

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 04/2008 (SB)

- 1) Dinesh son of Balkrishna Vairagade,
Aged about 47 years,
Occ. Service, Resident of Ramnagar,
Chandrapur.
- 2) Premdas son of Rajaram Gajbhiye,
Aged about 54 years,
Occ. Service, Resident of Ramnagar,
Chandrapur.
- 3) Prabhudas son of Nathuji Rangari,
Aged about 52 years,
Occ. Service, Resident of Ramnagar,
Wardha.
- 4) Dnyaneshwar son of Eknath Kalbande,
Aged about 43 years,
Occ. Service, Resident of Sindhi,
District Wardha.

Applicants.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Animal Husbandry and Fisheries,
Mantralaya, Mumbai-32.
- 2) The Dairy Development Commissioner,
Khan Abdul Gaffar Khan Marg,
Administrative Building Worli, Mumbai.
- 3) Regional Dairy Development Officer,
Nagpur Region, Telankhedi Road,
Civil Lines, Nagpur.

Respondents

WITH**ORIGINAL APPLICATION NO. 11/2008 (SB)**

Anil son of Gangadhar Pande,
aged about 45 years,
Occ. Service, Resident of Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Animal Husbandry and Fisheries,
Mantralaya, Mumbai-32.
- 2) The Dairy Development Commissioner,
Khan Abdul Gaffar Khan Marg,
Administrative Building Worli, Mumbai.
- 3) Regional Dairy Development Officer,
Nagpur Region, Telankhedi Road,
Civil Lines, Nagpur.

Respondents

Shri I.S. Charlewar, Advocate for the applicants.

Shri M.I. Khan, Id. P.O. for the respondents.

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

COMMON JUDGEMENT

(Delivered on this 6th day of December,2017)

Heard Mrs. Charlwar, learned Counsel holding for Shri I.S.
Charlewar, learned counsel for the applicants and Shri M.I. Khan, Id.
P.O. for the respondents.

2. The applicant Shri Dinesh B. Vairagade and three others in O.A. no. 04/2008 and the applicant Shri Anil G. Pande in O.A.no. 11/2008, were working as Junior Clerks-cum-Typists with the respondents and were drawing the pay in the pay scale of Rs.3050-4590 as per the 5th Pay Commission.

3. The applicant nos. 1 to 3 have completed continuous service of 12 years' in the cadre of Junior Clerk on 08/02/2000, whereas, the applicant no.4 has completed continuous service of 12 years' in the same cadre on 31/12/1997 in O.A.No. 04/2008. The applicant has completed continuous service of 12 years' in the cadre of Junior Clerk on 1/9/1997 in O.A.No. 11/2008.

4. According to the applicants, they are entitled to benefits of G.R. dated 8th June,1995, i.e., pay of the promotional post so also as per the G.R. dated 20th July,2001 and therefore they have made representations to the respondent authorities to grant them pay scale of the Senior Clerk on completion of 12 years' continuous service in the pay scale of Rs.4000-6000.

5. Similarly situated employees have filed O.A.No.333/2003 before this Tribunal and the Hon'ble Tribunal vide order dated 11/10/2004 was pleased to direct the respondents to give the applicants in O.A. 333/2003 the pay scale of Rs.4000-6000. The

applicants in both these O.As. are therefore claiming pay scale of Rs. 4000-6000 from the date of completion of 12 years' continuous service as Junior Clerk and hence this O.A.

6. Respondents through the affidavit-in-reply have admitted the facts of the case in both the O.As. According to the respondents, the next higher pay scale available to the applicants was in the cadre of Time Keeper and the pay scale for Time Keeper was Rs.3200-4900 and the same has been rightly granted to the applicants. According to the respondents, the State has challenged the order passed in O.A.No.333/2003 of this Tribunal on 11/10/2004 before the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur vide Writ Petition no.3327/2005 and therefore the subject matter in O.A.No.333/2003 is pending before the Hon'ble High Court.

7. The matter was adjourned from time to time and during the pendency of both these O.As., the Writ Petition no.3327/2005 came to be decided by the Hon'ble High Court. The copy of the Judgment passed by the Hon'ble High Court is placed on record in O.A.no.04/2008 and the same is marked as Exh-X for the purposes of identification. The Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in Writ Petition No.3327/2005 vide order dated 22nd September,2016 was pleased to quash and set aside the Judgment and order delivered by this Tribunal, Bench at Nagpur in

O.A.No.333/2003 and the said O.A. has been dismissed. The Hon'ble High Court has observed in the said Judgment as under:-

“9] With the assistance of the learned Counsel for the parties we have gone through the judgment and order dated 11-10-2004 passed by the Maharashtra Administrative Tribunal, Nagpur in Original Application No.333 of 2003 and the relevant Government Resolutions. From the Government Resolution dated 08-06-1995 it can be seen that on completion of 12 years regular service employees are entitled to time bound promotion in the pay scale applicable to the next promotional post.

10] Further from the Government Resolution dated 26-02-1979 it is crystal clear that the post of Junior Clerk falls in Cadre-V and the promotional post for the post of Junior Clerk is in Cadre-IV as Time Keeper. It is not in dispute that Government Resolution dated 26-02-1979 regarding amalgamation of Accounts Group with Administration Group in the Dairy Development Department was holding the field at the time when the time bound promotions of the respondents came to be considered by the department.

11] So far as fixation of time bound promotion pay in respect of Shri Kulmethe is concerned State has referred the order dated 09-04--1999 wherein condition of letter dated 30-08-1995 was deleted. On 15-09-1999 corrigendum was issued and the pay scale of Shri Kulmethe was brought down to Rs.3050-4590 and thereafter he was placed in the pay scale of Rs.4000-6000. According to the State Shri Kulmethe was governed by the previous Government Resolution and accordingly his pay was fixed on time bound promotion whereas time bound promotion to respondents was given as Time Keeper in view of the subsequent Government Resolution applicable to them.

12] *In our view Tribunal was not justified in taking up the case of Shri Kulmethe and making it applicable to the respondents without any substantial material and Government Resolution on record. Needless to State that in order to pass the test of permissible/reasonable classification two conditions must be fulfilled-*

(i) that the classification must be founded on an intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and

(ii) that that differentia must have a rational relation to the object sought to be achieved by the impugned Government Resolution. What is necessary is that there must be a nexus between the basis of classification and the object of the Resolution.

13] *We do not want to go into the controversy raised by the respondents in respect of the pay scale given to Shri Kulmethe as he is not a party to this petition and the State has explained facts and circumstances in which time bound promotion pay scale was given to him to which there is no denial from the side of respondents.*

14] *In the aforesaid view of the matter we find that impugned judgment and order passed by the Maharashtra Administrative Tribunal, Nagpur is not based on the proper appreciation of the Government Resolutions then prevailing in respect of time bound promotion and fixation of pay scale thereon."*

8. In view of the Judgment of the Hon'ble High Court in Writ Petition No.3327/2005 as referred above, nothing survives in these O.As., and hence the following order :-

ORDER

The O.A.No. 04/2008 and O.A. No.11/2008 stand dismissed with no order as to costs.

Dated :- 06/12/2017.

dnk.

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