

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 805/2016 (S.B.)

Shashikant Pandurang Giridhar,
Aged about 55 years,
Occ. Government Servant
(Full time Teacher at Govt. Technical High School),
R/o Plot No. 83, Ganesh Nagar,
Nagpur – 440 009.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Principal Secretary,
Skill Development and Entrepreneurship Department,
Madam Kama Road,
Hutatma Rajguru Chowk,
Mantralaya, Vistar Bhavan, Mumbai- 400 032.
- 2) Joint Director of Vocational Education & Training,
Nagpur Division,
Nagpur Regional Office,
Civil Lines, Nagpur – 440 001.
- 3) Head Master,
Govt. Technical High School,
Rajura Asifabad Road,
Dist. Chandrapur.

Respondents

Shri S.Khandekar, Id. Advocate for the applicant.

Shri A.M.Khadatkar, Id. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 15th March, 2024.

Judgment is pronounced on 20th March, 2024.

Heard Shri S.Khandekar, Id. counsel for the applicant and Shri A.M.Khadatkar, Id. P.O. for the Respondents.

2. Case of the applicant is as follows:-

On 25/03/1994 the respondent no. 1 issued a Resolution inter alia making provisions for two level pay scale (द्विस्तरीय वेतनश्रेणी) for the Vocational Education Teachers in the Government Institutes. As per said Resolution the concerned employee who fulfils the criteria mentioned in the said Resolution was made eligible to get Senior Scale on completion of his 12 years' service.

As the applicant was fulfilling the criteria laid down vide Govt. Resolution dated 25/03/1994 he was granted benefit of Senior Scale by Respondent No. 2 vide order dated 19/09/2003 w.e.f. 25/03/1997.

On 8/6/1995 the Respondent No. 1 introduced Time Bound Promotion Scheme and subsequently vide another Govt.

Resolution dated 20/7/2001 the Respondent No. 1 introduced Assured Progress Scheme.

The applicant belongs to teaching cadre and the benefits of Senior Scale granted to him as per Govt. Resolution dated 25/03/1994 have no nexus with Time Bound Promotion Scheme or Assured Progress Scheme.

On the basis of Time Bound Promotion Scheme/Assured Progress Scheme the Respondent no. 1 issued a communication inter alia communicating the Directors and Joint Director of Vocational Education that the Time Bound Promotion Scheme/ Assured Progress Scheme is made applicable to both technical and non-technical staff. Therefore, if any employee who has been granted the benefit of Senior Scale but subsequently refuses the regular promotion; in that event the benefit of Senior Scale granted to him should be withdrawn and the recovery of excess payment be made.

Aforesaid communication was issued by the respondent no. 1 in reference to those employees who have been granted the benefit of Senior Scale under Time Bound Promotion

Scheme or Assured Progress Scheme. However, under the pretext that the said communication is applicable even to those employees who have been granted the benefit of Senior Scale under two level pay scale (द्विस्तरीय वेतन श्रेणी) the respondent no. 2 on 4/12/2008 issued an order against the applicant and other similarly circumstanced employees withdrawing the benefit of Senior Scale granted to the applicant and other employees on the ground that they refused regular promotion. However, the order dated 4/12/2008 though issued was not acted upon.

Some of the similarly circumstanced employees like the applicant approached the Respondent No. 1 and duly pointed out that the action of withdrawing Senior Scale is illegal. The respondent no. 1 thereafter passed an order on 09/04/2011 and stayed the recovery and the matter is still under consideration of Respondent No. 1 and final decision is yet to be taken.

In the light of the aforesaid order of the respondent no 1 no coercive action was taken against any of the employees including the present applicant whose benefits of Senior

Scale were earlier sought to be withdrawn on the basis of communication dated 26/09/2008. As such the communication dated 26/09/2008 was never acted upon.

However, all of a sudden on 25/05/2015 the respondent no. 2 on his own issued a circular stating therein that vide order dated 9/4/2011 the Respondent No. 1 has stayed only the recovery but the benefit of Senior Scale is not ordered to be restored. Therefore, those employees to whom the benefit of Senior Scale is granted on completion of 12/24 years of service and who have refused to accept the regular promotion their benefits of Senior Scale should be withdrawn.

On the basis of the aforesaid order of respondent no. 2 the Principal of the Government Technical High School Rajura i.e. Respondent No. 3 on 2/7/2015 intimated the applicant that the applicant has refused to accept the regular promotion and therefore the benefit of Senior Scale granted to him stands withdrawn.

On receipt of the above communication the applicant immediately submitted representation to the respondent no

2 inter alia pointing out how the action of withdrawing benefits of Senior Scale is illegal.

The applicant through his representation duly pointed out to the respondent no 2 that the post of Full Time Teacher comes under the teaching category and the Time Bound Promotion Scheme/Assured Progress Scheme is not applicable to the cadre of teachers. The applicant in support of his representation pointed out to the respondent no. 2 the report of the Pay Revision Committee, 2008 constituted under the chairmanship of Shri P.M.A.Hakim. At Para 3.27.5 (2) Hakim Committee has categorically observed that Assured Progress Scheme would not be applicable to Teaching Cadre. At para 3.9.4 of the said report a table of the revised Pay Scales for the posts falling under teaching category are mentioned and at serial No. 5 the post of the Full Time Teacher teaching vocational courses in Government or Non- Governmental institutions were mentioned. Aforesaid recommendations of the Hakim committee was accepted by the Respondent No. 1 vide Government Resolution dated 27/02/2009.

The applicant was thus expecting that in the light of his above representation as well as in the light of stay orders of the respondent no. 1 dated 9/4/2011 no coercive action would be taken against him. However, on 31/08/2015 the Headmaster of the Government Technical High School Rajura issued a communication to the applicant that applicant's benefits of Senior Scale are being withdrawn and therefore his pay is again fixed as per the pay scales mentioned in the said communication. It was further stipulated that the difference in the pay would be recovered from the month of September 2015.

Although the Respondent No. 3 passed the order on 31/08/2015 actual recovery is not yet effected by the Respondent No. 3 but the grievance of the applicant is that there was no propriety on the part of Respondent nos. 2 and 3 in issuing orders about withdrawing the benefits of Senior Scale also. It is in this background the applicant is constrained to approach this Hon'ble Tribunal for redressal of his grievances.

3. Stand of respondent no. 3 is as follows. By G.R. dated 03.09.1997 (A-R-1) the applicant was granted promotion. By letter dated 12.09.2007 (A-R-2) the applicant refused it. He deliberately suppressed this fact. G.R. dated 20.07.2001 (A-3) states:-

नियमित पदोन्नती नाकारलेल्या तसेच नियमित पदोन्नतीस अपात्र ठरलेल्या कर्मचा-यांना या योजनेचा लाभ देय होणार नाही. या योजनेअंतर्गत वरिष्ठ वेतनश्रेणी दिल्यानंतर नियमित पदोन्नती नाकारलेल्या वा नियमित पदोन्नतीस अपात्र ठरलेल्या कर्मचा-यांना देण्यात आलेला लाभ काढून घेण्यात येईल. मात्र दिलेल्या लाभांची वसूली करण्यात येणार नाही.

The Hon'ble Minister has, by letter dated 09.04.2011 stayed the recovery of amount stated to have been paid in excess but there is no stay to withdrawing promotion and refixing pay. Since the impugned decision of withdrawing benefits is pending before the Hon'ble Minister for review, instant O.A. is premature. The order proposing recovery has not been acted upon.

4. In his rejoinder the applicant has pleaded that benefits of senior scale granted to him vide G.R. dated 25.03.1994 have no nexus with the schemes introduced by G.Rs. dated 08.06.1995 and 20.07.2001. His specific contention is that the benefits of senior scale were based on assessment of service performance alone and hence the same cannot be withdrawn by taking recourse to a clause in G.R. dated 20.07.2001. It is

his contention that G.R. dated 25.03.1994 and G.Rs. dated 08.06.1995/20.07.2001 envisage distinct contingencies and clearly operate in separate spheres as would be apparent from the fact that senior scale is not granted in lieu of promotion whereas benefits under G.Rs. dated 08.06.1995 and 20.07.2001 are granted in lieu of promotion. Since pay is refixed by withdrawing benefits of senior scale, the O.A. is not at all premature.

5. With additional affidavit the applicant has placed on record order dated 14.02.2022 (A-14) by which benefits identical to the one claimed by the applicant are given to one Shri R.N.Giripunje who, like the applicant, is a full time teacher. This order reads as under:-

आदेश :-

यास्तव निम्नस्वाक्षरीत अधिकारी हे खालील कर्मचाऱ्यांच्या संबंधात त्यांनी पुर्णवेळ शिक्षक या पदावर सलग २४ वर्षांची अर्हताकारी सेवा पुर्ण केल्यामुळे तथा उपरोक्त अ.क्र. १ चे शासन निर्णयातील त्रुटीची पुर्तता करित असुन निवड वेतनश्रेणीचा लाभ अनुज्ञेय होत असल्यामुळे तसेच कार्यरत पदांच्या २० टक्के पदांत समाविष्ट होत असल्यामुळे त्यांना त्यांचे नावासमोर रकाना क्रं. ६ मध्ये दर्शविलेल्या द्विस्तरीय वेतनश्रेणीचा वेतनस्तर याचा फायदा रकाना क्रमांक ८ मध्ये दर्शविलेल्या दिनांकापासुन अनुज्ञेय करण्यात येत आहे.

6. The applicant has also relied on letter dated 08.03.2022 (at PP. 100/101) addressed to respondent no. 2 by the Director. It refers to letter of respondent no. 1 dated 24.02.2022 and states:-

सद्यःस्थितीत शासनाचे संदर्भिय ०२ येथील पत्र संचालनालयास प्राप्त झाले असून सदरील पत्रान्वये वित्त विभागाने वरील प्रकरणाच्या अनुषंगाने "मुख्य कार्यकारी अधिकारी, जिल्हा परिषद, नंदूरबार यांना शालेय शिक्षण व क्रिडा विभागाने पदोन्नती नाकारलेल्या शिक्षकांची वरिष्ठ/ निवडश्रेणी काढून घ्यावी किंवा कसे? या संदर्भात त्यांच्या दि.२८.०१.२०२२ रोजीच्या पत्रान्वये कळविले आहे. त्यात वरिष्ठ/निवडश्रेणीचा लाभ मिळणा-या शिक्षकांना नियमित पदोन्नती नाकारल्यास अनुसरावयाच्या कार्यवाहीबाबत सद्यःस्थिती या विभागाच्या मार्गदर्शक सूचना नाहीत. सबब, मुख्याध्यापक पदी नियमित पदोन्नती नाकारलेल्या ७१ प्राथमिक शिक्षकांना देण्यात आलेल्या वरिष्ठ/निवडश्रेणीचा लाभ तूर्तास काढून घेण्यात येऊ नये" असे कळविले आहे. याच धर्तीवर श्री.एस.पी. गिरीधर, पुर्णवेळ शिक्षक, शासकीय तंत्र माध्यमिक शाळा, जि. वर्धा यांच्या न्यायालयीन प्रकरणी या अनुषंगाने त्यांची (द्विस्तरीय/त्रिस्तरीय वरिष्ठ/निवडश्रेणी वेतनश्रेणी काढून घेणे तसेच लाभाची तूर्तास वसूली करणे योग्य होणार नाही, असे कळविले आहे.

7. The only issue involved in this O.A. is whether benefits of senior scale conferred by G.R. dated 25.03.1994 can be withdrawn on account of refusal to accept promotion, by taking recourse to G.Rs. dated 08.06.1995 and 20.07.2001. This issue is pending before respondent no. 1. Letter dated 08.03.2022 states that respondent no. 1 has communicated its stand not to withdraw benefits of senior scale for the time being. This wording clearly shows that the directive not to withdraw the benefits of senior scale is only a stopgap arrangement and final decision in that behalf is yet to be taken. This being the position, following order shall be just and proper:-

ORDER

A. Respondent no. 1 shall take a decision **within four months** from today on the issue formulated in para 7 hereinabove. Till this decision is taken no coercive action shall be taken against the applicant.

B. With these directions, **the O.A. is disposed of with no order as to costs.**

Member (J)

Dated :- 20/03/2024
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 : 20/03/2024
and pronounced on

Uploaded on : 21/03/2024