

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.824 OF 2017

1. Shri Vijaykumar K. Pillai.)
Retired as Deputy Assistant to Assistant)
to Inspector General of Police, R/o. C-1/15))
Vijay Avenue, Vijay Paradise C.H.S.Ltd.,)
Gokivara Naka, Vasai (E), Dist : Palghar.)
2. Shri Hareshjwar E. Todankar.)
Retired as Senior Desk Officer,)
R/o. B-12, Rane Apartment, Kaju Pada,)
Ganesh Chowk, Borivali (E), Mumbai.)
3. Shri Pradeep S. Shivalkar.)
Retired as Office Superintendent (GO),)
R/o. 249-A, Uplekar Bag, Jakimirya,)
Ratnagiri – 415 612.)
4. Shri Pralhad B. Rane.)
Retired as Senior Desk Officer,)
[Gazetted Group-B],)
R/o. C-109, Shree Krishna Height C.H.S.)
Ltd., New Gauri Marriage Hall, Hendre)
Pada, Badlapur (W), Tal.: Ambarnath,)
District : Thane.)
5. Shri Kamlakar T. Vaity.)
Retired as Senior Office Superintendent,)
[Gazetted Group-B], R/o. Khochivade)
Koliwada, Sone Aali, Tal. Vasai,)
District : Palghar.)
6. Shri Chandrakant T. Kotre.)
Retired as Senior Office Superintendent,)
[Gazetted Group-B], R/o. Om Gouri)
Nandan, A-Wing, Flat No.204, Near KDMC,))
D-Ward office, Vijay Nagar, Puna Link Rd.,))
Kalyan (E), District : Thane.)
7. Shri Abhay P. Vedpathak.)
Retired as Office Superintendent (Class II),))
R/o. B/37, Adarsh Vasant Bahar,)

- Jeevan Vikas Kendra Marg,)
Andheri (E), Mumbai – 69.)
8. Mrs. Vrishali V. Ajgaonkar.)
Retired as Desk Officer, R/o. 401,)
R/o. Vijay Shanti CHS, L.T. Nagar Road)
No.1, Off. M.G. Road, Goregaon (W),)
Mumbai – 104.)
9. Mrs. Aparna A. Naik.)
Retired as Senior Office Superintendent,)
R/o. B-601, Tawade Complex, Triveni)
Sangam CHS, L.T. Road, Dahisar (W),)
Mumbai – 68.)
10. Mrs. Amruta A. Shirsekar.)
Retired as Senior Office Superintednet,)
[Gazetted – Class – B],)
R/o. H-1/402, Swarna-Rekha CHS,)
Lok Gram, Netivali, Kalyan (E),)
District : Thane.)
11. Mrs. Ratnaprabha P. Acharekar.)
Retired as Desk Officer,)
R/o. D-901, Radha Govind Radha)
Residency CHS, Near Siddharth Nagar,)
Borivali (E), Mumbai – 66.)
12. Mrs. Smita S. Parab.)
Retired as Office Superintendent,)
R/o. Aditya CHS Ltd, 2nd Floor, Room No.7)
Kalwa (W), District : Thane.)
13. Mrs. Sandhya P. Rumade.)
Retired as Senior Office Superintendent,)
[Gazetted – Class-B],)
R/o. C/8, Mahadeo CHS, M.D. Keni Marg,)
Bhandup (E), Mumbai – 42.)
14. Mrs. Pradnya A. Patil.)
Retired as Senior Office Superintendent,)
R/o. B.N. 4, Diwa-Swapna, Bhaskar)
Colony, Naupada, Thane (W).)
15. Mrs. Lata M. Wadekar.)
Retired as Gazetted Officer,)
R/o. 7/8, Sankalp Siddhi CHS Ltd.,)
Bandrekar Wadi, Ramnagar,)
Jogeshwari (E), Mumbai – 60.)

16. Shri Shekhar D. Deshmukh.)
Retired as Senior Office Superintendent,)
R/o. Ramaparvati Bunglow, Shinde Ali,)
Shirgaon, Aptewadi, Badlapur (E),)
District : Thane.)
17. Shri Sandesh S. Mohit.)
Retired as Senior Office Superintendent,)
R/o. 101/C-2, MTNL Building,)
Samata Nagar, Kandiwali (E),)
Mumbai – 101.)
18. Mrs. Reshma S. Dipnaik.)
Retired as Senior Office Superintendent,)
R/o. 7/70, BIT Building, 3rd Floor,)
St. Marry Road, Mazgaon, Mumbai – 10.)
19. Shri Anil N. Kambli.)
Retired as Office Superintendent,)
R/o. nandgavkar Heights, A-Wing,)
Flat No.A-401, 4th Floor, Uthalsar,)
Thane (W).)
20. Shri Ganpat V. Navale.)
Retired as Senior Desk Officer,)
R/o. Pandu Hari Enclave, C-Wing,)
Flat No.404, Rai Residency, Gaondevi)
Road, Tisgaon, Kalyan (E), Dist : Thane.)
21. Shri Suresh R. Sawant.)
Retired as Desk Officer, R/o. Pansare Wadi)
Osargaon, Kankavli, Dist : Sindhudurg.)
22. Shri Sudhakar B. Kadam.)
Retired as Office Superintendent in the)
Office of D.G.P, and R/o. B-1,)
Shripushpak, Pawar Nagar, Pokhran)
Road No.2, Thane (W).)
- All retired from the Office of)
Director General & Inspector)
General of Police, M.S, Mumbai.)
23. Smt. Nirmala C. Hippargi.)
Retired as Senior Desk Officer in the)
Office of Director General of Police, M.S,)
Mumbai and R.o. C/o. Digge, Diggewada,)
Akkalkot, Dist : Solapur.)...Applicants

Versus

1. The Director General & Inspector)
 General of Police, [M.S.], Mumbai.)
 Having Office at Old Council Hall,)
 Shahid Bhagatsingh Marg,)
 Mumbai – 400 039.)
2. The State of Maharashtra.)
 Through Principal Secretary, Home Dept.,)
 Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicants.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 14.08.2019

JUDGMENT

1. The Applicants have challenged the impugned order dated 31.03.2017 thereby withdrawing the promotions given to them on the post of Superintendent (Gazetted Group 'B') from the post of Superintendent (Non-Gazetted Group 'C') accorded to them in the year from 2004 to 2011 and also challenged the subsequent order dated 06.10.2017, which has been passed during the pendency of the present Original Application, thereby seeking recovery of the excess payment made to them and down-grading their pay invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. In nutshell, the facts giving rise to this application are as under:-

The Applicants joined Government service in between 1972 to 1984 on the post of Junior Clerk in the Office of Director General and

Inspector General of Police (Respondent No.1). Later, during the course of service, they got promotions to the post of Senior Clerk, Head Clerk, Office Superintendent (Non-Gazetted), Office Superintendent (Gazetted), Senior Office Superintendent and some of them also promoted to the post of Deputy Assistant to Inspector General of Police. On attaining the age of superannuation, they retired in between 2007 to 2016.

3. The following Chart shows the dates of their appointment, promotion and retirement.

	Name	Date of appointment	D.O. Non-Gazetted	D.O. Gazetted	Date of retirement
1.	Shri V.K. Pillai	1/2/1982	7/4/2006	30/4/2007	29/2/2016
2.	Shri H.E. Todankar	30/10/1981	20/3/2006	30/4/2007	31/7/2013
3.	Shri P.S. Shiralkar	24/4/1970	7/4/2006	30/4/2007	30/6/2008
4.	Shri P.B. Rane	1/1/1980	8/5/2009	11/2/2011	30/6/2016
5.	Shri K.T. Vaity	17/12/1973	-	12/4/2004	31/3/2011
6.	Shri C.T. Kotre	1/6/1981	12/9/2005	20/3/2006	31/5/2013
7.	Shri A.P. Vedpathak	31/8/1984	8/5/2009	14/12/2011	31/1/2016
8.	Smt. V.V. Ajsaonkar	4/5/1978	12/8/2004	20/7/2005	31/5/2007
9.	Smt. A.A. Naik	5/2/1981	23/10/2008	25/1/2010	30/11/2015
10.	Smt. A.A. Shirsekar	1/12/1982	8/5/2009	1/8/2011	31/1/2016
11.	Shri S.B. Kadam	26/4/1982	12/9/2005	3/1/2006	31/7/2008
12.	Smt. R.P. Achrekar	1/12/1980	09/8/2004	11/1/2005	30/4/2007
13.	Smt. S.S. Parab	1/9/1977	2/8/2006	20/9/2008	22/1/2010
14.	Smt. S.P. Rumde	25/2/1980	7/9/2007	30/6/2009	30/9/2015
15.	Smt. P.A. Patil	6/11/1978	7/9/2007	18/2/2009	31/5/2015
16.	Smt. L.M. Wadekar	8/2/1983	8/5/2009	14/12/2011	30/4/2012
17.	Shri S.D. Deshmukh	1/10/1981	2/8/2006	20/9/2008	30/4/2015
18.	Shri S.S. Mohit	1/1/1980	8/5/2009	18/8/2011	30/4/2016
19.	Smt. R.S. Dipnaik	26/2/1980	23/10/2008	30/6/2009	31/1/2016
20.	Shri A.N. Kambli	25/1/1979	7/9/2007	18/12/2009	30/4/2009

21.	Shri Navale	G.V.	22/11/1981	2/8/2006	20/9/2008	31/5/2015
22.	Shri Sawant	S.R.	7/7/1981	/9/2006	30/4/2007	31/12/2010
23.	Smt. Hippergi	N.C.	1/9/1982	-	-	-

4. While giving promotions from the post of Superintendent (Non-Gazetted Group 'C') to the post of Superintendent (Gazetted Group 'B'), their pay was fixed as per Rule 11(1)(a) of Maharashtra Civil Services (Pay) Rules, 1981 (hereinafter referred to as 'Pay Rules 1981' for brevity). After retirement, the pay was verified by Pay Verification Unit, and accordingly, the pension was granted.

5. However, after retirement, by impugned order dated 31.03.2017, the promotions given to them to the post of Office Superintendent (Gazetted Group 'B') has been withdrawn on the ground that they have not completed three years' service in feeder cadre as required in terms of Circular dated 25.08.1988. This action of withdrawal of promotion has been initiated by Respondent No.1 on the complaint made by their colleagues Smt. Bharati Naik, Smt. Mukadam and Smt. Ghate as in their matter, the Pay Verification Unit raised objection for non-compliance of three years' service in feeder cadre. It is on this background, the Respondent No.1 cancelled the promotions of the Applicants to the post of Office Superintendent (Gazetted Group 'B') by impugned order dated 31.03.2017. Besides, during the pendency of O.A, the Respondent No.1 by order dated 06.10.2017 ordered recovery of excess payment made to them on account of promotions given to them to the post of Superintendent (Gazetted Group 'B') which is also impugned by the Applicants by way of amendment.

6. The Applicants contend that though they have not completed three years' service in feeder cadre as required in Circular dated 25.08.1988, they were given promotion as administrative exigency

and as per the requirement of the Department. Furthermore, the then Special Inspector General of Police (Administration) by letters date 01.11.2012 and 18.06.2015 had recommended the Government (Respondent No.2) to relax the requirement of three years' service in feeder cadre and for *ex-post facto* sanction to the promotions already accorded to the Applicants. However, the Respondent No.2 rejected the same by communications dated 09.10.2014 and 12.10.2015. On this pleading, the Applicants prayed to quash and set aside the impugned communications dated 31.03.2017 and 06.10.2017 and also prayed for consequential service benefits.

7. The Respondent No.1 has filed Affidavit-in-reply (Page Nos.161 to 180 of Paper Book) inter-alia admitting the factual aspects of giving promotions to the Applicant from the post of Office Superintendent (Non-Gazetted Group 'C') to the post of Office Superintendent (Gazetted Group 'B') though they have not completed three years' service in feeder cadre. In this behalf, the Respondents contend that as an administrative exigency, the promotions were given to the post of Office Superintendent (Gazetted) and while doing so, though the posts i.e. Office Superintendent (Non-Gazetted Group 'C') and Office Superintendent (Gazetted Group 'B') carries equal pay, the benefit of pay fixation was given under Rule 11(1)(a) of 'Pay Rules 1981'. The Respondent No.1 had also sent proposal for regularization to the Government on 01.11.2012 as well as on 18.06.2015 but the same was turned down. The Respondents sought to justify the impugned action on the ground that the same action was taken in respect of some of the employees, and therefore, it cannot be termed arbitrary or malicious. As such, in view of rejection of relaxation sought by Respondent No.1, the consequential action for recovery has been initiated against the Applicants. With these pleadings, the Respondents prayed to dismiss the O.A.

8. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that by impugned action, the benefit of promotion given to the Applicants more than a decade ago are now being withdrawn and recovery is sought which is highly unjust and inequitable as no fault or misrepresentation is attributable to the Applicant. He has further pointed out that the Government had earlier relaxed the condition of three years' service in feeder cadre in respect of earlier promotions but the Applicants are subjected to discrimination. He has further pointed out that the then DGP had made recommendations for relaxation of three years' service but the same has been turned down without any cogent and justiciable reasons.

9. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer urged that in view of Circular dated 25.08.1988 (Page No.184 of P.B.), three years' service was required in feeder cadre before giving promotion to the next promotional post but in the present case, the Applicants were promoted to the post of Office Superintendent (Gazetted Group 'B') though they have not completed three years' service in the cadre of Office Superintendent (Non-Gazetted Group 'C'). However, she fairly concede that as per record, the promotions were given from the point of administrative convenience and exigencies. However, as the Government has rejected the recommendations made by DGP for relaxation of three years' service in feeder cadre, the impugned action was necessitated, and therefore, it cannot be questioned by the Applicants.

10. In view of submissions advanced at the Bar, the issue posed for consideration is whether the promotions given to the Applicants a decade ago from the post of Office Superintendent (Non-Gazetted Group 'C') to the post of Office Superintendent (Gazetted Group 'B') without completion of three years' service in feeder cadre can after retirement of the Applicants be reversed to their disadvantage without

there being any fault on their part, particularly when the Department has utilized their services and extracted the work from them.

11. True, as per Circular dated 25.08.1988 (Page No.184 of P.B.), the G.A.D. had issued instruction that there should be three years' minimum service in feeder cadre before considering the employee for promotion and further instructed that the condition of three years' service in feeder cadre be incorporated in relevant Recruitment Rules. Admittedly, in the present case, no such Recruitment Rules are framed crystalizing three years' service in feeder cadre as a mandatory requirement. Furthermore, pertinent to note that the GAD had issued one more G.R. dated 17.02.2007 whereby the directions were issued to all Departments to fill-in all vacant posts expeditiously and Committee under the Chairmanship of Additional Chief Secretary, Home was constituted to consider the request of relaxation of any conditions and for guidance for related issues, if any. Suffice to say, in case where the proposal for relaxation of Rules is received, the same was required to be placed before the said Committee. However, in the present case, the proposal/recommendations made by the then DGP on 01.11.2012 and 18.06.2015 was not placed before the said Committee, but it was rejected out rightly by communication dated 09.10.2014 (Page No.185 of P.B.) and dated 12.10.2015 (Page No.189 of P.B.). Significantly, earlier, the Government has relaxed the condition of three years' service as a special case while filling the post of Officer Superintendent as seen by letter dated 21.04.2001 (Page No.181 of P.B.).

12. In fact, pertinent to note that the promotion from the post of Office Superintendent (Non-Gazetted Group 'C') to the post of Office Superintendent (Gazetted Group 'B') was not promotion in ordinary sense, as the pay scale for both the posts were same and all that, the change was in the designation. As such, admittedly, the post of Office Superintendent (Gazetted Group 'B') was not promotional post

carrying higher pay scale. However, at the same time, while giving promotion, the pay was fixed as per Rule 11(1)(a) of 'Pay Rules 1981' known as step-up in pay scale. In fact, this aspect was brought to the notice of Government by then DGP in its proposal dated 01.11.2012 and 18.06.2015. The justification for giving promotion the Applicants was also elaborately given in the letter. The relevant portion from the letter dated 18.06.2015 is material, which is as follows :-

“४. कार्यालय अधीक्षक (राजपत्रित, गट -ब) मध्ये पद रिक्त झाल्यास त्याच निवडसूचीवरील ज्येष्ठ कर्मचा-याला कार्यालय अधीक्षक (राजपत्रित, गट -ब) पदात पदोन्नती देउन शासन निर्णय, गृह विभाग, क्र. पीएए-०३०४/सीआर-७१/पोल-५अ, दि. ०८.०८.२००५ अन्वये पुन्हा वेतननिश्चिती केली जाती होती. तथापि, राजपत्रित, गट-ब पदात पदोन्नती देते वेळी त्यांच्या मूळ संवर्गात (म्हणजेच अराजपत्रित, गट -क) पदावर त्यांची ३ वर्षे सेवा केली नसली तरीही, संवर्ग छोटा असल्याने, आणि एकच निवडसूची तयार केल्याने व पदाची वेतनश्रेणी एकसमान असल्याची विचारात घेउन सरळपदोन्नती देण्याची कार्यवाही या कार्यालयाकडून करण्यात आलेली आहे. त्यामुळे वरील वस्तुस्थितीनुसार प्रशासकीय अडचण टाळण्यासाठीच केवळ अराजपत्रित पदात ३ वर्षांची अट गहीत न धरता राजपत्रित कार्यालय अधीक्षक पदी पदोन्नतीने नियुक्ती देण्याची कार्यपध्दती अवलंबविण्यात आली होती आणि त्यानंतर केलेल्या वेतननिश्चितीस वेतनपडताळणी पथक, मुंबई यांनी आक्षेप घेतला आहे. अशाप्रकारचे पदोन्नतीचे आदेश त्यानंतर निर्गमित करण्यात आलेले नाहीत.

५. त्यामुळे वरील पदावर पदोन्नतीसाठी निकट निम्न पदावर किमान ३ वर्षांच्या अर्हताकारी सेवेची विहित करण्यात आलेली अट यापूर्वी शासन पत्र, गृह विभाग, क्र.रापोसे ०२८८/१९१५/पोल-१, दि.१९.०७.१९८२ तसेच क्र.पीएमएन ०४००/१४१०/प्र.क्र.५७९/पोल-ब,दि.२१.०४.२००१ अन्वये शासनाने विशेष बाब म्हणून शिथिल करण्यास शासनाने मान्यता दिली होती.

६. तरी, उपरोक्त वस्तुस्थिती विचारात घेता पोलीस महासंचालकांच्या शहर लिपिक संवर्गातील कार्यालय अधीक्षक (राजपत्रित, गट -ब) पदावर पदोन्नती देण्याकरीता कार्यालय अधीक्षक (अराजपत्रित, गट -क) या निम्न पदावरील ३ वर्षे अर्हताकारी सेवेची विहित केलेली अट शिथिल करण्याबाबत “एक विशेष बाब” म्हणून कार्यात्तर मान्यता मिळण्याकरीता शासन निर्णय, सामान्य प्रशासन विभाग, क्र.एसआरव्ही २००६/प्र.क्र.१७१/०६/१२, दि. १७.०२.२००७ अन्वये अपर मुख्य सचिव (गृह) यांच्या अध्यक्षतेखालील गठीत करण्यात आलेल्या समिती समोर प्रस्ताव ठेवण्यास शासनास विनंती करण्यात येत आहे. प्रस्तुत प्रकरणाबाबतची आवश्यक ती कागदपत्रे यापूर्वीच या कार्यालयाच्या दि.१८.१०.२०१३ च्या पत्रान्वये (शासन नस्ती, गृहविभाग क्र. संकीर्ण -१०१३/१८७/प्र.क्र./८७०/पोल- ५ब) शासनास सादर केली आहेत.

७. तरी, प्रस्तुत प्रकरणी कार्यालय अधीक्षक (राजपत्रित, गट -ब) पदात पदोन्नतीकरिता कार्यालय अधीक्षक (अराजपत्रित, गट -क) या निम्न पदावरील ३ वर्षे अर्हताकारी सेवेची विहित केलेली अट शिथिल करून (दोन्ही पदांची वेतनश्रेणी व जबाबदा-या एकसारख्याच असल्याने)एक विशेष बाब म्हणून सदर कार्यवाहीस शासनाची मान्यता कृपया लवकर प्रदान करावी.”

13. However, instead of placing the proposal before the Committee constituted under the G.R. dated 17.02.2007, the Government rejected the proposal / recommendation made by the Office of DGP. No reason much less justiciable is forthcoming while rejecting the letter. Though in fact, earlier, the Government has accorded permission for relaxation of three years' service in feeder cadre by

letter dated 21.04.2001. The letter dated 21.04.2001 and the Government's approval for relaxation was also brought to the notice of Government but no avail. It is on this background, the Applicants have approached this Tribunal being aggrieved by the orders of recovery.

14. The promotions to the post of Officer Superintendent (Gazetted Group 'B') was given to the Applicants long ago in between 2004 to 2011 as shown in the above Chart. The Applicants availed the benefit till the date of retirement. The Applicants retired in between 2008 to 2016 on different dates on attaining age of superannuation as reflected in the Chart. The Respondent No.1 had extracted the work of the post of Office Superintendent (Gazetted Group 'B') from the Applicants for years together ranging from the date of their respective promotions i.e. from the year 2004 onwards till the date of retirement. Except less than three years' service in feeder cadre, the Applicants were fulfilling the other eligibility criteria. The Applicants were promoted for the administrative convenience and exigencies. This being the position, it would be unjust and arbitrary to withdraw the said benefits given to them after extracting the work from them, that too, by passing recovery orders after retirement. In my considered opinion, such action cannot be countenanced so as to deprive of the Applicants of their legitimate rights accrued for years together.

15. Needless to mention that State being model employer was required to treat the employees alike without any discrimination. However, in the present matter, the Applicants are subjected to discrimination by refusing to relax three years' service condition in feeder cadre. Earlier, the Government had relaxed the condition as explicit by letter dated 21.04.2001 but when the Applicants' recommendations were made by the then DGP, the Government turned down it simply.

16. In this behalf, it would be apposite to refer the Judgment of Hon'ble Supreme Court **(2015) 1 SCC 347 (State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava & Ors.)** wherein the Hon'ble Supreme Court laid down the following legal principles :-

“The most question that requires determination is as to whether the approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled out from the judgments cited both by the appellants as well as the respondents, can be summed up as under :

(i) Normal rule is that when a particular set of employees 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 Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by 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.

(ii) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(iii) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India(supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is

stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

17. In so far as the facts of present case are concerned, indeed, after retirement of the Applicants, pay verification was done and pension was also granted. However, later on the complaint of some of the employees, the impugned action of recovery was initiated which is clearly unsustainable in law for the reasons stated above. The aspect of permissibility of recovery from the retired Government servant is no more *res-integra* in view of Judgment of Hon'ble Supreme Court in **AIR 2015 SC 696 (State of Punjab and others Vs. Rafiq Masih (White Washer))**. Para No.12 of the Judgment, which reads 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 belong 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."*

18. As stated above, the only deficiency in the promotion of the Applicants was less than three years' service in feeder cadre in terms of Circular dated 25.08.1988. As stated earlier, though directions were issued by the said Circular incorporating the same in Recruitment Rules, no such Rules are framed till date crystallizing the requirement of three years' service in feeder cadre as a mandatory requirement. In other words, in the present case, non-completion of three years' service in feeder cadre cannot be termed breach of express provision of law or Recruitment Rules. The then DGP had recommended to the Government to relax three years' norm and has given elaborate cogent reasons to dispense with the same. However, the Government simply rejected it without any justiciable reason though earlier in 2001, the benefit was extended to some of the employees by relaxing three years' service criteria. No fraud or misrepresentation is attributed to the Applicants. Indeed, they were promoted from the point of administrative convenience and exigencies of the administration. This being the position, now after retirement, it would be highly unjust, unreasonable and arbitrary to withdraw the benefits given to them and to recover the amount. In this view of the matter, I have no hesitation to sum-up that the impugned action is totally unsustainable in law and O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 31.03.2017 and 06.10.2017 are quashed and set aside.
- (C) The Respondents are directed to restore the retiral benefits to the Applicants granted to them before passing impugned orders.
- (D) The compliance of the order be made within two months from today.

(E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 14.08.2019

Dictation taken by :

S.K. Wamanse.

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