

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 567/2023 (S.B.)

1. Prakash Madhukarrao Deshmukh,
Aged about 61, Occ.-Pensioners,
R/o Plot No. 8, Tarangan Nagar,
Shegoan Naka, V. M. V. Road,
Amravati- 444 604.

2. Kishor Wamanrao Wankhade,
Aged about 64, Occ-Pensioners,
R/o Near Ulemale House,
Rathinagar, Amravati-444 603.

3. Bhaskar Samadhanrao Mahalle,
Aged about 66, Occ- Pensioner,
R/o 28, RUSHIKESH,
Amravati -444 604.

4. Pramod Vitthalrao Gulhane,
Aged about 66, Occ: Pensioner,
Nisarg Estate, Flat No 202,
Ranpise Nagar, Akola - 444 001.

Versus

Applicants.

- 1) The State of Maharashtra,
Through it's Secretary,
Public Works Department,
Mantralaya, Mumbai- 400 032.
- 2) Superintending Engineer,
Public Work Department,
Circle Camp Amravati.
- 3) Superintending Engineer,
Public Work Department,
Circle, Akola.

Respondents

Shri N.R.Saboo, the Id. Advocate for the applicant.

Shri A.P.Potnis, the Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 11th Oct., 2023.

Judgment is pronounced on 17th Oct., 2023.

Heard Shri N.R.Saboo, Id. counsel for the applicants and Shri
A.P.Potnis, Id. P.O. for the Respondents.

2. Relevant details in respect of the applicants are as follows:-

Sr. No.	Name of employees	Date of initial appointment as Jr. Engineer	Date of upgradation on the post of Sectional Engineer	Date of grant of 1 st benefit of time bound	Date of grant of 2 nd benefit of time bound	Date of retirement

1	P. M. Deshmukh	28.12.83	01.04.90	01.04.02	01.04.14	20.06.20
2	Kishor Wamanrao Wankhade	04.01.84	01.04.90	01.04.02	01.04.14	30.04.17
3	B. S. Mahalle	04.06.82	01.04.91	01.04.03	—	31.03.15
4	P.V.Gulhane	04.06.82	01.04.91	01.04.06	—	31.07.15

3. Grievance of the applicants is that first and second time bound promotions ought to have been given to them on completion of service of 12 years and 24 years, respectively as Junior Engineer, and it was an error to consider grant of these benefits on completion of 12 years and 24 years, respectively from the date of upgradation on the post of Sectional Engineer.

4. Stand of respondents 1 & 2 is as follows:-

When the applicants were holding the post of Junior Engineer, at that time no scheme of time bound promotional benefits existed. However when ACPS scheme came into effect the applicants were holding the post of Sectional Engineer and became entitled for the aforesaid time bound benefits. Therefore for this purpose, the period of 12 years on the post of Sectional Engineer was counted from the date when they were upgraded and assumed the post. Because the benefits of higher pay grade of next upper post was attached to this post so the period rendered on the post of Sectional Engineer is relevant and not the period spent on other post of lower cadre i.e. Junior Engineer.

The O.A. is also opposed on the grounds of acquiescence and limitation.

5. It was submitted by Shri Saboo, ld. counsel for the applicants that the issue is no longer res-integra. In Judgment dated 02.08.2022 **(Civil Writ Petition No. 8009 of 2021, Shri Suhas S/o Prabhakarrrao Dhasurkar & 13 Ors. Vs. State of Maharashtra & Another)** the Hon'ble Bombay High Court framed the issue as follows:-

3. The common issue involved in the present petitions is whether the upgradation granted on the post of Sectional Engineer can be treated as a set-off against the financial upgradation to be granted under the provisions of Assured Career Progression Scheme/Modified Assured Career Progression Scheme, (Hereinafter referred to as "ACP & MACP").

It was held:-

*The issue involved in the present petitions is no more re-integra, and is squarely covered by the judgment of this Court dated 6 February 2019 passed in **Writ Petition No. 2605 of 2017, in the case of The Association of Subordinate Service of Engineers Maharashtra State and Ors Vs. The State of Maharashtra and Ors.** In the said judgment this Court has held that*

"Non functional upgradation to the post of Sectional Engineer cannot be counted as set-off for financial upgradation admissible under ACP/MACP Scheme."

Identical view was taken in **judgment dated 20.04.2023 by the Bombay High Court (in a batch of W.Ps. 1907, 5007, 5008, 5027, 5030, 5229, 7006, 7007, 7072, 7074, 7075, 7750, 7768, 7769 of 2022 & 889 of 2023)**. In this judgment it is observed:-

*We may now consider the decision of the Coordinate Bench in **Association of the Sub-ordinate, Kolhapur v. State of Maharashtra, 2019(4) Mh.L.J. 629**, which appears to have been followed in later decisions.*

The Coordinate Bench considered the Government Resolution dated 16-4-1984 whereby the Government resolved to confer the status of Gazetted Officers upon the degree holders and other Junior Engineers. The submission on behalf of the employees was that the MAT did not properly construe the nature of the upgradation under the Government Resolution dated 16-4-1984, and that the exercise of cadre restructuring was prior to the introduction of the time bound promotion/ACP Scheme. The Coordinate Bench considered the issue thus :

“31. It is evident that the aforesaid GR was an exercise in cadre review. The principal object of the aforesaid GR was to give gazetted status (Class II) to junior engineers working at the lowest level. Not only the restructuring was done in the lowest cadre of junior engineers but also the immediately superior cadre of Assistant Engineer Class II and Class I were restructured. Yet, most importantly, the duties and functions which the erstwhile junior engineers discharged, were mandated to be discharged by the Assistant Engineers Grade II and Sectional Engineers.

It is further observed:-

In this view of the matter, the denial of the ‘second benefit’ under the MACP Scheme, with reference to an exercise of cadre restructuring and the revision in pay scale, in the year 1984, appears to be legally unsustainable. We are, thus, inclined to answer the aforesaid question in the ‘negative’. We hold and declare that the upgradation under G.R. dated 16th April, 1984 does not constitute grant of non functional pay scale and cannot be treated as the ‘first benefit’ within the meaning of Clause 2(b)(3) of the GR dated 1st April, 2010. We are, thus inclined to allow the petition.

6. The cause of action asserted by the applicants is continuing one and hence question of either acquiescence or limitation would not arise. **In view of aforequoted factual and legal position the O.A. is allowed in the following terms.** The respondents shall consider cases of the applicants in accordance with above referred judgments of the Bombay High Court and on the basis that the upgradation under G.R.

dated 16.04.1984 does not constitute grant of non functional pay scale and cannot be treated as first benefit within the meaning of Clause-2(b)(3) of G.R. dated 01.04.2010. **This exercise shall be completed within four months from today.** No order as to costs.

Member (J)

Dated :- 17/10/2023

aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 17/10/2023
and pronounced on

Uploaded on : 18/10/2023