

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.705 OF 2019  
with  
ORIGINAL APPLICATION NO.706 OF 2019**

**DISTRICT : MUMBAI  
SUBJECT : TIME BOUND  
PROMOTION**

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**ORIGINAL APPLICATION NO.705 OF 2019**

- 1) Varesh Dnyanu Kamane, )  
Aged 56 Yrs, Occ. Service as Laboratory )  
Attendant, Having Office at Forensic Science )  
Laboratory, Kalina, Santacruz (E), Mumbai-98, )  
R/at Room No.1102, 11<sup>th</sup> Floor, Chance Heritage)  
Co-operative Society, C-2 Wing, Tawari Pada, )  
Near Water Filter, Kalyan (E), Dist. Thane. )
- 2) Martand Kashinath Rakshe, )  
Aged 58 Yrs, Occ. Service as Laboratory )  
Attendant, Having Office at Forensic Science )  
Laboratory, Kalina, Santacruz (E), Mumbai-98, )  
R/at. Forensic Science Laboratory Staff Quarters)  
A-Wing, Room No.8, Mumbai-98. )
- 3) Baban Ramchndra Raut, )  
Aged 57 Yrs, Occ. Service as Laboratory )  
Attendant, Having Office at Regional Forensic )  
Science Laboratory, Ganesh Khind, Pune-7, )  
R/at Nimdari, Post Savargaon Basti, Tal. Junnar,)  
Dist. Pune. )
- 4) Parshuram Laxman Sutar, )  
Aged 58 Yrs, Occ. Service as Laboratory )  
Attendant, Having Office at Regional Forensic )  
Science Laboratory, Ganesh Khind, Pune-7, )  
R/at Govind Nivas, House No.72, Sutarwadi, )  
Pashan, Pune-21. )

- 5) Harun Amir Nadaf, )  
 Aged 57 Yrs, Occ. Service as Laboratory )  
 Attendant, Having Office at Regional Forensic )  
 Science Laboratory, Ganesh Khind, Pune-7, )  
 R/at Sr. No.570, Anand Nagar Gultekdi, )  
 Market Yard, Near Zala Complex, Pune-37. )
- 6) Madhukar Tulaji Kunde, )  
 Aged 59 Yrs, Occ. Service as Laboratory )  
 Attendant, Having Office at Forensic Science )  
 Laboratory, Kalina, Santacruz (E), Mumbai-98, )  
 R/at. Omkar C.H.S. Ltd, Building No.1, Room )  
 No.604, Pant Nagar, Ghatkopar (E), Mumbai 75. )
- 7) Vilas Sabaji Adhangale, )  
 Aged 59 Yrs, Occ. Service as Laboratory )  
 Attendant, Having Office at Forensic Science )  
 Laboratory, Kalina, Santacruz (E), Mumbai-98, )  
 R/at F/N/G/140 1/3, Anand Wadi, Barkat Ali )  
 Darga Marg, Wadala (E), Mumbai 37. )
- 8) Budhaji Jilu Dore, )  
 Aged 50 Yrs, Occ. Service as Laboratory )  
 Attendant, Having Office at Forensic Science )  
 Laboratory, Kalina, Santacruz (E), Mumbai-98, )  
 R/at. Thalakhancha Pada, Post Dharai, )  
 Tal. Shahapur, Dist. Thane. )
- 9) Rajaram Govind Parab, )  
 Aged 57 Yrs, Occ. Service as Laboratory )  
 Attendant, Having Office at Forensic Science )  
 Laboratory, Kalina, Santacruz (E), Mumbai-98, )  
 R/at. Sai Prem Society, ward No.1, Room No.5, )  
 Umesh Nagar, Devicha Pada, Satyawar Chowk, )  
 Dombiwali (W), Dist. Thane. )... **Applicant**

**Versus**

- 1) The Director, )  
Directorate of Forensic Science laboratory, )  
M.S. and Government Chemical Analyser, )  
Having office at Kalina Vidyanagari, Santacruz (E))  
Mumbai-98. )
- 2) The Director General (Legal and Technical), )  
M.S. Having Office at 18<sup>th</sup> Floor, New )  
Administrative Building, Opp. Mantralaya, )  
Mumbai-32. )
- 3) The State of Maharashtra, )  
Through Principal Secretary, Home Department, )  
Having Office at Mantralaya, Mumbai – 32. )
- 4) The State of Maharashtra, )  
Through Additional Chief Secretary, Finance )  
Department, Mantralaya, Mumbai – 32. )...**Respondents**

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### ORIGINAL APPLICATION NO.706 OF 2019

- 1) Prakash Shankar Parab, )  
Aged 57 Yrs, Occ. Service as Laboratory )  
Attendant, Having Office at Forensic Science )  
Laboratory, Kalina, Santacruz (E), Mumbai-98, )  
R/at Shiv-Ashish Society, Plot NO.56, B-Wing, )  
404, Sector 34, Kamothe, Navi Mumbai. )
- 2) Balu Lajras Sathe, )  
Aged 52 Yrs, Occ. Service as Laboratory )  
Attendant, Having Office at Regional Forensic )  
Science Laboratory, Ganesh Khind, Pune-7, )  
R/at. Sokhi Building, Fugewadi, near Deccan )  
Paper, Tal. Haveli, Dist. Pune. )
- 3) Uttam Shripat Khandagale, )  
Aged 57 Yrs, Occ. Service as Laboratory )  
Attendant, Having Office at Regional Forensic )  
Science Laboratory, Ganesh Khind, Pune-7, )  
R/at A/p Deugaon, Tal. Haveli, Dist. Pune. )

- 4) Bhaskar Shivram Dinde, )  
 Aged 55 Yrs, Occ. Service as Laboratory )  
 Peon, Having Office at Regional Forensic )  
 Science Laboratory, Ganesh Khind, Pune-7, )  
 R/at Sai Nisarg Apartment, Sr. No.60/1, Viwa )  
 Sarowar, Jambhulwadi Road, Ambegaon (Kd), )  
 Pune 46. )
- 5) Vilas K. Gosavi, )  
 Aged 51 Yrs, Occ. Service as Laboratory )  
 Attendant, Having Office at Regional Forensic )  
 Science Laboratory, Ganesh Khind, Pune-7, )  
 R/at N-9, R-26, House No.305, CIDCO, Raygad )  
 Nagar, Aurangabad, Pune3. )
- 6) Ganpat Dnyanoba Tapkir, )  
 Aged 51 Yrs, Occ. Service as Laboratory )  
 Attendant, Having Office at Regional Forensic )  
 Science Laboratory, Ganesh Khind, Pune-7, )  
 R/at A/P Alandi (Devachi), Tal. Haveli, )  
 Dist. Pune. )
- 7) Suresh Sonu Gaikad, )  
 Aged 60 Yrs, Occ. Service as Laboratory )  
 Attendant, Having Office at Regional Forensic )  
 Science Laboratory, Ganesh Khind, Pune-7, )  
 R/at A/P Baner, Tal, Haveli, Dist. Pune. )
- 8) Dagadu Kisan Langhi, )  
 Aged 50 Yrs, Occ. Service as Laboratory )  
 Attendant, Having Office at Forensic Science )  
 Laboratory, Kalina, Santacruz (E), Mumbai-98, )  
 R/at Room No.303, Om Pandurang C.H.S., )  
 Thane Belapur Road, Suryangar, Vitawa, Thane. )
- 9) Prakash Udhavrao Bhagwat, )  
 Since deceased through his legal heir by name )  
 Smt. Mandakini P. Bhagwat, Aged 60 years, )  
 Occ : service as Lab. Attendant, Having Office at )  
 Regional Forensic Science Laboratory, )

Ganesh Khind, Pune-7, )  
R/at.Sr. No.1221, Kasba Peth, Pune 11. )... **Applicant**

**Versus**

- 1) The Director, )  
Directorate of Forensic Science laboratory, )  
M.S. and Government Chemical Analyser, )  
Having office at Kalina Vidyanagari, Santacruz (E))  
Mumbai-98. )
- 2) The Director General (Legal and Technical), )  
M.S. Having Office at 18<sup>th</sup> Floor, New )  
Administrative Building, Opp. Mantralaya, )  
Mumbai-32. )
- 3) The State of Maharashtra, )  
Through Principal Secretary, Home Department, )  
Having Office at Mantralaya, Mumbai – 32. )...**Respondents**

**Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.**

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

**CORAM : A.P. KURHEKAR, MEMBER (J)**

**DATE : 28.07.2023.**

**JUDGMENT**

1. In O.A.No.705/2019, the Applicants have challenged order dated 02.11.2016 issued by the Respondent No.3 thereby rejecting their claim for second benefit of ACPS on the ground of non-holding requisite qualification prescribed for promotional post. Whereas, in O.A.No.706/2019, the Applicants have prayed for directions to the Respondents to give second benefit of ACPS Scheme. Thus, the claim in both Original Applications is restricted to extent of denial of 2nd benefit of ACPS Scheme. Other relief for considering ad-hoc service for counting ACPS benefit is not pressed by the learned Counsel for the Applicant.

2. Briefly stated facts giving rise to Original Applications are as under:-

The Applicants are Class-IV employees and stand retired from service. They were appointed in between 1988-1993 as Lab Attendant. They were given benefits of 1st ACPS Scheme on completing 12 years of service of Lab Assistant. Next promotional post was Junior Lab Assistant since they were not given functional promotion, the department gave them 1st benefit of ACPS as a non-functional promotion. They claimed 2nd benefit of ACPS for the next promotional post as Sr. Lab Assistant which is denied by the Respondents on the ground that they do not possess requisite qualification for promotion of Lab Assistant in terms of Recruitment Rules of 1987.

3. Shri A. V. Bandiwadekar, learned Counsel for the Applicants submits that 2nd benefit of ACPS is required to be given on the basis of ACR as specifically provided in Clause No. D-2 of G.R. dated 01.04.2010 and criteria of possessing requisite educational qualification is totally irrelevant. According to him, the Government in its wisdom through Finance Department had issued G.R. dated 01.04.2010 making distinction for grant of 2nd ACPS to those who got actual functional promotion after 1st benefit of ACPS and employees who did not get actual functional promotion. Thus, according to him, the Government has made conscious distinction in respect of employees who did not get actual promotion and for them requirement of possessing educational qualification for 2nd benefit is dispensed with. As such, he relied on Clause D-2 of G.R. dated 01.04.2010 in this behalf.

4. Per contra, Smt. Archana B.K., learned P.O. in reference to Recruitment Rules, 1987 as well as G.R. dated 20.07.2001 sought to contend that for grant of benefit of ACPS Scheme, the candidate must possess educational qualification for promotional post in respect of which

ACPS benefit is claimed. She has pointed out that as per Recruitment Rules, 1987, minimum qualification for next promotional post of Sr. Lab Assistant is HSC and Applicant being admittedly not possessing the said educational qualification, they are not entitled to 2nd benefit of ACPS Scheme.

5. In view of above controversy relates to interpretation of G.R. dated 01.04.2010 particularly clause D-2 and intention of the Government. Clause D-2 of G.R. dated 01.04.2010 reads as under :-

**"ड. योजनेच्या दुस-या लाभासाठी पात्रतेच्या अटी व शर्ती :-**

(१) पहिला लाभ घेतलेल्या व त्यानंतर प्रत्यक्ष पदोन्नती मिळालेल्या कर्मचा-यास दुसरा लाभ मंजूर करताना तो पहिल्या लाभाप्रमाणेच दिनांक २० जुलै २००९, च्या आदेशामधील व यासंबंधी वेळोवेळी निर्गमित करण्यात आलेल्या स्पष्टीकरणात्मक आदेशांतील तरतुदीच्या अधिन मंजूर करण्यात यावा. म्हणजेच, ज्या पदाची वेतनसंरचना मंजूर करण्यात येणार आहे, त्या पदावर प्रत्यक्ष पदोन्नती मिळण्यासाठी विहित केलेल्या अटी व शर्तीची पूर्तता करणे आवश्यक राहिल.

(२) पहिल्या लाभांतर्गत पदोन्नतीच्या ज्या पदाची वेतनसंरचना मंजूर करण्यात आली आहे त्या पदावर प्रत्यक्ष पदोन्नती न मिळालेल्या कर्मचा-यांच्या बाबतीत, दुसरा लाभ मंजूर करण्यासाठी, त्याला ज्या पदाची वेतनसंरचना मंजूर करण्यात येणार आहे त्या पदावरील पदोन्नतीसाठी विहित केलेली गोपनीय अहवालाची किमान सरासरी प्रतवारी प्राप्त करणे आवश्यक राहिल.

6. At this juncture, it would be apposite to reproduce Rule No.3 and 4 of 'Rules 1987' being relevant here and those are as under:-

"3) Appointment to the post of Junior Laboratory Assistant in the Directorate shall be made either-

- a) By promotion of a suitable person on the basis of seniority subject to fitness from amongst the person holding the post of Senior Laboratory Attendant having not less than 3 years' service as Senior Laboratory Attendant in the Directorate; or
  - b) By nomination from amongst candidates who -
    - (i) Unless already in the service of Government, are not more than 28 years of age; and
    - (ii) Have passed Secondary School Certificate Examination with science subject.
- 4) Appointments to the post of Senior Laboratory Assistant in the Directorate shall be made either-
- a) By promotion of a suitable person on the basis of seniority subject to fitness from amongst the persons holding the posts of Junior Laboratory Assistant and possessing qualification prescribed for appointment by nomination in sub-clause (ii) of Clause (b) of this rule;

*provided that Junior Laboratory Assistants who have passed at least Secondary School Certificate examination with science subjects and have completed at least 5 years service in that post may also be held eligible for promotion to their inter-se seniority in that clause; or*

- b) *By nomination from amongst candidate who-*
- (i) *Unless already in the service of Government, are not more than 28 years of age, and*
  - (ii) *Have passed Higher Secondary Certificate Examination with science subject."*

7. On 24.07.2023 when the matter was heard and question of interpretation of Clause-D of G.R. dated 01.04.2010 arose, the Tribunal directed Additional Chief Secretary, Finance Department who is author of G.R. dated 01.04.2010 to file Affidavit . Para Nos.4, 5 and 6 of order dated 24.07.2023 is as under :-

*" 4. As per Recruitment Rules, there are channels of promotions for the next promotional post and prima-facie, the post held by the Applicants can be said isolated post. That apart, Respondent No.1 - Director, Forensic Science Laboratory by order dated 11.05.2023 corrected the order dated 17.03.2016 to the effect that the said benefit is not of isolated post, but is of next promotional post.*

*5. In view of above, the question arises whether for 2nd benefit as claimed by the Applicant, there is requirement of possessing educational qualification for the said post or it can be granted only on the assessment of ACRs in terms of Clause (d)(2) of G.R. dated 01.04.2010 ignoring educational qualification criteria.*

*6. Additional Chief Secretary, Finance Department is, therefore, directed to file Affidavit explaining Clause (d) of G.R. dated 01.04.2010. Affidavit be filed on or before 28.07.2023."*

8. In terms of above order, today Shri Ashish Kumar Singh, Additional Chief Secretary, Finance Department has filed Affidavit and what he stated in Affidavit is as under :-

*"5. I say and submit that, the Modified Assured Career Progression Scheme was effective vide Government Resolution dated 01.04.2010 issued by Finance Department. As per this Government Resolution two benefits were given to employees after completion of 12 years and 24 years of regular service. As per Clause 2(d)(2) of said Government Resolution the criteria for granting this benefit to employee is as follows :-*



"(2) पहिल्या लाभांतर्गत पदोन्नतीच्या ज्या पदाची वेतन संरचना मंजूर करण्यात आली आहे. त्या पदावर प्रत्यक्ष पदोन्नती न मिळालेल्या कर्मचा-यांच्या बाबतीत, दुसरा लाभ मंजूर करण्यासाठी, त्याला ज्या पदाची वेतन संरचना मंजूर करण्यात येणार आहे. त्या पदावरील पदाची वेतन संरचना मंजूर करण्यात येणार आहे. त्या पदावरील पदोन्नतीसाठी विहित केलेली गोपनीय अहवालाची किमान सरासरी प्रतवारी प्राप्त करणे आवश्यक राहिल."

*6.I say and submit that thus it is clear from the provisions of above said clause 2(d)(2) that in respect of employees who received first benefit of Modified Assured Career Progression Scheme (MACPS) however di not receive actual functional promotion on the said post, while granting second benefit of pay structure of promotional post, it is necessary for the employee to possess minimum Average Gradation of Confidential Report which is prescribed for promotion of that post. In view of the above position, second benefit as claimed by the Applicant in present O.A. can be granted only on the assessment of Annual Confidential Reports ("ACRs") in terms of clause 2(d)(2) of Government Resolution dated 01.04.2010, being next promotional post as stated by the Forensic Department, Maharashtra."*

9. Thus, the Additional Chief Secretary, Finance Department clarified that 2nd benefit of ACPS has to be granted only on assessment of ACR in terms of Clause D-2 of G.R. dated 01.04.2010. Notably, in Affidavit, he did not state that educational qualification has to be complied with for 2nd benefit of ACPS as tried to canvass by learned P.O. Specific directions when given by the Tribunal in order dated 24.07.2023 to know whether there is requirement of possessing educational qualification for 2nd benefit of ACPS or can it be granted only on the basis of assessment of ACR. Whereas, the Additional Chief Secretary, Finance Department who is the author of G.R. dated 01.04.2010 in unequivocal terms clarified that benefit of ACPS has to be granted only on assessment of ACR as provided in Clause D-2 of G.R. dated 01.04.2010. This being so, there is clear admission of the Finance Department that there is no requirement of educational qualification for 2nd benefit for those who have not availed actual functional promotion.

10. True, in G.R. dated 20.07.2001, as per Clause 5, it is stated that for the benefit of ACPS, all requirements including educational qualification has to be complied with. However, notably the Government through F.D. had subsequently issued G.R. dated 01.04.2010 making

special provisions for grant of 2nd benefit of ACPS and, therefore, G.R. dated 01.04.2010 shall prevail. Apparently, Finance Department was aware of G.R. dated 20.07.2001 requiring educational qualification for the benefit of ACPS but later while issuing G.R. dated 01.04.2010, the Government in its wisdom has made two categories for grant of 2nd benefit of ACPS for those who were given actual promotion after grant of 1st benefit and for those who did not get actual functional promotion. It appears that such distinction is made to provide some succor to employees who did not get single actual functional promotion during their entire carrier and that is why for them 2nd benefit was to be given only on the basis of assessment of ACR. Had there been requirement of possessing educational qualification, it would have stated so in Clause D-2 of G.R. dated 01.04.2010. However, it is not so. On the contrary, it is specifically mentioned that 2nd benefit of ACPS has to be granted on the basis of ACR to those employees who did not get single actual functional promotion in their tenure. As such, knowingly different criteria is made applicable and it is fortified by Affidavit filed by Shri Ashish Kumar Singh, Additional Chief Secretary, F.D. today.

11. Needless to mention that interpretation of documents or G.R. has to be done on the basis of language and expression used in the document/G.R. and where the language is clear leaving no doubt something which is not there in the document or G.R. cannot be imported therein. Suffice to say, harmonious and plain meaning of Clause D of G.R. dated 01.04.2010 is that Applicants are entitled to consider their claim for 2nd benefit of ACPS on the basis of assessment of ACR only. This being so, impugned order dated 02.11.2016 is totally arbitrary and unsustainable in law.

12. The totality of the aforesaid discussion leads me to sum up that Applicants are entitled for consideration of their claim for 2nd benefit of

ACPS Scheme on the basis of assessment of ACRs. Hence, the following order :-

**ORDER**

- (A) Both the Original Applications are allowed.
- (B) Impugned order dated 02.11.2016 challenged in O.A.No.705/2019 is quashed and set aside.
- (C) The Respondents are directed to consider the claim of the Applicants for 2nd benefit of ACPS Scheme on assessment of ACRs as provided in Clause D-2 of G.R. dated 01.04.2010 by convening special DPC within six weeks from today and if Applicants found entitled, consequential service benefits accordingly be released.
- (D) No order as to costs.

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

Place : Mumbai  
Date : 28.07.2023  
Dictation taken by : VSM  
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