

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 219 OF 2012

DISTRICT: - DHULE.

Shri Vasant Baburao Haral,
Age : - 62 years, Occu: Retired,
Dhule, District Dhule.

.. APPLICANT.

V E R S U S

01. The State of Maharashtra,

Through Secretary,
Animal Husbandry, Fisheries
and Dairy Development Dept.,
Mantralaya, Mumbai.

02. Regional Dairy Development Officer,

Nashik Division,
Trimbak Road, Nashik.

03. The General Manager,

Government Milk Scheme,
Dhule, Dist. Dhule.

04. Salary Verification Squad,

O/o Assistant Director,
Assistant Directoraterat,
Accounts and Treasury,
Nashik, Collector Office Compound,
Nashik, Dist. Nashik.

.. RESPONDENTS

APPEARANCE : Shri Kakasaheb B. Jadhav – learned
Advocate for the applicant.

: Shri M.P. Gude – learned Presenting
Officer for the respondents.

CORAM : **HON'BLE SHRI J.D. KULKARNI,**
VICE CHAIRMAN (J)

DATE : **24TH AUGUST, 2017.**

ORDER

1. Heard Shri Kakasaheb B. Jadhav – learned Advocate for the applicant and Shri M.P. Gude – learned Presenting Officer for the respondents.

2. The applicant initially, joined the service in the Government Dairy Department on 1st August, 1975 as a Pump Operator and came to be absorbed as a Helper / Madatnis. The applicant got first time bound promotional scale in the pay scale of Rs. 1200-1800 w.e.f. 01.10.1994, which was revised to Rs. 4000-6000 w.e.f. 01.06.1996.

3. On 5th January, 2011, salary verification squad raised certain objections in respect of pay scale granted to the applicant and in pursuance of the said objection the respondent No. 4 i.e. Salary Verification Squad, re-fixed the scale of the applicant and the applicant was directed to deposit the amount, which has been paid in excess to

him. In consequence of the said direction the respondent No. 3 issued the impugned notice dated 26.5.2011 **(Exhibit 'D')**, whereby it has been directed as under : -

“आदेश

श्री. व्ही.बी. पांडे, मजुर, श्री. व्ही.बी. हरळ, मदतनीस (सेवानिवृत्त), व श्री. एस. एस. गायकवाड, मदतनीस (सेवानिवृत्त), शासकीय दूध योजना, धुळे यांना संदर्भित आदेश क्र. १ ला अधिन राहून जे या कार्यालयाचे संदर्भित आदेश क्र. २, ३, ४ निर्गमित केले आहेत, ते संदर्भित आदेश क्र. १ मधील शेवटच्या परिच्छेदातील अट क्र. ग नुसार रद्द करण्यात येत आहेत. सदर आदेशामुळे त्यांना अतिप्रदान झालेली रक्कम त्यांचेकडून वसूल करण्यांत येत आहे. श्री. पांडे यांना फरकाची मागील रक्कम अदा करण्यात आलेली नसून सुधारित वेतननिश्चिती आदेशाच्या दिनांकापासून दरमहाच्या वेतनात अतिप्रदान वाढीव रक्कम आजपावेतो त्यांना अदा झालेली आहे. तसेच श्री. गायकवाड यांना कुठलीही फरकाची रक्कम अदा केलेली नसल्याने त्यांचेकडून अतिप्रदान वसूली येणे नाही. श्री. व्ही.बी. हरळ यांना फक्त रजा रोखीकरणाची रक्कम अदा केली असून इतर फरक रक्कमा अदा केलेल्या नाहीत. त्यांची पुनरवेतननिश्चिती करून अतिप्रदान रक्कम त्यांना कळविण्यात येईल. त्यानुसार सदर अतिप्रदान रक्कम त्यांनी या कार्यालयात त्वरीत भरणा करावी.”

4. The aforesaid impugned order dated 26.5.2011 has been challenged in this Original Application and the applicant has prayed that the said order be quashed and set aside and the respondents be restrained from effecting

recovery of amount in pursuance of the said order. The recovery has been stayed during the pendency of this Original Application.

5. Respondent Nos. 1 to 3 have filed common affidavit in reply and submitted that pay has been reduced and revised in view of the directions issued by the respondent No. 4. It is admitted that the applicant was receiving pay scale in the pay scale of Rs. 775-1150 and in the Departmental Promotion Committee meeting dated 17.6.2010, his name was considered for time bound promotion in the pay scale of Rs. 1200-1800 and accordingly the same was granted. Not only that but also the pay scale of Vth Pay Commission was also granted to the applicant in the pay scale of Rs. 4000-6000 and after retirement the Pay Verification Unit directed the respondent No. 3 to revise the pay scale and, therefore, the impugned order has been issued.

6. Respondent No. 4 i.e. Salary Verification Squad has submitted that as per the Government Resolution dated 8.6.1995 the applicant was in the pay scale of Rs. 750-12-

870-EB-14-940 and after completion of 12 years' in the Group 'D' Category, he was entitled to the pay scale of Rs. 775-12-955-EB-15-1030-20-1150. However, the respondent No. 3 wrongly granted pay scale of Rs. 1200-2040 and the same was directed to be recovered.

7. It is stated by the respondent Nos. 1 to 3 that while granting pay scale, the applicant has given undertaking that he will refund the amount of pay fixation, if wrongly paid to him.

8. Learned Advocate for the applicant submits that the applicant's case has been covered by the judgment delivered by this Tribunal in O.A. No. 752/2001. The said judgment was delivered by this Tribunal at Aurangabad Bench on 29.9.2003 in the case of **RAMESH SOPAN JAMBHALE VS. STATE OF MAHARASHTRA AND OTHERS**. In the said judgment this Tribunal has observed in paragraph Nos. 12 to 14 as under: -

“12. The respondent Nos. 1 to 5 stated in short affidavit in reply dated 26.11.2001 that the applicant did not fulfill the

condition of the Govt. Resolution dated 8.6.1995. The said resolution was produced on record (page-52). I made scrupulous scrutiny of the document and I found that this resolution specify the general conditions for the grant of the benefit of removal of stagnation - time bound promotion on completion of service for 12 years, by the employee any particular cadre. Here admittedly the applicant had been in the said cadre for 12 years and he was entitled for the grant of such benefit. I did not find anything from this document, as to what was a particular condition, which was not satisfied by the applicant. The learned Presenting Officer could not point out that a particular condition and requirement was not complied by the applicant for grant of pay scale of Rs. 1200-1800. The respondents then stated in the aforesaid reply that the applicant did not possess the minimum qualification for the grant of the benefit of pay scale of Rs. 1200-1800. The matter was heard by this Tribunal on 4.8.2003 and it was noticed that the respondents did not specifically state as to what was that minimum qualification, which was not

possessed by the applicant. The matter therefore, was adjourned from time to time and the respondents did not produce any document indicating that the particular was minimum qualification to be possessed by the helpers for the grant of the pay scale of rs. 1200-1800.

13. Of course, the respondents filed additional affidavit in reply dated 2.9.2003 and they contended that the case of employees working at Pune & Mumbai. Besides making such vague statement, they did not enlight as to how and why there can be no comparison. When the employees working at Mumbai & Pune as well as Dhule were appointed on the post of helper on the basis of similar qualification and when they drawing particular pay scale of Rs. 750-940, the respondents could not discriminate them while granting the pay scale on the occasion of time bound promotion. I have already observed that the helpers working at Pune were initially drawing the basic pay of Rs. 750-940, which the applicant was drawing and they (employees of Pune) were granted the pay scale of Rs. 1200-1800. The applicant was

obviously similar situated with them and therefore, was entitled to the equal treatment. It was specifically stated in the order dated 22.2.1999 (page-28) in the last portion that although the helpers therein were placed in the higher pay scale, still there would be no difference in their designation as well as their duties and responsibilities. Obviously, there was no special circumstance to grant them the higher pay scale of Rs. 1200-1800. This benefit was granted to them in the ordinary course. The applicant therefore, was entitled to the same benefit.

14. During the course of the argument, on making the query, Mr. Diagavane, learned Presenting Officer for the respondents addressed, as far as, the case of Mr. Kandre is concerned, that the internal audit section has raised the objection against his pay fixation in the higher cadre. This would therefore, mean that the applicant is similarly situated to Mr. Kandre and even on this basis, he would be entitled to the equal treatment.”

9. Learned Advocate for the applicant submits that the judgment of this Tribunal delivered in O.A. No. 752/2001 has been confirmed by the Hon'ble Bombay High Court Bench at Aurangabad in W.P. Nos. 1991 & 1992 both of 2006 delivered on 7TH October, 2008. A copy of the said judgment of the Hon'ble High Court is also placed on record at page Nos. 33 to 35 (both inclusive).

10. Perusal of the judgment passed by this Tribunal as aforesaid, which is confirmed by the Hon'ble High Court clearly shows that the pay scale of the helper has been confirmed as Rs. 1200-1800. In view of this judgment, the submission made by the respondents as per G.R. dated 8.6.1995, the applicant should have been given lower pay scale than Rs. 1200-1800 is not correct.

11. From the affidavit in reply filed on behalf of the respondent Nos. 1 to 3, it is clear that the applicant has been granted pay scale of Rs. 1200-1800 vide order dated 29.6.2010 and not only that he was also given benefit of Vth Pay Commission on the basis of such pay scale and the said pay scale was revised in the scale of Rs. 4000-

6000. There is nothing on record to show that the applicant has played any fraud or misrepresented the respondents to get his pay scale fixed in the scale of Rs. 1200-1800. I am, therefore, satisfied that the case of the applicant has been covered by the judgment in O.A. No. 752/2001, which has been confirmed by the Hon'ble High Court in W.P. Nos. 1991 & 1992 both of 2006. In view of this, the applicant accordingly got his salary in the pay scale of Rs. 1200-1800 from the year 1994 i.e. 1.10.1994 and thereafter in the pay scale of Rs. 4000-6000 from 1.1.1996. The applicant has already retired and he is a Group 'D' employee and recovery of such so-called excess amount after such a prolonged period will cause great hardship to the applicant. Considering all these aspects, I am satisfied that the impugned order of re-fixation of pay and recovery of so-called excess amount is not legal and proper. Hence, the following order: -

ORDER

- (i) The impugned order dated 26.5.2011 (Exhibit 'D') issued by the respondent No. 3 is quashed and set aside.

(ii) The respondents are restrained from effecting recovery of so-called excess amount under the said notice from the applicant.

(iii) There shall be no order as to costs.

VICE CHAIRMAN (J)

O.A.NO.219-2012(SB)-HDD-2017-
recovery