

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD.

**ORIGINAL APPLICATION NO. 374 OF 2016**

DIST. : JALNA.

1. David S/o Samuel Gantur  
Age 62 years, Occu. Nil,  
R/o. Suvarna Nagar  
Near Ram Nagar Colony,  
Jalna Tq. & Dist. Jalna.
2. Bhagwan S/o Karbhari Manthe  
Age 62 years, Occu. Nil,  
R/o. Aggression Nagar, House  
No. 40, Jalna, Tq. & Dist. Jalna.
3. Bhagwan S/o Janardhan Maghade  
Age 62 years, Occu. Nil,  
R/o Sukhshanti Nagar,  
Jalna, Tq. & Dist. Jalna.

--- APPLICANT.

**VERSUS**

1. The District Superintendent of Police,  
Jalna, District Jalna.
2. The Deputy Superintendent of Police,  
Jalna, District Jalna. .. RESPONDENTS.

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APPEARANCE :- Shri K.M. Nagar, learned Advocate  
for the Applicants.

: Smt. Sanjivani Deshmukh-Ghate,  
learned Presenting Officer for the  
Respondents.  
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**CORAM : HON'BLE SHRI J.D. KULKARNI,  
MEMBER (J)**  
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**J U D G E M E N T**

**[Delivered on this 29<sup>th</sup> day of November, 2016]**

The applicants have challenged the impugned order dated 17/18.12.2015 issued by respondent No. 2, whereby recovery has been directed against the applicants for excess payment from the retiral benefits. The applicant No. 1 viz. David S/o Samuel Gantur, was appointed as a Police Constable on 23.3.1972, the applicant No. 2 viz. Bhagwan S/o Karbhari Manthe, was appointed on 26.4.1974; whereas applicant No. 3 viz. Bhagwan S/o Janardhan Maghade, was appointed on the same post on 1.1.1975. On 31.8.2009 the Government of Maharashtra issued a Government Resolution, whereby benefit of "in-service Assured Progress Scheme" was given to the employees and the pay was to be revised from 1.1.2006. On 16.11.2010, the Superintendent of Police,

Jalna, issued the impugned order and granted benefit of Assured Progress Scheme to all the applicants.

2. The applicant No. 1 got retired from service on 31.8.2011, applicant No. 2 got retired from service on 31.7.2011 and the applicant No. 3 got retired from service on 31.8.2011 on attaining the age of superannuation. Vide order dated 8.6.2015 and 20.7.2015 on the ground that the applicants have not qualified departmental examination for such benefit. Being aggrieved by the said order the applicants seem to have filed Writ Petition No. 1476/2014 in the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad (Appellate side jurisdiction). In the said Writ Petition the Hon'ble High Court has passed the order on 12<sup>th</sup> January, 2015 and it was observed in paragraph Nos. 5 & 6 as under: -

**“5. The Apex Court in the case of *Bhagwan Shukla Vs. Union of India and others* reported in [AIR 1994 Supreme Court 2480], has specifically observed that when no opportunity is granted to show cause against the reduction of the basic pay, such**

**an order is a violative of the principles of natural justice.**

**6. In light of the judgment of the Apex Court in the case of *Bhagwan Shukla* (supra), the impugned order which is passed without hearing the Petitioners cannot sustained. The said impugned order and the judgment of the Maharashtra Administrative Tribunal are quashed and set aside. The Respondent Authorities shall after hearing the Petitioners decide about the aspect of pay scale of the Petitioners afresh, expeditiously and preferably within six months from the date of this judgment.”**

3. According to the applicants, the respondents have not given an opportunity to the applicants and passed the impugned order dated 17/18.12.2015 (Annexure 'A7') and rejected the benefit to the applicants and held that the cancellation of benefit of first Assured Progress Scheme to the applicant was legal, and therefore, the applicants are constrained to file this Original Application. The applicants have claimed that the impugned communication dated 17/18.12.2015 (**Annexure 'A-7'**) be

quashed and set aside and the respondents be directed to grant all consequential benefits along with interest.

4. From the affidavit in reply, it seems that the fact that the applicants were earlier granted benefit of first Assured Progress Scheme and the same was specifically cancelled vide order dated 7.10.2011 has been admitted. According to the respondents, the applicants were not eligible for such benefit of the Assured Progress Scheme since they have not passed the qualifying examination as per the Government Resolutions dated 31.8.2009, 20.7.2001 and 31.8.2010.

5. According to the respondents, after the judgment delivered by the Hon'ble High Court in Writ Petition No. 1476/2015 and in view of the directions therein the applicants were given an opportunity to submit their say. They were called in the meeting held by the Superintendent of Police, Jalna, on 1.9.2015. The applicants were informed that the Assured Progress Scheme benefit cannot be granted to the applicants, since they were not entitled as per the Government Resolutions

dated 8.5.1995 and 20.6.2001 and after considering the submission of the applicants the impugned order came to be passed.

6. The applicants also filed rejoinder affidavit and submitted that they have crossed the age of 45 years, and therefore, they are exempted from appearing for qualifying departmental examination, and therefore, they ought to have been considered in view of judgment delivered by the **Division Bench of Hon'ble Bombay High Court** in the case of **P.K. Ghuge and Another Vs. States of Maharashtra and others (WRIT PETITION NO. 1098 OF 1998) [reported in 2014 (4) LJSOFT page-33.]**

7. Heard Shri K.M. Nagarkar – learned Advocate for the applicant and Smt. Sanjiavni Deshmukh-Ghate – learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed by the respondents, rejoinder affidavit filed by the applicant and various documents placed on record by the learned Advocates for the respective parties, so also citation relied upon by the learned Advocate for the applicant.

8. From the record, it is clear that the applicants were granted benefit of first Assured Progress Scheme vide order dated 7.10.2011 and the said order came to be cancelled vide impugned order dated aa17/18.12.2015 by the Superintendent of Police, Jalna. The only reason for cancellation of first Assured Progress Scheme benefit to the applicants is that the competent authority noticed that the applicants have not passed the qualifying examination, which is required to be passed so as to eligible for such benefit as per Government Resolutions dated 8.5.1995 and 20.6.2001.

9. I have perused the said Government Resolutions. There is no dispute on the fact that in order to be eligible for the benefit of Assured Progress Scheme, the employee must have passed the qualifying examination. Since the applicants have not passed the qualifying examination they were not eligible for the benefit. The said benefit has been taken out as it was granted ignoring the fact that they have not passed the examination. However, while cancelling such order no opportunity was given to the

applicants and, therefore, the Hon'ble High Court directed the respondent authorities to give them an opportunity of hearing.

10. From the affidavit in reply, as well as, documents placed on record, it seems that the applicants were called by the Superintendent of Police, Jalna, in the meeting dated 1.9.2015 and after hearing the applicants the Superintendent of Police, Jalna, came to the conclusion that the applicants have not passed qualifying examination and, therefore, they were not eligible for being considered for the benefit of Government Resolution for grant of Assured Progress Scheme.

11. The respondents have placed on record the minutes of the meeting dated 1.9.2015 from which it seems that the retired Assistant Police Sub Inspector, Shri M.M. Kamble addressed the grievance of the applicants. After hearing him, the impugned order has been passed. The applicants have filed affidavit in rejoinder and have raised the issue that the applicants have crossed the age of 45 years and, therefore, they are exempted from appearing for



the departmental qualifying examination. They have also placed reliance on the judgment reported in **2014 (4) LJSOFT page No. 33 (supra)**. I have perused the said judgment, a copy of which has been placed on record at page Nos. 40 to 44. The Hon'ble High Court at Bombay Bench in W.P. No. 1098/1998 in the case of P.K. Ghuge & Another Vs. State of Maharashtra and Others, has observed that the Government servant, who had completed 45 years of age are exempted from appearing for departmental examination. From perusal of the minutes of the meeting, as well as, various documents placed on record, it seems that this point was not raised by the applicants before the Superintendent of Police, Jalna, in the meeting dated 1.9.2015. Therefore, the decision taken by the Superintendent of Police, Jalna, on whatever submission made before it, cannot be faulted. However, the point raised by the applicants that they are exempted from appearing for qualifying examination is seems to be prima-facie valid, which is required to be considered by the competent authority.

12. In view of the above, I am of the opinion that it will be in the interest of justice and equity to allow the applicant to raise such point before the Superintendent of Police, Jalna by filing a comprehensive representation and direction in this regard to the respondent Superintendent of Police can be issued.

13. In view of the above, I pass the following order: -

**ORDER**

- (i) The present Original Application is partly allowed.
- (ii) The impugned order dated 17/18.12.2015, issued by respondent No. 2 for recovery of excess amount paid to the applicants, is quashed and set aside.
- (iii) The applicants are given liberty to file comprehensive representation before the Superintendent of Police, Jalna, considering the points raised by them in the affidavit in rejoinder. Such representation shall be filed within a period of four weeks from the date of this order.

- (v) On receiving such representation, if filed by the applicants, respondent No. 2 viz. The Superintendent of Police, Jalna, shall give an opportunity to the applicants of being heard and then take appropriate decision, as may be considered fit in the circumstances, on such representation within a further period of four weeks from the date of receipt of the representation.
- (vi) The decision taken shall be communicated to the applicants in writing by Registered post and till reply of such communication by the applicants, the amount claimed in the impugned order dated 17/18.12.2015 shall not be recovered from the applicants.
- (vii) In the facts and circumstances of the case, there shall be no order as to costs.

**MEMBER (J)**