

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

**ORIGINAL APPLICATION NOS.607, 608, 620, 827, 966, 1101,
1166, 1202, 1240 & 1241 OF 2022**

DISTRICT : MUMBAI

**SUBJECT : Revision of
Pay/Recovery**

ORIGINAL APPLICATION NO.607 OF 2022

Sunil Laxman Sawant,)
Aged about 61 years, retired Police Sub-Inspector))
Dr. D.B. Marg Police Station, Mumbai and)
having residential address at K5/1102, 'D' Wing,))
Building No.4, Garden Avenue – K, Global City,)
Virar (West), Palghar 401 303,)... Applicant

Versus

1. Commissioner of Police,)
Mumbai, Near Mahatma Jyotiba Phule)
Market, D.N. Road, Mumbai – 400 001.)
2. Additional Commissioner of Police,
South Region, Mumbai, Sir J.J. Marg,
Nagpada, Mumbai 400 008.
3. Directorate of Accounts and Treasuries,
Through its Director, Pay Verification Unit,)
Kasturi Building, J. Tata Road,, Churchgate,)
Mumbai 400 020.).....Respondents

ORIGINAL APPLICATION NO.608 OF 2022

Prakash Bhiva Kadam,)
aged about 61 years,)
retired Police Sub-Inspector,)
Pydhuni Police Station, Mumbai,)
and residing at RNA Hills CHS Ltd.,)
A/502, Malpa Dongri, Andheri (East),)
Mumbai – 400 093.)... Applicant

Versus

1. Commissioner of Police,)
Mumbai, Near Mahatma Jyotiba)
Phule Market, D.N. Road,)
Mumbai – 400 001.)
2. Additional Commissioner of Police,)
South Region, Mumbai, Sir J.J. Marg,)
Nagpada, Mumbai 400 008.)
3. Directorate of Accounts and Treasuries,)
Through its Director,)
Pay Verification Unit, Kasturi Building,)
J. Tata Road,, Churchgate,)
Mumbai 400 020.)....Respondents

ORIGINAL APPLICATION NO.620 OF 2022

Surendra Ganpat Ghatge,)
aged about 61 years, Retired PSI,)
Economic Offence Wing,)
Commissioner of Police, New Office Building,)
3rd floor, Near Mahatma Jyotiba Phule Market,)
D.N. Road, Mumbai 400 001,)
and residing at Plot No. 146, Room No. B-19,)
Saidham CHS Ltd., Gorai-2,)
Borivali (West), Mumbai 400 092,)....Applicant

Versus

1. Commissioner of Police,)
Mumbai, Near Mahatma Jyotiba)
Phule Market, D.N. Road,)
Mumbai – 400 001.)
2. Police Joint Commissioner,)
Economic Offences, Mumbai,)
Near Mahatma Jyotiba)
Phule Market, D.N. Road,)
Mumbai – 400 001.)
3. Directorate of Accounts and Treasuries,)
Through its Director,)
Pay Verification Unit, Kasturi Building,)
J. Tata Road,, Churchgate,)
Mumbai 400 020.)...Respondents

ORIGINAL APPLICATION NO.827 OF 2022

Shri Dinesh Dadabhau Sonawane,)
 Aged about 57 years,)
 Police Sub Inspector, Armed Police,)
 Naigaon, Mumbai – 400014 and residing)
 at 43/756, M.I.G. 1, Kokan Vasahat,)
 Opposite, Birla College,)
 Kalyan (W) – 421301)... Applicant

V/s

1. Commissioner of Police,)
 Mumbai, Near Mahatma Jyotiba Phule)
 Market, D.N. Road, Mumbai – 400 001.)
2. Deputy Commissioner of Police,)
 Armed Police Naigaon, Mumbai – 400014.)
3. Directorate of Accounts and Treasuries,)
 Through its Director, Pay Verification Unit,)
 Kasturi Building, J. Tata Road,Churchgate,))
 Mumbai 400 020.)...Respondents

ORIGINAL APPLICATION NO.966 OF 2022

Shri Sambhaji Vitthalrao Raje)
 Aged about 60 years,)
 Retired Assistant Police Inspector,)
 Kurla Police Station, Mumbai,)
 And residing at /5, Ashwamegh CHS Ltd,)
 Koparcross Road, Dombivali (W),)
 Thane – 421202.)... Applicant

V/s

1. Commissioner of Police,)
 Mumbai, Near Mahatma Jyotiba Phule)
 Market, D.N. Road, Mumbai – 400 001.)
2. Additional Commissioner of Police,)
 Central Region, Byculla (W),)
 Mumbai – 400027.)

3. Directorate of Accounts and Treasuries,)
 Through its Director, Pay Verification Unit,)
 Kasturi Building, J. Tata Road,,)
 Churchgate, Mumbai 400 020.)...Respondents

ORIGINAL APPLICATION NO.1101 OF 2022

Shri Vivek Dattatray Parab)
 Aged about 59 years,)
 Retired P.S.I., Mantralaya,)
 Security, Mantralaya,)
 Mumbai – 400032 and residing at,)
 A/109, Sri Smaran Building,)
 Samarth Nagar, Aagasam Road,)
 Opposite Siddhivinayak Gate, Diva (E),)
 Thane – 400612)....Applicant

V/s

1. The State of Maharashtra)
 Through Additional Chief Secretary,)
 Home Department, Mantralaya,)
 Mumbai – 400 032.)
2. Commissioner of Police,)
 Mumbai, Near Mahatma Jyotiba,)
 Phule Market, D.N. Road,)
 Mumbai – 400 001.)
3. Additional Commissioner of Police,)
 Protection and Security, Mumbai.)
4. Directorate of Accounts and Treasuries,)
 Through its Director,)
 Pay Verification Unit, Kasturi Building,)
 J. Tata Road, Churchgate,)
 Mumbai 400 020.)...Respondents

ORIGINAL APPLICATION NO.1166 OF 2022

Shri Gautam Namdeo Kamble)
 Aged about 59 years,)
 Retired Police Sub Inspector,)
 Commissioner State Intelligence)
 Department, Maharashtra State,)
 Mumbai – 400001 And residing at)
 Building No. 14/706, Shraddha Pinnacle)
 Tower, Tagore Nagar, Vikroli (E),)
 Mumbai – 400083.)...Applicant

V/s

1. Director General of Police,)
 Maharashtra State, Mumbai – 400001.)
2. Commissioner State Intelligence)
 Department, Maharashtra State,)
 Mumbai – 400001.)
3. Deputy Commissioner of Police)
 (Administration), State Intelligence)
 Department, Maharashtra State,)
 Mumbai – 400001.)
4. Commissioner of Police, Mumbai,)
 Near Mahatma Jyotiba Phule Market,)
 D.N. Road, Mumbai – 400001.)
5. Additional Commissioner of Police (Crime),)
 Mumbai, Near Mahatma Jyotiba Phule)
 Market, D.N. Road, Mumbai – 400001.)
6. Directorate of Accounts and Treasuries,)
 Through its Director, Pay Verification Unit,)
 Kasturi Building, J. Tata Road,)
 Churchgate, Mumbai – 400020.)
7. Government of Maharashtra,)
 Through Additional Chief Secretary,)
 Home Department, Mantralaya,)
 Mumbai – 400032.) ...Respondents

ORIGINAL APPLICATION NO.1202 OF 2022

1. Shri Vilas Balasaheb Shinde)
 Aged about 60 years,)
 Retired Head Constable Writer,)
 Protection and Security, Dog Squad,)
 Goregaon (East) and residing at,)
 Flat No. 202, Ashtvinayak CHS,)
 Plot No. 59 AB, Sector – 21 Kamothe,)
 New Mumbai, District – Raigad 410209.)...Applicants
 V/s
1. The State of Maharashtra)
 Through Additional Chief Secretary,)
 Home Department, Mantralaya,)
 Mumbai – 400 032.)
2. Commissioner of Police,)
 Mumbai, Near Mahatma Jyotiba,)
 Phule Market, D.N. Road,)
 Mumbai – 400 001.)
3. Additional Commissioner of Police,)
 Protection and Security, Mumbai.)
4. Directorate of Accounts and Treasuries,)
 Through its Director, Pay Verification Unit,)
 Kasturi Building, J. Tata Road, Churchgate,)
 Mumbai 400 020.)...Respondents

ORIGINAL APPLICATION NO.1240 OF 2022

- Shri Ramchandra Vishnu Indulkar)
 Aged about 59 years,)
 Retired Assistant Police Inspector,)
 Crime Branch, Unit 6,)
 Chembur, Mumbai – 400074, And)
 residing at 504/A, Siddhant Building,)
 GD Ambedkar Marg, Parel,)
 Mumbai – 400012.)..Applicant

V/s

1. The State of Maharashtra)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. Commissioner of Police,)
Mumbai, Near Mahatma Jyotiba,)
Phule Market, D.N. Road,)
Mumbai – 400 001.)
3. Additional Commissioner of Police (Crime),)
Mumbai, Near Mahatma Jyotiba,)
Phule Market, D.N. Road,)
Mumbai – 400 001.)
4. Directorate of Accounts and Treasuries,)
Through its Director,)
Pay Verification Unit, Kasturi Building,)
J. Tata Road, Churchgate,)
Mumbai 400 020.)...Respondents

ORIGINAL APPLICATION NO.1241 OF 2022

Shri Vilas Vitthal Pendurkar)
Aged about 59 years,)
Retired Assistant Police Inspector,)
Senior Inspector of Police (Administration),)
D.C.B. C.I.D., Mumbai – 400001)
And residing at Lucy Pascol Mendonza,)
Chawl No.1, Room No. 04, Ashapura Store,)
Adarsh Nagar, Kanjurmarg (East),)
Mumbai – 400042)...Applicant

V/s

1. The State of Maharashtra)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. Commissioner of Police,)
Mumbai, Near Mahatma Jyotiba,)
Phule Market, D.N. Road,)
Mumbai – 400 001.)

3. Additional Commissioner of Police (Crime),
 Mumbai, Near Mahatma Jyotiba,)
 Phule Market, D.N. Road,)
 Mumbai – 400 001.)
4. Directorate of Accounts and Treasuries,)
 Through its Director,)
 Pay Verification Unit, Kasturi Building,)
 J. Tata Road, Churchgate,)
 Mumbai 400 020.)...Respondents

Shri M.D.Lonkar, Advocate for the Applicants

Smt. Archana B. K., Presenting Officer for the Respondents.

CORAM : A.P. Kurhekar, Member (J)

DATE : 17.03.2023. -

JUDGEMENT

1. In all these Original Applications, the Applicants have challenged the order of recovery of the amount allegedly paid in excess of their entitlement by cancelling 1st Time Bound benefit and re-fixation of orders of pay and allowances passed by the Respondents after their retirement (only O.A.No.827/20212, the impugned order is passed before one year of retirement). It being common issue, all these Original Applications are decided by common order.

2. Heard Shir M. D. Lonkar, learned Counsel for the Applicants and Smt. Archana B. K., learned Presenting Officer for the Respondents.

3. At the very outset, it needs to be stated the issue involved in all these Original Applications is already adjudicated by this Tribunal in various groups of Original Applications which have filed against the same Respondents. The Tribunal allowed all those Original Applications and the orders have attained finality. The Respondents indeed implemented all those orders. This being so, the Applicants in all these Original Applications being similarly situated persons, the Respondents ought to have given the

benefit of decisions rendered by the Tribunal to them but Applicants are compelled to file these Original Applications.

4. During the course of hearing, specific query was raised to learned P.O. to know as to whether there is any difference or distinguishing factors for not giving benefits of earlier decisions to the present Applicants. Learned P.O. fairly concedes that there is no such distinguishing factor. If this is so, the Respondents at their own ought to have extended the benefit of earlier decision to present Applicants. It is more so, in view of the Circular dated 28.02.2017 by Law & Judiciary, Government of Maharashtra issued on the basis of the decision of the Hon'ble Supreme Court in ***State of Uttar Pradesh & Ors V/s. Arvind Kumar Srivastava reported in 2015 (1) SCC 347*** as well as the directions issued by this Tribunal for giving benefit of particular pronouncement of the Tribunal to other employees who are similarly situated persons. Indeed, the Tribunal has expressed displeasure over the rejection of claim of similarly situated persons of which the Government has taken note and issued Circular dated 28.02.2017.

5. The Circular is as under:-

"1. The Hon'ble Maharashtra Administrative Tribunal, Mumbai vide order dated 14.12.2016 in O.A.Nos.59, 61 and 90 of 2016, has expressed displeasure over rejection of the claim of the applicants therein, for grant of Time Bound Promotion on the ground that the applicants had declined to accept temporary promotions, though in similar matters Hon'ble Tribunal has allowed the OAs and order of the Tribunal has attained finality.

2. The Hon'ble Tribunal, in Para 8 of aforesaid judgment, has observed as under:-

"If a principle of general applicability is capable of being culled out from a particular pronouncement of this Tribunal, then similarly placed employees, though not before the Tribunal should be given the benefit thereof without actually moving this Tribunal for relief. If on the other hand, the relief is person specific, then of course, this direction will not apply."

Therefore, the Hon'ble Tribunal has directed the undersigned to inform all the concerned departments regarding applicability of general judicial principle as explained in Para 8 of the aforesaid Judgment.

3. The Hon'ble Supreme Court in the case of State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava reported in 2015(1) SCC 347 has laid down similar principle, thus :

"Normal rule is that when a particular set of employee 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 Consitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved y 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."

4. In view of the above, all the departments are hereby directed to take action according to the above directions given by the Hon'ble Maharashtra Administrative Tribunal, reiterating the legal position expounded by the Hon'ble Supreme Court.

5. The aforesaid directions be also brought to the notice of the offices under the administrative control of the departments."

6. Disgusting to note that despite this situation, the Applicants are compelled to approach this Tribunal by filing Original Applications for the same relief. These Original Applications, therefore, required to be decided by similar line. The following chart shows details as to date of appointment of Police Constable, date of posting as Police Constable Writer, date of 1st time bound benefit, date of retirement, date of impugned order etc.

O.A. No.	Name of the Petitioner	Date of appointment as a Police Constable	Date of posting as a PCW	Date of 1 st Time Bound Promotion	Date of promotion as a Head Constable Writer	Date of retirement on superannuation	Date of impugned order of revision of pay/recovery
1	2	3	4	5	6	7	8
607/2022	S.L.Sawant	20.08.1983	01.11.1989	20.08.1995	01.09.2001	31.12.2019	14.6.2021, with recovery, Page No.25, Exhibit 'F' cancelling 1 st TBP and refixation of pay granted with 1 st benefit of ACP Scheme from 1.09.2013 vide G.R. dated 5.7.2010 Exhibit 'J', Page No.44 .
608/2022	P.B.Kadam	20.08.1983	01.11.1989	20.08.1995	01.09.2001	30.11.2019	10.8.2021, with recovery, Page No.36, Exhibit 'J' cancelling 1 st TBP and 2 nd Benefit of ACPS and refixation of pay granted with 1 st benefit of ACP Scheme from 1.09.2013 vide G.R. dated 5.7.2010 Exhibit 'N', Page No.59
620/2022	S.G.Ghatge	04.05.1982	07.12.1988	01.10.1994	01.09.2001	30.09.2019	14.6.2019, with recovery, Page No.69, Exhibit 'P' by which TBP granted from 1.10.1994 is cancelled with revision of pay and consequential recovery.
827/2022	D.D. Sonawane	01.03.1987	01.06.1993	01.03.1999	01.09.2001	31.05.2023	11.03.2022 with recovery, Page No.86, Exhibit 'U' by which TBP granted from 1.3.1999 is cancelled with revision of pay and consequential recovery.
966/2022	S.V.Raje	15.01.1983	03.08.1989	15.01.1995	01.09.2001	30.4.2021	19.4.2022, with recovery, Page No.92, Exhibit 'V' cancelling 1 st TBP and

							refixation of pay granted with 1 st benefit of ACP Scheme from 1.09.2013 vide G.R. dated 5.7.2010 Exhibit 'J', Page No.48 .
1101/2022	V.D.Parab	01.10.1983	01.02.1990	01.10.1995	16.06.2002	31.10.2021	08.04.2022, with recovery, Page No.11, Exhibit 'A' by which TBP granted from 01.10.1995 is cancelled with revision of pay and consequential recovery and order of recovery dated 17.08.2022, Page No. 14, Exhibit 'B'.
1166/2022	G.N.Kamble	01.03.1987	22.07.1994	01.03.1999	01.09.2001	30.04.2021	21.02.2022, with recovery, Page No.11, Exhibit 'A' by which TBP granted from 01.03.1999 is cancelled with revision of pay and consequential recovery and order of recovery dated 01.08.2022, Page No. 13, Exhibit 'B'.
1202/2022	V.B.Shinde	15.09.1989	07.12.1995	15.09.2001	01.08.2006	31.12.2020	11.05.2022, with recovery, Page No.11, Exhibit 'A' by which TBP granted from 15.09.2001 is cancelled with revision of pay and consequential recovery and order of recovery dated 13.10.2022, Page No. 16, Exhibit 'C'.
1240/2022	R.V. Indulkar	04.05.1982	01.06.1993	01.10.1994	01.09.2001	31.03.2021	29.08.2022, with recovery, Page No.71, Exhibit 'N' by which TBP granted from 1.10.1994 is cancelled with revision of pay and consequential recovery.
1241/2022	V.V. Pendurkar	15.05.1982	01.06.1993	01.10.1994	01.09.2001	31.07.2021	29.08.2022, with recovery, Page No.71, Exhibit 'N' by which TBP granted from 1.10.1994 is cancelled with revision of pay and consequential recovery.

7. As stated above, the issue involved in these group of Original Applications is already decided by this Tribunal in **O.A.No.783/2018 (Pradip Dalvi Vs. State of Maharashtra)**, decided on 19.03.2019. **O.A. No.30/2020 (Sunil Satam Vs. State of Maharashtra)**, decided on 08.10.2021 as well as **O.A. No.522/2020 decided with O.A.Nos.807, 830/2021 with O.A.Nos.123 & 124/2022 with O.A.395/2022** by common order dated 17.10.2022. All these Original Applications were allowed and orders of cancellation of 1st time bound benefit as well as re-

fixation of pay and allowances and recovery orders were quashed and set aside and all these decisions were implemented.

8. The issue involved in the Original Applications for consideration is whether withdrawal of benefit of 1st Time Bound Promotion given to the Applicants by counting their service period from date of appointment as Police Constable up to Police Constable Writer is legal and valid and exactly this was the issue involved in earlier Original Applications rendered by the Tribunal.

9. Here, it would be sufficed to reproduce the relevant paragraphs from the decision delivered by the Tribunal on 17.10.2022 in O.A.No.522/2020 decided with connected Original Applications.

"7. In view of submissions, the issue posed for consideration is whether withdrawal of benefit of 1st Time Bound Promotion given to the Applicants by counting their service period from the date of appointment as Police Constable upto the date of Police Constable Writer is legal and valid and the answer is emphatic negative.

8. Indisputably, Applicants were appointed on the post of Police Constable in between 1982-1988 and after rendering the service of near about 5 to 8 years they were appointed on the post of Police Constable Writer as shown in the Chart. There is no denying that it was not by way of promotion and the pay scale of Police Constable Writer and Police Constable is one and same except additional allowances of Rs.40/- p.m. to Police Constable Writer. Thus, all that Police Constable Writer would get meager amount to Rs.40/- p.m. As such, this is not a case where Applicants were appointed on higher pay scale or on promotion carrying higher pay scale within the period of 12 years from the date of initial appointment on the post of Police Constable. At the most, it could be said a case of upgradation and not promotion so as to deprive of the Applicants of the benefit of Time Bound Promotion Scheme. By impugned orders, the initial period of service rendered by the Applicants on the post of Police Constable is totally wiped out, which is not at all intended while appointing the Applicants on the post of Police Constable Writer. The Respondents, therefore, initially rightly considered the service rendered on the post of Police Constable and granted benefit of 1st Time Bound Promotion. Needless to mention, the very object of the Scheme of Time Bound Promotion is to take care of stagnation and to give non-functional promotion, subject to fulfillment of eligibility criteria for the promotional post. Only because in between Applicants were appointed on the post of Police Constable Writer, they could not be deprived of counting service rendered by them on the post of Police Constable. Thus, this is a case where benefit of 1st Time Bound Promotion was rightly granted, but withdrawn at the verge of retirement resulting into downgrading pay and allowances which has effect of wiping out the earlier service rendered on the post of Police Constable.

9. At this juncture, it would be apposite to see the clarification issued by Government in G.R. dated 01.11.1995. On issue No.11, the Government clarified as under :-

१	२	३
११	कर्मचा-याने धारण केलेल्या पदाची श्रेणीवाढ होवून त्याच कर्मचा-यास श्रेणीवाढ केलेल्या पदावर नियुक्त केले असल्यास १२ वर्षांच्या नियमित सेवेचा कालावधी कॅम्पासून मोजावा तसेच वेतनश्रेणी तीच असून केवळ पदनाम बदललेले असेल किंवा पद त्याच वेतनश्रेणीतील अन्य पदात रुपांतरित समाविष्ट झाले असल्यास वेतनश्रेणीचा फायदा कसा देण्यात यावा ?	पूर्वी धारण केलेल्या मूळ पदाची श्रेणीवाढ झाल्यावर कर्मचा-यास श्रेणीवाढ पदावर नियुक्ती मिळाली असल्यास त्याच श्रेणीवाढ झालेल्या पदावरील १२ वर्षांच्या नियमित सेवेनंतरच दि. ८.६.९९ च्या शासन निर्णयातील इतर अटी व शर्तीनुसार वरिष्ठ वेतनश्रेणी अनुज्ञेय होईल. वेतनश्रेणी तीच असून केवळ पदनाम बदलले असेल किंवा त्याच वेतनश्रेणीतील अन्य पदात रुपांतर/समाविष्ट केले असल्यास किंवा निव्वळ वेतनश्रेणीत सुधारणा झाली असल्यास मूळ पदावरील १२ वर्षांच्या नियमित सेवेनंतर वरिष्ठ वेतनश्रेणीचा लाभ अनुज्ञेय होईल.

10. The submission advanced by the learned P.O. that since Applicants were appointed on the post of Police Constable Writer between 1982 to 1988 and they had different channels of promotion, and therefore, the benefit of Time Bound Promotion given to them has been rightly withdrawn is unpalatable basically for the reason that pay scale of Police Constable and Police Constable Writer is same, except only addition allowance of Rs.40/- p.m. to Writer. In such situation, the refusal of benefit of Time Bound Promotion would be totally unjust and it would amount to ignore and wipe out Applicants' initial service, which is contrary to law and object of scheme of Time Bound Promotion.

11. Now turning to the aspect of recovery. Assuming for a moment that excess payment was made, in that event also recovery is not permissible. Indeed, this issue is no more *res-integra* in view of Judgment of Hon'ble Supreme Court in **(2015) 2 SCC (L & S) 33 [State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors.]** wherein in Para No.12 of the Judgment Hon'ble Supreme Court culled out situations where recovery on account of excess payment would be impermissible, which is 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, summarize 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 services (or Group 'C' and Group 'D' services).*

(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."*

13. Insofar as recovery aspect is concerned, the Applicant in O.A.No.552/2020, 123/2022, 124/2022 and 395/2022 are already stands retired from Group 'C' post. No fraud or misrepresentation is attributed to them. Applicant in O.A.No.807/2021 and 830/2021 are still in service, but they also belonging to Group 'C'. Therefore, recovery from them would be impermissible in view of decision of Hon'ble Supreme Court in **Rafiq Masih's** case.

14. Indeed, basically, the impugned action of withdrawal of benefit of 1st Time Bound Promotion granted to the Applicants being totally illegal, consequently, the orders of re-fixation of pay and allowances are liable to be quashed.

10. Now turning to the facts of the present case, all the Applicants except Applicant in O.A.No.827/2022 stands retired and the orders of recovery are issued after retirement. Insofar as Applicant in O.A.No.827/2022 is concerned, the impugned order was issued on 11.03.2022 and he is due to retire on 31.05.2023. They belong to group "C". Therefore, the recovery from them would be impermissible in view of decision of the Hon'ble Supreme Court in **(2015) 2 SCC (L & S) 33 (State of Punjab & Ors. Vs. Rafiq Masih (While Washer) & Ors.)**. That apart, basically, the impugned action of withdrawal of benefit of 1st Time Bound Promotion granted to the Applicants being totally illegal, consequently the orders of re-fixation of pay and allowances are liable to be quashed.

11. In this view of the matter, I have no hesitation to sum up that the impugned action of recovery as well as downgrading pay and allowances are illegal and deserves to be quashed. Hence, the following order.

ORDER

- (A) All these Original Applications are allowed.
- (B) Impugned orders of re-fixation of pay and allowances and recovery are quashed and set aside.
- (C) Respondents are directed to release retiral benefits to the Applicants who are already stands retired from service and it should be paid within two months from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai

Date : 17.03.2023

Dictation taken by :Vaishali S. Mane

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