

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.166 OF 2019**

1. Shri Nitin W. Dandekar. )
2. Shri Shrikant C. Barbhai. )
3. Smt. Bharati P. Virnodkar. )
4. Shri Sunil B. Bhavsar. )
5. Shri Dnyandeo V. Mistry. )
6. Shri Rajendra M. Rajput. )
7. Smt. Jasmeen N. Mujawar. )
8. Shri Namdeo R. Waked. )
9. Shri Ajitkumar A. Dangare. )
- )
- All are aged Adult, Working in the )
- Post of Scientific Assistant in the )
- different offices under administrative )
- control of the belownamed )
- Respondent No.1 except Applicant )
- No.9 (Retired). )...**Applicants**

**Versus**

1. The Incharge Director. )  
Forensic Science Laboratory, )  
[M.S] and the Government Chemical )  
Analyser, having office in the office )  
of the Directorate of Forensic )  
Science Laboratories, Vidnyan Nagari )  
Hans Bhurga Marg, Santacruz (E), )  
Mumbai – 400 098. )
2. The State of Maharashtra. )  
Through Principal Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )...**Respondents**

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

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 17.12.2021**

### **JUDGMENT**

1. In this second round of litigation, the Applicants have challenged the two orders dated 24.01.2019 passed by Respondent No.1 intimating to the Applicants that the benefit of Time Bound Promotion [TBP] given to them earlier pursuant to the order passed by this Tribunal in O.A.No.1195/2013 was wrongly granted and also challenged the order dated 30.03.2021 of Respondent No.2 Government (passed during the pendency of O.A) whereby the benefits of TBP granted to them were actually cancelled. The Applicants also prayed for declaration of entitlement to TBP by condoning the break in temporary service period invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

Initially, the Applicants were appointed as Scientific Assistant (Class-III) post in between 1988 to 1990 purely on temporary basis for 30 days and thereafter, they were continued in service with same break on the same post. In the year 1999, the Government by G.R. dated 08.03.1999 had taken policy decision to regularize the temporary appointees who were appointed through Selection Board/Employment Exchange Office and 3761 employees were regularized, subject to fulfillment of conditions/criteria mentioned therein. Pursuant to it in G.R. dated 08.03.1999, Applicants services were regularized by issuing order dated 07.01.2000 stating that their seniority will be considered w.e.f. 01.03.1999.

3. Later, the Applicants have filed O.A.No.1195/2013 before this Tribunal for grant of benefit of TBP by counting their initial temporary service. The said O.A. was decided by this Tribunal along with O.A.No.732/2011 and other connected batch of O.As by Judgment dated

08.06.2016 with direction to the Respondents to reconsider the case of all Applicants who were parties to that bunch of O.As for grant of TBP benefit by counting their service from the date of their initial appointment and to extend the benefit of Judgment delivered by Hon'ble High Court in **Writ Petition No.9051/2013 [State of Maharashtra Vs. Smt. Meena Kuwalekar]** decided on 20.04.2016 (hereinafter referred to as '**Meena Kuwalekar's case**'). The Tribunal while deciding O.A.No.1195/2013 with connected O.A. has mainly relied upon the decision of Hon'ble High Court in **Meena Kuwalekar's** case and issued direction to consider the Applicant's case for grant of benefit of TBP and passed appropriate orders. In Para No.24, the Tribunal issued directions which are as under :-

*“24. The Respondents in this fasciculus of OAs are directed to reconsider the case of all the Applicants herein in the matter of grant of Time Bound Promotion / Assured Career Progression Scheme by counting the services of the Applicants from the date of their initial appointments in whichever capacity and take the steps consequent thereupon so as to extend the benefit of this judgment based on **Meena Kuwalekar's** case. The authorities shall bear in mind the principles laid down in **Meena Kuwalekar's** case and also in this OA. Compliance be made within eight weeks from today. A copy hereof be forwarded to the Chief Secretary, Government of Maharashtra with a request to comply with the directions in Paragraph 22 of this Judgment. These Original Applications stand allowed to this extent with no order as to costs.”*

4. Pursuant to the decision rendered by this Tribunal in O.A.No.1195/2013 dated 08.06.2016, the Respondents granted the benefit of TBP to the Applicants by counting their service from the date of their initial temporary appointment and accordingly, pay fixation was done by order dated 31.12.2016 and 13.01.2017 (Page No.143 and 146 of Paper Book).

5. In the meantime, Respondent No.1 forwarded proposal dated 20.04.2018 for condonation of break in temporary service of the Applicants and sought orders from Government.

6. However, later, while one Smt. Ketki Kulkarni has filed representation before the Respondents claiming the same benefits, the said matter was placed before the DPC. The DPC took a view that Smt. Kulkarni is not entitled to the said benefit since the benefit granted to the Applicant on the basis of decision in **Meena Kuwalekar's** case itself was wrong. The DPC observed that Applicants do not fulfill the criteria for grant of benefit of TBP by calculating her service from the date of initial temporary appointment and rejected the claim of Smt. Kulkarni. While doing so, the DPC proposed to withdraw the benefit already granted to these Applicants stating that it was wrongly granted. The Respondent No.1 issued Show Cause Notice dated 27.12.2018 to the Applicant which was replied by them on 03.01.2019.

7. It is on the above background, the Respondent No.1 – Incharge Director, Forensic Science Laboratory issued orders dated 24.01.2019 thereby withdrawing the benefit of TBP granted to the Applicants and referred the matter to the Government about decision of recovery in view of Judgment of Hon'ble Supreme Court in **AIR 2015 SC 696 (State of Punjab and others Vs. Rafiq Masih (White Washer))**.

8. During the pendency of O.A, the Respondent No.2 – Government by order dated 30.03.2021 rejected the proposal dated 20.04.2018 forwarded by Respondent No.1 for condonation of break in service of the Applicant in view of order passed by Respondent No.1 dated 24.01.2019 withdrawing the benefit of TBP. The Applicants, therefore, amended the O.A. and challenged the order dated 30.03.2021 (Page No.157-A).

9. Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that the Applicants' case is squarely covered by the Judgment of Hon'ble High Court in **Meena Kuwalekar's** case and in view of directions given by this Tribunal in earlier litigation i.e. O.A.No.1195/2013, the Respondent No.1 rightly granted the benefit of TBP to the Applicant by counting their initial temporary period of service.

According to him, impliedly it amounts to condone the break in service. He, therefore, submits that once decision of grant of TBP is taken and implemented by fixation of pay, later Respondent No.1 ought not to have withdrawn the said benefit. According to him, withdrawing of TBP by Respondent No.1 amounts to review, and therefore, the impugned orders passed by Respondent No.1 withdrawing the benefit of TBP are unsustainable in law.

10. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer sought to justify the impugned orders *inter-alia* contending that though initially, the benefit of TBP was granted to the Applicants, later it was noticed that the same was granted wrongly since there was huge break during the temporary period of appointment of the Applicants and they did not fulfill the parameters laid down by Hon'ble High Court in **Meena Kuwalekar's** case. She has further pointed out that before withdrawing of benefit, notices were issued to the Applicants and thereafter only, the impugned action was taken. Thus, according to her, wrong decision was corrected after giving an opportunity of hearing. She further emphasized that admittedly, the Applicants were appointed temporarily from time to time with breaks, and therefore, their initial temporary service till date of regularization cannot be treated as regular service, so as to entitle them for the benefits of TBP scheme.

11. In view of submissions advanced at the Bar, the question falls for consideration is whether the Applicants were entitle for counting their initial temporary period of service with breaks therein.

12. At the very outset, it needs to be stated that in so far as first round of litigation i.e. O.A.No.1195.2013 filed by the Applicants is concerned, there was no adjudication of the claim made by the Applicant on merit by the Tribunal. That O.A. was decided along with batch of O.As by Judgment dated 08.06.2016 thereby directions only were given to consider the case of Applicants for grant of TBP benefits/Assured Career

Progression Scheme (ACPS) by counting their service from the date of their initial appointment in the light of Judgment of Hon'ble High Court in **Meena Kuwalekar's** case. The Tribunal further directed for compliance within 8 weeks. Suffice to say, there was no such adjudication on merit by the Tribunal about the entitlement of the Applicants to the benefit of TBP/ACPS as well as about the condonation of break in initial period of temporary appointment. All that, the matter was disposed of with direction.

13. As regards decision of Hon'ble High Court in **Meena Kuwalekar's** case decided with bunch of Writ Petitions dated 20.04.2016, the Hon'ble High Court examined the issue of entitlement of the employees, who were initially appointed temporarily for counting period of temporary appointment for grant of benefit of TBP Scheme. On examination of factual aspects, in Para Nos. 18 and 19, the Hon'ble High Court held as under :-

*"18. The record in the present cases very clearly establishes the following:-*

*(A) That the appointments of the respondent - employees were neither illegal nor can the same be said to have been made through the back door;*

*(B) The appointments, though styled as 'temporary' were made to permanent, clear, substantive and sanctioned vacancies;*

*(C) The names of the respondent - employees were sponsored by respective employment exchanges or other authorised agencies;*

*(D) The selection process was fair, transparent and above board;*

*(E) The respondent - employees fulfilled the qualifications prescribed in the recruitment rules as applicable;*

*(F) From the date of initial appointments, the respondent - employees were placed in the regular pay scale applicable to the posts to which they came to be appointed;*

*(G) The services of the respondent - employees, from the date of their initial appointments, has been taken into consideration for various service benefits, including increments, leave, transfer, opening of GPF account, opening of service book, pension etc. (H) The services of the respondent - employees, from the date of their initial appointments, however, do not*

*appear to have been taken into consideration for purposes of seniority or functional promotion;*

*(I) It is not even the case of the State Government that the appointments of the respondent - employees were on daily wage basis or on work charged basis;*

*19. Despite the aforesaid features, the only reason for styling the appointments of the respondent - employees as 'temporary' is that the posts to which the appointments came to be made were under the purview of the Maharashtra Public Service Commission (MPSC) and the State Government, for reasons suggested in the GR dated 1 December 1994, was constrained to make such appointments without the involvement of the MPSC. It is not even the case of the State Government that the respondent - employees were in any manner responsible for the non involvement of the MPSC in their selection. Suffice to note that the GR dated 1 December 1994 by which the services of such employees were directed to be treated as regularised inter alia makes reference to the discriminatory situation brought about by the State Government itself, in the matter of denial or delay in the regularisation process. The main issue raised in this batch of petitions is therefore, required to be examined in the light of such factual background."*

14. The Hon'ble High Court then proceeded to examine the aim and object of the Scheme for TBP introduced by G.R. dated 08.06.1995 as well as G.R. dated 20.07.2001 whereby earlier TBP Scheme was substituted by ACPS. In that matter, the employees were temporarily appointed after following some selection process, and thereafter, their services were regularized by G.R. dated 01.12.1994. The Hon'ble High Court having found that the appointments of the employees were done by following some selection process on substantive vacant post and they have already availed all services benefits including increments, leave, transfer, opening of GPF Account, opening of Service Book, pension, etc. held that the initial period of service under the nomenclature of temporary service was required to be treated as regular service for the benefit of TBP.

15. In view of above, the crux of the matter is whether present Applicants fulfill factual parameters discussed by Hon'ble High Court in Para No.18 of Judgment reproduced above, so as to count their initial temporary service for the benefit of TBP Scheme. Here most important and distinguishing aspect is that in the present case, admittedly,

Applicants were appointed initially for 30 days/60 days and after certain breaks, they were again issued temporary appointment orders. As such, pertinently, it was not continuous appointment. On the contrary, there were breaks in their services. It is for this reason, the Applicants in this O.A. have prayed for declaration of condonation of break in service, which was not the issue in **Meena Kuwalekar's** case.

16. Following Chart illustrates the break in service in between 1<sup>st</sup> temporary appointment till regularization of their services.

Sr.No.	Names of Employees	Post	Date of appointment through Employment Exchange	Date of Regularization	Broken period in service	Total broken service (days)
1)	Shri N.W. Dandekar	Senior Laboratory Assistant	23.05.1990	10.01.2000	23.05.1990 to 8.3.99	195
2)	Shri S.C. Barbhai	Scientific Assistant	13.03.1990	13.04.2000	13.03.1990 to 8.3.99	209
3)	Smt. B.P. Virnodkar	Senior Laboratory Assistant	08.02.1990	10.01.2000	9.02.1990 to 8.3.99	205
4)	Shri S.B. Bhavsar	Scientific Assistant	13.03.1990	13.04.2000	13.03.1990 to 8.3.99	196
5)	Shri D.V. Mistry	Senior Laboratory Assistant	18.01.1990	10.01.2000	18.01.1990 to 8.3.99	205
6)	Shri R.M. Rajput	Senior Laboratory Assistant	11.04.1988	10.01.1990	11.04.1988 to 8.3.99	227
7)	Smt. J.N. Mujawar	Senior Laboratory Assistant	13.03.1990	10.01.2000	13.03.1990 to 8.3.99	196
8)	Shri N.R. Waked	Senior Laboratory Assistant	11.04.1988	10.01.1990	11.04.1988 to 8.3.99	227
9)	Shri A.A. Dangare	Scientific Assistant	13.03.1990	10.01.2000	13.03.1990 to 8.3.99	209

17. Now let us see the G.R. dated 08.03.1999 whereby Applicants' services were regularized as one time measure, which is as under :-



“२. प्रादेशिक दुय्यम सेवा निवडमंडळे, जिल्हा निवड समित्या व सेवायोजन कार्यालये या विहित सेवा भरती माध्यमा मार्फत शिफारस होऊन येण्याची अट शिथिल करून, सोबतच्या परिशिष्ट “अ’ मध्ये नमूद केलेल्या विविध मंत्रालयीन विभागाच्या प्रशासकीय नियंत्रणाखाली ३७६१ कर्मचा-यांची प्राप्त झालेली माहिती लक्षात घेऊन, शासनाने आता असा निर्णय घेतला आहे की, या कर्मचा-यांच्या सेवा “एक वेळची बाब म्हणून” खालील अटीच्या अधीनस्त नियमित करण्यात याव्यात :-

- (अ) संबंधित कर्मचा-याने सेवा प्रवेश नियमाप्रमाणे विहित केलेली शैक्षणिक अहर्ता व वयाची अट मूळ नियुक्तीच्या वेळी पूर्ण केलेली असावी,
- (ब) दिनांक १ एप्रिल, १९९९ रोजी एक वर्षाची सलग सेवा झालेली असावी व कामाचा दर्जा किमान “चांगला” असावा,
- (क) पदे उपलब्ध असावीत,
- (ड) नियमितीकरण करताना आरक्षण बिंदू आणि समांतर आरक्षण, या संदर्भात तत्त्वांचे/नियमांचे पालन करण्यात आले असावे,
- (इ) कर्मचा-यांची सेवाजेष्ठता प्रस्तुत आदेश निर्गमित झाल्याच्या दिनांकापासून धरण्यात यावा,
- (ई) अभाव अभावित निवृत्तीचा फायदा कुठल्याही प्रयोजनार्थ/कारणासाठी देण्यात येणार नाही.”

18. Whereas, at the same time, it would be also apposite to see the conditions of appointment order of the Applicants whereby their services were regularized as one time measure, which is at Page No.37 of P.B.

“शासन आदेश क्रमांक एफएसएल ०१९९/प्र.क्र. २९/पोल-४ दिनांक ६ ऑगस्ट १९९९ अनुसार खालील वरिष्ठ प्रयोगशाळा सहाय्यक या पदावर काम करणा-या कर्मचा-यांच्या वैयक्तिक वैद्यकीयदृष्ट्या पात्र ठरण-यावर व पूर्व चरित्र पडताळणी करण्यावर अवलंबित तसेच दोन वर्षांच्या परिविक्षाधीन कालावधी (नेमणूक करण्याच्या दिनांकापासून) समाधानकारक पूर्ण करण्याच्या अटीवर दिनांक १० जानेवारी २००० पासून नेमणूक करण्यात येत असून न्यायसहाय्यक वैज्ञानिक प्रयोगशाळा, महाराष्ट्र शासन, मुंबई येथे पदस्थापित करण्यात येत आहे. तुमचा परिविक्षाधीन कालावधी वाढविणे हे तुमच्या परिविक्षाधीन कालावधीच्या कामावर अवलंबित आहे.

- १) श्री. ज्ञा.व. मेस्त्री
- २) श्री. रा.सु. गावित
- ३) कुमारी मा.प्र. विरनोडकर
- ४) श्री. नि.वा. दांडेकर
- ५) श्री. म.दु. पिचड

तुमची बदली प्रादेशिक न्यायसहाय्यक वैज्ञानिक प्रयोगशाळा, नागपूर/पुणे/औरंगाबाद या ठिकाणी करण्यात येईल, या अटीवर तुमची नेमणूक करण्यात येत आहे. तुम्ही आवश्यकतेनुसार शासनाने विहित केलेल्या हिंदी व मराठी भाषा उत्तीर्ण झाले पाहिजे.

वरील सर्व कर्मचा-यांची सेवा जेष्ठता शासन निर्णय सामान्य प्रशासन विभाग क्रमांक एसआरव्ही-१०९९/प्र.क्र.६/९९/१२ दिनांक ८ मार्च १९९९ अनुसार ८ मार्च १९९९ पासून धरण्यात येत आहेत. तसेच त्यांना दिनांक ८/३/१९९९ ते ९/१/२००० या कालावधीत वेळोवेळी देण्यात आलेले सेवाखंड सेवा जेष्ठते साठी क्षमापित करण्यात येत आहेत.”

19. It is thus explicit that Applicants' services amongst others were regularized as one time measure in pursuance of G.R. dated 08.03.1999.

Here pertinent to note that as per G.R. dated 08.03.1999, one of the important condition for regularization was that the employee must have completed one year continuous service on 01.04.1999. However, it is manifest from appointment order reproduced above that Applicants did not fulfill the said condition but that condition was relaxed condoning their break in service from 08.03.199 to 09.01.2000. As such, even if the Applicant did not fulfill the condition No.(b) of G.R. dated 08.03.1999, they were given benefit of said G.R. relaxing the said condition.

20. Apart, admittedly, they are not in continuous and regular service from the date of initial appointment, as admittedly they were appointed in piecemeal for a period of 3/4 months by giving short breaks. This break in that period of temporary service is tabulated in Para No.15. Suffice to say, the Applicants were not in continuous and regular service and it was marred with various intervals, breaks and even they were not in continuous and regular service for one year on 01.04.1999 as per condition set out in Clause (b) of G.R. dated 08.03.1999. It is for this reason, the Applicants in this O.A. have also claimed relief of declaration of condonation of break in service. These two aspects will have to be borne in mind while considering their claim on the parameters observed by Hon'ble High Court in **Meena Kuwalekar'** case. At this juncture, it would be significant to note that in G.R. dated 08.03.1999, in Clause (e), it was clearly stipulated that the Applicant would not be entitled to any benefit of earlier fortuitous/temporary period of service, which now they are claiming in this O.A.

21. Now, let us see the minutes of D.P.C. which are as under:-

“उपरोक्त नमूद वस्तुस्थिती विचारात घेता, उपरोक्त कर्मचा-यांची तात्पुरती सेवा विचारात घेऊन सेवांतर्गत आश्वासित प्रगती योजना अंतर्गत लाभ मंजूर करताना याचिका क्र.१०५१/२०१३ व इतर (श्रीमती मीना कुवळेकर व इतर) मध्ये दिलेल्या तत्वानुसार यथास्थिती तरतुदी व निरीक्षणे तपासणे क्रमप्राप्त होते. परंतु मूळ याचिका क्र.११९५ /२०१३ प्रकरणी श्री. नि.वा. दांडेकर व इतर कर्मचा-यांना वरील परीच्छेद क्र.(क)नुसार तात्पुरत्या सेवेतील मूळ नियुक्तीच्या दिनांकापासून कालबद्ध पदोन्नती/सेवांतर्गत आश्वासित प्रगती योजनेचा लाभ मंजुरीचे आदेश

निर्गमित करण्यात आलेले आहेत. यास्तव, आता श्रीम मीना कुवळेकर व इतर विरुद्ध महाराष्ट्र शासन मूळ याचिका क्र.९० ५१/२०१३ मध्ये दिलेल्या तरतुदीनुसार श्री. नि.वा. दांडेकर व इतर ८ कर्मचा-यांना आणि तसेच श्रीम के.सु. कुलकर्णी मूळ याचिका क्र.२६६/२०१८ यांना तात्पुरत्या खंडित सेवेतील मूळ नियुक्तीच्या दिनांकापासून सेवांतर्गत आश्वासित प्रगती योजनेचा लाभ अनुज्ञेय होत नाही. याबाबतची वस्तुस्थिती/निष्कर्ष शासनास सादर करण्याच्या विभागीय पदोन्नती समितीने निर्णय घेतला आहे. तसेच शासन निर्णय, सामान्य प्रशासन विभाग, क्र. एसआरव्ही-१०९९/ प्र.क्र.६/९९/बारा, दि.०८.०३.१९९९ मधील परीच्छेद क्र.२ मध्ये नमूद केल्याप्रमाणे प्रादेशिक दुय्यम सेवा निवडमंडळे/जिल्हा निवड समित्या/सेवायोजन कार्यालय यांच्या कार्यक्षेत्रातील अधिनियम नियुक्त्या कर्मचा-यांची सेवा 'एकवेळची बाब म्हणून' नमूद अटी व शर्ती क्र.(ब) व (ई)यांची पूर्तता होत नसतानाही नियमित करण्यात आलेल्या असल्यामुळे श्री. दांडेकर व इतर तसेच श्रीम के.सु. कुलकर्णी यांच्या अभावित सेवेच्या नियुक्तीचा फायदा कुठल्याही प्रयोजनार्थ/कारणास्तव देणे लागू ठरत नाही. त्यानुषंगाने श्रीम के.सु. कुलकर्णी विरुद्ध महाराष्ट्र शासन याचिका क्र.२६६/२०१८ प्रकरणी पुढील कोणतीही आवश्यक कार्यवाही करण्यासाठी Cause of Action नसल्यामुळे सदर वस्तुस्थिती/निष्कर्ष शासनास सादर करण्याचा विभागीय पदोन्नती समितीने निर्णय घेतलेला आहे. सदर वस्तुस्थिती/निष्कर्ष शासनास सादर केल्यानंतर त्यावर वित्त विभागाचे/शासन अभिप्राय प्राप्त झाल्यानंतर श्री. नि. दांडेकर व इतर ८ कर्मचा-यांना संचालनालयाचे का.आ.क्र.२१४९, दि. ३१.१२.२०१६ व शुद्धिपत्रक का.आ.क्र. ३९, दि. १३.०१.२०१७ अन्वये दिलेल्या कालबद्ध पदोन्नती/सेवांतर्गत आश्वासित प्रगती योजनेचा लाभ काढून घेणे प्रशासकीयदृष्ट्या योग्य राहिल, असा समितीने निर्णय घेतला आहे. जेणेकरून संबंधित प्रकरणे अन्य कर्मचा-यांच्या बाबतीत सुद्धा अशा प्रकारे न्यायालयात याचिका दाखल झालेल्या असल्याने श्रीम मीना कुवळेकर व इतर विरुद्ध महाराष्ट्र शासन मूळ याचिका क्र. ९०५१/२०१३ मध्ये दिलेल्या मा. उच्च न्यायालयाच्या निर्देशाच्या अनुषंगाने आणि त्यानुसार निर्गमित केलेल्या शासन निर्णय, वित्त विभाग क्रमांक-मप्रन्या- २०१२/प्र.क्र. ६९/२०१२/ सेवा-३, दि.०७.१०.२०१६ मधील तरतुदी विचारात घेऊनच योग्य ती कार्यवाही करणे आवश्यक असल्याचे समितीने निष्कर्ष मांडले.”

22. Thus DPC in its meeting dated 14.08.2018 noted all these aspects of break in service, non-fulfillment of conditions set out in G.R. dated 08.03.1999 as well as non-fulfillment of factual parameters mentioned in Clause (9) of Para No.18 of Judgment in **Meena Kuwalekar's** case and came to the conclusion that Applicants were not entitled to the benefit of TBP and decided to withdraw the same. Accordingly, after giving Show Cause Notice, it came to be withdrawn.

23. In so far as Scheme of TBP and its aim and object is concerned, the State Government initially introduced TBPS by G.R. dated 08.06.1995 which was effective from 22.09.1994 and the said TBPS was substituted by Assured Career Progression Scheme (ACPS) vide G.R. dated 20.07.2001. In both the G.Rs, one of the condition for eligibility was to have regular service of 12 years on concerned post. The said scheme was introduced to give monetary benefits of non-functional promotion to relieve employees from frustration on account of stagnation. The scheme does not involve actual functional promotion, but it is known as Non-functional promotion giving benefit of higher promotional post pay scale. As such, there is no denying that one of the condition was to have 12 years' continuous service. Whereas in the present case, admittedly, there was huge break and interruption in the service of Applicants even before their regularization. Furthermore, it was a policy decision taken by the Government by G.R. dated 08.03.1999 to regularize the service of such employees as one time measure and as per specific stipulation in G.R. dated 08.03.1999, they were not entitled to the benefit of earlier fortuitous/temporary service period.

24. Whereas, the decision in ***Meena Kuwalekar's*** case has arisen from totally different factual background. In that case, it was a case of temporary appointment on the clerical posts which were within the purview of MPSC. From 1986 to 1990, there was ban upon direct recruitment. Therefore, the State Government in consultation with MPSC took decision to regularize the services of the employees who were appointed upto 17.06.1983. In that matter, it was noticed that they fulfilled the criteria discussed in Clause Nos.(a) to (i) as mentioned in Para No.18 of the Judgment.

25. Whereas, in the present case, admittedly, Applicants do not fulfill the criteria Clause (g) of Para No.18 of Judgment of Hon'ble High Court. In the present case, admittedly, Applicants are not given increments, leave, GPF facility, opening of service book, etc. which was complied with

by the employees in **Meena Kuwalekar's** case. This is also one of the material distinction in the present case. In **Meena Kuwalekar's** case, there was no such interruption or break during the period of temporary appointment and on the contrary, they were found in regular appointment and had availed all service benefits including increments, leave, transfer, opening of GPF Account, service book, pension, etc. Furthermore, there was no such stipulation in G.R. dated 01.12.1994 whereby the services of those employees in **Meena Kuwalekar's** case were regularized about non-benefit of previous fortuitous service, which is specifically one of the condition in G.R. dated 08.03.1999 in the present case.

26. As such, on examining the factual aspects, the Applicants do not fulfill the criteria observed by Hon'ble High Court in Para No.18(g) of the Judgment. Secondly, even if the Applicants were not strictly fulfilling the condition No.(b) of having one year continuous service on 01.04.1999, it was condoned. Thirdly, admittedly, there were interruption and break in service in the spell of temporary appointment (prior to regularization) as set out in Chart in Para No.15 of the Judgment. Fourthly, there was specific stipulation in Clause (e) of G.R. dated 08.03.1999 that the employees will not be entitled for any benefit of their fortuitous/temporary period of service and fifthly, by decision dated 08.03.1999, the services of those 3761 employees were regularized as one time measure which was not there in G.R. dated 01.12.1994 whereby employees in **Meena Kuwalekar's** case were regularized.

27. Shri Bandiwadekar, learned Advocate for the Applicant sought to contend that Respondent – Government had adopted pick and choose policy and in some cases, the Government has condoned the break. Advertising to this aspect, he sought to contend that denial of relief claimed by the Applicant would be discrimination. He further pointed out that in proposal dated 20.04.2018 forwarded by Department, the recommendation was made to condone the break in service. True, the

perusal of proposal dated 20.04.2018 tendered by the learned Presenting Officer during the course of hearing reveals that such recommendations were also made. However, the fact remains that the powers vests with the Government and ultimately, the Government by impugned order dated 30.03.2021 rejected the same. True as noticed from the note (Page No.206 of P.B.) in 2005, note was prepared by the department seeking opinion of GAD in the matter of condonation of break but fact remains that no such decision was ultimately taken on that note by the Government. Indeed, by order dated 30.03.2021 which is impugned in the present O.A, the Government has specifically rejected the request of condonation of break in service. Letter dated 23.04.2007 (Page No.262 of P.B.) referred by the learned Advocate for the Applicant pertains to the condonation of break in service of a Government servant in regular service and not about break in service during temporary period service before regularization. Therefore, the submission advanced by the learned Advocate for the Applicant on the ground of discrimination holds no water.

28. The totality of aforesaid discussion leads me to sum-up that Applicants were not entitled to the benefit of TBP, but it was wrongly granted and subsequently after giving Show Cause Notice, it has been rightly withdrawn by the impugned order. The challenge to the impugned order thus holds no water. I see no such legal infirmity therein. The O.A, therefore, deserves to be dismissed.

29. However, in so far as payment, if any made consequent to the grant of benefits of Time Bound Promotion Scheme (TBPS) is concerned, it should not be recovered from the Applicants since it would be impermissible to recover such amount from Group 'C' employee, in view of decision of Hon'ble Supreme Court in **Civil Appeal No.11527/2014 (State of Punjab and others Vs. Rafiq Masih (White Washer), decided on 18th December, 2014**. There was no fraud or misrepresentation attributable to the Applicants and Department mistakenly granted

monetary benefits. Therefore recovery would be iniquitous and harsh. Hence, the order.

**ORDER**

- (A) The Original Application O.A. stands dismissed with no order as to costs.
- (B) However, in so far as monetary benefit already paid to the Applicants are concerned, the said amount should not be recovered from them.

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

Mumbai

Date : 17.12.2021

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2021\December, 2021\O.A.166.19.w.11.2021.Time Bound Promotion.doc

Uploaded on