 447 of 2015, the applicant was appointed on the post of Junior Medical Officer on 31/10/1987. He was due for promotion on 11/11/1999. But the said time bound promotion was granted to him as per order dated 04/05/2006 and time bound promotion w.e.f. 11/11/1999 was given to him. In fact, he was promoted on the post of Medical Officer on 01/08/2007. The applicant obtained voluntary retirement from the post of Medical Officer on 13/09/2013. His case was sanctioned by the A.G. office. The pension was revised by the A.G. office after taking into consideration of NPA. The respondent nos.4 and 5 submitted the proposal dated 24/07/2014 to the A.G. office stating that time bound promotion was wrongly granted w.e.f. 01/11/1999. It should have been 01/08/2001 instead of 01/11/1999. Therefore, he approached to this Tribunal for the following reliefs –

“(1) Quash and set aside the impugn official correspondence dtd. 24/04/2014 bearing no. जावक क्र. /जीप/आवी/राजप/३९३९/२०१४ (Annexure-A-1) and the deduction order of respondent no. 5 (Accountant General) dtd. 24/09/2014 (Annexure-A-2), in the all above mentioned facts and circumstances in the interest of justice.

3. Direct the respondent no. 1 to 5 to refund the deducted amount of pension and gratuity to the present applicant alongwith interest @ 18% per annum thereon from the date of 24/09/2014 till its realization.

4. Direct the respondent no. 1 to 5 to review the pay scale of present applicant and pay the pension and gratuity by taking into consideration his

time bound promotion from 01/11/1999 in the all above mentioned facts and circumstances, in the interest of justice.

5. Allow the application with cost.

6. Grant any other relief, which this Hon'ble Tribunal deems just and proper in the interest of justice.

10. Interim relief sought:

1. By way of interim relief may kindly please to stay the effect, operation, execution, implementation of official correspondence dtd. 24/04/2014 (Annexure-A-1) and order of respondent no. 5 dtd. 24/09/2014 and may kindly direct they not to make any further deduction from the pension and gratuity of applicant.

2. Grant ad-interim relief in terms of prayer clause No. (1).

3. Grant any other relief, which this Hon'ble Tribunal deems just and proper in the interest of justice.”

9. The O.A. is strongly opposed by the respondents. It is submitted that Government has issued G.R. in the year 2001 and time bound promotion is to be granted w.e.f. 01/08/2001. The earlier time bound promotion was wrongly granted to the applicant. Therefore, the respondents have submitted the proposal to revise his pay and recovery also.

10. Heard Shri N.B. Bargat, learned counsel for the applicant. He has submitted that 1st time bound promotions were correctly granted to the applicants. Now all applicants are retired. Their salary cannot be revised and excess amount cannot be recovered from them.

11. Shri N.B. Bargat, learned counsel for applicants has submitted that there was a G.R. of 1995. As per the said G.R., if the employees could not be promoted for want of post etc., then time bound promotion should be given to those employees after completion of 12 years of service. All the applicants were granted time bound promotion after completion 12 years of service and therefore the G.R. of 2001 is not applicable to the applicants. He has pointed out the decision of the Hon'ble Supreme Court and the Judgment of this Tribunal in O.A.981/2017 with connected matters and the Judgment in O.A.622/2022 with connected matters, decided on 10/10/2023.

12. The learned P.O. has submitted that the applicants had given undertaking stating that if any recovery is to be made, then they shall not object. In support of his submission pointed out the decision in O.A.1023/2019 and the decision of the Hon'ble Bombay High Court in Writ Petition No.13262 of 2018.

13. The Judgment of the Hon'ble Supreme Court in case of ***High Court of Punjab and Haryana and others vs. Jagdev Singh reported in 2016 AIR (SCW) 3523*** is not applicable to the case in hand, because, he was the judicial officer and was not retired.

14. All the applicants are retired employees. Therefore in view of the Judgment of the Hon'ble Apex 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 recovery cannot be made. The same view is taken by this Tribunal in O.A.Nos. 981/2017 with connected matters and O.A.No.622/2022 with connected O.As., decided on 10/10/2023 by this Tribunal. The applicants are similar Doctors like the Doctors who were in O.A.No.622/2018 with connected O.As. and in O.A.No.981/2017 with connected O.As. Nothing is pointed out by the side of respondents to show that these Judgments were challenged before the Hon'ble High Court and those were set aside. Applicants are similarly situated employees.

15. The facts in the cited Judgments by the side of respondents are very much different. In the present O.As., the applicants were granted 1st time bound promotion as per the G.R. of 1995. The applicants were not given promotion even after completion of 12 years of service. Therefore, the respondents have given time bound promotion to all the applicants and revised their pay scales. Therefore, the said promotion was rightly given as per the G.R. of 1995. The Hon'ble Supreme Court in the case of ***Syed Abdul Qadir and Others Vs. State of Bihar and Others (2009) 3 SCC,475*** has held in para-59 as under –

“(59) Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being

paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the a peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

16. The applicants never made any misrepresentation or fraud on their part and therefore the amount which was paid to them granting time bound promotion after completion of 12 years of service cannot be recovered. This Tribunal in the above cited O.As. relied on the Judgment in the case of the Hon’ble Supreme 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 Hon’ble Supreme Court has given guidelines in para-18 as under -

“18. 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."

17. As per clause (ii) and (iii) the recovery cannot be made from the applicants because those recoveries are in respect of excess payment granted more than 5 years before their retirement. All the applicants are retired employees and therefore recovery cannot be made. Hence, the following order –

ORDER

(i) The O.As. are allowed.

(ii) The impugned communications in respect of recovery of excess payment are hereby quashed and set aside.

(iii) The amount if recovered from the applicants, shall be refunded to them.

(iv) No order as to costs.

Dated :- 07/02/2024.

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

*dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 07/02/2024.