

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1158 OF 2016  
WITH  
ORIGINAL APPLICATION NOS.352 & 353 OF 2017**

**DISTRICT : MUMBAI**

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**ORIGINAL APPLICATION NO.1158 OF 2016**

1. Smt. Supriya Kiran Goraksha. )  
Age : 59 Yrs, Occu. Retired Accounts )  
Clerk, Class-III in the Office of )  
Chief Executive Officer, Aarey Milk )  
Colony, Goregaon, Mumbai and )  
R/o. C/401,Riddhi-Siddhi Building, )  
Vajira Naka, Borivali, Mumbai – 91. )
  
2. Smt. Prabha Anand Bhage. )  
Age : 66 Yrs, Occu.: Retired Accounts )  
Clerk, Class-III in the Office of )  
Inchage Manager, Central Dairy, )  
Aarey, Goregaon, Mumbai – 65. )  
R/o. 621, Adarsh Nagar, Aarey Milk )  
Colony, Old Hill Quarter, Near Sai )  
Baba Mandir, Goregaon (E), )  
Mumbai – 400 065. )
  
3. Smt. Rekha Arun Honrao. )  
Age: 63Yrs, Occ. Retired Accounts )  
Clerk, Class-III, in the office of the )  
General Manager, Worli Dairy, )  
A.G. Khan Road, Worli, )  
Mumbai - 400 018, and Residing at )  
A2/6, A2,] Worli Sea Side Co-op. )  
Housing] Society, Narayan Pujari )  
Nagar, A.G. Khan Road, Worli, )  
Mumbai - 400 018. )
  
4. Smt. Rajlaxmi Prabhakar Gawas. )  
Age : 66 Yrs, Occ. Retired Accounts )  
Clerk, Class-III, in the office of the )

General Manager, Worli, )  
 Dairy, A.G. Khan Road, Worli, )  
 Mumbai - 400 018, R/o. A-501, )  
 Marba1 Arch, Near Mitta1 College, )  
 Malad [W], Mumbai - 64. )

5. Smt. Amla Ashok Parab. )  
 Age : 59 Yrs, Occ. Retired Accounts )  
 Clerk, Class-III, in the office of the )  
 Dairy Manager, Worli Dairy, )  
 A.G. Khan Road, Worli, )  
 Mumbai-400 018, RIO. 33/C, )  
 Madhukesh, Tukaram Javji Road, )  
 Mumbai. )

6. Smt. Ruti Shirish Sule. )  
 Age : 62 Yrs, Occ. Retired Accounts )  
 Clerk, Class-III, in the office of Dairy )  
 Manager, Mother Dairy, Nehru )  
 Nagar, Kurla [E], Mumbai - 400 024. )  
 R/o. B-23, Sindhutirtha CBS, )  
 Makhamali Talav, Thane [W]-400601. )

7. Smt. Shubhada Y. Barnaikar. )  
 Age : 62 Yrs, Occ. Retired Accounts )  
 Clerk, Class-III in the Office of Dairy )  
 Manager, Mother Dairy, Nehru )  
 Nagar, Kurla (E), Mumbai - 24 and )  
 R/at A/9, Ravi Darshan Co-op. )  
 Hsg. Soc., Arunoday Nagar, Near )  
 Sambhaji Maidan, Mulund (E), )  
 Mumbai - 400 081. )

8. Smt. Sushma D. Pagare. )  
 Age : 63 Yrs, Occu.: Retired Accounts )  
 Clerk, Class-III, in the office of Dairy )  
 Manager, Mother Dairy, Nehru )  
 Nagar, Kurla (E), Mumbai - 24 and )  
 R/o. Dena Deep CHS, 11<sup>th</sup> Parijat, )  
 2<sup>nd</sup> Floor, 90 Ft. D.P. Road, )  
 Mulund (E), Mumbai - 400 081. )

9. Smt. Sunanda U. Mehendale. )  
 Age : 59 Yrs., Occu. Retired Accounts )  
 Clerk, Class-III, in the office of Dairy )  
 Manager, Mother Dairy, Nehru )  
 Nagar, Kurla (E), Mumbai - 24 and )  
 R/o. 11, Aparna, 353/16, R.B. Mehta )  
 Road, Ghatkopar (E), Mumbai - 77. )

10. Smt. Anupama V. Chavan. )  
 Age : 59 Yrs., Occu. Retired Accounts )  
 Clerk, Class-III, in the office of Dairy )  
 Manager, Mother Dairy, Nehru )  
 Nagar, Kurla (E), Mumbai – 24 and )  
 R/o. 1, Janmans CHS, Vahatuk )  
 Nagar, Kevanipada, Behind Amboli )  
 Church, Jogeshwari (W), )  
 Mumbai – 400 102. )
11. Smt. Sawati S. Ghosalkar. )  
 Age “ 62 Yrs, Occu. Retired Accounts )  
 Clerk, Class-III, in the office of Dairy )  
 Manager, Mother Dairy, Nehru )  
 Nagar, Kurla (E), Mumbai – 24 and )  
 R/o. C/38, Jaideep Laxmi Co-op. )  
 Hsg.Soc, Devi Chowk, Shastri Nagar, )  
 Dombivali (W), District : Thane. )
12. Smt. Sushama S. Deshpande. )  
 Age : 64 Yrs., Occu. Retired Accounts )  
 Clerk, Class-III in the office of Dairy )  
 Manager, Mother Dairy, Nehru )  
 Nagar, Kurla (E), Mumbai – 24 and )  
 R/o. 5/2, Shukoendu, Datar Colony, )  
 Bhandup (E), Mumbai – 400 042. )
13. Smt. Seema J. Vaidya. )  
 Age : 60 Yrs, Occu. Retired Accounts )  
 Clerk, Class-III in Greater Mumbai )  
 Milk Scheme, Worli Dairy, A.G. Khan )  
 Road, Worli, Mumbai – 18 and )  
 R/o. 358/B, Gangaram Khatri Wadi, )  
 Thakurdwar, J.S.S. Road, )  
 Mumbai – 400 002. )
14. Smt. Aparna C. Nandoskar. )  
 Age : 68 Yrs, Occu. Retired Accounts )  
 Clerk, Class-III in the office of Dairy )  
 Manager, Greater Mumbai Milk )  
 Scheme, Worli Dairy, A.G. Khan )  
 Road, Worli, Mumbai – 18 and )  
 R/o. 38/2751, Maharashtra )  
 Housing Board, Kalachowki, )  
 Mumbai – 400 033. )
15. Smt. Suchita V. Desai. )  
 Age : 63 Yrs, Occu.: Retired Accounts )

Clerk, Class-III in the office of Dairy )  
 Manager, Mother Dairy, Nehru )  
 Nagar, Kurla (E), Mumbai – 24 and )  
 R/o. 501, Shree Datta Niwas, )  
 Datar Colony, V.S. Marg, )  
 Bhandup (E), Mumai - 400 042. )

16. Smt. Sulaxana B. Mokashi. )  
 Age : 68 Yrs, Occu.: Retired Ward )  
 Cashier, Class-III in the office of )  
 Dairy Manager, Mother Dairy, Nehru )  
 Nagar, Kurla (E), Mumbai – 24 and )  
 R/o. 1, New Soni Co-op. Housing )  
 Society, Opp. Forest Office, Naupada )  
 Road, Thane (W) – 400 602. )

17. Smt. Nilima R. Chaudhari. )  
 Age : 60 Yrs, Occu. : Retired )  
 Accounts Clerk, Class-III in the )  
 Office of Dairy Manager, Mother )  
 Dairy, Nehru Nagar, Kurla (E), )  
 Mumbai – 24 and R/o. B-9, Nav- )  
 Indera Prashtha Co-op. Hsg. Soc., )  
 Rambaug, Lane No.4, Murbad Road, )  
 Kalyan (W), District : Thane. )

18. Smt. Hemalata A. Dhanawade. )  
 Age : 62 Yrs, Occu.: Retired Accounts )  
 Clerk, Class-III in the office of )  
 Dairy Manager, Mother Dairy, Nehru )  
 Nagar, Kurla (E), Mumbai – 24 and )  
 R/o. 12-B/40, New BDD Block, )  
 G.K. Road, Naigaon, Dadar, )  
 Mumbai – 400 014. )

19. Smt. Prabhavati P. Kamble. )  
 Age : 61 Yrs, Occu.: Retired )  
 Accounts Clerk, Class-III in the )  
 Office of General Manager, )  
 Worli Dairy, A.G. Khan Road, Worli, )  
 Mumbai – 18 and R/o. Plot No.79/ )  
 A-402, Gorai Shivsagar Co-op. Hsg. )  
 Soc, Gorai-II, Borivali (W), )  
 Mumbai – 400 092. )

20. Shri Chandrakant S. Telang. )  
 Age : 61 Yrs, Occu.: Retired )  
 Accounts Clerk, Class-III in the )  
 Office of Dairy Manager, )

Worli Dairy, A.G. Khan Road, Worli, )  
 Mumbai – 18 and R/o. 15/A, )  
 1<sup>st</sup> Floor, 103, Nandraj CHS )  
 Manisha Nagar, Kalwa, Dist : Thane. )

21. Shri Bhagwan S. Narse. )  
 Age : 65 Yrs, Occu. : Retired )  
 Accounts Clerk, Class-III in the )  
 Office of Dairy Manager, )  
 Mother Dairy, Nehru Nagar, )  
 Kurla (E), Mumbai – 24 and R/o. )  
 B-1, Neelkanth Prerana Building, )  
 No.3, Co-op. Hsg. Soc, Vishnunagar, )  
 Dombivali (W), District : Thane. )

22. Mr. Vishwas D. Manjrekar. )  
 Being heir and legal representative )  
 [Husband] of deceased Government )  
 Servant by name Late Smt. Urmila )  
 V. Manjrekar, Age : Adult, )  
 Dosti Vihar, Near Vartak Nagar )  
 Nagar, Thane (W). )

**)...Applicants**

**Versus**

1. The Dairy Manager. )  
 Mother Dairy, Kurla, Having office )  
 at Nehru Nagar, Kurla [E], )  
 Mumbai – 400 024. )

2. The Dairy Manager. )  
 Worli Dairy, Having Office at Worli, )  
 Mumbai – 400 018. )

3. The Chief Executive Officer. )  
 Aarey Milk Scheme, Having office at )  
 Aarey Milk Colony, Goregaon, )  
 Mumbai – 400 065. )

4. The Dairy Manager. )  
 Central Dairy, Having office at )  
 Aarey Milk Colony, Goregaon, )  
 Mumbai – 400 065. )

5. The General Manager. )  
 Greater Mumbai Milk Scheme, )  
 Worli, Having office at Worli, )  
 Mumbai – 400 018. )

6. The Dairy Development Commissioner)  
 Dairy Development, M.S, Mumbai )  
 Having office at Administrative )  
 Building, A.G. Khan Marg, Worli, )  
 Mumbai – 400 018. )

7. The State of Maharashtra. )  
 Through Principal Secretary, )  
 Agriculture, Dairy Development, )  
 Animal Husbandry & Fisheries )  
 Department [Dairy Development], )  
 Having Office at Mantralaya, )  
 Mumbai – 400 032. )

)...**Respondents**

**WITH**

**ORIGINAL APPLICATION NO.352 OF 2017**

Mrs. Shaila Dilip Narvekar. )  
 Age : 60 Yrs, Occu.: Nil, Retired as )  
 Accounts Clerk, Class-III in the office of )  
 below named Respondent No.1, R/o. A/5, )  
 Om-Brahmagiri CHS Ltd, Sunil Kambli )  
 Marg, Kurla (E), Mumbai – 24. )

**Versus**

1. The Dairy Manager. )  
 Mother Dairy, Kurla, Having Office )  
 at Nehru Nagar, Kurla (E), )  
 Mumbai – 400 024. )

2. The Dairy Development Commissioner )  
 Dairy Development, M.S, Mumbai )  
 Having office at Administrative )  
 Building, A.G. Khan Marg, Worli, )  
 Mumbai – 400 018. )

3. The State of Maharashtra. )  
 Through Principal Secretary, )  
 Agriculture, Dairy Development, )  
 Animal Husbandry & Fisheries )  
 Department [Dairy Development], )  
 Having Office at Mantralaya, )  
 Mumbai – 400 032. )

)...**Respondents**

**AND****ORIGINAL APPLICATION NO.353 OF 2017**

Mrs. Kalpana S. Gadkari. )  
 Age : 60 Yrs, Occu.: Nil, Retired as )  
 Accounts Clerk, Class-III in the office of )  
 below named Respondent No.1, R/o. )  
 A/2801, 'Vijeta' Dosti Vihar, Pokhran )  
 Road No.1, Vartak Nagar, Thane (W). )

**Versus**

1. The Dairy Manager. )  
 Mother Dairy, Kurla, Having Office )  
 at Nehru Nagar, Kurla (E), )  
 Mumbai – 400 024. )

2. The Dairy Development Commissioner )  
 Dairy Development, M.S, Mumbai )  
 Having office at Administrative )  
 Building, A.G. Khan Marg, Worli, )  
 Mumbai – 400 018. )

3. The State of Maharashtra. )  
 Through Principal Secretary, )  
 Agriculture, Dairy Development, )  
 Animal Husbandry & Fisheries )  
 Department [Dairy Development], )  
 Having Office at Mantralaya, )  
 Mumbai – 400 032. )

**)...Respondents****Mr. A.V. Bandiwadekar, Advocate for Applicant.****Mrs. K.S. Gaikwad, Presenting Officer for Respondents.****CORAM : A.P. KURHEKAR, MEMBER-J****DATE : 09.03.2020**

## **JUDGMENT**

1. All these Applicants are retired Government servants who have challenged the withdrawal of pay scale granted to them during the tenure of service and consequential recovery as well as re-fixation of pension to their disadvantage. Since all these O.As arising from common facts, they are decided by common Judgment.

2. The uncontroverted facts to be borne in mind while deciding these O.As can be set out as under :-

(i) All these Applicants were appointed on the post of Clerk-cum-Typist / Account Clerk in between 1967 to 1980 and they were getting additional pay of Rs.20/- p.m. as Special Allowance.

(ii) The Government by its Resolution dated 16.09.1981 has withdrawn Special Allowance of Rs.20/- p.m. which was being paid to them.

(iii) The colleagues of the Applicants and their Union viz. Greater Bombay Milk Scheme Staff Association have filed Writ Petition No.266 of 1982 before the Hon'ble High Court challenging withdrawal of Special Pay of Rs.20/- p.m. and also sought direction to place them in pay scale of Rs.335-680 in place of the then existing pay scale of Rs.260-495 on the ground of parity and equal pay for equal work.

(iv) The Hon'ble High Court allowed the Writ Petition by Judgment dated 07.11.1989 declaring the Account Clerks employed in Dairy Development Department entitled to pay scale of Rs.335-680 w.e.f.07.11.1989, but rejected the challenge to the withdrawal of Special Pay of Rs.20/- p.m.



(v) While granting pay scale of Rs.335-680, the Hon'ble High Court held that the Account Clerks working in Dairy Development Department do the same or identical work to those of Account Clerks in other Departments. The Hon'ble High Court further observed that the Government has differentiated various Departments and no rational is shown as to why for identical work, different grades are maintained or why different salaries are paid in different Departments. The Senior Clerks in other Departments also perform identical work as performed by Senior Clerks in Dairy Development Department. The Hon'ble High Court thus pleased to grant the then pay scale of Rs.335-680 to the Account Clerks employed in Dairy Development Department.

(vi) The Respondents as well as original Petitioners challenged the decision delivered in Writ Petition No.266 of 1982 by filing Civil Appeal No.521 of 1990 and Appeal No.379 of 1990. The Hon'ble High Court dismissed both the Appeals by Judgment dated 06.01.1993 and in Para No.8 of the Judgment directed that "However, we wish to make it clear 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.335-15-500-20-580-680 would apply not only to the Applicants but would also apply to all Clerks who are similarly situated and inclusive of those who have retired. The Respondents are directed to make the payment of arrears on or before 1<sup>st</sup> April, 1993. .

(vii) In the meantime, the Account Clerks who were in pay scale of Rs.950-1500 were placed in revised pay scale of Rs.1200-2040 w.e.f.07.11.1989 by order dated 21.04.1993.

(viii) The Respondent No.6 by order dated 21.05.1996 granted pay scale of Rs.1200-2040 to 219 Account Clerks who were in pay scale of Rs.950-15—[Pay scale of Jr. Clerk] by giving benefit of ACP with effect from 01.10.1994.

(ix) The Respondents challenged the Judgment of Hon'ble High Court by filing SLP before the Hon'ble Supreme Court, which was dismissed on 13<sup>th</sup> September, 1997.

(x) In view of dismissal of SLP, the Government issued G.R. dated 29.09.1997 and thereby all Account Clerks working in Dairy Development Department were granted pay scale of Rs.1200-2040 (from the existing pay scale of Rs.950-1500) w.e.f.07.11.1989 and further directions were issued to fix pay as per Rule 11(2) of Maharashtra Civil Services (Pension) Rules, 1982. In the said G.R, it is stated that if those Account Clerks who are benefited by this G.R. are transferred to another Department, then they will be brought down to their original pay scale of Rs.950-1500.

(xi) The Applicant No.2 viz. Smt. Prabha Bhage and her colleagues have filed O.A.No.1144/2003 for benefit of TBP/ACPS having denied next higher pay scale even after completion of 12 years regular service as Account Clerks w.e.f.7<sup>th</sup> November, 1989. The Tribunal by order dated 17<sup>th</sup> February, 2006 allowed the O.A. and directed the Respondents to grant next higher pay scale to them.

(xii) Resultantly, all other Applicants who were placed in higher pay scale w.e.f.07.11.2001 in view of completion 12 years of regular service from 07.11.1989, higher pay scale i.e. non-functional promotion was granted though nomenclature remains same as Account Clerks.

(xiii) Later, all these Applicants of the present O.A. were also placed in pay scale of Rs.5000-8000 on completion of 12 years' service w.e.f.7<sup>th</sup> November, 1989 and continued to avail the said benefit till their retirement.

(xiv) After retirement, the pension papers were processed considering the last pay scale of Rs.5000-8000 which Applicants

were availing at the time of retirement. However, in so far as the Applicants are concerned, the Pay Verification Unit raised objection about the pay scale of Rs.5000-8000 given to the Applicants mainly on the ground that temporary posting of Account Clerk was given to them w.e.f.07.11.1989 until they work in Accounts Section and asked Department to reconsider the issue [Page Nos.174 to 179 of P.B.)

(xv) In view of objections raised by Pay Verification Unit, the Respondents down-graded their pay scale into Rs.4000-6000 and issued orders for recovery of excess payment from retiral benefits.

3. Following Chart indicates the details viz. date of appointment, date of retirement, amount recovered, etc.

<b>Sr. No</b>	<b>Name of the Petitioner</b>	<b>Date of appointment as Clerk/ Typist</b>	<b>Date of retirement</b>	<b>Total Recovery</b>	<b>Post Retirement Recovery Date</b>
1.	Smt. Supriya Kiran Goraksha	07-02-1980	01-05-2015	187835	28.07.2015
2.	Smt. Prabha Anand Bhage	05-03-1975	31-08-2008	-	-
3.	Smt. Rekha Arun Honrao	26-04-1977	30-04-2011	177731	12.07.2013
4.	Smt. Rajlaxmi Prabhakar Gawas	16-10-1972	01-09-2006	12650	22.08.2008
5.	Smt. Amla Ashok Parab	01-10-1980	31-03-2015	188000	09.03.2017
6.	Smt. Ruti Shirish Sule	01-03-1977	31-08-2012	232733	30.09.2013 & 01.03.2014
7.	Smt. Shubhada Yeshwant Harnaikar	02-02-1976	30-09-2012	65700	15.02.2014
8.	Smt. Sushama Damodar Pagare	18-02-1976	31-08-2011	229198	05.02.2014 & 07.02.2014
9.	Smt. Sunanda Uday Mehendale	05-11-1980	31-08-2015	227934	21.12.2015
10.	Smt. Anupama Vishwambhar Chavan	29-07-1980	31-08-2015	258774	17.11.2015
11.	Smt. Swati Suresh Ghosalkar	02-08-1977	30-04-2012	179429	29.11.2013

12.	Smt. Sushama Suhas Deshpande	01-01-1975	30-11-2010	201191	02.05.2014
13.	Smt. Seema Jayawant Vaidya	31-12-1979	30-09-2014	165811	22.02.2016
14.	Smt. Aparna Charudatta Nandoskar	02-12-1974	31-07-2006	47845	13.09.2008 & 18.10.2008
15.	Smt. Suchita Vilas Desai	16-10-1972	31-10-2010	354822	12.05.2014
16.	Smt. Sulaxana Balkrishna Mokashi	05-10-1968	30-11-2006	17895	17.11.2007
17.	Smt. Nilima Ratnakar Choudhair	03-11-1980	30-09-2014	216915	23.12.2015
18.	Smt. Hemalata Ashok Dhanawade	01-12-1976	31-11-2012	246794	21.02.2014 & 28.02.2014
19.	Smt. Prabhavati Parasu Kambale	01-01-1979	30-06-2013	122866	02.09.2015
20.	Shri Chandrakant Shankar Telang	08-02-1977	31-03-2013	90519	27.10.2014
21.	Shri Bhagwan Shantaram Narse	02-06-1976	31-01-2009	-	-
22.	Late Smt. Urmila Vishwas Manjrekar Legal Heirs Spouse Vishwas D. Manjrekar	04-07-1977	01-09-2006	49549	22.02.2007 & 03.01.2014
23.	Smt. S.D. Narvekar	20-01-1980	31-07-2014	188440	07.02.2016
24.	Smt. K.S. Gadkari	24-03-1976	30-06-2014	269965	01.09.2015

4. Being aggrieved by the recovery as well as downgrading the pay scale entailing reduction in pension, the Applicants have filed the present O.A. along with M.A.532/2016 for condonation of delay. The Tribunal allowed the M.A. and condoned the delay with observation that it is the case of continuous and recurring cause of action in view of reduction of pension.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicants submits that in view of decision of Hon'ble High Court in Writ Petition No.266/1982 decided on 07.11.1989, the Account Clerks including Applicants were placed in pay scale of Rs.335-680 and the said Judgment was confirmed by Hon'ble Apex Court. He invited my attention to the decision of Hon'ble High Court wherein it is held that

Account Clerks working in Dairy Development Department do the same or identical work to those of Account Clerks in other Department and having found discrimination in the pay scale of Account Clerks employed in Dairy Development Departments were entitled to pay scale of Rs.335-680 w.e.f.07.11.1989. In this behalf, he further invited my attention to Para No.8 of the Judgment of Hon'ble High Court in Civil Appeal No.521/1990 and Appeal No.379/1990 arising from Judgment delivered in Writ Petition No.266/1982 wherein in Para No.8, it is held that the Judgment of Hon'ble High Court dated 07.11.1989 by which higher pay scale has been given to Account Clerks in Dairy Development Department in the pay scale of Rs.335-680 would not apply to the Applicants who were in Writ Petition but would also to all Clerks who are similarly situated and inclusive of those who have retired. Accordingly, the Respondents were directed to make payment of arrears on or before 1<sup>st</sup> April, 1993. Adverting to this Judgment, Shri A.V. Bandiwadekar submits that the Respondents by issuance of order dated 21.04.1993 (Page No.104 of P.B.) implemented the order. He invited attention to the order dated 21.04.1993 wherein it is specifically stated that “शासन निर्णय क्रमांक दुविआ-२७८९/सीआर-७०३/८९/पदुम-७ दिनांक ३१.१.९३ अन्वये दुग्धव्यवसाय विकास विभागातील लेखा लिपिक या पदाला वेतनश्रेणी रु १२००-२०४० दिनांक ७.११.१९८९ पासून पूर्वलक्षी प्रभावाने मंजूर करण्यांत आली आहे. यामुळे सध्या वेतनश्रेणी रुपये ९५०-१५०० मध्ये लेखा लिपिक पदावर कार्यरत असलेल्या लिपिक संवर्गातील कर्मचा-यांना त्यांच्या जेष्ठतेनुसार दिनांक ७.११.८९ पासून उपरोक्त सुधारित वेतनश्रेणी रुपये १२००-२०४० लागू करणे कमप्राप्त ठरते. बृहन्मुंबई प्रादेशिक विभागातील एकत्रित प्रशासन पदोन्नती गटातील लिपिक संवर्गातील खालील कर्मचारी त्यांच्या जेष्ठतेनुसार लेखालिपिकाचे पद मिळण्यास पात्र ठरतात म्हणून त्यांचे पदस्थापनेचे आदेश निर्गमित करण्यांत येत आहेत.”

6. He also invited my attention to order issued by Respondents dated 29<sup>th</sup> September, 1997 (Page No.313 of P.B.) whereby the pay scale of Rs.1200-2040 is made applicable to all Account Clerks w.e.f.07.11.1989 including those who retired. Material to note that in Para No.3 of the order dated 29.09.1997, stipulation is mentioned as follows :-

“३. संबंधित लेखा लिपिकांची लेखा शाखेतून अन्यत्र बदली झाल्यास संबंधितांची रुपये ९५०-१५०० या मूळ निम्न वेतनश्रेणीत वेतन निश्चिती महाराष्ट्र नागरी सेवा [वेतन] नियम १९८१ च्या नियम १५ नुसार करण्यात यावी.”

7. He, therefore, submits that admittedly, the present Applicants till retirement worked in Account Section, and therefore, the question of reverting

them to pay scale of Rs.950-1500 (applicable to Clerk) from pay scale of Rs.1200-2040 does not arise. On this line of submission, he submits that the impugned action of recovery as well downgrading pay scale is totally unsustainable in law in view of the decision of Hon'ble High Court in Writ Petition No.266/1982.

8. Per contra, Smt. K.S. Gaikwad, learned P.O. submits that as per the Judgment of Hon'ble High Court, the benefit of pay scale was granted to group of Clerks doing account work but they were basically Clerks and the order of Hon'ble High Court was of upgradation of pay scale and not promotion. According to her, the next promotional post is of Senior Assistant in pay scale of Rs.1200-2040 (revised pay scale 4000-7000) and at the time of promotion only, the Applicants were entitled to next promotional pay scale of Rs.1200-2040 of Senior Assistant. Thus, awarding to her pay scale granted by Hon'ble High Court was applicable to Account Clerks only and Applicants' basic cadre being of Clerk, they were not entitled to the said pay scale. On this line of submission, she tried to justify the impugned action of down-grading the pay scale. As regard recovery aspect, the learned P.O. fairly concede that in view of decision of Hon'ble Supreme Court in **Rafiq Masih's** case, the recovery could not have been done.

9. Thus, what transpires from the record that the pay scale of Rs.335-680 (corresponding to 1200-2040) was made applicable to the Applicants and Respondents accordingly implemented the same in terms of order of Hon'ble High Court and thereafter subsequent benefits of ACP Scheme were also given to the Applicants on completion of 12 years/24 years' service and the Applicants availed the same till retirement. The problem crop-up in view of objection raised by Pay Verification Unit. The main objection is that the posting of the Applicants in Account Section was temporary, and therefore, they are not entitled to such pay scale of Rs.1200-2040 which is already granted by the Respondents in terms of order dated 21.04.1993 as well as 29.09.1997. Pertinent to note that, it is nowhere the case of the Respondents that the Applicants were not doing account work or nor it is the case of the Respondents that they were shifted to other Department from Account Department. This aspect is of vital importance in the

present matter in view of belated objection raised by Pay Verification Unit after retirement of the Applicants.

10. In this behalf, it would be useful to refer the decision of Hon'ble High Court whereby the decision of Government to withdraw special pay of Rs.20/- p.m. was upheld and new pay scale of Rs.335-680 was granted (which was corresponding to 1200-2040). In this behalf, it would be useful to refer Para No.8 of decision of Hon'ble High Court dated 6<sup>th</sup> January, 1993 which is as follows :-

*“8. For the reasons mentioned hereinabove, the appeal preferred by the appellant viz. Appeal No.379 of 1990 stands dismissed. However, we wish to make it clear that the judgment dated 7<sup>th</sup> November, 1989 by which higher pay-scale has been given to the accounts clerks in the Dairy Development Department in the pay-scale of Rs.335-15-500-20-580-Extn.-20-680 would apply not only to the appellants but it would also apply to all clerks who are similarly situated and inclusive of those who have retired.”*

11. It is thus explicit that the benefit of pay scale of Rs.350-680 which was corresponding to 1200-2040 was granted not only to the appellants who are party to the said litigation but also to all Clerks who are similarly situated and inclusive of those who have retired. In so far as arrears are concerned, the directions were issued to pay the arrears on or before 01.04.1993. It is in pursuance of this decision of Hon'ble High Court arising from Writ Petition No.266/1982, the Respondents by order dated 21.04.1993 (Page No.104 of P.B.) implemented pay scale of Rs.1200-2040 w.e.f.07.11.1989 as directed by Hon'ble High Court to all Clerks who were initially in pay scale of Rs.950-1500. The relevant portion of order dated 21.04.1993 is as follows :-

*“शासन निर्णय क्रमांक दुविआ-२७८९ /सीबार-७०३/८९/पदुम-७ दिनांक ३१.३.९३ अन्वये दुग्धव्यवसाय विकास विभागातील लेखालिपिक पदाला वेतनश्रेणी रु.१२००-२०४० दिनांक ७.११.१९८९ पासून पूर्वलक्षी प्रभावाने मंजूर करण्यात आली आहे. यामुळे सध्या वेतनश्रेणी रुपये ९५०-१५०० मध्ये लेखालिपिक पदावर कार्यरत आलेल्या लिपिक संवर्गातील कर्मचा-यांना त्यांच्या जेष्ठतेनुसार दिनांक ७.११.८९ पासून उपरोक्त सुधारिक वेतनश्रेणी रुपये १२००- २०४० लागू करणे क्रमप्राप्त ठरते. बृहन्मुंबई प्रादेशिक विभागातील एकत्रित प्रशासन पदोन्नती गटातील लिपिक संवर्गातील खालील कर्मचारी त्यांच्या जेष्ठतेनुसार लेखालिपिकाचे पद मिळण्यास पात्र ठरतात म्हणून त्यांचे पदस्थापनेचे आदेश निर्गमित करण्यात येत आहेत.”*

12. Later in view of the dismissal of SLP by Hon'ble Supreme Court on 13.02.1997, the Government had issued G.R. on 29.09.1997, which is at Page No.313 of P.B. and the contents are relevant, which are as follows :-

*“दुग्धव्यवसाय विकास विभागातील लेखा लिपिक श्री. मधुकर हरी घुगे व इतर यांनी मुंबई उच्च न्यायालयात दाखल केलेल्या याचिका क्रमांक २६६/८२ वर निर्णय होऊन, या लेखा लिपिकांना दिनांक ७.११.१९८९ पासून रुपये १२००-२०४० ही वेतनश्रेणी अनुज्ञेय करण्यात यावी*

असा निर्णय मुंबई उच्च न्यायालयाने दि.७.११.१९८९ रोजी दिला होता. या निर्णयावर राज्य शासनातर्फे मुंबई उच्च न्यायालयात (अपिल शाखा) अपिल करण्यात आले होते. राज्य शासनाचे अपिल क्रमांक ५२१, मुंबई उच्च न्यायालयाचे न्यायमूर्ती श्री. पेंडसे व श्री. कापडिया यांच्या खंडपीठापुढे दिनांक ६ जानेवारी १९९३ रोजी सुनावणीस आले असताना त्यांनी मुंबई उच्च न्यायालयाच्या एका न्यायाधिशाने (सिंगल जज्जनी) दिनांक ७.११.८९ रोजी दिलेला निर्णय कायम केला व त्यांनी असे ही आदेश दिले की, दुग्धव्यवसाय विकास विभागातील सर्व लेखा लिपीकांना दिनांक ७.११.१९८९ पासून रु.१२००-२०४० ही वेतनश्रेणी अनुज्ञेय करण्यात यावी व यामध्ये या दरम्यान निवृत्त झालेल्या कर्मचा-यांचाही समावेश असावा. या दिनांक ६.१.९३ च्या निर्णयाच्या विरुद्ध राज्य शासनातर्फे सर्वोच्च न्यायालयात स्पेशल लिटिगेशन दाखल करण्यात आले. यावरील निर्णयाच्या अधान राहून शासन निर्णय क्र.दुविआ-२७८९/सीआ-७०३/८९/पदुम-७ दिनांक ३१.३.९७ अन्वये आवश्यक ते आदेश निर्गमित करण्यात आले. तथापि सर्वोच्च न्यायालयाने मुंबई उच्च न्यायालयाच्या दि.६.१.९३ च्या आदेशास स्थगिती दिल्यामुळे उपरोक्त दि.३१.३.९३ च्या शासन निर्णयान्वये दिलेले आदेश दि.१५.५.९३ च्या आदेशान्वये स्वगित ठेवण्यात आले. सदर स्पेशल लिटिगेशन दि.१३.२.९७ रोजी फेटाळण्यात आले आहे. ही बाब लक्षात घेऊन शासन खालीलप्रमाणे आदेश देत आहे :-

२. दुग्धव्यवसाय विकास विभागातील लेखा लिपीकांना (दिनांक ७.११.१९८९ नंतर निवृत्त झालेले लेखा लिपीकांसह रु. ९५०-१५०० या विद्यमान वेतनश्रेणीच्या समोर रु १२००-३०-१५६०-द. रो.- ४०-२०४० ही वेतनश्रेणी दिनांक ७.११.१९८९ पासून पुर्वलक्षी प्रभावाने लागू करण्यात यावी. उक्त वेतनश्रेणीत त्यांचे वेतन महाराष्ट्र नागरी सेवा (वेतन) नियम १९८१ मधील नियम ११(२) अनुसार निश्चित करण्यात यावे.

३. संबंधित लेखा लिपीकांची लेखा शाखेतून अन्यत्र बदली झाल्यास संबंधितांची रुपये ९५०-१५०० या मुळ निम्न वेतनश्रेणीत वेतन निश्चिती महाराष्ट्र नागरी सेवा (वेतन) नियम १९८१ च्या नियम १५ नुसार करण्यात यावी.”

13. Material to note that, as per Clause 3 of G.R. dated 29.09.1997, it is only in case the Clerks doing account work were shifted outside Account Section, in that event only, they would be reverted back in original pay scale of Rs.950-1500. As stated above, at the cost of repetition, it is necessary to pinpoint that it is nowhere the case of Respondents in the present O.A. that the present Applicants were not doing account work or shifted outside Account Section, so as to attract Clause No.3 of G.R. dated 29.09.1997. This being the position, the stand taken by the Respondents in the present O.A. that the pay scale granted by Hon'ble High Court i.e. 335-680 (corresponding to 1200-2040) is not applicable to the Applicants is totally unsustainable. As such, the impugned action of the Respondents to down-grade pay scale of Rs.1200-2040 to 950-1500 is clearly unsustainable and indeed, contrary to the decision of Hon'ble High Court.

14. At this juncture, it would be apposite to refer the decision rendered by this Tribunal in **O.A.No.1144/2003 (Sunita Shenoy & Ors. Vs. Principal Secretary, Dairy Development Department, State of Maharashtra) decided on 17<sup>th</sup> February, 2006** which have complete bearing over the present issue. Material to note that Smt. Prabha A. Bhage, who is Applicant No.2 in the present O.A. was Applicant No.16 in O.A.1144/2003. In **O.A.1144/2003**, the grievance was raised by the Applicants therein working as Account Clerks that though they were placed in pay scale of Rs.1200-2040 w.e.f.07.11.1989 in terms of decision



of Hon'ble High Court in **Writ Petition No.266/1982**, they were not given the benefit of 1<sup>st</sup> Time Bound Promotion on completion of 12 years' service in the pay scale of 1200-2040 w.e.f.07.11.1989. The Tribunal by decision dated 17<sup>th</sup> February, 2006 allowed the O.A. giving direction to extend the benefit of Time Bound Promotion/ACP to the Applicants on the basis of continuous service of 12 years on 07.11.1989. Para Nos.4 & 5 of the Judgment in **O.A.1144/2003** is material, which are as follows :-

**4.** It is seen that admittedly the applicants have been working continuously from 7.11.1989 in the pay scale of Rs.1200-2040. On being eligible for Time Bound Promotion after 12 years continuous service in the same pay scale they are entitled to Time Bound Promotion. It is seen that even though Time Bound Promotion is granted to them the applicants are kept in the same pay scale. It is also seen that on getting the regular promotion to the post of Senior Assistant also the applicants have remained in the same pay scale. Thus, the applicants are working continuously from 7.11.1989 in one single pay scale inspite of Time Bound Promotion and regular promotion to the next higher post.

**5.** The G.R. dated 8.6.1995 lays down the scheme of Time Bound Promotion to be granted to Class-IV Government servant. The said G.R. states that after 12 years continuous service the Class-III and Class-IV Government servants shall be given the next higher scale admissible in the channel of promotion. In case there is no channel of promotion available in any particular cadre they should be given the relevant scale prescribed under the annexure to the said G.R. It is seen that under the Special G.R. dated 29.9.1997 which was issued as per the directions of the High Court the applicants were granted the scale of Rs.1200-2040 with retrospective effect from 7.11.1989. It is not the case of the respondents that the applicants at any time were transferred from Accounts Section, resulting in reverting back to the earlier scale as per para 3 of the said G.R. Thus, the applicants continuously remained in the pay scale of Rs.1200-2040 even after regular promotion as Senior Assistant. Since they are still working in the Accounts Section continuously in the same pay scale they should have been granted Time Bound Promotion in the next higher scale as indicated in the annexure to the G.R. dated 8.6.1995 or under the G.R. dated 20.7.2001 whichever was applicable.”

15. Admittedly, the aforesaid decision was implemented without challenging the same and benefits were given to the Applicants therein. However, similarly situated persons i.e. the present Applicants are discriminated. The submission advanced by the learned P.O. that the Applicants in O.A.1144/2003 were promoted in the cadre of Senior Assistant, and therefore, the said decision is not applicable to the present Applicants is fallacious. Admittedly, the Applicants were also placed in pay scale of Rs.1200-2040 w.e.f. 07.11.1989 in terms of decision of Hon'ble High Court, and therefore, they are also entitled to the benefit

of Time Bound Promotion considering their pay scale 1200-2040 conferred upon them on 07.11.1989. However, the Respondents after retirement belatedly downgraded the pay scale of the Applicants from 1200-2040 to 950-1500 which is clearly unsustainable and contrary to the decision of Hon'ble High Court as well as G.R. dated 29.09.1997 referred to above.

16. The totality of aforesaid discussion leads me to sum-up that the impugned action of the Respondents down-grading the pay scale of the Applicants from 1200-2040 to 950-1500 and consequent action of down-grading pension as well as recovery of the amount from the retiral benefits of the Applicants is totally unsustainable in law and deserves to be quashed. The O.As, therefore, deserve to be allowed. All these Original Applications are allowed 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.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 09.03.2020  
Dictation taken by :  
S.K. Wamanse.