

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.768 OF 2017

(Subject :- Pay Scale As Per G.R.)

DISTRICT : AURANGABAD

1. **Rajan Anna Lengde,**)
Age : 53 years, Occu: Service,)
R/o. A1/2, Vivekanand Nagar,)
N-4, South, Cidco, Aurangabad.)
2. **Rameshchandra Pandharinath Morankar**
Age: 55 years, Occu: Service,)
R/o.77 HIG MHADA Colony, CDN 207/7,))
CBS Aurangabad.)
3. **Sham Vasantrao Pande,**)
Age: 53 years, Occu: Service,)
R/o. C-11, Renuka Enclave,)
Behind Chetana Nagar,)
Aurangabad.)
4. **Ravindra Madhavrao Pandit**)
Age: 53 years, Occu: Service,)
R/o. 35, N-5, South, Savarkar Nagar,)
Cidco, Aurangabad.)
5. **Nandkumar Gangadharrao Suradkar**)
Age:54 years, Occu: Service,)
R/o. Plot No.19, Sadgurukrupa Society,)
N-8 (B) Cidco, Aurangabad.)...Applicants

V E R S U S

1. **The State of Maharashtra,**)
Through: Secretary, (WR))
Water Resource Department,)
Mantralaya, Mumbai-32.)

2. **The Executive Director,**)
 Godavari Marathwada Irrigation)
 Development Corporation,)
 Sinchan Bhavan, Jalna Road,)
 Aurangabad.)
3. **The Chief Engineer, (W.R.)**)
 Water Resources Department,)
 Sinchan Bhavan, Jalna Road,)
 Aurangabad.)
4. **The Chief Engineer &**)
 Chief Administrator,)
 Command Area Development,)
 Water Resources Department,)
 CADA Bhavan, Aurangabad.)...**Respondents.**

Smt. Suchita A. Dhongde, learned Advocate for the Applicants.

Shri M.P. Gude, learned Presenting Officer for the Respondent No.1.

Shri A.D. Gadekar, learned Advocate for the Respondent Nos. 2 to 4.

CORAM : B.P. PATIL, ACTING CHAIRMAN

RESERVED ON : 17.10.2019.

PRONOUNCED ON : 13.11.2019.

ORDER

1. The Applicants have challenged the order dated 25.10.2017 issued by the Respondent No.2 canceling first benefit under Modified Assured Career Progress Scheme and re-fixing pay

by filing the present Original Application and prayed to quash and set aside the said order. They have also prayed to direct the Respondents to grant benefits of Assured Career Progress Scheme to the Applicants from 01.10.2006, the date on which they completed further period of 12 years (i.e. 24 years service), as per the Government Resolution dated 01.04.2010.

2. The Applicants joined service with the Respondents as Junior Engineer on following dates:-

- (1) The Applicant No.1, Shri Rajan Anna Lengde joined services on 18.7.1983.
- (2) The Applicant No.2, Shri Rameshchandra Pandharinath Morankar joined services on 12.05.1981.
- (3) The Applicant No.3, Shri Sham Vasant Rao Pande joined services on 01.03.1984.
- (4) The Applicant No.4, Shri Ravindra Madhav Rao Pandit joined services on 13.02.1984.
- (5) The Applicant No.5, Shri Nandkumar Gangadhar Rao Suradkar joined services on 03.02.1982.

3. They completed 12 years of services on 18.7.1995, 12.05.1993, 01.03.1996, 13.02.1996 and 03.02.1994 respectively. They completed further period of 24 years of services on 18.7.2007, 12.05.2005, 01.03.2008, 13.02.2008 and 03.02.2006 respectively.

4. The Government of Maharashtra introduced the scheme of giving benefit of pay scale of promotional post to such employee on completion of 12 years in order to remove the

stagnation reached by the employee by virtue of long services and who could not get any promotion and to remove the feeling of being neglected amongst such employees. The Government issued G.R. accordingly on 8.6.1995. Thereafter, the Government modified the scheme from time to time in order to remove the difficulties. On 1.11.1995, the Government issued G.R. and modified the earlier scheme. Again on 20.3.1997, the Government modified the scheme by issuing G.R. On 20.7.2001, the Government introduced the Assured Career Progress Scheme to the employees who completed 12 years of service. On 03.08.2001, the Government issued the G.R. wherein pay scale of higher post is made applicable to the employees completing further period of 12 years in the scale. By issuing G.R. dated 11.01.2002, the Government delegated powers to the authorities to fix the pay of the employee who are eligible for getting benefits under Assured Career Progress Scheme. On 15.11.2009, the Government issued another resolution wherein benefits of A.C.P.S. were made applicable to the employees who could not pass the departmental examination in prescribed period. Vide G.R. dated 01.04.2010, the Government made applicable modified/improved A.C.P.S. to the employees. Clause No.2 of the resolution provides that the revised A.C.P.S. shall be applicable to the employees who are drawing pay in the pay Band No.3 (Rs.15,600 to 39,100 with grade pay of Rs.5400). By this clause,

it was made clear that the employee would be entitled to get benefits of the scheme at least two times. However, such benefits would not be applicable to employees who are promoted for three times and who have got two times promotion are entitled for onetime benefit of this M.A.C.P.S.

5. On 21.5.2010, Government issued resolution giving guidelines as to pay fixation of the employees. The Government issued another resolution dated 05.07.2010 regarding employees working on technical posts which do not have further chance to promote. By resolution dated 1.7.2011, clarifications are given to the queries often asked for grant of benefits of A.C.P.S.

6. It is contention of the Applicants that vide G.R. dated 1.4.2010, A.C.P.S. has been made applicable since 01.10.2006 for the employees drawing pay in the pay band No.3 i.e. Rs.15600-29100 with grade pay of Rs.5400. Therefore, the Applicants are entitled to get such benefit from 01.10.2006 since they joined service on 18.7.1983, 12.05.1981, 01.03.1984, 13.02.1984 and 03.02.1982 respectively and they have completed 12 years service on 18.7.1995, 12.05.1993, 01.03.1996, 13.02.1996 and 03.02.1994 respectively. They have completed 24 years of their services on 18.7.2007, 12.05.2005, 01.03.2008, 13.02.2008 and 03.02.2006 respectively. Therefore, they are entitled to get

second benefit w.e.f. 1.10.2006. But the Respondents had not appreciated the intent and purport of A.C.P.S. in its letters and spirit. For grant of relief under the scheme, the length of service is material. The date of joining, completion of 12 years and thereafter the date of completion of further period of 12 years are material factors for grant of benefit of said scheme. Therefore, the order granting the benefits to the Applicants from later date is erroneous and needs to be modified suitably.

7. It is their contention that the Respondents ought to have granted similar benefits to them. However, the Respondents had not granted the benefits from the date they completed 24 years service but granted at later date i.e. from 1.8.2013. Therefore, the directions are required to be given to the Respondents in that regard.

8. The Applicants were enjoining second benefit given to them w.e.f. 01.08.2013. But the Respondents authority issued Government Circular dated 13.06.2016 stating that the benefits given on the post of Sectional Engineer be treated as first benefit and the benefit which was given on 01.08.2001 is second benefit.

9. It is contention of the Applicants that depending upon the qualification possessed by them, on completion of 5 years, 7 years and 10 years, benefit of upgradation of post of Junior

Engineer to that of Sectional Engineer and Assistant were given in view of the G.R. 16.4.1984. It is their contention that while granting higher pay scale to such upgraded Sectional Engineer/Assistant Engineer, there is no mention as regards non-functional post etc. However, it is mentioned that duties and responsibilities would remain the same. In fact for being eligible for the post of Sectional Engineer, five years service as Junior Engineer is a condition precedent. An engineer holding subordinate certificate from Osmaniya University or qualification declared equivalent to it should have completed 7 years continuous service and if an engineer does not hold both these qualification, he should have worked for ten years services for being eligible to the post of Sectional Engineer. It means completion of five years, seven years and ten years, as the case may be, is the requisite qualification to claim the post of Sectional Engineer. Thus after completion of service for requisite number of years, they can be upgraded as Sectional Engineer. It is not a promotional post. It was only upgradation and not non-functional promotion.

10. It is their contention that on 13.6.2016, the Government of Maharashtra issued circular and directed to stop practice of granting second benefit to the Engineers considering their upgradation to the post of Sectional/Assistant Engineers post as a promotion and further directed to recover the amount from

the salary of the beneficiaries. The Government is misconstruing the upgradation of the Junior Engineer to the post of Sectional/Assistant Engineer's post. The upgradation cannot be treated as promotion. The criteria for promotion is different than the process of upgradation. Completion of five years services is only criteria for upgradation, whereas for getting promotion, seniority cum merit is the general principle besides qualification and eligibility. Only because the Engineers are getting the pay scale of Executive Engineer, some mischief is being played and weapon of impugned circular is being used. The said action on the part of the Respondent is out of the negative approach of the State and it is not bonafide one. It is their contention that the benefit granted to them under A.C.P.S. has been withdrawn by this circular without being valid reason. On the basis of said circular, the Respondents authority issued the recovery from the Applicants.

11. It is their contention that the Junior Engineers Associations had filed Original Application No.837 of 2016 before the Principal seat of this Tribunal at Mumbai for quashing and setting aside the Government Circular dated 13.06.2016. Unfortunately the Original Application was dismissed. Thereafter, the Association approached the Hon'ble High Court by filing the Writ Petition No.2605 of 2017 challenging the order passed by the Principal seat of this Tribunal at Mumbai in O.A.No.837 of 2016.

In the said Writ Petition, Hon'ble High Court granted interim order stating that "In the Meanwhile, no coercive recovery be enforced against the petitioners". In view of the order of Hon'ble High court dated 8.3.2017, the Government i.e. Water Resources Department, Mantralaya, issued communication dated 10.03.2017 and directed to the concerned to obey the directions given by the Hon'ble High Court. It is their further contention that the impugned order is illegal and therefore, they prayed to set aside the impugned order and sought direction to the Respondents to grant benefit of A.C.P.S. to the Applicants from 1.10.2006 on completion of 12 years and further benefit after completion of 12 years i.e. 24 years service and prayed to direct the Respondents to grant all consequential benefits to them.

12. The Respondent No.1 has filed affidavit-in-reply and resisted the contention of the Applicant. It is his contention that after recommendation of the 6th Pay Commission, the State Pay Revision Committee headed by Shri P.M.A. Hakeem retired Secretary, Government of India submitted its report to the State Government as regards revision of pay scale of the State Government Employees on the basis of recommendations of Central 6th Pay Commission. The recommendation made by the said Committee has been accepted by the State and accordingly G.R. dated 27.02.2009 was issued to that effect. Para No.3.27.5

and sub paras no.2 to 4 of the said report has also been accepted by the State.

13. On the background of the para no.3.27.5 (1) and G.R. dated 27.2.2009, the Respondents department had issued G.R. dated 01.04.2010, granting second benefit under Modified Assured Career Progress Scheme to the Stat Government employees. In the para no.2 (B) (3) of the said G.R. dated 01.04.2010, it has been clarified that benefit of non functional promotion or higher pay scale, granted after specific time period without increase in duties and responsibilities will be treated as first benefit. In view of the said provision, the Finance Department had issued circular dated 13.06.2016 to stop the grant such 2nd benefit of MACPS to the Sectional Engineers and to recover the excess amount actually granted to such employees. It was brought to the knowledge of Government that the Applicants were given three benefits of higher pay scale of the post of Sectional Engineer, Deputy Engineer and Executive Engineer respectively. As per the Government Circular dated 13.06.2016, benefits given to the applicants under MACPS from 1.8.2013 had been extended wrongly. Therefore, the Executive Director, GMIDC, Aurangabad issued order dated 25.10.2016 and reduced the grade pay of the Applicants from Rs.6600/- to 5400/- and re-fixed the pay of the Applicants to avoid excess payment to the Applicants.

14. It is his contention that Government Circular dated 13.06.2016 had been challenged by the Junior Engineers Association by filing the O.A.No.837 of 2016 before the Principal seat of this Tribunal at Mumbai. The Tribunal by its order dated 02.02.2017 has rightly held that provision 2(B) (3) of the said G.R. dated 01.04.2010 is applicable to the petitioners. The Association challenged the said order before the Hon'ble High Court of judicature at Bombay by filing the Writ Petition No.2605 of 2017. The Hon'ble High Court, Bombay passed an interim order on 08.03.2017 stating that "In the meanwhile, no coercive recovery be enforced against the petitioners". Thereafter, there is no instruction/orders prohibiting implementation of the provisions no.4(a) and (b) of the Government Circular dated 13.06.2016. The Hon'ble High Court of Judicature at Bombay stayed the action of coercive recovery of excess payment made to the petitioners only and there is no stay for re-fixation of pay scale as per the Government circular dated 13.06.2016.

15. It is further contention of the Respondent No.1 that the Government had introduced the Time Bound Promotion Scheme by issuing G.R. dated 08.06.1995 and given one promotional pay scale from 01.10.1994 to all employees of Group 'C' and 'D' after completion of 12 years of service. The above scheme was applicable to Group 'C' and 'D' employees. Thereafter, in the year

2001, ACPS was introduced wherein Group 'B' Officers were also included under ACPS after completion of 12 years of service of Sectional Engineer. It was made applicable to the Applicant also. The Applicants were given benefit of the pay scale of Sub-Divisional Officer on 01.08.2001. Thereafter, Government introduced Modified Assured Career Progress Scheme (MACPS) by issuing G.R. dated 01.04.2010 w.e.f. 01.10.2006. The Applicants had given benefits of higher pay scale of Executive Engineers post i.e. pay scale of Rs.15600-39100 with grade pay of Rs.6600 w.e.f. 01.08.2013. As per the para no.2(B) (3) of the G.R. dated 01.04.2010, it has been clarified that the benefit of non functional promotion or higher pay scale granted after specific time period without increase in duties and responsibilities will be treated as first benefit. The Applicants were given three benefits of higher pay scale of the post of Sectional Engineer, Deputy Engineer and Executive Engineer. Therefore, the second benefit under MACPS given to the Applicant from 01.08.2013 is contrary and erroneous to the Government Resolution dated 01.04.2010.

16. The Finance Department also reiterated the said view by issuing G.R. dated 13.06.2016 and on the basis of said G.R., the impugned order has been passed. It is his contention that there is no illegality in the impugned order and therefore, he has

supported the impugned order and prayed to dismiss the Original Application.

17. The Respondent Nos.2 to 4 have filed their affidavit-in-reply and resisted the contentions of the Applicants by raising the contentions similar to that of the contentions raised by the Respondent No.1 in his affidavit-in-reply and prayed to dismiss the Original Application.

18. I have heard Smt. Suchita A. Dhongde, learned Advocate for the Applicants, Shri M.P. Gude, learned Presenting Officer for the Respondent No.1 and Shri A.D. Gadekar, learned Advocate for the Respondent Nos.2 to 4. The learned Advocate as well as the learned Advocate for the Respondent Nos.2 to 4 have filed their written notes of argument. I have perused the document on record.

19. Admittedly, the Applicants joined services as Junior Engineers on 18.07.1983, 12.05.1981, 01.03.1984, 13.02.1984 and 03.02.1982 respectively. The post of Junior Engineers has been upgraded as Sectional Engineer/Assistant Engineer in accordance with the provision of Government Resolution dated 16.4.1984 and accordingly, pay scale of the Sectional Engineer/Assistant Engineer was given to the Applicants.

20. After introducing ACPS in the year 2001, the Applicants received the first benefit under scheme and received the pay scale of Sub Divisional Officer on 1.8.2001. Thereafter, the Government introduced the MACPS by issuing the G.R. dated 01.04.2010 and Applicants received the second benefit under the scheme w.e.f. 1.8.2013 and the pay scale of Rs.15,600 to 39,100 with grade pay of Rs.5400 was granted to the Applicant. There is no dispute about the facts that thereafter, the Government in Finance Department issued G.R. dated 13.06.2016 stating that in view of the para no.2 (b) (3) of the G.R. dated 1.4.2010, the benefit of non functional promotion or higher pay scale, granted after specific time period without increase in duties and responsibilities will be treated as first benefit. In view of this it was found that the Applicants have received three benefits of higher pay scale of post of Sectional Engineer, Deputy Engineer and Executive Engineer respectively therefore, second benefit granted under MACPS to the Sectional Engineers had been withdrawn by impugned order and their pay have been re-fixed accordingly.

21. There is no dispute about the fact that Junior Engineers Association filed Original Application No.837 of 2016 before the Principal seat of this Tribunal at Mumbai and challenged the Government Circular dated 13.06.2016 and prayed to quash and set aside the said circular. The Original Application

has been dismissed on 02.02.2017. The Association of Junior Engineers has challenged the said order before the Hon'ble High Court of Judicature at Bombay by filing the Writ Petition No.2605 of 2017 wherein the Hon'ble High Court passed the interim order stating that " In the Meanwhile, no coercive recovery be enforced against the petitioners".

22. Learned Advocate for the Applicant has submitted that the Applicants joined the service as Junior Engineer during the year 1981 to 1984. In view of the provision of G.R. dated 16.04.1984, the post of Junior Engineer was upgraded to the post of Sectional Engineer/Assistant Engineer and therefore pay scale of Section Engineer/Assistant Engineer was given to the Applicants. She has argued that in the year 2001, the Government introduced the Assured Career Progress Scheme by G.R. dated 20.07.2001. By G.R. dated 11.02.2002, the benefit of the said ACPS was came to be extended to the Sectional Engineers after putting in 12 years service. She has submitted that thereafter on implementation of recommendation of 6th Pay Commission, the Government modified/improved ACPS by G.R. dated 01.04.2010 and it was brought in to force w.e.f. 01.10.2006. She has submitted that according to the said G.R., the eligible employees were entitled to get benefits of the scheme at least two times. However, such benefits would not be applicable to the employees who are

promoted for three time and who has got two time promotion are entitled to get one benefit only. The first benefit has to give after completion of 12 years service and second benefit is made admissible after completion of 12 years service from granting of first benefit.

23. She has argued that the Applicants were initially appointed as Junior Engineer and they have not been given benefit of Time Bound Promotion Scheme vide G.R. dated 08.06.1995. She has argued that the post of Applicants i.e. Junior Engineer was upgraded as Sectional Engineer/Assistant Engineer in view of the G.R. dated 28.09.1984. She has argued that upgradation of the post does not amount promotion and therefore, it cannot be treated as benefit given under MACPS. She has submitted that the Respondents have rightly granted two benefits under MACPS to the Applicants but subsequently they have withdrawn the second benefit by issuing the impugned order on the ground that the Applicants have received three benefits. She has submitted that the impugned order has been issued on the basis of the circular dated 13.06.2016 which is not in consonance with the provision of earlier G.R. dated 1.04.2010 and therefore, he has prayed to quash the impugned order.

24. She has submitted that the similar issue has been dealt with and decided by the principal bench of this Tribunal in O.A.No.296 of 2012 decided on 22.4.2014 as well as in O.A.No.86 of 2014 decided on 22.07.2016. She has submitted that the similar view has been again taken by the bench of this Tribunal in O.A.No.421 of 1993 as well as in O.A.No.578 of 2011. She has argued that inspite of the said facts, the principal seat of this Tribunal at Mumbai had taken different view in O.A.No.837 of 2016 and dismissed the Original Application. She has submitted that the decision of the principal seat of this Tribunal at Mumbai in O.A.No.837 of 2016 has been challenged before the Hon'ble High Court of Judicature at Bombay by filing the Writ Petition No.2605 of 2017 which was allowed on 06.02.2019 and the order of this Tribunal has been set aside and it has been held that the Junior Engineers are entitled to get two benefits under MACPS and the upgradation of the post of Section Engineer/Assistant Engineer does not amount promotion. It has been held by the Hon'ble High Court that revision of pay scale cannot be equated with the grant of pay scale of promotional post.

25. She has submitted that the case of the Applicants is squarely covered by the said decision. She has submitted that the similar view has been taken by the Hon'ble High Court of Judicature of Bombay bench at Nagpur in **W.P.No.6329 of 2015**

dated 23.11.2015 in case of The State of Maharashtra Vs. Subhash Eknath Kawalkar and Others as well as in the **W.P.No.1048 of 2019 dated 16.4.2009 in case of Nandkishor Mahipatrao Akolkar Vs. The State of Maharashtra & Ors.** decided by Hon'ble High court of Judicature of Bombay bench at Aurangabad.

26. Learned Advocate for the Applicant has also placed reliance on the judgment of Hon'ble Apex Court in **Civil Application No.2944 of 2015 arising out of (C) No.35931 of 2009 in case State of Madhya Pradesh and Others Vs. Mala Banerjee decided on 17.3.2015** and in case of **State of Tripura & Ors. Vs. K.K. Roy in Civil Appeal No.6253 of 1998 decided on 12.12.2003** and in case of **Commissioner And Secretary to Government of Haryana and Others Vs. Ram Sarup Ganda And Others in Civil Appeal No.3250 of 2006 with Nos.3354 of 2006, 3353 of 2006 etc. decided on 2.8.2006 reporting in (2011) 15 Supreme Court Cases 772** in support of his submission.

27. Learned Advocate for the Applicant has submitted that Respondents have not considered the provision of clause 2(b) (3) of G.R. dated 1.4.2010 with proper perspective and wrongly held that upgradation of the post of Junior Engineer as Sectional

Engineer/Assistant Engineer amounts grant of promotion on non-functional pay scale and considered it as First Benefit under MACPS. She has submitted that the case of the Applicants is squarely covered by the decision given by Hon'ble High Court in W.P.No.2605 of 2017 and therefore, she has prayed to extend the said benefit by allowing the Original Application and also prayed to quash the impugned order by which the earlier benefit extended to the Applicant under MACPS has been withdrawn. She has prayed to direct the Respondents to extend the benefit to the Applicants in view of the G.R. dated 1.4.2010.

28. Learned P.O. and learned Advocate for the Respondent Nos.2 to 4 have submitted that the Government introduced the Time Bound Promotion Scheme by issuing G.R. dated 8.6.1995 and given one promotional pay scale w.e.f. 1.10.1994 to all the employees of Group 'C' and 'D' cadre after completion of 12 years service. Initially this scheme was applicable to Group 'C' and 'D' employees. Thereafter, the Government introduced the ACPS in the year 2001, wherein group 'B' officers were also included under the scheme after completion of 12 years service. By G.R. dated 11.2.2002, the benefit of the scheme was extended to the employees senior on the post of Sectional Engineer, after putting in 12 years service. Accordingly, the Applicants have been given the benefit of pay scale of Sub-Division Officer in the year 2001.

Thereafter, the Government introduced the MACPS by issuing G.R. dated 1.4.2010 w.e.f. 1.10.2006. The Applicants had been given benefit of higher pay scale of Executive Engineers on 1.8.2013.

29. They have submitted that the Government constituted the State Pay Revision Committee headed by Shri P.M.A. Hakeem, retired Secretary, Government of India on recommendation of the 6th Pay Commission. On the basis of report of the committee, the recommendations were accepted by the Government by G.R. dated 27.2.2009 and on the basis of the said report, the G.R. dated 1.4.2010 has been issued regarding second benefit under MACPS to the State Government employees. In clause 2(b)(3) of the said G.R., it has been clarified that the benefit of non-functional promotion or higher pay scale, granted after specific time period without increase in duties and responsibilities will be treated as first benefit. In view of the said provision, the Finance Department issued the circular dated 13.6.2016 to stop to grant such second benefit of MACPS to the Sectional Engineers and to recover the excess amount actually granted to them as it was noticed by the Government that the three benefits of higher pay scale has been given to the Junior Engineers on promotional post of Sectional Engineer, Dy. Engineer and Executive Engineer respectively. It has been noticed by the Government that the benefits have been

extended to the Applicants wrongly and therefore, impugned order has been issued by the Respondents.

30. They have argued that the Applicants have received three benefits of higher pay scale of the post of Sectional Engineer, Deputy Engineer and Executive Engineer. Therefore the second benefit given under MACPS to the Applicant from 1.8.2013 is contrary and in violation of the G.R. dated 1.4.2010 and therefore, the said benefit had been withdrawn. It is their contention that there is no illegality in the impugned order and therefore they have justified the impugned order and prayed to dismiss the Original Application.

31. They have submitted the principal seat of this Tribunal has decided O.A.No.837 of 2016 filed by the Association of Junior Engineers involving the similar view but it came to be dismissed on 2.2.2017 holding that the provision of 2(b) (3) of the G.R. dated 1.4.2010 is applicable to the petitioners/applicants. They have submitted that the said decision has been challenged by the Association of Sub-ordinate Service of Engineers Maharashtra State & Ors. before the Hon'ble High Court of Judicature at Bombay by filing the W.P.No.2605 of 2017 and the said Writ Petition was allowed on 6.2.2019. They have submitted that the Respondents State is intending to file S.L.P. before the Hon'ble

Apex Court and therefore, it cannot be held that the said decision is conclusive and final. They have submitted that the Applicants had already received two benefits of pay upgradation and therefore, third benefit has been withdrawn by the Respondents by issuing impugned order and there is no illegality in the impugned order. Therefore, they have justified the impugned order and prayed to dismiss the Original Application.

32. On perusal of record it is crystal clear that the Applicants were initially appointed as Junior Engineers during the year 1981 to 1984. On 16.4.1984, the Government resolved to confer the status of 'gazetted officers' upon the 'degree- holders' and other junior engineers. The degree-holder junior engineers were given the status of gazette officers immediately. Whereas the diploma-holder and unqualified junior engineers were conferred the said status after putting in the specified years of service i.e. five years service for the junior engineers who had three years diploma, seven years for two years diploma-holders and ten years for the unqualified junior engineers. In view of the said G.R., two different cadres were created newly. The degree-holder junior engineers were designated "Assistant Engineer Grade -II'. Whereas the diploma-holder and unqualified junior engineers were designated as Sectional Engineers'. Both the cadres i.e. Assistant Engineers

Grade -II and Sectional Engineers were given the same pay scale i.e. Rs.600-30-750-40-950.

33. In the year 2001, the Government introduced Assured Career Progression Scheme (ACPS) by G.R. dated 20.07.2001 by repealing the Time Bound Promotion Scheme. Initially the ACPS was applicable to group 'C' and 'D' employees. By G.R. dated 11.2.2002, the benefit of the said ACPS was came to be extended to the Section Engineers after putting in 12 years service. On implementation/recommendation of the 6th Pay Commission, the Government modified scheme and implemented MACPS by G.R. dated 1.4.2010. It was brought in to force with effect from 1.10.2006. As per the said scheme, the eligible employees were entitled to 'second benefit' of the promotional pay scale. The first benefit has been given after putting in 12 years service and second benefit made admissible after putting in 12 years service of grant of first benefit. However, the employees who had already been promoted twice were entitled to one benefit only. In view of the clause 2(b) (3) of the G.R., while considering the admissibility of the first benefit i.e. non-functional pay structure extended to the employees after putting in a specified years of service, without there being any increase in the duties and responsibilities shall be reckoned as the first benefit under the scheme.

34. It is material to note here that the Applicants were working as Junior Engineers. The post of Junior Engineers was upgraded to the post of Sectional Engineer in view of the G.R. dated 16.4.1984. That time the scheme of Time Bound Promotion or Assured Career Progression was not introduced. After introducing the ACPS and MACPS, the first and second benefit was given to the Applicants. By G.R. dated 16.4.1984, the post of Gazetted structure, class-2 Junior Engineer was upgraded in two different cadre by reconstructing cadre of Junior Engineer and designated as Assistant Engineer Grade 'II' and the Sectional Engineer. The duties and function of the newly created posts were the same duties and function discharged by the Junior Engineer and new pay scale was permissible for Assistant Engineer Grade 'II' and Sectional Engineer. Therefore, it cannot be termed as promotional or functional upgradation. Therefore, it cannot be treated as first benefit within the meaning of clause 2(b)(3) of the G.R. dated 1.4.2010.

35. Similar issue has been dealt with by the Nagpur bench of this Tribunal in O.A.No.636, 733 and 599 of 2013 and it has been held that the revision in pay scale was for removal of discrepancy or anomalies and without any concomitant increase in the duties and responsibilities, and that the promotional pay-scale was not granted under the GR dated 08.12.1994. It was further

observed that clause 2(b)(3) of the G.R. dated 10.04.2010 covered the benefit which was schematic and not by way of one time grant.

36. The Hon'ble High Court of Judicature at Bombay has also dealt with and decided the similar issue in **Writ Petition No.2605 of 2017 in case of Association of the Sub-ordinate Service of Engineers Maharashtra State & Ors. Vs. State of Maharashtra and Others decided on 6.12.2019** and held that restructuring of cadre and revision of pay scale does not amount second benefit under MACPS. It has further observed that the upgradation under G.R. dated 16.4.1984 does not constitute grant of non-functional pay scale and cannot be treated as first benefit within the meaning of clause 2(b)(3) of the G.R. dated 1.4.2010.

The Hon'ble High Court has observed as follows:-

“39. Another factor, which has a material bearing on the claim of the applicants is that under ACP and MACP Scheme, the basis postulate is the benefit of pay-scale of the promotional post. It is nobody's case that under the G.R. dated 16th April, 1984 the applicants were given the benefit of the pay-scale of the promotional post. Mere revision of the pay-scale cannot be equated with the grant of pay-scale of the promotional post. On the contrary, it is pertinent to note that under the same GR, the Government had re-designated the next higher post as Assistant Engineers Grade-I and Assistant Executive Engineers.

40. *The learned Counsel for the Petitioners, also drew our attention to the fact that the degree-holder junior engineers whose pay-scale was also revised under the GR dated 16th April 1984 were given the 'second benefit' under MACP Scheme. An office*

order issued by the Assistant Chief Engineer in the office of Chief Engineer, Nashik, dated 5th October, 2013 was placed on record to buttress the said fact. Even from the reply of the Respondents before the Tribunal, the said fact becomes clear.

41. Even on this count, we find that the discrimination between the degree-holder Assistant Engineers Grade-II and the Sectional Engineers, who were given the same revised pay-scale under the GR dated 16th April, 1984, is invidious. The sectional engineers, concededly, were brought at par with the Assistant Engineers Grade-II, after putting in the specified years of service. Thereafter, the absence of promotional avenues and actual promotion, leading to stagnation, affected both the Assistant Engineers Grade-II and Sectional Engineers.

42. In this view of the matter, the denial of the 'second benefit' under the MACP Scheme, with reference to an exercise of cadre restructuring and the revision in pay scale, in the year 1984, appears to be legally unsustainable. We are, thus, inclined to answer the aforesaid question in the 'negative'. We hold and declare that the upgradation under GR dated 16th April, 1984 does not constitute grant of non-functional pay-scale and cannot be treated as the 'first benefit' within the meaning of clause 2(b)(3) of the GR dated 1st April, 2010. We are, thus inclined to allow the petition."

37. The Hon'ble High Court while deciding the said Writ Petition has considered the decision given by this Tribunal in O.A.No.636, 733 and 599 of 2013, O.A.No.233 of 2013. The Hon'ble High Court has also considered the decision of the Division Bench of Hon'ble High Court, Bench at Nagpur in W.P.No.6329 of 2015 and on considering the various decisions held that upgradation of the post of Junior Engineer as Sectional Engineer/

Assistant Engineer Grade 'II' and revision of pay scale does not amount grant of non-functional pay scale and it does not fall under the clause 2(b)(3) of the G.R. dated 1.4.2010.

38. The principle laid down by the Hon'ble High Court is appropriately applicable in the instance case. The present is squarely covered by the said decision. Revised pay scale given to the Applicants on upgradation of the post of Junior Engineer as Sectional Engineer/Assistant Engineer Grade 'II' in view of the G.R. dated 1.4.2010 cannot be considered as promotional or non-functional pay-scale. But the Respondents have wrongly interpreted the same while withdrawing the benefit given to the Applicants on the post of Sectional Engineer in view of the circular dated 13.6.2016. Therefore, the impugned order withdrawing the benefit granted to the Applicants is illegal and therefore, it requires to be quashed by allowing the Original Application.

39. In view of the discussion in the foregoing paragraphs, the Original Application is allowed. The impugned order dated 25.10.2016, cancelling/withdrawing the benefit given to the Applicants under the MACPS is hereby quashed and set aside. The Respondents are directed to grant the benefit of MACPS to the Applicants in view of the G.R. dated 01.04.2010. Amount, if any, recovered by the Applicants pursuant to the G.R. dated 13.6.2016

be refunded to the Applicants within a period of three months from today. No order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place:- Aurangabad

Date :- 13.11.2019

Sas. O.A.No.768 of 2017.Pay Scale as per G.R. BPP