

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

ORIGINAL APPLICATION NO.841 OF 2016

DISTRICT : BEED/AHMEDNAGAR

1. Sambhaji S. Waghumbare)
Age : 52 Yrs., Occu.: Service as)
Wireless Operator.)
2. Shaikh Amin Shaikh Mohammad)
Age : 48 Yrs., Occu.: Service as)
Wireless Operator.)
3. Jeevan K. Varat.)
Age : 46 Yrs., Occu.: Service as)
Wireless Operator.)
4. Laxman S. Garde.)
Age : 58 Yrs., Occu.: Service as)
Wireless Operator.)
5. Arjunsingh K. Rajput.)
Age : 62 Yrs., Occu.: Retd.,)
R/o : At-Post Kambhi, Tq. Sevgaon,)
District : Ahmednagar.)
6. Satyanarayan B. Pawar.)
Age : 57 Yrs., Occu.: Service as)
Wireless Operator.)
7. Babasaheb A. Ghodke.)
Age : 58 Yrs., Occu.: Service as)
Wireless Operator.)
8. Shivaji S. Chintamani.)
Age : 54 Yrs., Occu.: Service as)
Sr.Nos.1 to 4 & 6 to 8 R/o.)
C/o. Jayakwadi Irrigation)

Sub-Division Nos.2 & 4,)
 Baghpimpalgaon Camp,)
 Tq. Georai, District : Beed.)...**Applicants**

Versus

1. The State of Maharashtra.)
 Through its Secretary,)
 Command Area Development)
 Authority (CADA), Water Resources)
 Dept., Mantralaya, Mumbai.)
2. The Superintendent Engineer &)
 Administrator, Command Area)
 Development Authority (CADA),)
 Nagar Road, Beed, Dist. : Beed.)
3. The Executive Engineer.)
 Jayakwadi Irrigation Division No.3,)
 Nagar Road, Beed, Dist. : Beed.)...**Respondents**

Mr. V.B. Wagh, Advocate for the Applicants.

Mrs. R.S. Deshmukh, Presenting Officer for Respondents.

CORAM : SHRI B.P. PATIL (MEMBER-J)

Closed on : 19.04.2018

Pronounced on : 24.05.2018

J U D G M E N T

1. The Applicants have challenged the orders dated 18.03.2008 and 15.09.2008 issued by the Respondents thereby granting the benefit to the Applicants in view of the G.R. dated 29.09.2003 with effect from 02.06.2008 by filing the present Original Application (O.A.). They have further claimed that

they are entitled to get the benefit of the G.R. dated 29.09.2003 and to get higher pay scale from the date of G.R. i.e. from 29.09.2003, and therefore, they prayed to direct the Respondents to extend the benefit of G.R. dated 29.09.2003 from the date of G.R. and to pay the arrears accordingly.

2. The Applicants were initially appointed as “Labourer” on daily wages. Thereafter, they have been brought on Converted Regular Temporary Establishment (CRTE). They were given work of Wireless Operators and Door Keeper though they were appointed as Labourer. The details regarding their initial appointment, appointment in CRTE and the higher post on which they worked are as follows :

Sr. No.	Name of Applicant	Initial Appointment	C.R.T. Date	Pay Scale given Post & Date	Qualification
1.	S.S. Waghumbare	01.05.1983	01.05.1988	Wireless Operator 08/12/09	S.S.C.
2.	B.A. Ghodke	01.11.1983	01.06.1988	Wireless Operator 08/12/09	S.S.C.
3.	J.K. Varat	12.12.1987	12.12.1992	Wireless Operator 08/12/09	S.S.C.
4.	Shaikh Amin Shaikh Mohammad	01.06.1983	01.06.1988	Wireless Operator 14/05/09	S.S.C.
5.	L.S. Garde	15.09.1980	15.09.1985	Wireless Operator 08/12/09	S.S.C.
6.	S.B. Pawar	01.05.1983	01.05.1988	Wireless Operator 08/12/09	S.S.C.
7.	A.K. Rajput (Retired)	19.04.1976	19.04.1981	Wireless Operator 08/12/09	S.S.C.
8.	S.S. Chintamani	19.11.1982	19.11.1987	Door Keeper 01.06.12	S.S.C.

3. It is their contention that they were working on higher post but they were getting pay of the lower post. They were working on the higher post of Wireless Operator/Door Keeper since 1991 onwards.

4. It is their contention that on 29.09.2003, the Government has issued G.R. titled as “कामानुसार हुद्दा व हुद्यानुसार वेतनश्रेणी देण्याबाबत” and decided to grant pay scale according to allotment of work. As per G.R, they are entitled to get pay scale of the post, which they are holding and as per the work allotted to them subject to fulfillment of the requirements mentioned therein. It is their contention that they were working on the higher post i.e. Wireless Operator and Door Keeper, but they had been paid salary for the lower post. It is their contention that the Respondents had given effect to the G.R. dated 29.09.2003 and extended the benefit to them, but by impugned orders dated 14.05.2009 and 08.12.2009, they had extended the benefit of the G.R. with effect from 02.06.2008. The Respondents deprived the Applicants from their legitimate right to get arrears with effect from the date of G.R. dated 29.09.2003.

5. It is their contention that the similarly situated employees have filed O.A.No.135/2013 claiming similar relief before this Tribunal and the Tribunal allowed the O.A. and extended the benefit of the G.R. dated 29.09.2003 to those employees from the date of the G.R. dated 29.09.2003. The said order of the Tribunal has been challenged by the State

before the Hon'ble High Court by filing Writ Petition No.10069/2010 but the Hon'ble High Court was pleased to dismiss the Writ Petition on 25.10.2010. The said decision has been challenged by the Government in the Apex Court by filing Special Leave Petition, but the said Special Leave Petition came to be dismissed on 20.04.2012. Therefore, the order passed by this Tribunal has attained the finality. It is obligatory on the part of the Respondents to comply the G.R. dated 29.09.2003 but the Respondents have not granted benefit to the Applicants from the date of G.R. i.e. from 29.09.2003 and thereby discriminated them. It is their contention that there is no just reason for denying the benefit to the Applicants from the date of G.R. i.e. from 29.09.2003. It is their contention that the impugned order dated 18.03.2008 and 15.09.2008 extending the benefit to the Applicants with effect from 02.06.2008 is in contravention of the G.R. dated 29.09.2003, and therefore, they prayed to quash the said order and to extend the benefit of G.R. dated 29.09.2003 from the date of its issuance i.e. from 29.09.2003 and also prayed to direct the Respondents to pay the arrears to them accordingly.

6. The Respondents resisted the contention of the Applicants by filing their Affidavit-in-reply. They have admitted the fact regarding the initial appointment of the Applicants, bringing them on CRTE and their working on the higher post as Wireless Operator/Door Keeper. They have not disputed the fact that they have extended the benefit of the G.R. dated 29.09.2003 to the Applicants with effect from 02.06.2008. It is

their contention that the benefit of the principle “equal pay for equal work” has been extended to the Applicants, as Applicants fulfill the said condition mentioned in the G.R. dated 29.09.2003. It is their contention that the said benefit has been extended to the Applicants with effect from 18.03.2008 in view of the instructions received from the Government vide G.R. dated 18.03.2008 and there is no illegality in the orders issued by them. It is their contention that the effect of the G.R. dated 29.09.2003 has been given to the Applicants by the letters dated 14.05.2009, 08.12.2009 and 15.05.2009 as decided by the Government. The said dates have been fixed by the Government, and therefore, there is no illegality. It is their contention that the pay scales of the Applicants have been revised from 18.03.2008, and therefore, there is no illegality in the impugned orders. On these grounds, they have prayed to dismiss the O.A.

7. I have heard Mr. V.B. Wagh, learned Advocate for the Applicant and Mrs. R.S. Deshmukh, learned Presenting Officer (P.O.) for the Respondents and perused the documents produced on record by the parties.

8. Admittedly, the Applicants are initially appointed Labourers, and thereafter, they have been brought on CRTE. Admittedly, they were appointed on lower post and they were asked to work on the higher post because of the ban on the recruitment process by the Government from 28.05.1986 to 31.12.1997. There is no dispute about the fact that on

29.09.2003, the Government has issued a G.R. titled as “कामानुसार हुद्दा व हुद्यानुसार वेतनश्रेणी देण्याबाबत” and decided to give pay scale to those employees who were appointed on the lower post but discharging work on the higher post as per the work done by them. The G.R. came into force with effect from 29.09.2003. Admittedly, the Applicants were eligible to get the benefit of the said G.R. and the Respondents sent their proposal to the Government to extend the benefit of the G.R. to them. Admittedly, the benefit of the G.R. dated 29.09.2003 was extended to the Applicants vide orders dated 14.05.2009 and 08.12.2009. The said benefit was given to them with effect from 02.06.2008.

9. Only dispute in between the parties is regarding the effective date of the G.R. dated 29.09.2003 to extend the benefit to the Applicants.

10. Learned Advocate for the Applicants has submitted that the issue involved in this matter has already been decided by this Tribunal in **O.A.No.135/2013 in case of Ravindra P. Kulkarni & Ors.Vs. The State of Maharashtra & Ors. on 2nd December, 2014** and it has been held that the benefit of the G.R. dated 29.09.2003 will be applicable from the date of its issuance i.e. from 29.09.2003 and accordingly, the directions were given to the Respondents. He has submitted that the said decision has been challenged by the Respondents in Writ Petition No.10069/2010 before the Hon'ble High Court, but the Hon'ble High Court was pleased to dismiss the Writ

Petition on 25.10.2010. He submitted that, thereafter, the Respondents approached before the Hon'ble Apex Court by filing Special Leave Petition, but the said Special Leave Petition came to be dismissed on 20.04.2012. He has submitted that the decision rendered by this Tribunal in O.A.No.135/2013 has attained the finality, and therefore, the same is binding on the Respondents. The case of the Applicant is squarely covered by the decision given by this Tribunal in O.A.No.135/2013. He has further submitted that this Tribunal has also decided the cases of similarly situated persons in **O.A.Nos.64, 65, 66 and 194/2011 in case of Pratap Rohidas Sonavane Vs. State of Maharashtra & Ors.** and held that the said G.R. is applicable from the date of its issuance i.e. from 29.09.2003. The said view has been followed in O.A.No.135/2013. He has submitted that while deciding the **O.As. 615/2016, 775/2016 and 257/2017 in case of Manohar W. Adhikar & Ors. Vs. The State of Mah. & Ors. dated 18.04.2018** this Tribunal has again placed reliance on the above cited cases and extended the benefit of the G.R. dated 29.09.2003 to the Applicants in those matters from the date of G.R. i.e. from 29.09.2003. He has submitted that the G.R. dated 29.09.2003 is self-explanatory and it has been specifically mentioned therein that the benefit of the G.R. will be extended to the eligible employees from the date of G.R. He has submitted that the present case of the Applicants is squarely covered in view of the decisions rendered by this Tribunal earlier, and therefore, he prayed to allow the O.A. and to extend the benefit of the G.R. dated 29.09.2003 to the Applicants from the date of its issuance and

prayed to quash the orders dated 18.03.2008 and 15.09.2008 issued by the Respondents.

11. Learned P.O. has submitted that the Respondents had sent proposal to the Government to extend the benefit of the G.R. dated 29.09.2003, as they are eligible to get the pay scale of the higher post on which they worked, and accordingly, the benefit was extended to them, but by Government letters dated 14.05.2009, 08.12.2009 and 15.09.2011, the benefit was extended to the Applicants with effect from 18.03.2008 and there is no illegality in the impugned orders, as the Respondents acted as per the instructions given by the Government vide letters dated 14.05.2009, 08.12.2009 and 15.09.2011, and therefore, she prayed to reject the O.A.

12. On going through the rival contentions of both the parties, it reveals that the Respondents have not disputed the eligibility of the Applicants to get the benefit of the G.R. dated 29.09.2003. As the Applicants are eligible employees, the Respondents sent their proposal to the Government to extend the benefit of the G.R. dated 29.09.2003 and to pay the pay scale of the higher post on which they are discharging their duties, and accordingly, the impugned orders had been issued, but the said benefit has been extended to the Applicants with effect from 02.06.2008.

13. I have gone through the various Judgments cited by the learned Advocate for the Applicants including the decision

of the Hon'ble High Court and Hon'ble Apex Court. The issue regarding the date of application of the G.R. dated 29.09.2003 has been considered in the earlier decisions rendered by this Tribunal and it has been held that the benefit of the scheme should be extended to the eligible employees from the date of G.R. dated 29.09.2003. The view of this Tribunal has been upheld by the Hon'ble High Court. Not only this, but Special Leave Petition filed by the Government challenging the decision of the Hon'ble High Court in that regard has been dismissed, and therefore, the said issue attained finality, and therefore, the said decision is binding on the Respondents. As the said issue has already been dealt with by this Tribunal and the decision of this Tribunal has attained finality in Hon'ble High Court and Hon'ble Apex Court, there is no need to interfere in that arena again. The said decisions are binding on this Tribunal, and therefore, I rely on the above said decisions rendered by this Tribunal as well as Hon'ble High Court and Hon'ble Supreme Court and hold that the actual date of incorporation of the G.R. is the date of G.R. i.e. 29.09.2003, and therefore, the Applicants are entitled to get the benefit of the G.R. dated 29.09.2003 w.e.f. 29.09.2003. The Respondents had not considered the earlier decisions rendered by this Tribunal as well as Hon'ble High Court and Hon'ble Apex Court while passing the impugned orders. The Respondents have wrongly interpreted the G.R. dated 29.09.2003 and they have not considered earlier decisions rendered by this Tribunal, Hon'ble High Court and Hon'ble Apex Court. Consequently, they issued the impugned orders

dated 18.03.2008 and 15.09.2008 extending the benefit of the G.R. dated 29.09.2003 w.e.f. 02.06.2008 which is in contravention of the wording of the G.R. dated 29.09.2003. Therefore, the impugned orders require to be quashed by allowing the O.A.

14. It is to be noted here that, the Division Bench of this Tribunal has specifically directed the Respondents in O.A.Nos.64, 65, 66 and 195/2011 on 20.06.2011 that the Respondents should grant the benefit of the scheme to any of his employees, whose cases are not processes earlier and directed to extend the benefits to those employees with effect from 29.09.2003 so that the employees need not to approach this Tribunal, but the Respondents have not followed the said directions given by this Tribunal and passed the impugned orders. Therefore, the impugned orders require to be quash and set aside.

15. In view of the above said discussion, the O.A. deserves to be allowed. Hence, I pass the following order.

ORDER

- 1) The Original Application is allowed.
- 2) The impugned orders dated 18.03.2008 and 15.09.2008 issued by the Respondents granting the

benefit to the Applicants with effect from 02.06.2008 are hereby quashed and set aside.

3) The Respondents are directed to extend the benefits of the G.R. dated 29.09.2003 to the Applicants and fix their salary in the higher cadre, in which they have worked since prior to 31.12.1997 as on 29.09.2003 and to pay difference of pay to them from 29.09.2003 onwards.

4) No order as to costs.

Sd/-
(B.P. Patil)
Member-J
24.05.2018

Mumbai

Date : 24.05.2018

Dictation taken by :

S.K. Wamanse.

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