

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NOS.901 of 2019 with O.A. No.902 of 2019  
with O.A.No.1010 of 2019 with O.A. No.1011 of 2019 with  
O.A.No.137 of 2020 with O.A.No.09 of 2020 with O.A.No.293 of  
2019**

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**ORIGINAL APPLICATION NO.901 of 2019**

Shri Raghunath S. Palkar, )  
Age 62 years, Occ : Rtd. Sectional )  
Engineer, R/at & post Murgud, )  
Suryawanshi Colony, Taluka Kagal, )  
Dist. Kolhapur. )...**Applicant**

**Versus**

1. The State of Maharashtra, through )  
The Principal Secretary, Water )  
Resource Department, Mantralaya, )  
Mumbai. )
2. The Superintending Engineer, )  
South Konkan Irrigation Project, )  
Circle, Oras-Sindhudurag Nagri, )  
Dist. Sindhudurag. )
3. The Executive Engineer, Minor )  
Irrigation Division, Oras-Sindhudurg )  
Nagri, Dist. Sindhudurag. )
4. The Accountant General, M.S. )  
Pratishta Bhavan, 2<sup>nd</sup> floor, 101, )  
Maharshi Karve Road, Mumbai. )...**Respondents**

**With**

**ORIGINAL APPLICATION NO.902 of 2019**

Shri Madhukar Waman Bhogan , )  
Age 59 years, Occ : Retired Jr. Engineer, )  
R/o At & Post Majgaon, Kumbharwadi, )  
Tal. Sawantwadi, Dist. Sindhudurag. )...**Applicant**

**Versus**

1. The State of Maharashtra, through )  
The Principal Secretary, Water )  
Resource Department, Mantralaya, )  
Mumbai. )
2. The Superintending Engineer, )  
Konkan Irrigation Circle, )  
Kuarbao – Ratnagiri, )  
Dist. Ratnagiri. )
3. The Executive Engineer, )  
Sindhudurg Irrigation Division, )  
Ambadpal, Tal. Kudal, )  
Dist. Sindhudurg. )
4. The Accountant General, M.S. )  
Pratishtha Bhavan, 2<sup>nd</sup> floor, 101, )  
Maharshi Karve Road, Mumbai. )...**Respondents**

**With**  
**ORIGINAL APPLICATION NO.1010 of 2019**

Shri Arun Ganesh Bhat )  
Age 60 years, Occ : Retired Jr. Engineer, )  
R/o. C-109, Kher Sankul, Tilak Ali, )  
Behind Radhakrushna Theater, )  
Ratnagiri 415612. )...**Applicant**

**Versus**

1. The State of Maharashtra, through )  
The Principal Secretary, Water )  
Resource Department, Mantralaya, )  
Mumbai. )
2. The Superintending Engineer, )  
Konkan Irrigation Circle, )  
Kuwarbav, Ratnagiri 415639. )

3. The Executive Engineer, South )  
Ratnagiri Khar Land Development )  
Division, Kuwarbav, Ratnagiri - )  
415639. )
4. The Accountant General, M.S. )  
Pratishtha Bhavan, 2<sup>nd</sup> floor, 101, )  
Maharshi Karve Road, Mumbai. )...**Respondents**

**With**  
**ORIGINAL APPLICATION NO.1011 of 2019**

- Shri Ashok Bhagwan Sawant, )  
Age 60 years, Occ : Retired Civil )  
Engineering Assistant. )  
R/o Sawant Apartment, 1<sup>st</sup> floor, )  
Jaitapkar Colony, At & Post : Oras, )  
Tal. Kudal, Dist. Sindhudurg 416812. )...**Applicant**

**Versus**

1. The State of Maharashtra, through )  
The Principal Secretary, Water )  
Resource Department, Mantralaya, )  
Mumbai. )
2. The Superintending Engineer & )  
Director, Irrigation & Research & )  
Development, Pune 411001. )
3. The Executive Engineer, )  
Irrigation, Research Division, Kalwa )  
Thane 400 005. )
4. The Accountant General, M.S. )  
Pratishtha Bhavan, 2<sup>nd</sup> floor, 101, )  
Maharshi Karve Road, Mumbai. )...**Respondents**

**With**

**ORIGINAL APPLICATION NO.137of 2020**

Shri Rajaram Arjun Khedekar , )  
 Age 58 years, Occ : Retired Water )  
 Conservator Officer, R/o at : Sainiknagar, )  
 Post & Tal. Poladpur, Dist. Raigad. )...**Applicant**

**Versus**

1. The State of Maharashtra, thorough )  
 The Principal Secretary, Water )  
 Resource Department, Mantralaya, )  
 Mumbai. )
2. The Superintending Engineer & )  
 Regional Water Conservation Officer,)  
 Soil & Water Conservation Circle, )  
 Thane. )
3. The Sub Divisional Water )  
 Conservation Officer, Soil & Water )  
 Conservation Department, )  
 Shahapur -Thane, Pin Code 421601 )
4. The Sr. Accountants Officer,/PR-7 )  
 Office of Accountant General, M.S. )  
 Pratishta Bhavan, 2<sup>nd</sup> floor, 101, )  
 Maharshi Karve Road, Mumbai. )...**Respondents**

**ORIGINAL APPLICATION NO.293 of 2019**

Shri Dhananjay R. Dhumal, )  
 Age 59 years, Occ : Retired Jr. Engineer, )  
 R/at Yashashree Hsg. Society, Plot No. )  
 R-24, M.I.D.C. Baramati 413133. )...**Applicant**

**Versus**

1. The State of Maharashtra, through )  
 The Secretary, Public Works Dept. )  
 Mantralaya, Mumbai. )

2. The Accountant General, Indian )  
Audit & Accounts Dept., office of )  
The Principal Accountant General )  
(A & E)-I, M.S., 2<sup>nd</sup> floor, 101, )  
Maharshi Karve Road, Mumbai. )
3. The Executive Engineer, )  
Public Work East Division, )  
B Barrack, Central Compound )  
Camp, Pune 411001. )...**Respondents**

**With**

**ORIGINAL APPLICATION NO.09 of 2020**

- Shri Sudhaskar L. Gholap, )  
Age 57 years, Occ : Civil Engineering )  
Assistant Irrigatiion Sub Division Murbad )  
Dist. Thane. R/at Post Dhasai, Shantivan )  
Marg, Near Sainath Rice Mill, )  
Tal. Mubad, Dist.Thane 421 402. )...**Applicant**

**Versus**

1. The State of Maharashtra, through )  
The Secretary, Water Resource Dept, )  
Mantralaya, Mumbai 32. )
2. The Superintending Engineer, )  
Thane Irrigation Circle, Sinchan )  
Bhavan, 3<sup>rd</sup> floor, Kopri, Thane (E) 3.)
3. The Executive Engineer, Thane )  
Irrigation Division, Kalwa, opp. )  
Sahakar College, Old Mumbai Pune )  
Highway, Kalwa, Thane 400605. )...**Respondents**

Shri V.A. Sugdare holding for Shri A. D. Sugdare, learned Advocate for the Applicants in O.A.Nos.901, 902, 1010, 1011/2019 and O.A.No.137/2020

Shri K.R. Jagdale, learned Advocate for the Applicant in O.A.No.09/2020  
Smt. Punam Mahajan, learned Advocate for the Applicant in O.A.No.293/2019

Smt. Archana B. K., learned Presenting Officer holding for Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 08.12.2021

### **J U D G M E N T**

In all these Original Applications, the Applicants have challenged the orders of recovery of excess payment sought to be made after retirement and there being common issue, all these applications are decided by this common order.

2. Heard Shri Sugdare, Shri K.R. Jagdale and Smt. Punam Mahajan, learned Counsels for the Applicants and Smt. Archana B. K., learned Presenting Officer holding for Ms S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

3. The following chart indicates the dates of appointment as Technical Assistant/ Muster Karkoon on Work Charged Establishment, the dates of appointment as Civil Engineer Assistant, the dates of grant of Time Bound Promotions, the dates of retirement and details of recovery sought after retirement.

Sr No.	Name of Applicant	Date of appointment on work charged establishment	Date of appointment as Civil Engineering Assistant	Date of 1 <sup>st</sup> Time Bound Promotion (after 12 years)	Date of 2 <sup>nd</sup> Time Bound Promotion (after 24 years)	Date of retirement	Recovery order details
1	R.S. Palkar (O.A.901/2019)	03.03.1982	w.e.f. 01.01.1989 by order dated 28.08.1998	w.e.f. 01.10.1994	01.10.2006	31.05.2016	Rs.6,20,967/- by order dated 17.06.2019
2	M.W. Bogan (O.A.902/2019)	22.12.1983	w.e.f. 01.01.1989 by order dated 20.08.1999	w.e.f. 22.12.1995 by order dated 28.08.1998	12.06.2012	31.04.2019	Objection raised by office of A.G. by letter dated 05.02.2019
3.	S. L. Gholap (O.A.09/2020)	22.01.1985	w.e.f. 01.01.1989	w.e.f. 22.01.1997 by order dated 16.09.1998	w.e.f. 22.01.2009 by order dated 22.03.2012	29.02.2020	Dt.17.01.2019 and 26.11.2019 for recovery of Rs7,97,035/-

Sr No.	Name of Applicant	Date of appointment on work charged establishment	Date of appointment as Civil Engineering Assistant	Date of 1 <sup>st</sup> Time Bound Promotion (after 12 years)	Date of 2 <sup>nd</sup> Time Bound Promotion (after 24 years)	Date of retirement	Recovery order details
4.	A. G. Bhat (O.A.1010/ 2017)	13.01.1982	01.01.1989	01.10.1994	01.10.2006	30.09.2017 retired as Jr. Engineer	Rs.7,08,107/- order dated 17.07.2019
5.	A. B. Sawant (O.A.1011/ 2019)	27.04.1984	01.01.1989	27.04.1996	27.04.2008	31.08.2017 retired as C.E.A.	Recovery is made Rs.9,51,601/- also reduced pension.
6.	R. A. Khedkar (O.A.137/ 2020)	23.03.1982 as Technical Assistant	01.01.1989	01.10.1994	01.10.2006	31.10.2019 as Jr. Engineer /Water Conservor or Officer	Recovery order is issued and pension is reduced by order dated 26.11.2019 recovery sought.
7.	D.R. Dhumal (O.A.293/ 2019)	12.02.1985	07.02.1989	11.02.1999	31.12.2012	31.08.2018	Rs.5,48,809/- was adjusted towards recovery by order dated 19.03.2019

4. There is absolutely no dispute about factual aspect mentioned in the above chart. Undisputedly, it is only after retirement the objections are raised about entitlement of the Applicants to the benefit of Time Bound Promotion granted by the departments considering their initial period of service as Technical Assistant / Muster Karkoon on Work Charged Establishment. In view of objections of Pay Verification Unit, recovery was ordered and their last drawn pay has been reduced resulting into down grading of pension. Indeed, this Tribunal has already dealt with this issue firstly in **O.A. No.238/2016 Madhukar Patil Vs. State of Maharashtra & Ors., decided on 25.06.2019**. Thereafter second set of Original Application Nos.536/2018, 537/2018, 538/2018, 539/2018, 540/2018, 775/2018, 776/2018, 777/2018 and 1084/2018 were also decided on similar line on 10.10.2019. In view of the view taken by the Tribunal in **Madhukar Patil's** case decided on 25.06.2019,

in all these Original Applications, the Tribunal held that the Applicants were entitled to the benefit of Time Bound Promotion considering their earlier period of service and recovery orders were quashed. In other words, they were held entitled to the pension on the basis of last drawn pay without down grading the same. The Respondent – Government being aggrieved by the decision rendered by the Tribunal filed R.A.No.21/2019, 9/2020 and 13/2020 which were heard and decided by this Tribunal by order dated 08.02.2021 thereby dismissing these Review Applications.

5. The Respondent -Government of Maharashtra then challenged the decision rendered by this Tribunal in O.A.No.238/2016 in **Madhukar Patil's** case as well as dismissal of review by filing W.P.No.3118/2021, before the Hon'ble High Court. All these present Original Applicants are arising from the same facts of judgment in **Madhukar Patil's** case. Initially all these Writ Petitions were adjourned awaiting the decision of the Hon'ble High Court in W.P.No.3118/2021.

6. The Hon'ble High Court recently by judgment dated 09.09.2021 dismissed the W.P.No.3118/2021 and confirmed the decision rendered by this Tribunal in **Madhukar Patil's** case allowing applications and confirming rejection of Review Applications.

7. It is on the above background, now all these Original Applications are being decided. Suffice to say, the issue involved in the present set of Original Applications is already adjudicated and the decision rendered by the Tribunal is maintained by the Hon'ble High Court.

8. Learned Counsels for the Applicants, therefore, submit that all these Original Applications are required to be allowed on similar line in view of the finality to the judgment rendered by this Tribunal in similar litigation.

9. Per contra, learned Presenting Officer all that submits that the Government is likely to challenge the decision by filing special SLP before



the Hon'ble Supreme Court. Learned Presenting Officer did not dispute that the Applicants are similarly situated persons.

10. Since while deciding earlier litigations, this Tribunal has already exhaustively dealt with the issue involved, it would be appropriate to reproduce certain relevant paragraphs from the judgment in **Madhukar Patil's** case. In Para Nos.13,14,15,16,17,18 & 23, the Tribunal held as under:-

*"13. Thus, this is not a case where the benefit of 1<sup>st</sup> TBP was granted mistakenly. The material placed on record clearly spells that it was conscious decision of the Government to extend the benefit of 1<sup>st</sup> TBP and 2<sup>nd</sup> TBP considering earlier period of service of Technical Assistant. As stated above, the persons who were appointed on Technical Assistants like Applicant were absorbed in 1989 on newly created post and it is not a promotion. True, it carries a different pay scale but in the facts and circumstances of the case, it cannot be termed as a promotion to higher post, and therefore, the services rendered by the Applicant on the post of Technical Assistant cannot be wiped out from consideration while granting the benefit of 1<sup>st</sup> TBP. In fact, precisely for this reason, the Government by letter dated 18.06.1998 accorded its official sanction.*

*14. The issue of considering earlier temporary service for considering the benefit of TBP is in fact no more res-integra in view of various decisions of Tribunal and maintained by Hon'ble High Court. In this respect, the reference can be made to the Judgment of Hon'ble High Court in **Writ Petition No.905/2013 (State of Maharashtra Vs. Meena Kuwalekar and other 32 Writ Petitions) decided on 28<sup>th</sup> April, 2016**. The Hon'ble High Court has considered the catena of decisions in this regard and held that the State Government has adopted selective approach while considering the past service of the employees prior to absorption. The Hon'ble High Court, therefore, declined to interfere in the orders passed by M.A.T. and dismissed the Writ Petitions. True, in the present matter, one distinguishing feature is that the Applicant was absorbed on different post viz. Civil Engineering Assistant carrying some higher pay. However, it cannot be considered as a promotion but it was a case of absorption, as acknowledged by the Government in letter dated 18.06.1998 referred above.*

15. *The reference can be made to the decision of Hon'ble High Court in **Writ Petition No.3815/2012 (Subhash Cheke Vs. State of Maharashtra) decided on 29<sup>th</sup> August, 2013**, which is arising from the similar situation. The Para Nos.5 and 6 of the Judgment is material, which is as follows :-*

*"5. The limited grievance of the petitioners is regarding placement of their scale in the cadre of Junior Engineer on completion of 12 years' service from the initial appointment in the cadre of Technical Assistant/mistry/Karkoon, etc. We find that the case of the petitioners is squarely governed and covered by the Circular dated 18.06.1998. It is not in dispute that the Circulars/Government Resolutions as are applicable to the employees of Irrigation Department have been made applicable by the Respondent Maharashtra Jeevan Pradhikaran to their employees.*

*6. In that view of the matter, rule is made absolute by holding that the petitioners are entitled to the benefit of the pay-scale in the cadre of Junior Engineer upon completion of 12 years' from the date of their entry in the cadre of Technical Assistant/Mistry/Karkoon, etc. It is made clear that the claim of the petitioners has been considered since the petitioners have restricted their claim for grant of benefit in accordance with the Circular dated 18.06.1998. We make it clear that our judgment and order may not be construed as entitlement of the petitioners to any other promotional or other benefits. The same would be construed strictly in accordance with the requirements of service conditions governing the employees of respondent no.1 Corporation. The Writ Petition stands disposed of accordingly. There will be no order as to costs."*

16. *Similar view was taken by Hon'ble High Court, Bench at Nagpur in **Writ Petition No.5185/2015 (Namdeo B. Paikrao Vs. Maharashtra Jeevan Pradhikaran, Mumbai)** wherein the Hon'ble High Court held that the Petitioners are entitled to the benefit of pay scale of Junior Engineer on completion of 12 years of service from the date of their entry in the cadre of Technical Assistant/Mistry/Karkoon, etc.*

17. *The learned Advocate for the Applicant also referred to the Judgment passed by M.A.T, Bench at Aurangabad in **O.A.701/2015 (Mohan Chaudhary Vs. State of Maharashtra) decided on 22.09.2017**. In that case, the Applicant was earlier appointed as Technical Assistant in 1980 and later in 1989, he was appointed as Civil Engineering Assistant and received the benefit of 1<sup>st</sup> TBP and 2<sup>nd</sup> TBP considering his service on the post of Technical Assistant. He stands retired on 30.05.2014. After retirement, the Office of A.G. raised objection about the entitlement of the Applicant therein for considering the service on the post of Technical Assistant. The O.A. has been allowed with the observation that the objection raised by A.G. is not in consonance with the law and O.A. came to be allowed.*

18. The learned Advocate for the Applicant also referred to the decision of Hon'ble High Court, Bench at Aurangabad delivered in **Writ Petition No.10012/2014 (Chandravadan Gujrathi Vs. State of Maharashtra) decided on 31.01.2019**. In that case, the Petitioner therein was appointed on the establishment of Zilla Parishad on the post of Mistry (Grade-II) and his services were regularized in terms of order passed by Industrial Court. However, later, the employees of Z.P. working on various different posts as Junior Engineering Assistant/Mistry (Grade-I)/Mistry (Grade-II), etc. were amalgamated in one cadre of Civil Engineering Assistant and all those employees were absorbed in the different posts in the cadre of Civil Engineering Assistant. The issue was whether the Petitioner therein is entitled to the benefit of TBP considering his initial date of appointment in the cadre of Mistry (Grade-II). The order passed by Additional Chief Executive Officer, Z.P. extending TBP benefit considering his date of absorption in Civil Engineering Assistant post was held unsustainable and directions were issued to grant the benefit of TBP considering Petitioner's initial date of appointment.

23. This being the position, it seems that the Respondents have adopted the policy of pick and choose and there is no consistency in the stand taken by the Respondents. In the decisions of Hon'ble High Court referred to above, particularly the decision in **Writ Petition No.3815/2012 (Subhash Cheke Vs. Maharashtra Jeevan Pradhikaran)** and **Writ Petition No.5185/2015 (Namdeo B. Paikrao & Ors. Vs. Maharashtra Jeevan Pradhikaran, Mumbai)**, the benefit of 1<sup>st</sup> TBP was granted to Technical Assistants considering their earlier period of service and relying on the said Judgment, the same benefit was extended in **O.A.701/2015 (Mohan R. Choudhari Vs. The State of Maharashtra)** (cited supra). Therefore, the Applicant being similarly situated person, he is entitled to the same relief. Needless to mention that the consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of "Doctrine of Precedent". One of the basic principles of administration of justice is that the cases should be decided alike. Whenever an application under Section 19 of the Administrative Tribunals Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent and decide the application accordingly, if there is no reason to deviate for the same."

11. Now let us see the judgment of the Hon'ble High Court delivered in W.P.No.3118/2021 thereby maintaining the decision rendered by this Tribunal. The Hon'ble High Court in Para No.4 and 5 are observed as under:-

"4. The question that the Tribunal formulated for an answer was, whether the respondent was entitled to the benefit of 1st time bound promotion considering his date of initial appointment in May 1982 or whether he was entitled to the

*said benefit from the date of his absorption in the year 1989. Findings have been returned by the Tribunal in paragraph 13 of its judgment on the original application that the materials placed on record clearly spell out that it was a conscious decision of the Government to extend the benefit of 1st time bound promotion considering the earlier period of service rendered by the respondent as Technical Assistant. Referring to several decisions of this Court on the point of consideration of past service of employees prior to absorption, viz. those referred to in paragraphs 14 to 18 of its judgment, the Tribunal was of the view that the pay of the respondent had been fixed in accordance with law. Reliance in this regard was placed by the Tribunal on the decision of the Government reflected in letter dated June 18, 1998 whereby the benefit of 1st time bound promotion to the Technical Assistants was granted considering their earlier period of service irrespective of absorption in the Civil Engineering Assistant cadre. The Tribunal also referred to the decision of the Supreme Court in **State of Punjab and ors. vs. Rafiq Masih** decided on December 18, 2014 laying down the situations where the recoveries by the employers, after retirement of their employees, would be impermissible in law. In the present case, no recovery is sought to be effected by the impugned orders and hence, the decision in **Rafiq Masih** (supra) may not have any application. However, we are of the considered opinion having regard to the discussions made by the Tribunal in the impugned judgment dated June 25, 2019 as well as on perusing the decision of the Supreme Court in **Bhagwan Shukla s/o. Sarabjit Shukla vs. Union of India and others**, reported in (1994) 6 SCC 154, that reduction of pay by the employing department behind the back of the employee without following any procedure known to law amounts to flagrant violation of the principles of natural justice. The Supreme Court in **Bhagwan Shukla** (supra) interfered with the order dated September 17, 1993 of the Central Administrative Tribunal (hereafter "the CAT", for short) dismissing the appellant's original application on the ground that fair play in action warrants that no order having the effect of subjecting an employee to civil consequences by reducing his pay should have been passed without putting the employee concerned on notice and giving him a hearing in the matter. Since that was not done, the memorandum under challenge dated July 25, 1991 impugned before the CAT was set aside together with the order of dismissal of the original application by it.*

*5. The decision in **Bhagwan Shukla** (supra) arose in respect of an employee in service, whereas the respondent before us has faced reduction in pay after retirement from service. In a way, the fact situation here is worse than the one in **Bhagwan Shukla** (supra). Having regard to the law laid down in such decision, which squarely applies to the facts and circumstances of the present case, we hold that the approach of the Tribunal in setting aside the impugned orders dated October 6, 2015 and November 21, 2015 was quite justified."*

12. As regard dismissal of review by the Tribunal, the Hon'ble High Court in Para Nos.6, 7, 8 and 9 held as under:-

*“6. We have also perused the judgment and order dated February 8, 2021 of the Tribunal dismissing the review application. In such application, certain decisions of the Nagpur Bench of the Tribunal were referred to, where it was held that there was no existence of letters dated March 18, 1998 and June 18, 1998 issued by the Finance Department. Based on such decisions of the Nagpur Bench of the Tribunal and in view of the doubt about existence of such letters, a review of the judgment allowing the original application of the respondent was sought for by the petitioners. The Tribunal held, and in our opinion, rightly that the decisions of the Nagpur Bench of the Tribunal were in existence prior to the judgment and order dated June 25, 2019 under review and failure to place the said decisions before the Tribunal for consideration did not amount to discovery of new evidence, which could not have been collected despite due diligence, as contemplated under Order 47 Rule 1 of the Code of Civil Procedure. The Tribunal also held that the judgment and order dated June 25, 2019 did not suffer from any error apparent on the face of the record. For such reasons, the review application stood dismissed.*

*7. Law is well settled that under the guise of a review, the parties are not entitled to re-hearing of the same issue. If any authority is required, one may refer to the decision in **S. Bagirathi Ammal vs. Palani Roman Catholic Mission**, reported in (2009) 10 SCC 464. We may also profitably refer to the decision in **State of West Bengal vs. Kamal engupta**, reported in (2008) 8 SCC 612, where the Supreme Court has held that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced prior to delivery of the final judgment, it would have the effect of altering such judgment. Documents on record would show the existence of the letters dated March 18, 1998 and June 18, 1998 issued, not by the Finance Department, but by the Irrigation Department; and the terms thereof having been satisfied insofar as the respondent is concerned, there could be no valid ground for the office of the Accountant General to object to the 1st time bound promotion that was granted to him. Even otherwise, it has never been the case of the petitioners that because of sharp or fraudulent practice adopted by the respondent, benefits in excess of his entitlement was extended to him. No review was, therefore, maintainable on the ground of discovery of new material which were not produced at the time the original application of the respondent was finally heard and decided.*

*8. The Tribunal, in our opinion, thus did not commit any error in not reviewing its earlier judgment dated June 25, 2019.*

*9. For all the reasons aforesaid, we find the writ petition to be devoid of any merit and the same stands dismissed. No costs.”*

13. In view of above, present applicants being similarly situation persons are entitled to the same relief in view of the decision of the

Hon'ble Supreme Court in **(2015) 1 SCC 347 State of Uttar Pradesh V/s Arvind Kumar Shrivastav & Ors.**, in which the Hon'ble Supreme Court held that with a particular set of employees were given relief by the Court all other identical persons need to be treated as alike by extending that benefit and not doing so would amount to discrimination which would be violative of Article 14 of the Constitution of India particularly in service matters more emphatically.

14. In view of above, inevitable conclusion is that impugned orders of recovery, down grading pay as well as pension are totally unsustainable in law. The Applicants are entitled to the pensionary benefits as per their last drawn pay which they were getting before down grading. Hence the following order :-

**ORDER**

- (A) All the Original Applications are allowed.
- (B) Impugned orders of recovery are quashed and set aside.
- (C) The Respondents are directed to release the pension of the Applicants and monetary benefits be paid to them as per their last drawn pay which they were getting before down grading within two months from today.
- (D) Respondents are further directed to refund the amount which is recovered from the concerned Applicant within two months from today.
- (E) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**MEMBER (J)**

