

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.238 OF 2016

DISTRICT : KOLHAPUR

Shri Madhukar A. Patil.)
Age : 62 Yrs., Occu.: Retired,)
R/o. Vidhi Hights, First Floor, Flat No.4,)
Near Sai Mandir, Kalamba, Dist.: Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Water Resources Department,)
Erstwhile known as Irrigation Dept.,)
Mantralaya, Mumbai - 400 032.)
2. The Executive Engineer.)
Hydrology Project Division, G. Barrack,)
Central Building, Pune – 411 001.)
3. The Accountant General)
(Accounts & Entitlements)-I,)
Maharashtra, 2nd Floor, Pratishta)
Bhavan, New Marine Lines,)
Maharshi Karve Road, Mumbai – 20.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 25.06.2019

JUDGMENT

1. This is an application made by retired Government servant challenging impugned orders dated 06.10.2015 and 21.11.2015 thereby down-grading his pay scale and pension 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 :-

The Applicant was appointed as Technical Assistant with Respondent No.2 on 11.05.1982 on Work Charge Basis in regular pay scale. He worked continuously till absorption. Subsequently, 25 posts in the cadre of Civil Engineering Assistants were created by the Government by order dated 26.09.1989 and in pursuance of it, the Applicant was absorbed on the post of Civil Engineering Assistant on regular establishment. There was no change in the nature of duties. As he had completed 12 years' service, he was granted the benefit of 1st Time Bound Promotion (TBP) in terms of G.R. dated 08.06.1995 w.e.f. 01.10.1994 by considering his initial date of appointment of 11.05.1982 in consultation with the Government and the approval of Finance Department in terms of letters dated 18.03.1998 and 18.06.1998. Thereafter again, the Applicant was granted the benefit of 2nd TBP on completion of 24 years' service in terms of G.R. dated 01.04.2010 by order dated 13.07.2011. The Applicant accordingly availed the benefits of 1st TBP as well as 2nd TBP and stands retired on 31.05.2013.

3. After retirement, when the pension papers were processed and forwarded to the Office of Accountant General – Respondent No.3, it raised objection for granting the benefit of 1st TBP considering his initial date of appointment on 11.05.1982. In view of objection raised by the Office of A.G, the Respondent No.2 revised the pay scale of the Applicant and granted the benefit of 1st TBP w.e.f.26.09.1989 i.e. the date of absorption in the post of Civil Engineering

Assistant and excluded the period of his earlier service from 11.05.1982 to 26.09.1989 and passed impugned orders dated 06.10.2015 and 21.11.2015 to revise the pension by down-grading his salary. As per existing pay scale at the time of retirement, his basic was fixed at Rs.22,690/- whereas, by impugned order, it was down-graded to 19,510/-. The Applicant has challenged these orders contending that he was rightly granted the benefit of 1st TBP considering his initial date of appointment and also pointed out that it was granted with the approval of Finance Department, and therefore, the withdrawal of the said benefit after retirement is arbitrary and illegal. He has also raised the ground of discrimination contending that his colleague viz. B.P. Patil and Guddulal Shikalgar were granted the benefit of 1st TBP considering their initial date of appointment. The Applicant further contends that the action taken by the impugned orders is in violation of fundamental rights under Articles 14 and 16 of the Constitution of India. With these pleadings, the Applicant prayed to set aside the impugned orders and to grant the pension as per Last Drawn Pay.

4. The Respondent Nos.1 & 2 resisted the claim by filing Affidavit-in-reply (Page Nos.62 to 69 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. It is not in dispute that earlier, the Applicant was appointed on the post of Technical Assistant temporarily in a pay scale of Rs.260-10-390-15-420-15-495, and thereafter, in terms of G.R. dated 31.01.1989, when Civil Engineering Assistant cadre was created, those who were working on the post of Technical Assistant including the Applicant were absorbed as Civil Engineering Assistant on regular establishment on revised pay scale of Rs.1200-30-1400. It is also not in dispute that initially, the benefit of 1st TBP as well as 2nd TBP was granted to the Applicant considering his initial date of appointment of 11.05.1982. The Respondents contend that after retirement of the Applicant, his pension proposal was forwarded to the Office of A.G. for approval but the Office of A.G. raised objection for granting the benefit of 1st TBP to the Applicant

considering his initial date of appointment of 11.05.1982. The Respondent No.2, therefore, revised the pay scale of the Applicant in terms of letter of Government dated 19.05.2014 which inter-alia states that while counting the period of 12 years' service, the initial period of service on the post of Technical Assistant shall not be considered. As such, in terms of letter dated 19.05.2014, the Respondent No.2 revised the pay scale and forwarded the same to the Office of A.G. The Respondent Nos.1 & 2, therefore, sought to justify the impugned action.

5. The Respondent No.3 had also filed Affidavit-in-reply (Page Nos.96 to 100 of P.B.) *inter-alia* adopting the contentions raised by the Respondent Nos.1 and 2 adverted to above and sought to contend that the objections raised by the Office of A.G. are correct in terms of letter of Government dated 19.05.2014.

6. Shri K.R. Jagdale, learned Advocate for the Applicant urged that the impugned orders dated 06.10.2015 and 21.11.2015 are arbitrary and unsustainable in law and facts and the benefit of 1st TBP and 2nd TBP was granted to the Applicant considering his initial date of appointment was of the approval of Government, and therefore, the action of withdrawing the said benefits after retirement of the Applicant being arbitrary without issuance of Show Cause Notice is clearly unsustainable in law. He has further pointed out that the issue of considering the period of temporary appointment for the benefit of 1st TBP is no more *res-integra* and it is now fairly settled that the employee is entitled to consider his date of initial appointment on temporary post for grant of benefit of 1st TBP. He further canvassed that in 1989, the Applicant was absorbed on the post of Civil Engineering Assistant and it is not promotion so as to deny the benefit of earlier service period from 1982 to 1989. He has also invited Tribunal's attention to the various decisions rendered by this Tribunal as well as Hon'ble High Court in support of his submission which will be dealt with during the course of discussion.

7. Per contra, the learned C.P.O. countered that, initially in 1982, the Applicant was appointed as Technical Assistant on Work Charge Basis on regular payi scale, but later in 1989, he was absorbed on the post of Civil Engineering Assistant on different (higher) pay scale, and therefore, the earlier service of the Applicant from 1982 to 1989 cannot be considered for the benefit of 1st TBP and he was entitled for the said benefit from 1989 only. The learned CPO, therefore, contends that in view of objection raised by the Office of A.G. in terms of letter of Government dated 19.05.2014, the pay scale of the Applicant was revised by giving the benefit of 1st TBP from 1989 and sought to justify the impugned action.

8. In view of submission advanced at the Bar, the following factors are admitted.

- (a) The Applicant was initially appointed on 11.05.1982 as Technical Assistant on Work Charge Basis and continued on the said post till absorption.
- (b) By G.R. dated 26.09.1989, 25 posts of Civil Engineering Assistants were created and the Applicant was absorbed on the said post.
- (c) Earlier, the benefit of 1st TBP was granted to the Applicant considering his initial period of appointment of 1982 and thereafter, he was also granted the benefit of 2nd TBP on completion of 24 years' service.
- (d) The Applicant stands retired on 31.05.2013 and after his retirement, pension proposal was forwarded to the Office of A.G. for grant of pension on the basis of Last Drawn Pay at the time of retirement.
- (e) The Office of A.G. raised objection for grant of benefit of 1st TBP to the Applicant considering his date of initial appointment on the basis of letter issued by Water Resources Department, Government of Maharashtra on 19.05.2014.

9. The crux of the matter is whether the Applicant is entitled to the benefit of 1st TBP considering his date of appointment or whether he is entitled to the said benefit from the date of absorption in the year 1989 only.

10. True, the Applicant was initially appointed as Technical Assistant on Work Charge Basis in the pay scale of Rs.260-10-390-15-420-15-495 and later in terms of G.R. dated 26.09.1989, when 25 posts of Civil Engineering Assistants were created, the Applicant was absorbed in the said post in different pay scale i.e. 1200-30-1400-EB-30-1800. However, it could not be forgotten that it was not a promotional post but absorption on the post of Civil Engineering Assistant which was newly created and this aspect of absorption is of much significance. The benefit of 1st TBP was granted to the Applicant considering his initial service from 11.05.1982 that too, with the approval of the Government. In this behalf, the letters issued by Government dated 18th March, 1998 and 18th June, 1998 (Page Nos.33 and 34 of P.B.) are important. What is significant to note that by the said letter dated 18th June, 1998, the Government accorded it's approval to consider temporary service of Technical Assistant for considering the benefit of 1st TBP on completion of 12 years. Furthermore, while doing so, the approval of Finance Department was also taken. Here, it would be apposite to reproduce the contents of letter dated 18.06.1998, which are as follows :-

“संदर्भाकित शासन पत्रान्वये, पाटबंधारे विभागातील स्थापत्य अभियांत्रिकी सहायक संदर्भातील कर्मचा-यांना त्यांची तांत्रिक सहायक पदावरील पदस्थापना झाल्याच्या दिनांकापासून १२ वर्षे सेवा झाल्यानंतर कनिष्ठ अभियंताची वेतनश्रेणी लागू करण्यास शासन मान्यता देण्यात येत असल्याचे कळविण्यात आले आहे. तथापि, ज्या कर्मचा-यांची नेमणूक कार्यव्ययी आस्थापनेवर तांत्रिक सहायक म्हणून झाली आहे अशा कर्मचा-यांची १२ वर्षांची सेवा त्यांच्या कार्यव्ययी आस्थापनेवरील नियुक्तीच्या दिनांकापासून धरण्यात यावी किंवा कसे असा मुद्या उपस्थित झाला होता त्याअनुषंगाने असे कळविण्यात येते की, स्थापत्य अभियांत्रिकी सहायक संवर्गातील कर्मचा-यांच्या आस्थापनेचा विचार न करता त्यांच्या तांत्रिक सहायक/ मिस्त्री/कारकून इत्यादी पदावरील पदस्थापनेच्या दिनांकापासून १२ वर्षे सेवा झाल्यानंतर कालबद्ध पदोन्नती योजनेअंतर्गत कनिष्ठ अभियंताची वेतनश्रेणी लागू करण्यास शासन मान्यता देण्यात येत आहे. हे पत्र वित्त विभागाच्या अनौपचारिक संदर्भ क्र. ५४९/ सेवा - ३, दि. १०.६.९८ च्या प्राप्त सहमतीनुसार निर्गमित करण्यात येत आहे.”

11. As such, there is no denying that the Government accorded its approval to consider earlier period of service of Technical Assistant for grant of benefit of 1st TBP and its is on that basis, the Applicant was granted the benefit. Later, the

benefit of 2nd TBP was also granted to the Applicant and he availed all these benefits till his retirement. He superannuated on 31.05.2013. The problem crop up when the pension proposal was forwarded to the Office of A.G. who raised an objection on the basis of Govt. Letter dated 19.05.2014.

12. The perusal of letter dated 19.05.2014 (Page No.81 of P.B.) reveals that the same has been issued by Water Resources Department addressed to A.G. stating that the opinion of A.G. that earlier period of service cannot be considered for the benefit of 1st TBP is correct. Thus, this letter dated 19.05.2014 seems to have been issued in reference to the letter of A.G. However, in the letter dated 19.05.2014, there is no reference of the earlier orders of Government dated 18.03.1998 and 18.06.1998 referred to above whereby the Government accorded its approval for considering earlier service period of Technical Assistant. Therefore, this letter dated 19.05.2014 which is not in the form of decision of Government can hardly be used or acted upon to the detriment of the Applicant, particularly after his retirement. This being the position, the letter dated 19.05.2014 cannot prevail over the Government decision reflected in letter dated 18.06.1998, much less, with retrospective effect.

13. Thus, this is not a case where the benefit of 1st TBP was granted mistakenly. The material placed on record clearly spells that it was conscious decision of the Government to extend the benefit of 1st TBP and 2nd TBP considering earlier period of service of Technical Assistant. As stated above, the persons who were appointed on Technical Assistants like Applicant were absorbed in 1989 on newly created post and it is not a promotion. True, it carries a different pay scale but in the facts and circumstances of the case, it cannot be termed as a promotion to higher post, and therefore, the services rendered by the Applicant on the post of Technical Assistant cannot be wiped out from

consideration while granting the benefit of 1st TBP. In fact, precisely for this reason, the Government by letter dated 18.06.1998 accorded its official sanction.

14. The issue of considering earlier temporary service for considering the benefit of TBP is in fact no more *res-integra* in view of various decisions of Tribunal and maintained by Hon'ble High Court. In this respect, the reference can be made to the Judgment of Hon'ble High Court in ***Writ Petition No.905/2013 (State of Maharashtra Vs. Meena Kuwalekar and other 32 Writ Petitions) decided on 28th April, 2016***. The Hon'ble High Court has considered the catena of decisions in this regard and held that the State Government has adopted selective approach while considering the past service of the employees prior to absorption. The Hon'ble High Court, therefore, declined to interfere in the orders passed by M.A.T. and dismissed the Writ Petitions. True, in the present matter, one distinguishing feature is that the Applicant was absorbed on different post viz. Civil Engineering Assistant carrying some higher pay. However, it cannot be considered as a promotion but it was a case of absorption, as acknowledged by the Government in letter dated 18.06.1998 referred above.

15. The reference can be made to the decision of Hon'ble High Court in ***Writ Petition No.3815/2012 (Subhash Cheke Vs. State of Maharashtra) decided on 29th August, 2013***, which is arising from the similar situation. The Para Nos.5 and 6 of the Judgment is material, which is as follows :-

"5. The limited grievance of the petitioners is regarding placement of their scale in the cadre of Junior Engineer on completion of 12 years' service from the initial appointment in the cadre of Technical Assistant/mestry/Karkoon, etc. We find that the case of the petitioners is squarely governed and covered by the Circular dated 18.06.1998. It is not in dispute that the Circulars/Government Resolutions as are applicable to the employees of Irrigation Department have been made applicable by the Respondent Maharashtra Jeevan Pradhikaran to their employees.

6. *In that view of the matter, rule is made absolute by holding that the petitioners are entitled to the benefit of the pay-scale in the cadre of Junior Engineer upon completion of 12 years' from the date of their entry in the cadre of Technical Assistant/Mistry/Karkoon, etc. It is made clear that the claim of the petitioners has been considered since the petitioners have restricted their claim for grant of benefit in accordance with the Circular dated 18.06.1998. We make it clear that our judgment and order may not be construed as entitlement of the petitioners to any other promotional or other benefits. The same would be construed strictly in accordance with the requirements of service conditions governing the employees of respondent no.1 Corporation. The Writ Petition stands disposed of accordingly. There will be no order as to costs."*

16. Similar view was taken by Hon'ble High Court, Bench at Nagpur in ***Writ Petition No.5185/2015 (Namdeo B. Paikrao Vs. Maharashtra Jeevan Pradhikaran, Mumbai)*** wherein the Hon'ble High Court held that the Petitioners are entitled to the benefit of pay scale of Junior Engineer on completion of 12 years of service from the date of their entry in the cadre of Technical Assistant/Mistry/Karkoon, etc.

17. The learned Advocate for the Applicant also referred to the Judgment passed by M.A.T, Bench at Aurangabad in ***O.A.701/2015 (Mohan Chaudhary Vs. State of Maharashtra) decided on 22.09.2017***. In that case, the Applicant was earlier appointed as Technical Assistant in 1980 and later in 1989, he was appointed as Civil Engineering Assistant and received the benefit of 1st TBP and 2nd TBP considering his service on the post of Technical Assistant. He stands retired on 30.05.2014. After retirement, the Office of A.G. raised objection about the entitlement of the Applicant therein for considering the service on the post of Technical Assistant. The O.A. has been allowed with the observation that the objection raised by A.G. is not in consonance with the law and O.A. came to be allowed.

18. The learned Advocate for the Applicant also referred to the decision of Hon'ble High Court, Bench at Aurangabad delivered in ***Writ Petition***

No.10012/2014 (Chandravadan Gujrathi Vs. State of Maharashtra) decided on

31.01.2019. In that case, the Petitioner therein was appointed on the establishment of Zilla Parishad on the post of Mistry (Grade-II) and his services were regularized in terms of order passed by Industrial Court. However, later, the employees of Z.P. working on various different posts as Junior Engineering Assistant/Mistry (Grade-I)/Mistry (Grade-II), etc. were amalgamated in one cadre of Civil Engineering Assistant and all those employees were absorbed in the different posts in the cadre of Civil Engineering Assistant. The issue was whether the Petitioner therein is entitled to the benefit of TBP considering his initial date of appointment in the cadre of Mistry (Grade-II). The order passed by Additional Chief Executive Officer, Z.P. extending TBP benefit considering his date of absorption in Civil Engineering Assistant post was held unsustainable and directions were issued to grant the benefit of TBP considering Petitioner's initial date of appointment.

19. Now, turning to the facts of the present case, the Applicant is in better position in view of Government's approval reflected in the letter dated 18.06.1998 (referred to above) whereby the Government has taken conscious decision to consider the service of Technical Assistants while granting the benefit of TBP to them after their absorption as Civil Engineering Assistants.

20. It needs to be noted that when the Office of A.G. raised objection by its letter dated 13.08.2013 and returned the pension papers to the Office of Executive Engineer. That time itself, the Superintending Engineer by his letter dated 25.03.2014 addressed to Executive Engineer made it clear that the benefit of 1st TBP was granted to the Applicant w.e.f.01.10.1994 in pursuance of G.Rs. dated 08.06.1995 and 01.11.1995 and directed Executive Engineer to bring it to the notice of A.G. and get the pension of the Applicant sanctioned for immediate payment. Despite the clarification given to the Office of A.G, the pension papers

of the Applicant were returned back in view of letter 19.05.2014 which only reflects the opinion of Water Resources Department that the stand taken by A.G. for not considering earlier service of the Applicant on the post of Technical Assistant is correct.

21. Thus, what transpires from the material placed on record that it is only on the basis of letter dated 19.05.2014 (Page 81 of P.B.), the A.G. has raised objection. In my considered opinion, the letter dated 19.05.2014 cannot be allowed to prevail over the conscious decision taken by the Government and conveyed to one and all by letter dated 18.06.1998, and therefore, the benefit extended in terms of it, cannot be withdrawn with retrospective effect after retirement of the Applicant in view of various decisions of Hon'ble High Court referred to above.

22. The Applicant has also raised the issue of discrimination contending that his colleagues viz. B.P. Patil and Guddulal Shikalgar were granted pension considering their past service for the entitlement of 1st TBP. The Applicant has also produced their pension orders sanctioned by A.G, which is at Page Nos.52 to 57 of P.B. Surprisingly, in this behalf, the reply of Respondent Nos.1 & 2 as well as reply of Office of A.G. is far from satisfaction. The Respondent Nos.1 & 2 feigned ignorance about the same stating that those employees are not retired from the establishment of Respondent No.2. Whereas, the A.G. all that stated in reply that their cases will be re-examined for appropriate action. Thus, there is no denying that no such objection was raised in respect of matters of Shri B.P. Patil and Guddulal Shikalgar, but the Applicant is subjected to discrimination which is violative of Articles 14 and 16 of the Constitution which guarantees equality before law.

23. This being the position, it seems that the Respondents have adopted the policy of pick and choose and there is no consistency in the stand taken by the

Respondents. In the decisions of Hon'ble High Court referred to above, particularly the decision in ***Writ Petition No.3815/2012 (Subhash Cheke Vs. Maharashtra Jeevan Pradhikaran)*** and ***Writ Petition No.5185/2015 (Namdeo B. Paikrao & Ors. Vs. Maharashtra Jeevan Pradhikaran, Mumbai)***, the benefit of 1st TBP was granted to Technical Assistants considering their earlier period of service and relying on the said Judgment, the same benefit was extended in ***O.A.701/2015 (Mohan R. Choudhari Vs. The State of Maharashtra)*** (cited supra). Therefore, the Applicant being similarly situated person, he is entitled to the same relief. Needless to mention that the consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of "Doctrine of Precedent". One of the basic principles of administration of justice is that the cases should be decided alike. Whenever an application under Section 19 of the Administrative Tribunals Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent and decide the application accordingly, if there is no reason to deviate for the same.

24. In this behalf, it would be apposite to refer the Judgment of Hon'ble Supreme Court in ***(2015) 1 SCC 347 (State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava & Ors.)*** wherein the Hon'ble Supreme Court laid down the following legal principles :-

"The moot question that requires determination is as to whether the approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled out from the judgments cited both by the appellants as well as the respondents, can be summed up as under :

- (i) Normal rule is that when a particular set of employees 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.

(ii) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(iii) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India(supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

25. As such, the exposition of law enunciated in the aforesaid authority is squarely applicable in the present situation with greater force in view of conscious decision of the Government reflected in letter dated 18.06.1998 whereby the benefit of 1st TBP to the Technical Assistants was granted considering their earlier period of service irrespective of their absorption on Civil Engineering Assistant post.

26. The necessary corollary of aforesaid discussion leads me to sum-up that the impugned orders dated 06.10.2015 and 21.11.2015 thereby withdrawing the benefit of 1st TBP granted to the Applicant w.e.f. 1994 and revision of pension are unsustainable in law. Needless to mention that, consequent to it, the question of recovery of the alleged excess payment made to the Applicant does not survive in view of the law laid down by Hon'ble Supreme Court in ***Civil Appeal No.11527/2014 (State of Punjab and Ors. Vs. Rafiq Masih) decided on 18th December, 2014.*** The Hon'ble Supreme Court summarised the legal position in the Judgment and held that recovery from retired employees or employees who are due to retire within one year from the order of recovery is not permissible.

27. The Hon'ble Supreme Court in Para No.12 held as follows :

"12. 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."

28. The upshot of aforesaid discussion leads me to conclude that the impugned orders dated 06.10.2015 and 21.11.2015 are not sustainable in law and O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 06.10.2015 and 21.11.2015 are quashed and set aside.
- (C) The Respondents are directed to release the pension of the Applicant as per his pay scale on the date of retirement and monetary benefits be paid to him within two months from today.
- (D) No order as to costs.

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

Mumbai
Date : 25.06.2019
Dictation taken by :
S.K. Wamanse.