

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1139 OF 2022

DISTRICT : MUMBAI

Sub.:- Pensionary benefits

1. Smt. Tilottama G. Bhole.)
Age : 63 Yrs, Occu.: Nil,)
Retired as Accounts Clerk, Class-III,)
Having Office at Dairy Development)
Commissioner, Worli, Mumbai and residing)
at Room No.8, Pathan Chawl, Bhawani)
Shankar Road, Dadar, Mumbai.)
2. Smt. Sanjivani D. Rane.)
Age : 63 Yrs, Occu.: Nil,)
Retired as Accounts Clerk, Class-III,)
Having Office at Greater Mumbai Milk)
Scheme, Worli, Mumbai and residing)
at 15/3, Green House, Amrutwan Complex)
Goregaon (E), Mumbai.)
3. Shri Dinakaran P. Nair.)
Age : 60 Yrs, Occu.: Nil,)
Retired as Accounts Clerk, Class-III,)
Having Office at Manager Incharge,)
Central Dairy, Goregaon, Mumbai and)
residing at 302, Amey CHS,)
Jogeshwari (W), Mumbai.)
4. Smt. Archana A. Naik.)
Age : 64 Yrs, Occu.: Nil,)
Retired as Accounts Clerk, Class-III,)
Having Office at Manager Incharge,)
Central Dairy, Goregaon, Mumbai and)
residing at B-101, Raj Palace Apt.,)
Majaswadi, Jogeshwari (E), Mumbai.)
5. Shri Prakash P. Raorane.)
Age : 65 Yrs., Occu.: Nil,)
Retired as Accounts Clerk, Class-III,)
Having Office at Dairy Development)
Commissioner, Worli, Mumbai and)
residing at B-8, Ambe-Sai Society,)
Mahatma Phule Marg, Dombivali (W),)
Dist.: Thane.)

6. Shri Sureshchandra M. Pitale.)
Age : 65 Yrs., Occu.: Nil,)
Retired as Accounts Clerk, Class-III,)
Having Office at Dairy Manager, Greater)
Mumbai Milk Scheme, Worli, Mumbai and)
residing at Highfield Park, E-301,)
Amrutwell Colony, Vimal Garden,)
Rahatani, Pimpri, Pune.)

7. Smt. Deepali D. Gadekar.)
Age : 63 Yrs., Occu.: Nil,)
Retired as Accounts Clerk, Class-III,)
Having Office at Dairy Science Institute,)
Aarey Milk Colony, Goregaon, Mumbai and)
residing at 18/12, Shastri Nagar,)
Linking Road, Santacruz (W), Mumbai.)

8. Smt. Rekha C. Samant.)
Age : 64 Yrs., Occu.: Nil,)
Retired as Accounts Clerk, Class-III,)
Having Office at Chief Executive Officer,)
Aarey Milk Colony, Goregaon, Mumbai and)
residing at A/35, Vishal Kokan CHS,)
Fateh Baug, S.V. Road, Kandivali (W),)
Mumbai.)

9. Smt. Asha V. Palande.)
Age : 65 Yrs., Occu.: Nil,)
Retired as Accounts Clerk, Class-III,)
Incharge Manager, Central Dairy,)
Aarey Milk Colony, Goregaon Mumbai and)
residing at 604, Alkapuri CHS,)
Akurli Cross Road No.3, Kandivali (E),)
Mumbai.)

10. Shri Arvind R. Sawant.)
Age : 66 Yrs., Occu.: Nil,)
Retired as Accounts Clerk, Class-III,)
Having Office at Dairy Manager,)
Mother Dairy, Kurla, Mumbai and)
residing at E/204, Yashodhan CHS,)
Bolinj Naka, Virar (W).)

11. Smt. Neelam N. Velhal.)
Age : 66 Yrs., Occu.: Nil,)
Retired as Accounts Clerk, Class-III,)
Having Office at Dairy Development)
Department, Aarey Colony,)
Goregaon (E), Mumbai and residing at)

3/43, Meghwadi, Mahananda CHS,)
 Opp. Income Tax Colony, Jogeshwari,)
 Mumbai.)...**Applicant**

Versus

1. The Commissioner.)
 Dairy Development, M.S, Mumbai,)
 Having Office at Administrative)
 Building, A.G. Khan Marg, Worli)
 Sea Face, Mumbai – 400 018.)
2. The State of Maharashtra.)
 Through Principal Secretary,)
 Agriculture, Animal Husbandry,)
 Dairy Development and Fisheries)
 Department [Dairy Development],)
 Having Office at Room No.520)
 [Extn.], 5th Floor, M.K. Marg,)
 Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 23.03.2023

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.

2. In this O.A, following are the reliefs claimed by the Applicants.

- (a) By a suitable order / direction, this Hon'ble Tribunal may be pleased to direct the Respondents to extend in favour of the Petitioners the benefit of decision dated 9.3.2020 [Exhibit-A] of the Hon'ble Tribunal rendered in **O.A.No.1158 of 2016 [Smt. Supriya Goraksh & Ors. Vs. The Respondents herein]** they being identically placed like Smt. Supriya Goraksh & others within a period of 4 weeks from the order of the Hon'ble

Tribunal and to grant to the Petitioner all the consequential service benefits which came to be granted to Smt. Supriya Goraksh & others.

(b) By a suitable order/direction, this Hon'ble Tribunal may be pleased to quash and set aside the order dated 27.09.2022 passed by Respondent No.1 under which he declined to extend in favour of the Petitioners the decision of the Hon'ble Tribunal in O.A.No.1158 of 2016 in the matter of parity in pension and other consequential benefits.

3. The Applicants stands retired from service in between 2014 to 2020 and after retirement, in view of objection raised by Pay Verification Unit, the Respondents cancelled the benefit of 1st Time Bound Promotion (TBP) and downgraded their pay entailing into recovery of the excess amount which was also recovered from them from retiral benefits. This was the exactly issue in O.A.No.1158/2016 filed by Smt. Supriya Goraksh & others as referred by the Applicants in their Prayer Clause.

4. Thus, Applicants claiming to be similarly situated persons are seeking benefit of the decision rendered by this Tribunal on 09.03.2020 in **Supriya Goraksh's** case. Admittedly, Respondents have implemented the decision rendered in the said matter and extended all the benefits to the Applicants therein. The present Applicants were also working as Account Clerks in Dairy Department and stands retired. After they came to know about the decision rendered in **Supriya Goraksh's** matter, they made representation to Respondent No.1 on 25.07.2022 claiming the same benefit, but it came to be rejected by communication dated 27.09.2022 solely on the ground that the benefits were given to Smt. Supriya Goraksh and others in terms of order passed by the Tribunal. Notably, in impugned order dated 27.09.2022, no other reason even for name sake is mentioned for denying the similar relief to the present Applicants. As such, the impugned order is totally silent as to why

Applicants cannot be given the benefit of decision in **Supriya Goraksh's** case rendered by the Tribunal and implemented by the Department.

5. In the present O.A, Respondents have filed Affidavit-in-reply and tried to contend that the present Applicants were not party to the O.A.No.1158/2016, and therefore, the benefit has not been given to them. It is further contended in Affidavit-in-reply that the present O.A. is filed after six years and recovery has been ordered in pursuance of objection raised by Pay Verification Unit. These are the only contentions raised by the Respondents in Affidavit-in-reply.

6. The Respondents could not point out anything further to distinguish the status of the Applicants from the Applicants in O.A. 1158/2016 decided on 09.03.2020. Indeed, the perusal of decision rendered by the Tribunal in O.A.1158/2016 reveals that the said O.A. was filed on the basis of decision of Hon'ble High Court delivered in Writ Petition No.266/1982 decided on 07.11.1989. Hon'ble High Court declared the Accounts Clerks employed in Dairy Development Department are entitled to pay scale of Rs.350-680 w.e.f. 07.11.1989 on the ground of principle of 'equal work equal pay'. The decision rendered in Writ Petition was challenged by filing Civil Appeal No.521/1990 and 379/1990. While deciding appeal, Hon'ble High Court in Para No.8 of the Judgment directed that the Judgment dated 07.11.1989 by which higher pay scale has been given to Account Clerks in Dairy Development Department in pay scale of Rs.335-680 would apply not only to the Petitioner, but would also apply to all Clerks who are similarly situated and inclusive of those who have retired. Thus, in view of the mandate of these decisions, the Respondents were under obligation to extend the benefit not only to the Petitioner who were before Hon'ble High Court but to all other similarly situated employees. Beside this position, the Respondents made discrimination and issue recovery orders as well as re-fixing of pay and allowances which was the subject matter of challenge

in O.A. filed by Smt. Supriya Goraksh & others. The Tribunal passed detail reasoned order and allowed the O.A. in following terms.

- “(A) The impugned action of recovery of alleged excess amount from the retiral benefits of the Applicants is quashed and set aside.
- (B) The amount recovered be refunded to the Applicants within three months from today, failing which it shall carry interest at the rate of 9% p.a. from the date of order till actual payment.
- (C) The pensionary benefits of the Applicants with consequential service benefits be also released within three months in the terms of monetary benefits.
- (D) No order as to costs.”

7. The order passed by the Tribunal attained finality. The Respondents have also implemented the above order during the pendency of Contempt Petition filed by Smt. Supriya Goraksh and others. Thus, the fact remains that the decision rendered by the Tribunal in **Supriya Goraksh’s** matter has attained finality and implemented.

8. As stated above, there is no dispute that Applicants are also similarly situated persons. Insofar as objection on the point of delay is concerned, the Tribunal has already condoned the delay caused in filing this O.A. I, therefore, see no reason to deprive of the present Applicants of the benefits granted to similarly situated persons in O.A. filed by Smt. Supriya Goraksh and others on the principle of parity.

9. At this juncture, it would be apposite to note the decision of Hon’ble Supreme Court in **2015(1) SCC 347 [State of Uttar Pradesh Vs. Arvind Kumar Srivastava]** reiterating that where particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit and not doing so, would amount to discrimination and violative of Article 14 of the Constitution of India. As such, the objection raised by the Respondents in Affidavit-in-reply that present Applicants were not party to O.A.1158/2016, and therefore, not entitled to the benefit is totally

fallacious and untenable. In **Arvind Kumar Srivastava's** case, Hon'ble Supreme Court affirmed that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

10. Indeed, taking note of the decision of Hon'ble Supreme Court in **Arvind Kumar Srivastava's** case, the Government of Maharashtra had issued Circular dated 28.02.2017, which is as under :-

“1. The Hon'ble Maharashtra Administrative Tribunal, Mumbai vide order dated 14.12.2016 in O.A.Nos.59, 61 and 90 of 2016, has expressed displeasure over rejection of the claim of the applicants therein, for grant of Time Bound Promotion on the ground that the applicants had declined to accept temporary promotions, though in similar matters Hon'ble Tribunal has allowed the OAs and order of the Tribunal has attained finality.

2. The Hon'ble Tribunal, in Para 8 of aforesaid judgment, has observed as under:-

"If a principle of general applicability is capable of being culled out from a particular pronouncement of this Tribunal, then similarly placed employees, though not before the Tribunal should be given the benefit thereof without actually moving this Tribunal for relief. If on the other hand, the relief is person specific, then of course, this direction will not apply."

Therefore, the Hon'ble Tribunal has directed the undersigned to inform all the concerned departments regarding applicability of general judicial principle as explained in Para 8 of the aforesaid Judgment.

3. The Hon'ble Supreme Court in the case of State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava reported in 2015(1) SCC 347 has laid down similar principle, thus :

"Normal rule is that when a particular set of employee is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit, Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."

4. In view of the above, all the departments are hereby directed to take action according to the above directions given by the Hon'ble Maharashtra Administrative Tribunal, reiterating the legal position expounded by the Hon'ble Supreme Court. 5. The aforesaid directions be also brought to the notice of the offices under the administrative control of the departments."

11. Astonishingly, instead of extending the benefit at their own, the Respondents rejected the representation made by the Applicants. The Applicants retired in between 2015 to 2020 as Group 'C' employees and recovery has been effected from their retiral benefits, which is totally unjust and impermissible in law in view of the fact that Applicants have similarly situated persons are entitled to the benefit of decision rendered by the Tribunal in O.A.1158/2016.

12. In view of above, this O.A. also deserves to be allowed on similar line. The impugned communication dated 27.09.2022 is, therefore, liable to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) Impugned order dated 27.09.2022 is quashed and set aside.
- (C) The impugned action of recovery of alleged excess amount from the retiral benefits of the Applicants is quashed and set aside.
- (D) The amount recovered be refunded to the Applicants within three months from today, failing which it shall carry interest at the rate of 9% p.a. from the date of order till actual payment.
- (E) The pensionary benefits of the Applicants with consequential service benefits be also released within three months in the terms of monetary benefits.

(F) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 23.03.2023

Dictation taken by :

S.K. Wamanse.

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