

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.497 OF 2019
WITH
ORIGINAL APPLICATIN NOS.660 & 661 OF 2019**

DISTRICT : PUNE / MUMBAI

ORIGINAL APPLICATION NO.497 OF 2019

1. Shri Rajaram Sopana Khartode,)
2. Shri Shantaram Tulshiram Dumbare)
3. Shri Suresh Kushabhau Khedkar,)
4. Shri Shivaji Govind Hole,)
5. Shri Gulab Govind Bhoir,)
6. Shri Laxman Gangaram Gage,)
7. Shri Rajendra Nageshwar Kamble,)
8. Shri Namdev Bapurao Limbarkar,)
9. Shri Rajaram Tukaram Pawar,)
10. Shri Subhash Bhimrao Shelke,)
11. Shri Babanrao Satappa Koli,)
12. Shri Gorakhnath Shivaji Virbhadra,)
13. Shri Ashok Shankarrao Kadam,)
14. Shri Tukaram Pandurang Shendge,)
15. Shri Sambhaji Baburao Kamble,)
16. Shri Sarjerao Jaywantrao Gaikwad,)
17. Shri Tanaji Bapurao Jadhav,)
18. Shri Prakash Pandurang Diwate,)
19. Shri Gulab Dnyanoba Gavane,)
20. Shri Maruti Malhari Kalokhe,)
21. Shri Maruti Babu Atole,)
22. Shri Kailas Dhondiba Gaikwad,)
23. Shri Sarjerao Bhanudas Bandgar,)
24. Shri Pandurang Sonba Jagtap,)
25. Shri Altaf Husen Isaqoddin Kazi,)
26. Shri Mallaya Virsangayya Swami,)
27. Shri Mahadev Limbaji More,)
28. Shri Babu Buwa Mali,)
29. Shri Babasaheb Kashinath Patkar,)

30. Shri Suresh Ganpat Dabhade,)
31. Shri Dattatraya Adinath Kambaonkar,)
32. Shri Soma Bhiwa Chougule,)
33. Shri Narendrakumar Gajendra Gadekar,)
34. Shri Chandrakant Sopan Gawade,)
35. Shri Prabhakar Laxman Bhosale,)
36. Shri Maruti Bhayaji Tamhane,)
37. Shri Dnyanoba Bandu Bhise,)
38. Shri Ramdas Anna Virkar,)
39. Shri Nanasaheb Sadashiv Bhise,)
40. Shri Ishwar Appaji Gawade,)
41. Shri Sanjay Namdeo Pawar,)
42. Shri Gajanan Pilaji Sutar,)
43. Shri Shivaji Sopan Suryawanshi,)
44. Smt. Gangubai Pandharinath Golande,)
45. Smt. Shalan Shivaji Ghule)

All are Aged Adult, few of them are working as)
 Milk Procurement cum extension Supervisor)
 in any of the offices under the administrative)
 control of the Respondent No.1. That few of)
 them have retired as Milk Procurement)
 Supervisors.)

All are R/o. Dist. Kolhapur, Sangli, Satara,)
 Pune and Solapur.)

)...**Applicants**

Versus

1. The Regional Dairy Development Officer,)
 Having office at Common Wealth Building,)
 3rd floor, Laxmi Road, Pune - 30.)
2. The State of Maharashtra,)
 Through Principal Secretary,)
 [Dairy Development] (Agriculture),)
 Animal Husbandry, Dairy Development &)
 Fisheries Department, having office at)
 Mantralaya, Mumbai - 400 032.)

)...**Respondents**

WITH

ORIGINAL APPLICATIN NO.660 OF 2019

1. Ashok Pundlik Gote,)
 R/o. Vrindawan Colony, Karegaon Road,)
 Parbhani.)

2. Satish Bajirao Aakulwar,)
Prathmesh Apartment, Unit C, Yash Nagri,))
KabraNagar, Nanded.)
3. Suryakant Hanumantrao Aakulwar,)
R/o. Shilpa Saflya, Sujan Nagar Latur.)
4. Dadhel Bapurao Ambadasrao,)
R/o. Jaihanuman Nagar, Tarodakhurd,)
Nanded.)
5. Anil Yeknathrao More,)
Near Parvati HSG Society, Harsul,)
Aurangabad.)
6. Namdeo Aasaram Raut,)
R/o. MIG 21, Aavishkar Colony, CIDCO-6,))
Aurangabad.)
7. Shivaji Namdeo Aadmane,)
Tarangana Kasliwal, G-2, Sector, Mitmita)
Area, Aurangabad.)
8. Baban Murlidhar Galdhar,)
R/o, Ro House No.36, Near Mhada Colony,))
Tisgaon, Aurangabad.)
9. Magalsing Tarsing Jadhav,)
At- Dhotra, Post- Panavdod, Tal. Sillod.)
10. Datratray Kondiram Thorat,)
Swaraj Nagar, Balbhim Colony, BID.)
11. Zumber Kisanrao Sonavane,)
At- Aambegaon, Post : Mothewadi,)
Tah. Majalgaon, District BID.)
- All above are working Milk Procurement)
Supervisor under RDDO, Respondent No.3.)
12. Narayan Marotrao Bangane,)
Retired, Govt. Milk Scheme, Aurangabad.)

13. Sambhaji Pundlik Bodke,)
Retired, Govt. Milk Scheme, Aurangabad.)
14. Shivaji Ramrao Karad,)
Chikhali, Tal. Amadpur, Dist. Latur.)
15. Kishan Nivaratrao Made,)
Near Bansode Hospital, Latur.)
16. Shivaji Sambhaji Biradar,)
Dhanegaon, Tah. Deoni, Dist. Latur.)

Sr. No.12 to 16 are retired from the post of)
Milk Procurement Supervisor.)

)...Applicants

Versus

1. State of Maharashtra,)
Through its Principal Secretary,)
Agriculture, Animal Husbandry,)
Dairy Development and Fisheries Dept.,)
Mantralaya, Mumbai 32.)
2. The Commissioner,)
Dairy Development Department,)
Administrative Building, Varli Sea Face,)
Abdul Gaffarkhan Marg, Mumbai 18)
3. The Regional Dairy Development Officer,)
Administrative Building, Jalna Road,)
Aurangabad 431 001.)

)...Respondents

WITH

ORIGINAL APPLICATIN NO.661 OF 2019

Ramrao Vithalrao Utkar,)
Retired, Govt. Milk scheme Supervisor,)
R/o. K-15/1, N-9, Pawar Nagar, CIDCO Colony,)
Aurangabad - 431 003.)

)... Applicant

Versus

1. State of Maharashtra & 2 Ors.)

)...Respondents

Mr. A.V. Bandiwadekar, Advocate for Applicants in O.A.497/2019.

Mr. Bharat Kulkarni, Advocate for Applicants in O.As.660 & 661/2019.

Mr. A.J. Chougule, Presenting Officer with Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 11.10.2019

JUDGMENT

1. All these Original Applications are arising from common issues, and therefore, being decided by this common Judgment.

2. Shortly stated facts giving rise to these applications are as follows :-

The Applicants were appointed as Milk Procurement Supervisors in Dairy Development Department and some of them stand retired on attaining age of superannuation. The Government of Maharashtra took policy decision to revise pay scale w.e.f.01.01.1986 and the Applicants were brought in revised pay scale of Rs.1350-2200 from old pay scale of Rs.1200-1800 on completion of seven years' service. Accordingly, the Government Notification was issued. According to Applicants, the revised pay scale was granted to remove anomalies between pay scales of various cadres of equivalent post in other Departments. As such, the said revised pay scale could not be considered as a promotion or non-functional promotional pay scale. Thereafter, the benefit of 1st TBP in terms of G.R. dated 08.06.1995 as well as the benefit of 2nd TBP in terms of G.R. dated 01.04.2010 was granted to the Applicants. However, later, at the verge of retirement, the Respondents have issued impugned orders of recovery contending that the Applicants are not entitled to the benefit of TBP twice

because they have already availed the benefit of revised pay scale on completion of seven years' service. The Respondents accordingly issued impugned recovery orders, which are challenged by the Applicants in the present O.As.

3. Indeed, the issue involved in the present O.As are squarely covered by the various decisions rendered by the Tribunal and confirmed by Hon'ble High Court. Having noticed this aspect on the very first date, when the matter was taken up for admission, the Tribunal has passed an order directing learned P.O. to examine the matter, as hardly anything is left for decision in view of earlier decisions. However, later, the learned P.O. has filed Affidavit-in-reply on behalf of Respondent Nos.1 & 2 opposing the entitlement of the Applicant without explaining how the issue is open to challenge in the light of earlier decisions rendered by this Tribunal and confirmed by Hon'ble High Court. At the time of final hearing also, the learned P.O. could not point out anything substantial to take different view of the matter.

4. Whereas, the learned Advocates for the Applicants submit that in view of decisions rendered by this Tribunal earlier and confirmed by Hon'ble High Court, the principle of res-judicata embodied in Section 11 of CPC is squarely attracted and O.A. deserves to be allowed.

5. The learned P.O. was fair enough to concede that the issue raised in these O.As was exactly the matter in issue in the earlier O.As decided by this Tribunal and confirmed by Hon'ble High Court.

6. In view of above, it is not necessary to deal with the facts of the matter in detail and the present O.A. deserves to be allowed by giving benefit of earlier decisions on the principle of entitlement of the

Applicant being similarly situated persons and on the ground of parity.

7. The matter in issue in these O.As is whether the benefit of 1st and 2nd Time Bound Promotions granted to the Applicants was legal or whether the Respondents' contention that the ground of revised pay scale to the Applicants on completion of seven years' service amounts to non-functional promotional pay scale, so as to make them ineligible for benefit of 2nd TBP. If it is found that revised pay scale granted to the Applicants on completion of seven years' service was amounting to non-functional promotional pay scale, then in that event obviously, they would have been entitled only one benefit of TBP. Whereas, if grant of revised pay scale was found granted only to remove anomalies between pay scales of various cadres of only equivalent post in other Departments, then in that event, it obviously could not be treated as non-functional promotional pay scale. This is the only issue in the matter which is already adjudicated and had attained the finality.

8. The issue in question was firstly raised in **O.A.599/2013 (Subhash Kuwalkar Vs. State of Maharashtra and Others) decided along with O.A.636/2014 and O.A.633/2014 decided by M.A.T, Nagpur Bench on 26.02.2015**. The Tribunal considered the matter in depth and held that the benefit of revised pay scale cannot be construed as a benefit of non-functional promotional pay and the O.As were allowed. However, the State Government preferred Writ Petition No.6329/2015 before Hon'ble High Court, Bench at Nagpur. The Hon'ble High Court by Judgment dated 23.11.2015 upheld the order of Tribunal and dismissed the Writ Petition. The State Government again carried the matter to Hon'ble Supreme Court but SLP was dismissed on the point of delay on 27.07.2018. Suffice to say, the decision rendered by this Tribunal had attained finality and it has been implemented.

9. Later, again, the same issue was raised in O.A.378/2016, 389/2016, 380/2016 and 381/2016 before MAT, Bench at Nagpur. These O.As were allowed by order dated 20th February, 2017 on the basis of finality of Judgment in **Subhash Kuwalekar's** matter referred to above. Again, the same issue was crept up in **O.A.737/2014 (Daulat Pawar & Ors. Vs. Regional Dairy Development Officer, Nashik Division)**. The O.A. was allowed by this Tribunal on 22nd July, 2015. The Tribunal concurred with the finding recorded by this Tribunal in earlier litigation that the G.R. dated 08.12.1994 was issued with intent to remove anomalies in pay scales of the Officials working in the various Departments holding equivalent post.

10. Indeed, while deciding O.A.378/2016 connected with O.As 379/2016 and 380/2016, this Tribunal in Judgment dated 20.02.2017 frown-upon the attitude of the Government for not granting the benefit of the Judgment rendered by the Tribunal to the similarly situated persons without driving the public servant to approach the Tribunal or Court for redressal of their grievance. Para No.6 of the Judgment is material, which is as follows :-

“6. The above discussion must have made it quite clear that the present applicants are exactly similarly placed as the applicants of three O.As above referred to. The orders thereon were confirmed in the writ petition and, therefore, on party of reasoning and principle of similarly placed persons, these O.As also will have to be allowed in the line of those three O.As. Having said that, however, I am at complete loss to understand as to why the State should insist on each similarly placed employee to move the Judicial Forum for redressal in the matters which are concluded. There are inevitably certain principles that emanate from the judicial determination and more particularly this would be so in the Constitutional Courts like the Hon'ble High Court. When those principles have been settled and are capable of being implemented, in my opinion, without driving each and every similarly placed employee to litigation, it would always be desirable, proper and appropriate to apply those principles to the others who are so similarly placed as they are even if they were not parties thereto. This to my mind after all has to be the norm of State behaviour in a law and rule governed system of public administration. I would commend to the State to shun the insistence on every employee being made to move the

Tribunal or Judicial Forum for redressal with regard to those aspects of the matter which are concluded by orders of this Tribunal and more particularly by the orders of the Hon'ble High Court and the Hon'ble Supreme Court."

11. Despite the stern observation made by this Tribunal, the State Government did not mend the ways and again Applicants are required to file these O.As though in fact it was incumbent on the part of Respondents to extend the benefit of earlier decisions to the present Applicants at their own without forcing them for litigation. Suffice to say, the Applicants being similarly situated persons are 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 case number decided alike.

12. Whenever an application under Section 19 of Administrative Tribunals Act is made and the question involved therein found already concluded by some earlier decisions of the Tribunal, then the Tribunal is bound to take into account the Judgment rendered in earlier matters as a precedent and decide the applications accordingly, if there is no reason to deviate for the same. In the present matters, I see no reason to deviate from the decisions rendered earlier. The learned P.O. also fairly conceded that the issue is no more *res-integra*.

13. 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.”

14. The totality of aforesaid discussion leads me to conclude that the impugned action of recovery are not at all sustainable in law and the same deserves to be quashed. The amount, if any, recovered from the Applicants in pursuance of impugned actions is liable to be refunded to them. The O.A, therefore, deserves to be allowed. Hence, the following order.

ORDER

- (A) All these Original Applications are allowed.
- (B) The impugned recovery orders dated 18.04.2019 and 29.04.2019 in O.A. 497/2019, order dated 29.03.2019, 19.07.2017 and 13.09.2017 in O.A. 660/2019, order dated 29.03.2019 and 16.01.2019 in O.A.661/2019 are quashed and set aside.
- (C) Amount, if any, recovered in pursuance of recovery orders, be refunded within two months from today.
- (D) The Respondents are directed to grant retiral benefits to the Applicants, who already stand retired, within two months from today.
- (E) No order as to costs.

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

Mumbai
Date : 11.10.2019
Dictation taken by :
S.K. Wamanse.