

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.333 OF 2016**

**DISTRICT : THANE**

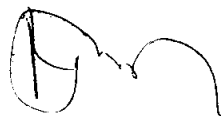
Shri Mohmed Aslam M. Usman Qureshi. )  
Age : 60 Yrs, Occu.: Nil, Retired as Police )  
Inspector, R/o. C/o. M.S.A.H. Qureshi, )  
Jametul Mominat (Madarasa), )  
Borivali – Padgha, Tal. Bhiwandi, )  
District : Thane. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai - 400 032. )
2. The Director General and Inspector )  
General of Police, M.S, Mumbai )  
Having office at Old Council Hall, )  
Shahid Bhagatsingh Marg, )  
Mumbai 400 039. )...**Respondents**

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

**Mr. N.K. Rajpurohit, Chief Presenting Officer for Respondents.**



**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 04.08.2017**

### **JUDGMENT**

1. There have been developments pending this Original Application (OA), and therefore, now the matter remains restricted to whether the Applicant having been given the deemed date for the post of Deputy Superintendent of Police (Dy.S.P.)/Assistant Commissioner of Police (ACP) is also entitled to the arrears which have been denied to him on the ground that he has not functioned as Dy.S.P. right till his retirement.

2. I have perused the record and proceedings and heard Mr. B.A. Bandiwadekar, the learned Advocate for the Applicant and Mr. N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) for the Respondents. The 1<sup>st</sup> Respondent is the State in Home Department while the 2<sup>nd</sup> Respondent is the Director General and Inspector General of Police.

3. The OA as earlier brought, sought the relief in the nature of directions to the 1<sup>st</sup> Respondent to grant to the Applicant the arrears of Pay and Allowances to the post



of Police Inspector (PI) from 17.8.1991 to 10.4.2003. He was given deemed date of promotion from 17.8.1991 to the post of P.I. Interest at the rate of Rs.12% p.a. was also claimed. Another relief was to seek deemed date of promotion to the next higher post of Dy.S.P./ACP from 2.11.2005 which was the date on which the Officer immediately below him in the cadre of P.I. Mr. P.S. Kasture was promoted. All consequential service benefits were also sought.

4. On 10.7.2017, the following order came to be made on the Farad of this matter.

“Heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.


The learned PO is being instructed by Mr. P.M. Balkande, Section Officer, Home Department.

The Applicant is a retired Police Inspector. He retired on 31<sup>st</sup> July, 2014. He brought this OA for the relief of deemed date of promotion / Pay and allowances, etc. Recently, some orders have been issued by the Government and both the sides are *ad-idem* that in so far as the post of PI is concerned, the



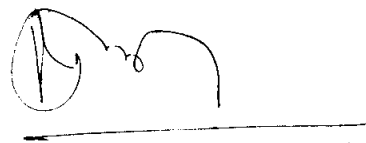
issue of deemed date and pay & Allowances, etc. has worked itself out although it appears that the actual payment is still to be made. Now, as far as the post of ACP is concerned, the deemed date has been granted and that issue has worked itself out. However, the learned CPO informs that the Finance Department has rejected the claim of the Applicant and that is the only issue that remains at large. The OA shall be heard to that extent on the next date. S.O. to 24<sup>th</sup> July, 2017.”

It will become quite clear as already mentioned above that except the issue of arrears to the post of Dy.S.P./ACP, no other dispute remained at large. There are documents of recent vintage filed on behalf of the Respondents. One is an order from the Home Department dated 27.2.2017 whereby the deemed date of promotion as 17.8.1991 was given for the post of P.I. The Finance Department opined, based on GAD and Law and Judiciary opinions that, as an exceptional case, there should be no objection in granting actual salary and allowances from the deemed date subject to the approval by the Hon'ble Chief Minister. The next document is dated 1<sup>st</sup> April, 2017 again from the Home Department pertaining to Dy.S.P./ACP indicating therein that the matter was submitted for approval of GAD. Another order of the Home Department of 4.7.2017 would



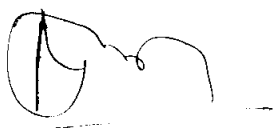
show that the name of the Applicant was included in the list of promotees to the post of Dy.S.P./ACP. He had, however, retired on 31.7.2014 on superannuation, and therefore, he was not considered for that promotion from the supplementary list of P.Is and was not promoted to the post of Dy.S.P./ACP. Mr. Kasture whose name has already figured above and who was immediately below the Applicant in the list of P.I. was promoted as Dy.S.P./ACP on 21.11.2005 vide the order dated 31.10.2005. The proposal to give to the Applicant the deemed date from 21.11.2005 was under Government's consideration. The name of the Applicant was included in the list of Dy.S.P./ACP for the year 2005. The Government approved the proposal to give deemed date of seniority and pay scale subject to the approval of MPSC. The pay of the Applicant be fixed by giving him notional fixation of pay for the period from 21.11.2005 to 31.7.2014, which was the date of his retirement on superannuation. The only benefit which the Applicant would be entitled to would be in the matter of pension, but he would not be entitled to the arrears in so far as the post of DY.S.P./ACP was concerned.

5. The above discussion, therefore, must have crystalized the only issue that survives for consideration.

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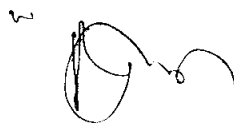
6. Reliance was placed on a recent Judgment rendered by me in OA 102/2017 (Shri Ashok G. Khamkar Vs. Commissioner of Police for Greater Mumbai and one another, 17.7.2017). That was also a matter in which the controversy was substantially the same as it is here wherein I relied upon another Judgment rendered by me in OA 1010/2016 (Smt. Manda V. Deshmukh Vs. The State of Maharashtra and 2 Ors. dated 6.4.2017).

7. Very pertinently, in both Ashok Khamkar as well as Manda Deshmukh, I relied upon a Judgment of the Hon'ble Supreme Court in the matter of Ramesh Kumar Vs. Union of India : AIR 2015 SC 2904. That as I shall be presently pointing out is the governing authority. Therein, yet another Judgment of the Hon'ble Supreme Court in State of Kerala and others Vs. E.K. Bhaskaran Pillai : (2007) 6 SCC 524 = AIR 2007 SC 2645 was referred to. I also relied upon an unreported Judgment of the Division Bench of the Hon'ble Bombay High Court in Writ Petition No.539/2016 (Shri Rajesh G. Waghmode Vs. The Chief Secretary, Govt. of Maharashtra and one another, dated 2<sup>nd</sup> September, 2016). Para 11 of Waghmode's case, in fact, needs to be fully reproduced because therein, one gets the guidance from Ramesh



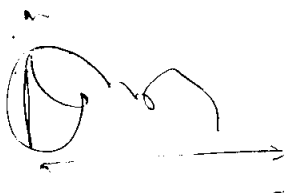
**Kumar** as well as **E.K. Bhaskaran Pillai**, two Judgments of the Hon'ble Supreme Court.

“11. The above discussion must have made it clear as to what the scope of this OA is all about and what is the nature of the claim made by the Applicant. He has been given the promotion to the post of Head Constable in 2003, but has been denied the arrears for that post. It was this particular aspect of the matter which is now fully governed by the Judgment of the Hon'ble Supreme Court in **Ramesh Kumar** (supra). Although that was a matter that arose out of facts wherein the disciplinary proceedings were held against the Petitioner of the Supreme Court but the principles are the same and will apply hereto. In **Manda Deshmukh** (supra), the issue was as to whether the grant of deemed date having been given to the various promotional posts from time to time, the actual arrears could be denied. In Para 14, I took guidance from Ramesh Kumar (supra) and also from another Judgment of the Hon'ble Supreme Court in **State of Kerala and others Vs. E.K. Bhaskaran Pillai : (2007) 6 SCC 524 = ASIR 2007 SC 2645** and



thereafter, I reproduced Paras 12 and 13 from Ramesh Kumar (supra). With this, I now reproduce Para 14 from **Manda Deshmukh's** case which as already mentioned above, contains the extracts from the Hon'ble Supreme Court Judgment in Ramesh Kumar (supra).

“14. Mr. Lonkar, the learned Advocate for the Applicant relied upon **Ramesh Kumar Vs. Union of India : AIR 2015 SC 2904.** There the Hon'ble Supreme Court was dealing with the case of an Army personnel. There were disciplinary proceedings against him. He had been proceeded against and once discharged also, but was reinstated and then promoted in the year 2000. His claim for arrears for the promotional post from 1.8.1997 was the subject matter of the contention before the Hon'ble Apex Court. There also, the arrears were denied to him and it is notable that unlike the present one, that was a case where disciplinary proceedings had been initiated. In Para 10, the Hon'ble Supreme Court was pleased to hold that when the appellant of Their

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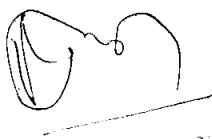
Lordships was granted ante-dated seniority along with his batch-mates, there is no reason as to why he should have been denied the pay and allowances in the promotional post. Their Lordships were told that, under the Rule of “no work no pay”, the appellant was not entitled to claim arrears. In Para 12, Their Lordships relied upon **State of Kerala and others Vs. E.K. Bhaskaran Pillai : (2007) 6 SCC 524 = AIR 2007 SC 2645**. It will be most appropriate in my view to fully reproduce Paras 12 and 13 from **Ramesh Kumar** (supra).

“12. In normal circumstances when the respective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. In State of Kerala & Ors. V. E.K. Bhaskaran Pillai, (2007) 6 SCC 524: (AIR 2007 SC 2645), this Court held that the principle of “no work no pay” cannot be accepted as a rule of thumb and the matter will have to be considered on a



case to case basis and in para (4), it was held as under:-

“.... We have considered the decisions cited on behalf of both the sides., So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent. of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeed in that and directions is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult



to set down any hard-and-fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.

13. We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority along with his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.”

8. In Para 12 of **Ashok Khamkar's** Judgment, I relied upon **Rajesh Waghmode** (supra) and Para 12 which



reproduces Paras 15 and 16 of **Manda Deshmukh's** case also need to be reproduced.

“12. In Para 15 of **Manda Deshmukh**, I relied upon a Judgment of the Hon'ble Bombay High Court and Paras 15 and 16 of **Manda Deshmukh** need to be reproduced.

“15. The Judgment in **Ramesh Kumar** (supra) was followed by Division Bench of the Hon'ble Bombay High Court in **Writ Petition No.539 of 2016 (Mr. Rajesh D. Waghmode Vs. The Chief Secretary, Govt. of Maharashtra and one another, dated 2<sup>nd</sup> September, 2016)**. There, the Pune Municipal Corporation ultimately granted deemed date to a physically handicapped employee and the issue of the arrears fell for consideration. The issue formulated by the Hon'ble High Court was as to whether the Petitioner was entitled to salary and other allowances admissible to the promotional post with effect from the deemed date. **Ramesh Kumar** (supra) was cited along with **Bhaskaran Pillai** (supra).



**16.** Further, the Hon'ble Bombay High Court was pleased to refer to the GR of the Government in GAD dated 29<sup>th</sup> October, 2001. In fact, there are GR dated 25<sup>th</sup> February, 1965, Circular of 9<sup>th</sup> September, 1969 issued by the GAD and a GR of 14<sup>th</sup> September, 1982 which have got important significant bearing on the present matter. Their Lordships in **Rajesh Waghmode** (supra) have referred to the above instruments except that of 1969. It becomes quite clear that the governmental instructions therein are that, in the event of wrongful supersession of a Government employee, he should be deemed to have been promoted to the higher post from the date from which he would have been promoted. In the absence of wrongful supersession i.e. from the date from which their juniors who were promoted by superseding them started to officiate in such posts and they should be allowed pay in such posts as if they were promoted on the dates on which their juniors were promoted and also paid arrears of pay and allowances from such dates."

It is pertinent to note that, in the above case law, it has been clearly held that the principle 'no

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work no pay' does not apply in such state of affairs. Although and this, I must repeat in **Ramesh Kumar** the facts were of the disciplinary enquiry but the principles are fully applicable hereto."

9. In order to deal with the contention on behalf of the Respondents, in my view, it will be appropriate to somewhat closely read **Rajesh Waghmode's** case also though that matter was discussed in the earlier OA decided by me. The issue that survives for consideration of Their Lordships of the Hon'ble High Court was as to whether Their Lordships Petitioner was entitled to salary and other allowances admissible to the promotional post with effect from the deemed date which in that matter was 29<sup>th</sup> April, 2008. It appears that, on facts therein, a note was put up that the Petitioner there could not be entitled for any monetary benefits for the deemed date of promotion though he would not be able to count his seniority from 29<sup>th</sup> April, 2008 for further promotional avenues. The two dates on which the said Petitioner was given promotions were recorded in Para 6 of the Hon'ble High Court. The 3 G.Rs which in fact, are relevant herein dated 25<sup>th</sup> February, 1965, 14<sup>th</sup> September, 1982 and 29<sup>th</sup> October, 2001 were referred to by Their Lordships. In Para 8, it was noted



that, in so far as the G.R. of 14<sup>th</sup> September, 1982 was concerned, the G.R. of 29<sup>th</sup> October, 2001 did away with the provision that the arrears would be payable provided the time gap between the actual promotions and the deemed date of promotion was more than three months. It was discussed as to how a noting was put up before the Standing Committee of the Pune Municipal Corporation that the Petitioner was suffering from 55% permanent physical disability and the further fact that the post of the Clerk was the promotional post for which the feeder cadre was the Junior Clerks. A reference was made to another Judgment of the Hon'ble Bombay High Court in Para 11 of **Rajesh Waghmode's** case. It was then observed in Para 11 as follows :

“11. .... It is true that in the letter dated 4<sup>th</sup> January 2013 at Exhibit-I issued by the Commissioner, there is a direction to pay salary and other benefits admissible to the promotional post from the deemed date. Such a direction could not have been issued in the light of the aforesaid decision of this Court in the case of Kuber Govindrao More. In the present case, there is an independent prayer made in this Petition for issuing a direction to pay salary from the deemed date of promotion.”

  
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10. Pertinently, in **Rajesh Waghmode's** case thereafter, **Ramesh Kumar** (supra) was referred to. The Paragraphs which I have already reproduced hereinabove were reproduced by the Hon'ble Bombay High Court also. It seems that, if there is some difference in the Paragraph numbers of **Ramesh Kumar's** case, it is because the Hon'ble High Court referred to the Supreme Court cases while in the OA earlier decided, I must have taken them from different law report which could be AIR. However, I must note quite carefully that, in **Rajesh Waghmode's** case also, Their Lordships were pleased to observe in effect that sometimes, when a person was superseded and he challenged that order of supersession and direction was given for reconsideration of his case from the date, the person junior to him was appointed. The Court may sometimes grant full benefits with retrospective effect and sometimes it may not. That in short, is a matter which is fact specific. Further, no thumb could be laid down as observed by the Hon'ble Supreme Court also in regard to the principle of "no work no pay". Their Lordships in Para 14 of **Rajesh Waghmode** (supra) held as follows :

"14. .... In the light of the principles laid down by the Apex Court in the case of Ramesh Kumar, the benefit of pay to the promotional post from the deemed date cannot be totally denied especially



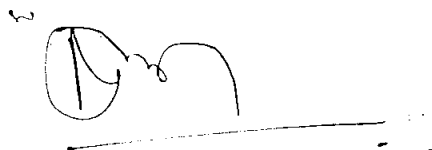


when in the affidavit-in-reply filed by the Municipal Corporation, it is specifically contended that the seniority of the Petitioner to the promotional post will be counted on the basis that he was promoted to the said post with effect from 29<sup>th</sup> April 2008. Therefore, we propose to grant benefit of salary of the promotional post from 23<sup>rd</sup> June 2010.”

11. The said Writ Petition was for the above reasons allowed and directions were given by Their Lordships to the Respondents to pay cost as well. In the final order, the Petitioner was found entitled to the salary and allowances admissible to the post of Clerk with effect from the date therein mentioned and Clause (b) read as follows :

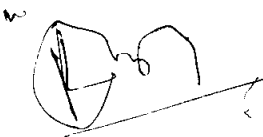
**“(b)** We direct the Pune Municipal Corporation to make fixation of the pay of the Petitioner on the footing that he was promoted to the post of Clerk with effect from 29<sup>th</sup> April 2008. The Petitioner will be entitled to all the benefit of the promotional post with effect from 29<sup>th</sup> April 2008 except the actual salary and allowances.”

12. Clause (c) mandated the Respondents to pay difference in salary and allowances to the Petitioner and also consequential benefits. An outer time limit was laid

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and consequences of failure to comply with the directions were provided and the Rule was made absolute.

13. The learned PO laid particular emphasis on the words "except the actual salary and allowances" in clause (b) of the final order in **Waghmode's** Writ Petition. Now, in my opinion, for guidance and to find as to what precisely is the ratio, the entire Judgment has to be read as a whole, and therefore, if the learned CPO envisages that Their Lordships have laid down the principle that actual salary and allowances should not be paid at all, I do not think, that is the mandate of the said case law. Their Lordships have made it clear that, the issue herein relevant is a fact specific one and no straight jacketed formula of universal application can be laid down. The quotations from the Judgments of the Hon'ble Supreme Court in **Ramesh Kumar** and **Bhaskaran Pillai** will further reinforce this conclusion. In my opinion, therefore, the course of action adopted by me in **Khamkar's** OA basically relying upon the two Judgments of the Hon'ble Supreme Court in **Ramesh Kumar** and **Bhaskaran Pillai** and that of the Division Bench of the Hon'ble Bombay High Court in **Waghmode's** Writ Petition will have to be adopted herein as well, even in so far as the actual entitlement of the Applicant for the post of DY.S.P./ACP is concerned. There are averments in



Ramesh Kumar (supra) which would make it very clear that the opinion of the Finance Department echoed at the Bar by the learned CPO that, if he has not worked actually as ACP, he would not be entitled to the actual payment or arrears cannot be accepted. In fact, I for one, in view of the foregoing, can find no justification in the move of the Respondents to make a distinction between the post of P.I. and Dy.S.P./ACP which was strenuously urged fails to appeal to me.

14. For the foregoing, it is hereby held and declared that the benefits for the post of P.I. and as also the deemed date and the emoluments, etc. have been correctly given to him. It is further held and declared that the Respondents have rightly given the deemed date to the Applicant in respect of both the posts of P.I. and Dy.S.P./ACP. No change or alteration is to be made therein. However, the impugned action and the order in so far as it refuses to grant arrears to the Applicant from 2.11.2005 till his retirement for the post of Dy.S.P./ACP is quashed and set aside and the Respondents are directed to grant to him even those arrears within a period of ten weeks from today. Should the Respondents fail to do so, they would be liable to pay interest to the Applicant at the rate of Rs.8% p.a. from the date of entitlement till actual payment. The



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Original Application is allowed in these terms with no order as to costs. Hamdast.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**04.08.2017**

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Mumbai

Date : 04.08.2017

Dictation taken by :

S.K. Wamanse.

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