

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**AURANGABAD BENCH AURANGABAD**  
**ORIGINAL APPLICATION No. 241 of 2017**

1. Sudhakar S/o Dagadu Mangalkar,  
Aged 57 years, Occ.-Service,  
R/o C/o SRPF group 12 Hingoli,  
Tq.and Dist. Hingoli.
2. Ratan S/o Meghaji Jadhav,  
Age 55 yrs., Occ. Service.  
R/o HC/o SRPF group 12 Hingoli,  
Samadhan Niwas near Atharva Kirana Shop,  
Ganganagar, Hingoli, Tq. and Dist. Hingoli.
3. Subhash S/o Sahwaji Musale,  
Age 57 yrs., Occ. Service.  
R/o C/o SRPF group 12 Hingoli,  
Tq. and Dist. Hingoli.

**Applicants.**

**Versus**

- 1) The State of Maharashtra  
through its Secretary home,  
Department, Mantralaya, Mumbai-32.
- 2) The commandant,  
State Reserve Police Force,  
Group 12 Hingoli,  
District Hingoli.

**Respondents**

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**Shri K.M.Nagarkar, Advocate for the applicants.**

**Smt. P.R.Bharaswadkar, Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**JUDGEMENT**

**(Delivered on 22<sup>nd</sup> Day of September, 2017)**

Heard Shri K.M.Nagarkar, Id. counsel for the applicants and  
Smt.P.R.Bharaswadkar, Id. P.O. for the respondents.

2. The applicants were appointed as Police Constables and were granted first time bound promotion under Ashwashit Pragati Yojana after completion of 12 years of service. The dates of appointment of the applicants, the dates of granting benefit of Ashwashit Pragati Yojana and the dates of withdrawal of such benefit are as under:-

Sr. No.	Applicant no. 1 and his name	Date of Appointment	Date of granting of first Ashwashit Pragati Yojana benefit	Date of withdrawal of the benefit
1	Sudhakar Dagadu Mangalkar	01/05/1989	28/11/2006	05/04/2017
2	Ratan Meghaji Jadhav	26/09/1983	21/06/2014	
3	Subhash Sahwaji Musale	02/12/1982	25/06/2008	

3. According to the applicants, they were granted the benefit of first time bound promotion under Ashwashit Pragati Yojana on the respective dates and were enjoying the pay scale accordingly. However, the said benefit has been withdrawn by order dated 05/07/2017. It is

stated that this action on the part of Respondent no. 2 without giving any opportunity to the applicants is against the principle of natural justice and against various decisions delivered by the Hon'ble Apex Court such as in the cases below:-

1. Bhagwan Shukla V/s Union of India and Ors. reported in (AIR 1994) Supreme Court pg. No. 2480.
2. R.K.Ghuge and Others V/s State of Maharashtra and Others reported in 2014 (4) LJ Soft page no. 33.
3. Judgment delivered in Writ Petition no. 7596/06 in case of Ajay S/o Kishanrao Losarwar V/s State of Maharashtra and Ors.
4. Judgement delivered by Supreme Court in Civil Appeal No. 11527/2014 dated 18/12/2014 in the case of State of Punjab and Others V/s Rafiq Masih (White Washer) others.
5. Judgement delivered in Writ Petition No. 3190/2003 in the case of Babulal Rama Thakare V/s Work Load Committee, Zilla Parishad, Jalgaon.

It is, therefore, requested that the impugned order passed by Respondent no. 2 dated 05/04/2017, withdrawing the benefit of Ashwashit Pragati Yojana to the applicants on various dates, be quashed and set aside.

4. The Respondent no. 2 resisted the claim and submits that the applicants were given the benefits of Ashwashit Pragati Yojana wrongly. For getting such promotional scale, it is necessary for a candidate to pass the Departmental examination. None of the applicants, however, cleared the qualifying Departmental examination as per Rules and therefore, their benefits have been rightly withdrawn.

5. By filing an additional affidavit, the Respondent no. 2 placed on record the G.R. dated 28/11/1979 and Circular dated 13/09/2012, making it clear that passing of the qualifying examination was must even for the candidates who are exempted from clearing the Departmental examination due to attaining the age of 45 yrs.

6. The Id. Counsel for the applicants submits that the impugned order has been issued against the applicants and therefore, the principles of natural justice have not been followed. Perusal of the impugned order dated 05/04/2017 shows that the reasons for withdrawal of the benefit of Ashwashit Pragati Yojana is as under :-

egkj"V" 'kl u] 'kl u fu.kz dz oru @1199@izdz2@99@l dk&3] fnukd  
 20-07-2001 e/khy ifjPNn dz 2 ¼5½ e/; svl suen dysvkgsh] ; k ; kstusvrxr  
 inkurp; k inkph oruJskh ns Bjfoyh vl Y; kus ofj"B oru Jskh feG.; kl lBh  
 inkurp; k inkdfjrkfogr dysyhgZk] ik=rk]T; sBrk]vgZk ifj{K} foHkxh; ifj{K  
 ; k l ozclph iqZk dj.lsr l p inkurpdk; i/nrhvuq jusvlo'; d jlgly- rl p  
 ek- vij ikfyl egkl pkyd] jkT; jk[kho ikfyl cy] egkj"V" jkT; ] epbz; kpsdek&

vikel @jki kcy@06@dk-ins@2014@1124] fnukad 20-10-2014 P; ki =ke/; suen  
 dsys vks dh] i ksyi mi fufj {kdkps dkyc/n inkburhdfjrk vgrk i fj {kk mRrh.kz gksks  
 vko'; d vks ; kckr 'kgfu'kk d#u dkyc/n inkburh ns gkr ul Y; kl rRdkG  
 dk<u ?s ; kckr dk; bkgh djkoh vl suen dsysvks

i jami jkDr uep l i knfu gsvgrk i fj {kk @foHkxh; i fj {kk mRrh.kzul Y; kusR; kauk  
 eatj dj.; kr vkyyh dkyc/n inkburh l okrxr vk'okfl r ixrh ; kstups vks k j i  
 dj.; kr ; s vks- l njps vks k j i dY; kus>kyY; k vfri nkukph ol yh fu; eki æk.ks  
 dj.; kr ; koh-

7. I have perused the impugned order as well as the Circular mentioned in the said order. The scheme whereby the time bound promotion is to be granted after completion of 12 years continuous service, shows that for getting such benefit the candidates have to pass the requisite qualifying examination/ Divisional examination and they must be senior. The circular dated 13/09/2012 placed on record shows that even if the candidates have completed the age of 45 years, they cannot be exempted from getting the benefit and they must clear the qualifying examination and after clearance of examination, they can be given benefit. The Id. counsel for the applicants submits that as per Rule 58 of the Recruitment Rules, there is no need to pass qualifying examination. The Rule 58 reads as under:-

“gokynkjkae/Auu R; kR; k I hfuvkMj Vhi zek.Aq rs; kX; vI Y; kl ] gokynkj estjP; k ntkbJ  
c<rhfnyh i kfgts”

The plain reading of Rule shows that the persons to be promoted as Hawaldar must be as per seniority but they must be qualified. Qualification may include passing of the examination. Perusal of the Rules placed on record on which the Respondent no. 2 has relied upon, shows that prime facie again on the part of Respondent no. 2 might be legal, but it is a fact that no opportunity has been given to the applicants before issuing the order of withdrawal of the benefits.

8. I have gone through the various Judgments on which the Id. counsel for the applicant has placed reliance. The Hon'ble Apex Court in the case of **Bhagwan Shukla V/s Union of India and other reported in (AIR 1994) Supreme Court pg. No. 2480** has observed thus:-

*“We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs, 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs. 181 p.m. from Rs. 190 pan. in 1991 retrospectively w.e.f. 1812.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not, even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the*

*matter. Since, that was not done, the order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9,1993 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant From Rs. 190 to Rs. 181 w.e.f. 18.12.1970."*

Similar view taken by the Hon'ble Supreme Court in various citations, is almost similar. The recovery against the applicants has been stayed. In my opinion the Respondent no. 2 may not be able to recover the amount in view of the judgment delivered by Hon'ble Apex Court in the case of **Rafiq Masih (White Washer)**. However, it does not mean that the Respondents might rectify the mistake committed by them while granting the benefits of the scheme illegally to the applicants. However, for that purpose opportunity should have been given to the applicants. In view thereof, the following orders :-

### **ORDER**

- 1) The application is partly allowed.
- 2) The impugned order dated 05/04/2017 passed by the respondents whereby the benefit of Ashwashit Pragati Yojana is

granted to the applicants has been withdrawn, is quashed and set aside.

- 3) The Respondent no. 2 is directed to issue a show cause notice to the applicants before taking any action as regards withdrawal of the benefit of Ashwashit Pragati Yojana to the applicants and after giving an opportunity to the applicants, submit their case and after giving an opportunity of hearing, the Respondent no. 2 may pass any order as may be deem fit and necessary as per rules.
- 4) The recovery of the arrears already paid to the applicants vide various respective orders of granting first time bound promotion i.e. Ashwashit Pragati Yojana benefit is further stayed till final order is passed after giving an opportunity to the applicants.
- 5) No order as to costs.

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**