

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

**ORIGINAL APPLICATION NO. 600 OF 2016**

DIST. : LATUR

Sadashiv s/o Jairam Daware, )  
Age. 70 years, Occu. : Retired, )  
R/o Annabhau Sathenagar, Ahmedpur,) .. **APPLICANT**  
Tq. Ahmedpur, Dist. Latur. )

**V E R S U S**

1. The State of Maharashtra, )  
Public Works Department, )  
Mantralaya, Mumbai – 32. )
2. The Superintending Engineer, )  
Public Works Department, )  
Mechanical Circle, )  
Yantriki Bhavan, Osmanabad, )  
Dist. Osmanabad. )
3. The Superintending Engineer, )  
Public Works Department, )  
Division Latur. )
4. Sub-Divisional Engineer, )  
Public Works Department, )  
Ahmedpur Sub Division, )  
Ahmedpur, Dist. Latur. )
5. The Sub Divisional Engineer, )  
Public Works Department, )  
Udgir Sub Division, Tq. Udgir, )  
Dist. Latur. )
6. The Executive Engineer, )  
Public Works Department, )  
Latur. )
7. The Deputy Engineer, )  
Public Works Department, )  
Division-1, Latur. )..

**RESPONDENTS**

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APPEARANCE :- Shri Kiran M. Nagarkar, learned Advocate  
for the applicant.  
: Shri I.S. Thorat, learned Presenting Officer  
for the respondents.  
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**CORAM : Hon'ble Shri B.P. Patil, Acting Chairman**  
**RESERVED ON : 12<sup>th</sup> December, 2019**  
**PRONOUNCED ON : 20<sup>th</sup> December, 2019**  
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### **ORDER**

1. The applicant has challenged the communications dated 28.10.2015, 30.10.2015 and 6.11.2015 issued by the respondents thereby refusing to re-fix his salary and prayed to quash the said orders and direct the respondents to re-fix his pension by giving benefits under Ashwashit Pragati Yogana i.e. Assured Career Progression Scheme (for short A.C.P. Scheme) and also prayed to direct the respondents to pay the arrears to him accordingly.

2. The applicant was appointed as a Cleaner on daily wages basis by the respondents on 30.3.1977. Though he was appointed as a Cleaner, occasionally he was assigned the work of Driver since beginning. After completion of 5 years of service as daily wager his services were converted into regular temporary establishment as per the Kalelkar Award w.e.f. 30.3.1982. However there was delay in considering the case of the applicant, the order to that effect was issued on 16.1.1985. It is his

contention that he was working as a Driver occasionally since the year 1982 though his posting was as a Cleaner. It is his contention that some other similarly situated persons were promoted as a Driver by the order dated 19.4.1984, but he was not promoted as a Driver though he was also appointed as a Cleaner along with those persons.

3. It is his contention that on 12.1.1994 a circular was issued by the respondents by which many other employees who were junior to the applicant and initially appointed as a Cleaner on daily wages basis and later on converted into regular temporary establishment were given promotion and given the pay scale of Rs. 950-1500 from the date of their conversion in regular temporary establishment. The applicant is seeking the same pay scale w.e.f. 30.3.1982 as he worked as a Driver though he was appointed as a Cleaner.

4. In the year 1995, the Government promulgated a scheme to give promotional scale to all such Government servants who have successfully completed 12 years continuous service in one post. According to this scheme the applicant was entitled to get the pay scale of Rs. 3050-4950. It is his contention that by the G.R. dtd. 3.8.2001 issued by the Finance Department it was further made clear that all such employees who cannot be given promotion for

any reasons, will be entitled to the promotional scale upon completion of 12 years of continuous service. It is his contention that by the order dtd. 3.8.1998 it was informed to the applicant that as he has completed 12 years continuous service as on 1.10.1994 he was entitled to get the benefit of the A.C.P. scheme. Accordingly the pay of the applicant was increased from the pay scale of Rs. 750-940 to 775-1150. It is contention of the applicant that his services from the year 1977 were not counted but his services from the year 1982 was considered while granting him the benefit of A.C.P. scheme. Therefore he made representations on 10.11.2003 and 17.1.2004 to the respondents for giving him the proper date of pay fixation and giving him benefit under A.C.P. scheme. By the communication 29.3.2004 it was informed to him by the respondents that since there was no promotional post available for Cleaner the next pay scale is awarded to him. The pay scale of Rs. 3050-4950 was applicable to the post of Driver and it was given to the applicant, but his services during the years 1977 to 1982 were not counted and therefore the said pay scale was not calculated from correct date. It is his contention that he was entitled to get the benefit of the A.C.P. scheme w.e.f. 1989 but it was given to him from the year 1994. It is his contention that though it was mentioned in the order dtd. 29.3.2004 that no promotional post of Driver is available to the Cleaner the

respondents have promoted the similarly situated Cleaners on the post of Driver. It is his contention that one Shri A.I. Shaikh, who was initially appointed as a Cleaner, was promoted on the post of Driver by the order dtd. 7.11.2003.

5. It is his contention that he retired on 30.6.2006 on attaining the age of superannuation. His service book was not properly maintained since his appointment. The applicant made representation to the respondents in that regard on 18.6.2008. The department took cognizance of it by letter dtd. 5.8.2008 and directed the concerned to take proper action in that regard. Thereafter he made representations to the respondents on 21.6.2010, 8.7.2010 and 27.7.2010. After retirement he was getting pension of Rs. 2,000/- and it was very much less from the actual amount to which he is entitled. He approached this Tribunal by filing O.A. no. 686/2013, but it was dismissed on 9.1.2014 on the basis of the order dtd. 29.3.2004. The applicant challenged the said order of the Tribunal before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing writ petition No. 10361/2014. It was disposed of on 16.9.2015 and the Hon'ble High Court was pleased to direct the respondents to consider the detailed representation to be filed by the applicant afresh. Hon'ble High Court was further pleased to observe that, if

the order is not favourable to the applicant, he has liberty to approach this Tribunal again. Accordingly the applicant made detailed representation on 5.10.2015 to the respondents. By the letter dtd. 28.10.2015 the applicant was called for hearing or filing objection, if any, stating that the proposal is being sent to the Accountant General, Nagpur recalculating the last drawn pay as Rs. 6,920/- and pension is based thereupon. Thereafter by the communication dtd. 30.10.2015 fresh calculation was submitted. Applicant submitted detailed representation to the respondents in that regard on 31.10.2015 and stated that similarly situated persons namely S/shri Ramesh Ganpatrao Kshirsagar and Khandu Narayan Kalbande were getting last pay in the pay band of Rs. 7070/-, while the applicant was getting pay in the pay band of Rs. 6920/-. In spite of the said facts the respondents refused to make the proper pay fixation. Therefore he approached this Tribunal challenging the said communications and prayed to quash the same and direct the respondents to re-fix his pension after giving proper pay scale to him under the A.C.P. scheme and also prayed to direct the respondents to pay the arrears to him accordingly.

6. Respondent nos. 4 to 6 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention

that the applicant was appointed as a Cleaner and he never worked as a Driver at any time. They have denied the fact that the applicant worked as a Driver though he was appointed as a Cleaner. It is their contention that the Executive Engineer, Public Works Division, Latur appointed the Cleaners as Drivers, who actually worked as a Driver on Machinery vehicle by the order dtd. 19.4.1984. As the applicant had not worked on any machinery vehicle as Driver he was not appointed as a Driver. It is their contention that as per the G.R. dtd. 12.1.1984 and Kalelkar award the workers on daily wage establishment converted to temporary establishment. The conversion of the workers on different posts who actually worked has been done on temporary establishment of that post. The applicant worked on the post of Cleaner therefore he was converted as Cleaner on temporary establishment and his pay was fixed in the pay scale of Rs. 750-12-870-14-940. As per the G.R. dtd. 8.6.1995 the applicant completed his 12 years service on the said post on 30.3.1994. The said G.R. was effective from 1.10.1994 and therefore the pay of the applicant was increased from the pay scale of Rs. 750-12-870-15-940 to Rs. 775-12-955-15-1030-20-1150 w.e.f. 1.10.1994. Thereafter his pay was revised on 1.1.1996 as per the appendix-1 from Rs. 775-12-955-15-1030-20-1150 to 2610-60-2910-65-330-70-4000 in view of the G.R. dtd. 3.8.2001. It is their contention

that after completion of 12 years continuous service on the acquired post a promotion is permissible. In view of G.R. dtd. 8.6.1995 those employees who are appointed by the direct recruitment or appointed on promotion are entitled for higher pay scale under this scheme after completion of 12 years of their regular service. The applicant was appointed from daily wages post to R.T. establishment on Cleaner's post on 30.3.1982 therefore his service was counted from that date. It is their contention that by the order dtd. 29.3.2004 the Executive Engineer, Public Works Division, Latur awarded him the pay scale of Rs. 3050-4950 of Class-III post, though he was not eligible to get it as it was not awardable to him as his post was of Cleaner i.e. Class-IV post. The pay scale of Rs. 775-12-955-15-1030-20-1150 was permissible to him and accordingly he was awarded with that scale w.e.f. 1.10.1994.

7. It is contention of the respondents that the employees working on class-III posts are entitled to retire from service after completion of 58 years of their age. But the applicant was in service of class-IV post therefore he retired on completion of 60 years of his age. After retirement on attaining the age of 60 years the applicant is claiming the benefit of Class-III post, which cannot be granted. It is their contention that the applicant never



worked on the post of Driver and he worked as a Cleaner. Therefore, his pension has been fixed at Rs. 2,000/-. Now he is receiving the pension of Rs. 3,112/- and dearness allowance. They have admitted the fact that the applicant filed O.A. no. 686/2013, which was rejected on 9.1.2014 by this Tribunal. Thereafter he challenged the said order of the Tribunal before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing writ petition No. 10361/2014. It was disposed of on 16.9.2015 and as per the directions of the Hon'ble High Court the Executive Engineer, Public Works Division, Latur reconsidered and corrected the pay scale of the applicant by the order dtd. 30.10.2015. It is their contention that they issued letter dtd. 28.10.2015 to the applicant. He gave his reply regarding his pay fixed by the department. It is their contention that there is no illegality in the impugned orders. Therefore they justified the impugned orders and prayed to reject the O.A.

8. Applicant filed rejoinder affidavit to the affidavit in reply of respondent nos. 4 to 6 and reiterated his earlier contentions raised in the original application and prayed to allow the same.

9. I have heard the arguments advanced by Shri Kiran M. Nagarkar, learned Advocate for the applicant and Shri I.S. Thorat,

learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

10. Admittedly the applicant was appointed as a Cleaner on daily wages basis by the respondents on 30.3.1977. After completion of 5 years of service as daily wager as per the recommendations of the Kalelkar Committee he was converted and appointed on R.T. establishment w.e.f. 30.3.1982. Admittedly the applicant retired on 30.3.2006 on attaining the age of superannuation. At the time of retirement he was working as a Cleaner. In view of the G.R. dtd. 8.6.1995 the benefit of time bound promotion was given to the applicant on completion of 12 years continuous service on the post of Cleaner w.e.f. 1.10.1994 and pay scale of Rs. 775-12-955-15-1030-20-1150 was awarded to him. Thereafter his pay was revised on 1.1.1996 as per the appendix-1 from Rs. 775-12-955-15-1030-20-1150 to 2610-60-2910-65-330-70-4000 in view of the G.R. dtd. 3.8.2001. Admittedly the applicant filed O.A. no. 686/2013 before this Tribunal claiming promotional scale of Driver under time bound promotion scheme, but it was dismissed on 9.1.2014 on the basis of the order dtd. 29.3.2004. The applicant challenged the said order before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing writ petition No. 10361/2014 and

the Hon'ble High Court disposed of the said writ petition on 16.9.2015 and granted liberty to the applicant to file detailed representation to the respondents and respondents were also directed to consider the said representation of the applicant and to decide it expeditiously within three months therefrom. Accordingly the applicant filed representation on 5.10.2015 to the respondents. The respondents issued the impugned order dtd. 28.10.2015 and called upon the applicant to appear before the Executive Engineer, P.W.D., Latur and thereafter passed the order dtd. 30.10.2015 re-fixing his pay and directed recovery of excess amount from the applicant. The applicant challenged the said orders in this O.A.

11. Learned Advocate for the applicant has submitted that the applicant was appointed as a Cleaner on daily wages basis by the respondents on 30.3.1977. After completion of 5 years of service as daily wager his services were converted into regular temporary establishment as per the recommendations of the Kalelkar Committee w.e.f. 30.3.1982. He has submitted that the respondents had given time bound promotion to the applicant w.e.f. 1.10.1994 in view of the G.R. dtd. 8.6.1995. He has argued that for the post of Cleaner the next promotional post is the post of Driver, but the respondents had not given the pay scale of

Driver to the applicant and they had given higher pay scale treating that the post of Cleaner is an isolated post. He has submitted that the impugned order has been issued by the respondents on the basis of the said assumption and therefore it requires to be set aside.

12. He has further submitted that the similarly situated persons approached this Tribunal by filing **O.A. nos. 288, 289, 314 and 387 all of 2009 (Shri Ramesh s/o Ganpatrao Kshirsagar & Ors. Vs. the State of Maharashtra & Ors.)** decided on 1.10.2010, wherein this Tribunal has held that for the post of Cleaner promotion is available on the post of Driver and therefore this Tribunal quashed the impugned orders passed by the respondents in those cases re-fixing the pay of those applicants and quashing the recovery order passed against them. He has submitted that the said decision of this Tribunal has been challenged by the Government of Maharashtra by filing writ petition no. 2107/2011 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. But the said writ petition has been dismissed by the Hon'ble High Court on 3.10.2011. Thereafter the State Government filed Review Petition No. 65/2014, but it was also rejected by the Hon'ble High Court on 28.4.2014. He has submitted that the Government of Maharashtra approached

before the Hon'ble Supreme Court by filing petition(s) for special leave to appeal (C) Nos. 32448-32449 of 2015, but the said petition(s) for special leave to appeal (C) were dismissed on 9.12.2015. He has submitted that the issue as to whether the post of Cleaner has a promotional post has been finally concluded and it has been held that for the post of cleaner the promotional post of Driver is available and the post of Cleaner is not an isolated post. He has submitted that in view of the said decision the respondents ought to have considered the case of the applicant and granted him the pay scale of the post of Driver in the pay scale of Rs. 3050-4950. But the respondents have wrongly granted the pay scale of Rs. 2610-60-2910-65-330-70-4000 to the applicant and therefore he prayed to quash the impugned orders.

13. Learned Presenting Officer has submitted that the applicant was initially appointed on daily wages basis on the post of Cleaner on 30.7.1977. On completion of 5 years service, as per the report of the Kalelkar Committee he was appointed and converted into R.T. establishment from 30.3.1982. He has submitted that the applicant worked as a Cleaner till his retirement and he never worked as Driver. He has submitted that in the year 2004 the applicant was given higher pay scale in the pay scale of Rs. 3050-

4950 wrongly on completion of 12 years service. At the time of his retirement his pension proposal was sent to the Accountant General and at that time the Accountant General raised objection and therefore his pay has been reduced and pay scale of Rs. 2610-60-2910-65-330-70-4000 was granted to him. He has submitted that in view of the provisions of the G.R. dtd. 3.8.2001 the said pay scale is available to the post of Cleaner as the said post was drawing the pay scale of Rs. 775-12-955-15-1030-20-1150 prior to 1.1.1996. He has submitted that the post of Cleaner was an isolated post and therefore the said pay scale was granted to the applicant in view of time bound promotion scheme and there is no illegality in it. Therefore he prayed to reject the claim of the applicant.

14. Learned Presenting Officer has further submitted that the applicant never worked as a Driver and therefore he was not eligible for promotion on the post of Driver and therefore he cannot claim the benefit of time bound promotion scheme. As the applicant never worked as a Driver the respondents re-fixed the pay of the applicant by the orders dtd. 28.10.2015 and 30.10.2015 and therefore he justified the impugned orders.

15. Learned Presenting Officer has further submitted that the facts in the present case and the facts in the case of **Shri Ramesh**

**s/o Ganpatrao Kshirsagar & Ors. Vs. the State of Maharashtra & Ors. (O.A. nos. 288, 289, 314 and 387 all of 2009)** decided on 1.10.2010 are different and therefore the ratio laid down therein by this Tribunal and Hon'ble High Court is not applicable in the present case. He has further submitted that in that case the recovery from those employees has been ordered on the basis of re-fixation of their pay scale as there was reduction in their pay scale. Hon'ble High Court has held that the pay of those employees has been reduced without giving an opportunity of hearing to them and therefore it was quashed. It has been further observed in the said order that the said pay has been revised after 12 years without giving an opportunity of hearing to those applicants and therefore those petitions were allowed. In the instant case proper opportunity was given to the applicant to defend himself. Moreover he has not worked as a Driver and therefore the principles laid down therein are not attracted in this case. Therefore he prayed to reject the O.A.

16. On perusal of record it reveals that the applicant was initially appointed as a Cleaner w.e.f. 30.3.1977 on daily wages basis. On completion of 5 years service as daily wager the applicant was appointed and converted into regular temporary establishment as per the recommendations of Kalelkar Committee

w.e.f. 30.3.1982. However as there was delay in considering the case of the applicant, the order to that effect was issued on 16.1.1985. On completion of 12 years continuous service the benefit under time bound promotion scheme was given to the applicant w.e.f. 1.10.1994 by the order dtd. 29.3.2004 and his pay was fixed in the pay scale of Rs. 3050-75-3950-80-4590. But it has been revised by the impugned orders dtd. 28.10.2015 and 30.10.2015 and it was reduced in the pay scale of Rs. 2610-60-2910-65-330-70-4000 w.e.f. 1.1.1996. On going through the record it is crystal clear that the benefit under the time bound promotion scheme was given to him as he was eligible for promotion.

17. It is material to note here that in view of the judgment of this Tribunal in **O.A. nos. 288, 289, 314 and 387 all of 2009 (Shri Ramesh s/o Ganpatrao Kshirsagar & Ors. Vs. the State of Maharashtra & Ors.)** (supra) decided on 1.10.2010, for the post of Cleaner promotion on the post of Driver is available and the post of Cleaner is not a post without having an opportunity of promotion. This Tribunal has considered the issue in detail while deciding the above said O.As. and it has been observed as under :-

**“6.** On going through these two documents it is evident that the Chitale Committee Report submitted in October,



1977, which created the cadres in the mechanical categories has created the post of Cleaner and also the post of Driver, by making the promotion available to the Cleaner to the said post. Moreover illustration for fixing the seniority in the Circular dtd. 18.3.1983 refers to fixation of seniority of the individuals promoted as Drivers from the post of Cleaners. It is, therefore, evident that for the post of Cleaners promotion as Drivers is available and those are not the posts without availability of promotional channel.

The notion of the respondents that this is a post without availability of promotional channel and, therefore, benefit of time bound promotion will have to be given by referring to the Schedule to GR dtd. 8.6.1995 and not by granting them salary in the time scale available to the Drivers, therefore, cannot be upheld.

Promotion as Drivers is available to the Cleaners, subject to fulfillment of eligibility conditions and, therefore, time bound promotion granted by allowing the Cleaners to draw timescale available for Drivers was correct and ought not to have been revised and refused as is done by the impugned order”.

18. The said decision has been challenged by the respondent State before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing writ petition no. 2107/2011. But the said writ petition was dismissed by the Hon'ble High Court on 3.10.2011. Thereafter the State of Maharashtra filed Review

Petition No. 65/2014, but it was also rejected by the Hon'ble High Court on 28.4.2014. Thereafter the State of Maharashtra challenged the said decision before the Hon'ble Supreme Court by filing special leave to appeal (C) Nos. 32448-32449/2015, but the said petition(s) for special leave to appeal (C) were dismissed by the Hon'ble Supreme Court on 9.12.2015 and thereby upheld the decision given by this Tribunal and the Hon'ble High Court. From this it is crystal clear that now it is settled legal position that for the post of Cleaner promotional post of Driver is available and the post of Cleaner is not an isolated post. Therefore the provisions of the G.R. dtd. 3.8.2001 are not attracted in this case. The respondents had given the higher pay scale to the applicant treating the post of Cleaner as an isolated post in view of the G.R. dtd. 3.8.2001 and granted him the pay scale of Rs. 2610-60-2910-65-330-70-4000 instead of Rs. 3050-75-3950-80-4590, which is illegal.

19. Not only this, but on perusal of the orders passed by the Executive Engineer, Mechanical Division, Osmanabad in case of similarly situated persons i.e. S/shri Ramesh Ganpatrao Kshirsagar and Khandu Narayan Kalbande it is crystal clear that they have extended the benefit to those employees and granted the pay scale of Rs. 3050-75-3950-80-4590 to them. The case of the

applicant is similar to the case of those applicants and his case is covered by the above said decision. Therefore the applicant in the instant case is also entitled to get the said pay scale on the ground of parity. The respondents ought to have considered the decision of this Tribunal in **O.A. nos. 288, 289, 314 and 387 all of 2009 (Shri Ramesh s/o Ganpatrao Kshirsagar & Ors. Vs. the State of Maharashtra & Ors.)** decided on 1.10.2010 (supra) and the decisions of the Hon'ble High Court as well as of the Hon'ble Supreme Court while re-fixing the pay of the applicant. But the respondents had not considered the said aspect with proper perspective and wrongly fixed the pay scale of the applicant in the pay scale of Rs. 2610-60-2910-65-330-70-4000 instead of Rs. 3050-75-3950-80-4590. Therefore it requires to be quashed by allowing the present O.A.

20. Applicant has claimed second time bound promotion in view of the modified A.C.P. scheme. The first benefit under time bound promotion scheme was given to the applicant w.e.f. 1.10.2010. He retired on 30.6.2006 on attaining the age of superannuation. On the date of retirement he has not completed 12 years continuous service from the date of grant of first time bound promotion, therefore he is not entitled to get the second benefit of A.C.P. scheme and therefore the respondents had not granted him the

said benefit. There is no illegality therein. Therefore the claim of the applicant in that regard cannot be considered.

21. In these circumstances, in my view, the respondents has passed the impugned orders illegally, therefore the same require to be quashed by allowing the O.A.

22. In view of the discussion in foregoing paragraphs the present O.A. stands allowed. The impugned orders dtd. 28.10.2015 and 30.10.2015 are quashed and set aside. The respondents are directed to re-fix the pay of the applicant in the pay scale of Rs. 3050-75-3950-80-4590 w.e.f. 1.10.1994 and extend the consequential financial benefits to him within a period of three months from the date of this order. There shall be no order as to costs.

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**Place : Aurangabad**  
**Date : 20<sup>th</sup> December, 2019**