

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

AURANGABAD BENCH, AURANGABAD.

ORIGINAL APPLICATION NO.634/2014. (D.B.)

Sudhakar Namdeo Suryawanshi,
Aged about 54 years,
Occ-Lab. Assistant.
R/o House No.65/392, Civil HUDCO Nagar,
Manmad Road, Bharat Chowk,
Ahmednagar.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Agriculture, Dairy Development
and Fisheries,
Mantralaya, Mumbai-400 032.
2. The Regional Dairy Development Officer,
Nashik Division, Trimbak Road,
Nashik.
3. The Dairy Manager,
Government Milk Scheme,
Ahmednagar,
4. The Accounts Officer,
Government Milk Scheme,
Ahmednagar.

Respondents

ORIGINAL APPLICATION NO.682/2014.

Abdul Mohammad Patel,
Aged about 61 years,
Occ-Lab. Assistant, Bramanwada,

Tq. Akole, Distt. Ahmednagar.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Agriculture, Dairy Development
and Fisheries,
Mantralaya, Mumbai-400 032.
2. The Regional Dairy Development Officer,
Nashik Division, Trimbak Road,
Nashik.
3. The Dairy Manager,
Government Milk Scheme,
Ahmednagar,
4. The Accounts Officer,
Government Milk Scheme,
Ahmednagar.

Respondents

Shri Anant Devkate, Ld. Advocate for the applicants.

Shri V.R. Bhumkar, Ld. P.O. for the respondents.

**Coram:- Shri J.D. Kulkarni, Vice-Chairman (J) and
Shri P.N. Dixit, Member (A)**

JUDGMENT

(Per: Vice-Chairman (J))

(Delivered on this 7th day of April, 2018.)

Heard Shri Anant Devkate, the learned counsel for the applicants and Shri V.R. Bhumkar, the learned P.O. for the respondents.

2. The applicants have joined the services of the respondents as Laboratory Assistants. They were conferred with the benefit of pay scale of Rs. 1200-30-1560 (40)-2040 from 4.4.1996, as a result of Time Bound Promotional scheme and accordingly their pay was fixed. The respondent No.1 conferred the benefit of second Time Bound Promotional scale to the applicants as per order dated 30.8.2011 w.e.f. 5.4.2008 in the pay scale of Rs.9300-34800 plus grade pay of Rs. 4200/- as per Sixth Pay Commission. However, a show cause notice was issued to the applicants and vide order dated 25.3.2014 the said benefit of pay scale of Rs. 9300-34800 plus grade pay of Rs. 4200/- was withdrawn and the applicants' pay was fixed in the pay scale of Rs. 5200-20200 plus grade pay of Rs. 2000/-. Notices were issued to them as regards recovery of excess amount which have been paid to them Thereafter vide orders dated 6.5.2014 and 8.5.2014 respectively, even the pay scale granted to the applicants in the pay band of Rs. 1200-30-

1560 (40)-2040 was withdrawn and the pay scale of Rs. 975-25-1150-30-1540 was granted and the excess amount was ordered to be recovered from them. The applicants have challenged respective orders of reduction of pay scale as well as recovery of so-called excess amount. The impugned orders of reduction of pay scale from Rs. 9300-34800 plus grade pay of Rs. 4200/- to the pay band of Rs. 5200-20200 plus grade pay of Rs. 2000/- has been passed on 25.3.2014 in both the O.As, whereas the order of re-fixation of pay from Rs. 1200-30-1560 (40)-2040 to Rs. 975-25-1150-30-1540 in O.A. No.634/2014 is dated 6.5.2014 whereas the said order in respect of O.A. No. 682/2014 is dated 8.5.2014. For the purpose of convenience, both these orders will be referred to as 'impugned orders'. The applicants are claiming that both the impugned orders be quashed and set aside and the respondents may be restrained from recovering the so-called excess amount vide these orders.

3. In both the O.As, separate reply-affidavits have been filed by respondent Nos. 1 to 4 and the same have been affirmed by Shri Yogesh Ramchandra Nagare, General

Manager, Government Milk Scheme, Ahmednagar. The respondents have submitted that the applicants were appointed on the post of Laboratory Assistants and as per the Recruitment Rules, the Laboratory Assistants are entitled to be promoted to the post of Assistant Dairy Chemist / Dairy Chemist. The Recruitment Rules have been published in this regard vide Resolution dated 3.3.1977 for the post of Assistant Dairy Chemist / Dairy Chemist in the Department of Dairy Development. As per the said rules, appointment to the post shall be made either-

“(A) By promotion of a suitable candidate in Dairy Development Department from the lower cadre, having qualification mentioned in clause B (iii),

OR

(B) by selection from among candidates who,

(i) Unless already in the service of Govt. of Maharashtra are not more than 25 years.

(ii) Hold B.Sc. with Chemistry or Microbiology or B.Sc. (Dairying) or B.Sc. (Tech.) with Food Technology or a Diploma in Dairy Technology (IDD)

(iii) Have experience of analytical work of 2 years in Dairy, Food Processing factory or pharmaceutical laboratory.”

4. It is further stated by the respondents that for the promotional post, a candidate must have requisite qualification. The applicants are not having necessary qualification and, therefore, they were not eligible for the promotional posts of Assistant Dairy Chemist / Dairy Chemist. The Government, therefore, withdrew the Time Bound Promotional scale granted to the applicants on the posts of Assistant Dairy Chemist / Dairy Chemist, since the applicants were not eligible to get higher pay scale. On account of such wrong promotion, excess amount was paid to the respective applicants which was required to be recovered from them.

5. The learned P.O. further invited our attention to the fact that the applicants have given undertaking with the department that if any difference in fixation of pay scale is found, the applicants will abide by the decision as regards recovery of such excess amount. The excess amount is, therefore, recovered in view of such undertaking.

6. The respondents have further placed reliance on the judgment delivered by this Tribunal in O.A. Nos. 1138/1993 and 1011/1994 alongwith Review Application No. 05/2007 decided by Principal Bench at Mumbai and justified the order of reduction of pay scale as well as recovery.

7. Admittedly, the applicants are Laboratory Assistants and as per Recruitment Rules, they are entitled to be promoted to the post of Research Assistant / Assistant Dairy Chemist. For getting promotion to the said post, requisite qualification has been prescribed in the Recruitment Rules. These qualifications are already mentioned in the above paras. The applicants do not possess the requisite qualification for being promoted to the post of Assistant Dairy Chemist.

8. The learned P.O. invited our attention to the judgment delivered by this Tribunal in **O.A. Nos. 1138/1993 and 1011/1994 in case of S.T. Deshmukh and others V/s State of Maharashtra and others.** The said judgment was delivered by Principal Bench at Mumbai on 8.12.2014. All these applications were dismissed. The Review Application

filed against the said judgment has already been dismissed in Review Application No.02/2001 on 14.12.2001.

9. The issue that has come in the present O.A. has also been dealt by this Tribunal in O.A. No.545/2012, in case of Electricians as regards recovery of excess amount. However; in that case, recovery was made without giving any opportunity and still the O.A. was dismissed. Admittedly, in the present case, show cause notices were given to the applicants before recovery.

10. In the affidavit in reply, it has been stated that when the Time Bound Promotional pay scale was granted to the applicants in the pay scale of Rs. 9300-34800 plus grade pay of Rs. 4200/-, the applicants have given undertaking in writing that, if their pay scale was found to be wrong, they will be liable to repay the excess amount.

11. From the facts and circumstances of the case, it is clear that both the applicants, though were Laboratory Assistants, have been granted higher pay scale of Rs. 9300-34800 plus grade pay of Rs. 4200/- which was of the post of

Assistant Dairy Chemist. Specific requisite qualification was necessary as per the Recruitment Rules for getting promotion to this post. Admittedly, the applicants are not qualified as per Recruitment Rules for the posts of Assistant Dairy Chemist / Dairy Chemist and still they have been wrongly granted pay scale of the said post. When this fact came to the knowledge of respondent authorities, they seem to have issued show cause notices to the applicants and have withdrawn higher pay scales granted to them. Admittedly, while getting the pay scale of higher post, the applicants have given clear undertaking that in case their pay scale was wrongly fixed, they will be liable to pay difference paid to them. In such circumstances, the applicants now cannot come with a case that the excess amount is being recovered without any authority.

12. In view of the recent judgment of the Hon'ble High Court reported in 2018 SCC Bombay 197 in W.P. No.7885/2016 and one another, it will be clear that if the pay fixation has been made wrongly and at the time of granting such pay fixation, the employee has given undertaking in writing that he will be liable to pay excess amount paid to him

due to wrong pay fixation, the employee cannot challenge the said recovery.

13. In view of discussion in foregoing paras, we pass the following order:-

ORDER

The O.A. Nos. 634/2014 and 682/2014 stand dismissed with no order as to costs.

(P.N. Dixit)
Member (A)
(J)

(J.D. Kulkarni)
Vice-Chairman

