

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 626 & 646 OF 2014

DISTRICT : MUMBAI

1) ORIGINAL APPLICATION NO. 626 OF 2014

1. Shri Milind K. Meshram)
2. Shri Santosh B. Mamadapure)
3. Shri Dayanand S. Munjale)
4. Mrs Pooja J. Tarade)
5. Mrs Priya S. Joshi)
6. Mrs Nanda D. Khedkar)
7. Shri Ramesh H. Pawar)
8. Mrs Deepali N. Sonawane)
9. Mrs Arati P. Patil.)
10. Shri Rajendra R. Deherkar)
11. Mrs Surekha P. Bodkhe)
12. Mrs Prachi V. Mainkar)
13. Shri Pandurang M. Raut)
14. Mrs Shubhangi S. Ghag)
15. Mrs Deepali S. Vaidya)
16. Shri Sudhir G. Sugaonkar)
17. Shri Harischandra W. Rathod)
18. Shri Kiran M. Shardul)

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19. Mrs Sushama N. Juvekar)
20. Mrs Sangita R. Shroff)
21. Mrs Shruti S. Toraskar)
22. Shri Prashant P. Sawant)
23. Mrs Manisha N. Tilak)
24. Mrs Ranjana U. Kumre)
25. Mrs Manisha C. Shinde)
26. Mrs Rupali S. Kabare)
27. Mrs Manisha S. Jamdade)
28. Mrs Deepali M. Paranjape)
29. Mrs Asha C. Shetty.)
30. Mrs Rashmi R. Jadhav)
31. Mrs Aishwarya N. Govekar)
32. Mrs Vidya G. Deshpande)
33. Mrs Yogita R. Gawathe)
34. Mrs Kalpana U. Karande)
35. Shri Pradeep D. Nigale)
36. Mrs Shilpa V. Patwardhan)
37. Mrs Shilpa J. Purao)
38. Mrs Mansi M. Sathe)
39. Shri Manjusha V. Jadhav)
40. Mrs Yogita R. Gangavane)
41. Mrs Yogita S. Desai)
42. Mrs Sadhana T. Sonawane)
43. Shri Vishal V. Ghadge)
44. Mrs Shobhana S. Kadam)
45. Mrs Ashwini A Moon)
46. Mrs Rajashri A. Tathare)

47. Mrs Geeta A. Pimple)
 48. Mrs Seema T. Sawant)
 49. Shri Sameer R. Dalvi.)
 50. Shri Kishor A. Fulzele)
 51. Shri Prakash S. Tupe)
 52. Shri Santosh J. Kale)
 53. Mrs Shilpa G. Chaudhari)
 54. Mrs Vaishali M. Tambe)
 55. Mrs Varsha M. Meher)
 56. Shri Rajendra D. Bhawari)
 57. Mrs Pradnya P. Mule)
 58. Shri Dattatraya S. Shinde)
 59. Shri Pritesh S. Raorane)
 60. Shri Sunil S. Natekar)
 61. Shri Sambhaji N. Bodkhe)
 62. Shri Gajanan S. Parab)
 All the Applicants are working as)
 Assistants in various departments)
 In Government of Maharashtra,)
 Mantralaya, Mumbai 400 032.)
 Add for service of notice:)
 Shri M.R Patil, Advocate for the)
 Applicants, Maharashtra)
 Administrative Tribunal,)
 Govt. Barrack Nos 3 & 4,)
 Free Press Journal Marg,)
 Mumbai 400 021.)...**Applicants**

Versus

1. The State of Maharashtra)
Through the Chief Secretary,)
General Administration Department)
Mantralaya, Mumbai.)
2. The Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai.)...**Respondents**

2) ORIGINAL APPLICATION NO. 646 OF 2014

1. Shri Appa Vishnu Veer)
2. Shri Madhukar S. Patil)
Both are working as Sales Tax)
Inspector in the office of the Joint)
Commissioner of Sales Tax,)
[VAT and Administration] and)
[Business Audit], Pune.)
Add for service of notice:)
Shri A.V Bandiwadekar,)
Advocate for the Applicants,)
Having office at 9, "Ram Kripa",)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicants**

Versus

1. The State of Maharashtra)
Through the Chief Secretary,)
General Administration Department)
Mantralaya, Mumbai.)
2. The Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai.)...**Respondents**

Shri M.R Patil, learned advocate for the Applicants in O.A No 626/2014.

Shri A.V Bandiwadekar, learned advocate for the Applicants in O.A no 646/2014.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents in O.A no 626/2014

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents in O.A no 646/2014.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 21.03.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri M.R Patil, learned advocate for the Applicants in O.A no 626/2014, Shri A.V Bandiwadekar, learned advocate for the Applicants in O.A 646/2014, Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents in O.A no 626/2014 and Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents in O.A no 646/2014

2. These Original Applications were heard together and are being disposed by a common order as the issues to be decided are identical.

3. The Applicants in O.A no 626/2014 were appointed as Assistants in various Mantralaya Departments on the basis of Limited Competitive Departmental Examination conducted by the Maharashtra Public Service Commission (M.P.S.C). They were initially appointed as Clerk, Clerk-Typist and Typists on the basis of selection by M.P.S.C.

4. The Applicants in O.A no 646/2014 were appointed initially as Clerks on selection by M.P.S.C. They were appointed as Sales Tax Inspectors on the basis of Limited Competitive Departmental Examinations.

5. Both for the Assistants in Mantralaya and Sales Tax Inspectors, there are three modes of recruitment viz:

- (a) by promotion from the post of Clerks who have completed three years of service and passed post recruitment examination on the basis of seniority cum fitness;
- (b) by direct recruitment, and
- (c) by Limited Competitive Departmental Examination conducted by M.P.S.C.

Till the Fifth Pay Commission, the pay of the persons appointed as Assistant/Sales Tax Inspectors was fixed at Rs. 5500 in the pay scale of Rs. 5500-9000 on initial appointment by nomination or by promotion. For those appointed on the basis of Limited Competitive Departmental Examination also, the pay was fixed at the minimum of the pay scale. However, after the implementation of the Sixth Pay Commission, Maharashtra Civil Services (Revised Pay) Rules, 2009 were notified on 22.4.2009.


6. The arguments of both the Counsels in O.A no 626/2014 and 646/2014 were on similar lines. For sake of convenience, they are referred to as the Learned

Counsel for the Applicants. Learned Counsel for the Applicants argued that the Assistants/Sales Tax Inspectors have been given pay in the Pay Band of Rs. 9300-34800 with Grade Pay of Rs. 4300. However, as per Rule 8 of the Revised Pay (R.P) Rules of 2009, a direct recruit's pay is fixed initially at Rs. 10,100. The persons appointed through Limited Competitive Departmental Examinations are treated at par with the persons appointed on promotion and their initial pay as per Rule 13 of the Revised Pay Rules 2009 is fixed at Rs. 9300/-. Learned Counsel for the Applicants argued that Rule 13 is arbitrary and discriminatory. Persons who are appointed as Assistants (or Sales Tax Inspectors) by different methods are being treated differently in the fixing of initial pay in the scale attached to the post. Learned Counsel for the Applicants argued that different source of recruitment for the same posts cannot be a reason for fixing pay at different levels in the same pay scale. This will be discriminatory and unreasonable. Learned Counsel for the Applicants argued that in the alternative, if it is held that fixation of pay in the same pay scale for direct recruits and promotes at different level as per the recommendation of the Sixth Pay Commission is held to be legal, the persons appointed as Assistant / Sales Tax Inspectors on the basis of Limited Competitive Departmental Examination should be treated at par with direct recruits and not equated with promotees. Learned Counsel for the Applicants cited

various judgments of Hon. Supreme Court, High Court and this Tribunal in support of their contentions.

7. Learned Chief Presenting Officer (C.P.O) in O.A no 626/2014 and learned Presenting Officer (P.O) Smt K.S Gaikwad argued for the Respondents. For the sake of convenience, there arguments are referred to as the arguments put forth by learned C.P.O.

8. Learned Chief Presenting Officer argued on behalf of the Respondents that M.C.S (Revised Pay) Rules, 2009 have been notified based on the recommendations of the Sixth Pay Commission, as made applicable to the State of Maharashtra. Para 2.2.22 of the recommendations of the Sixth Central Pay Commission deals with the fixation of pay of the new recruits and the promotees. Sub clause (iv)(c) deals with this aspect, in so far as the pay fixation of the new recruits is concerned. Sub-clause (vi), gives the rationale for the same. Learned C.P.O argued that this has been done to ensure entry and retention of talent in the Government at various levels. Learned C.P.O argued that Hon. Supreme Court has held in similar circumstances, that it is for the Government to accept or not to accept the recommendations of the Pay Commission. Such an approach cannot be held to be discriminatory or to be beyond the power of the Government. This is done in **UNION OF INDIA Vs. ARUN JYOTI KUNDU & ORS in**



CIVIL APPEAL NO 2468-2469 of 2005. In the case of **STATE OF HARAYANA & ANR Vs. HARYANA CIVIL SECRETARIAT PERSONNEL STAFF ASSOCIATION** in **CIVIL APPEAL NO 3518 OF 1997**, Hon. Supreme Court has held that the Courts should not interfere in such matters unless they are satisfied that the decision of the Government is patently irrational or unjust. In the case of **UNION OF INDIA & ORS Vs. MAKHAN CHANDRA ROY : (1997) 11 SCC 182**, Hon'ble Supreme Court has held that the Tribunal cannot direct grant of a particular pay scale to a particular section of employees. This is a policy decision which can be taken only by the Government. Learned C.P.O argued that the Applicant's claim that they are being discriminated is not based on facts. The Government has taken a policy decision to encourage talent by offering new recruit a higher start in the Pay Band attached to the posts of Assistants/Sales Tax Inspectors as recommended by the Sixth Pay Commission. The Applicants had appeared in the Limited Competitive Departmental Examination, where the number of competitors is around 150-300 while for direct recruits, the persons have to compete from amongst thousands of candidates. The syllabus for the direct recruitment and the Limited Competitive Departmental Examination is also different. Basic educational qualification for Clerks is 12th standard while for Assistant it is Graduation. Considering all these facts, there cannot be any parity between direct recruits and

those recruited on the basis of the Limited Competitive Departmental Examination.

9. We find that as per the Recruitment Rules for the post of Assistants (and similar rules for the recruitment to the post of Sales Tax Inspectors), the ratio of promotion, Limited Competitive Examination and nomination is 30:30:40. Rule 8 of the Maharashtra Civil Services (Revised Pay) Rules, 2009 provides that the entry level pay in the Pay Band at which the pay of direct recruits to a particular post carrying a specific grade pay is fixed as per annexure III. For the post of Assistants and Sales Tax Inspectors, the Pay Band-2, Rs. 9300-34800 is applicable with Grade Pay of Rs. 4300. As per annexure-III, for these posts, pay of new recruits is fixed at Rs. 10,100. The promotes pay is fixed as per Rule 13 *ibid*, which in most cases come to the minimum of the Pay Band, i.e. Rs. 9300. The Applicants claim that this is discriminatory and unreasonable.

10. In O.A no 646/2014, it is claimed by the Applicants that the Respondent no. 2 by letter dated 19.7.2014 had sent a proposal to the Respondent no. 1, i.e the State Government that this 'discrepancy' in rule 8 and 13 of the Revised Pay Rules may be removed. However, no decision was taken. Such anomaly should have been placed before the Pay Anomaly Committee, but it was not discussed by that Committee. It is argued by

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the Applicants that they be given same pay as the direct recruits by invoking Rule 17 of the Maharashtra Civil Services (Revised Pay) Rules, 2009.

11. There are two issues which emerge in the present Original Application viz:

- (i) Whether initial pay of the direct recruits can be fixed at a higher level in the same Pay Band vis-à-vis the promotes; and
- (ii) If yes, whether the persons appointed on the basis of Limited Competitive Departmental Examination are to be treated at par with the direct recruits.

Ordinarily, in a cadre, there may be more than one source of recruitment. Promotion and nomination are two main sources of recruitment. Once a person is appointed to a particular post, his subsequent treatment has to be regardless of the source of recruitment. However, the same may not apply in all cases as regards fixation of initial pay in the pay scale (Pay Band) attached to that post. A promotee may have put in a large number of years when he is promoted. His pay will be in many cases may exceed the minimum in the pay scale of promoted post while the direct recruit may be given the pay at the minimum of the Pay Scale. Such a scenario cannot be called discriminatory. After the

recommendations of the Sixth Pay Commission were accepted, Pay Scales have been replaced by Pay Bands and Grade Pay. Pay Commissions jurisdiction is not limited to recommending pay scales for different posts. Depending upon the terms of references of a Pay Commission, such Commission may make recommendations on the related aspects. Sixth Pay Commission has recommended that the new recruits may be given a higher start in the Pay Band in which their pay is fixed on initial appointment vis-à-vis promotees. This is reflected in para 2.2.22 of the recommendations of the Sixth Pay Commission which deals with fixation of pay in the revised pay bands of existing employees as well as future recruits.

Para 6.3.13 reads:-

“.....This will ensure entry and retention of talent in the Government even for those jobs that have a high demand a premium in the open market. A higher start and better incentives have been given at the initial entry level so as to attract a younger talented profile.”

This recommendation of the Sixth Pay Commission was accepted by the Central Government and consequently by the State Government. As a result, the M.C.S (Revised Pay) Rules, 2009 have different rules for pay fixation of

direct recruits and promotees viz Rule 8 and Rule 13 respectively. This has resulted in a situation where direct recruits in most cases are getting higher initial pay vis-a-vis the promotees. Whether this is unreasonable and amounts to discrimination is the moot question. Learned Chief Presenting Officer has cited the judgment of Hon. Supreme Court in the case of **UNION OF INDIA Vs. ARUN JYOTI KUNDU & ORS** (supra). Hon'ble Supreme Court has held that:-

"9. We had recently held in K.S Krishnaswamy Vs. Union of India & Another [JT 2006 (10) 479] that the recommendations of Pay Commission are subject to acceptance or rejection. Speaking for the Bench, one of us (H.K.Sema, J.) stated:

It is well settled principle of law that recommendations of the Pay Commission are subject to the acceptance / rejection with modifications of the appropriate Government. So unless the Government has accepted the recommendation to merge the cadres, the Court cannot proceed on the basis of recommendation alone or to direct the Government to accept the recommendation. In this context, we have also to take note of the decisions of this Court in Dev Kumar Mukherjee [1995 Suppl (2) SCC 640] that the recommendation of pay scale are not open to judicial review and the one in State of Uttar Pradesh

Vs. Ministerial Karmachari Sangh [1998(1) SCC 422] to the effect that the evaluation of typists for the purpose of pay scales must be left to the expert body. The role of the Pay Commission and that of the Court has also been dealt by the decision of this Court in Saurabh Chandra & others Vs. Union of India & others [2003(9) SCLAE 272] and M.P Rural Agricultural Officers Association Vs. State of M.P [2004 (4) SCC 646]. In the latter decision it was held by this Court that Pay Commissions are constituted for evaluating duties and functions of the employees and the nature thereof vis-à-vis the educational qualifications therefore. Although the Pay Commission is an expert body, the State in its wisdom and in furtherance of its valid policy may or may not accept its recommendations.”

In the present case the Central Government and the State Government have accepted the recommendation of the Sixth Pay Commission as regards the higher initial start to be given to the direct recruits. It is not open for this Tribunal, either to examine the challenge to the rationale of the recommendations of the Pay Commission or to scrutinize the decision of the State to accept the recommendation of the Pay Commission. This Tribunal cannot sit over judgment over the correctness of the recommendation of an expert body like the Pay Commission.

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12. In the case of **UNION OF INDIA & ANR Vs. P.V HARIHARAN & ANOTHER, (1997) 3 SCC 569** Hon'ble Supreme Court has held that:

“ We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of the Pay Commission.”

It is further observed that:

“The Tribunal should realize that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have full picture before it is the proper authority to decide upon this issue. Very often the doctrine of 'equal pay for equal work' is all being misunderstood and misapplied.”

13. It is quite clear that the scope of judicial review in cases of pay fixation is quite limited.

In State of Haryana & Another Vs. Haryana Civil Secretarial Personnel Staff Association, Hon'ble Supreme Court has held:

“In the context of complex nature of issues involved, the far reaching consequences of a decision in the matter and its impact on the administration of the State Government, Court have taken the view that ordinarily Courts should not try to delve deep into administrative decisions pertaining to pay fixation and parity.”

Based on these judgments of Hon'ble Supreme Court, it is quite clear that the Maharashtra Civil Services (Revised Pay) Rules, 2009 as regards pay fixation of direct recruits vis-à-vis promotes cannot be called discriminatory or arbitrary. The answer to issue at (i) is yes.

14. The Respondents have taken a plea that the Pay Commission's recommendation and the decision of Central Government is based on only two sources of recruitment viz direct recruitment and promotion. In the State of Maharashtra, there is a third category, viz those appointed on the basis of Limited Competitive Departmental Examination. The Applicants' claim that they are appointed on the basis of competitive examinations, to encourage younger talent, the same ground on which Sixth Pay Commission has recommended granting of higher initial start to the direct recruits. The Respondents claim that the Applicants are promotees and cannot be compared with direct recruits on the following grounds:

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- (i) The educational qualification for direct recruits is graduation, while the Applicants were recruited as Clerks on the basis of minimum qualification of 12th standard.
- (ii) The course content/syllabus for competitive examination for direct recruitment and for the limited competitive departmental examinations are quite different; and
- (iii) Direct recruits have to compete with almost one lakh candidates, while the Applicants had competed with 350 or so candidates.

15. It is true that basic educational qualification for the Applicants, when they were recruited as Clerks was H.S.C (12th standard) while for direct recruits, it is graduation. However, the Applicants are required to have a minimum experience of 7 years. This fact cannot be overlooked. The Applicants lack in educational qualification but have relevant experience. As regards course content, M.P.S.C has clarified that the same is different for these categories, as the direct recruits are judged in Language, General Knowledge and Intelligence, while for the Limited Competitive Examination, relevant rules, laws, administrative notings and knowledge of office procedures is judged.

16. We are of the opinion that the fact that the number of candidates appearing in an examination for direct recruitment may be in several thousands (or even lakh) is not very relevant. The Applicants have faced the similar situation when they appeared for the examination for the post of Clerks. The purpose behind appointment by Limited Competitive Departmental Examination is important in this context. There can be no rationale for this source of recruitment, except to promote younger talent among the Clerks. This is precisely the reason advanced by the Sixth Pay Commission in para 6.3.13 of its report. It is an admitted fact, that category of those appointed on the basis of the Limited Competitive Examination was not considered by the Sixth Pay Commission. In O.A no 646/2014, the Applicants have placed on record a letter from the Respondent no. 1 addressed to Shri S.J Kale, dated 23.11.2015, under the Right to Information Act. It is mentioned that:

“ मर्यादित विभागीय परीक्षेद्वारे नियुक्त सहायकांची वेतन निश्चिती सरळसेवा सहायकांप्रामणे रु १०,१००/- करण्याबाबतचा प्रस्ताव सामान्य प्रशासन विभागामार्फत वेतनत्रुटी निवारण समितीकडे सादर केला असल्याचे दिसून येते. तथापि या वेतनत्रुटी निवारण समितीच्या अहवालामध्ये सदर मागणीच्या उहापोह करण्यात आलेला नाही.”

It appears that Pay Anomaly Committee had also not considered this issue. However, considering the fact that the rationale and purpose of appointment on the basis of Limited Competitive Departmental Examination is similar

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to that of direct recruitment, and both encourage talent in the Government, the Applicants are closer to direct recruits than promotees. The Applicants, therefore, deserve to be treated as direct recruits.

17. Having regard to the aforesaid facts and circumstances of the case, the Respondents are directed to consider the case of the Applicants to fix their pay on appointment as Assistants/Sales Tax Inspectors as per Rule 8 of the Maharashtra Civil Services (Revised Pay) Rules, 2009 expeditiously preferably within a period of 3 months from the date of this order. These Original Applications are disposed of accordingly with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 21.03.2016

Dictation taken by : A.K. Nair.