

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.446/2022

DISTRICT: LATUR

Giriraj s/o. Kishanrao Joshi,
Age-60 Years, Occu.: Pensioner
(retired as an Executive Engineer),
R/o. 301, R.J. Complex, AUSA Road,
Latur, Tq. & Dist. Latur.

...APPLICANT

V E R S U S

1] The State of Maharashtra,
Through the Principal Secretary,
Water Resources Department,
Madam Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai-400032.

2] The State of Maharashtra,
Through the Principal Secretary,
Finance Department,
Madam Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai-400032.

3] The Chief Engineer,
G.M.I.D.C., Sinchan Bhavan,
Jalna Road, Aurangabad

4] The Superintending Engineer,
Beed Irrigation Project Circle, Parli Vajjnath,
Sinchan Bhavan, Ambajogai Road,
Parli Vajjnath-431 515.

5] The Accounts Officer,
Pay Verification Unit, Aurangabad,
Office of the Senior Treasury Officer,
Aurangabad, District Aurangabad. **...RESPONDENTS**

APPEARANCE : Shri V.P.Latange, Counsel for
Applicant.

: Shri S.K.Shirse, Presenting Officer
for respondent nos.1, 2 and 5.

: Shri S.G.Bhalerao, Counsel for
Respondent nos.3 and 4.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN.

RESERVED ON : 13.02.2023.

PRONOUNCED ON : 25.04.2023.

ORDER:

1. Heard Shri V.P.Latange, learned Counsel for Applicant, Shri S.K.Shirse, learned Presenting Officer for respondent nos.1, 2 & 5 and Shri S.G.Bhalerao, learned Counsel for Respondent nos.3 & 4.

2. Applicant has approached this Tribunal against the Orders No.63 & 64 both of 2022 dated 02-03-2022 passed by respondent no.4 whereby the previous pay fixation has been cancelled by the said respondent and new pay fixation has been done. According to the applicant, the orders so passed are against the Government policy contained in Rule 10 of notification dated 22-04-2009 and Government Resolutions of Finance Department dated 26-12-2011, 23-05-2014 and 08-09-2016. The applicant has also prayed for directions against the respondents to act upon

the Office Order No.43/2019 of the Chief Engineer, Pune and the Office Order No.225/2021 dated 06-08-2021 of the Superintending Engineer, Parli Vajinath stating that in both the aforesaid orders the pay fixation has been rightly done.

3. Applicant when was posted as Sub Divisional Engineer in Raigad Irrigation Department and was handling the Kondhane Minor Irrigation Scheme was issued with a chargesheet for certain irregularities occurred in the implementation of the said project along with other delinquents and the joint departmental enquiry was conducted against all of them. In contemplation of departmental enquiry the applicant was suspended vide order dated 17-12-2014. Vide order dated 18-01-2016, the Government revoked the suspension and the applicant was reinstated in service. Even after his reinstatement departmental enquiry was, however, continued further. In the departmental enquiry the charges levelled against the applicant were held to have been proved and vide order passed on 21-06-2017, the Water Resources Department, Government of Maharashtra imposed the punishment of lowering the pay of the applicant by 2 stages for the period of one year. Subsequently, by an order dated 02-08-2018,

the Government held the suspension period of the applicant from 17-12-2014 to 18-01-2016 as suspension period for all purposes except the pension.

4. The Assistant Chief Engineer, Water Resources, Pune held the applicant entitled for annual increments during the period of suspension, and accordingly, the pay fixation of the applicant was done from 01-07-2014 to 01-07-2018. Thereafter, the applicant was transferred from the post of Assistant Chief Engineer (Irrigation and Administration) Pune to the post of Executive Engineer, Minor Irrigation Division, Latur. It is the grievance of the applicant that the Superintending Engineer, Beed Irrigation Project Circle wrongly revised his pay by not considering the increments during the period between 17-12-2014 to 18-01-2016. The aforesaid orders are challenged by the applicant in the present O.A.

5. Learned Counsel appearing for the applicant submitted that after conclusion of the departmental enquiry, the disciplinary authority had imposed punishment on the applicant of lowering down his pay by two stages for a period of one year. Learned Counsel further submitted that as per Rule 5 of the Maharashtra

Civil Services (Discipline & Appeal) Rules, 1979, the punishment of withholding or lowering down the pay is a minor penalty. Learned Counsel further submitted that vide order dated 02-08-2018, Government had decided to treat the period of suspension from 17-02-2014 to 18-01-2016 as suspension period for all purposes except for pension purpose. Learned Counsel further submitted that after expiry of the period of punishment, the Chief Engineer, Pune has sought guidance from the Government for fixation of pay of the applicant and the Government had informed vide its letter dated 27-11-2018 to take the further necessary action on the basis of Rule 10 of the Government Notification of the Finance Department dated 22-04-2009 and the Government Resolutions dated 26-12-2011, 23-05-2014 and 08-09-2016 issued by the Finance Department.

6. Learned Counsel further submitted that the Chief Engineer, Water Resources, Pune has held the applicant entitled for annual increments during the period of suspension and accordingly his pay fixation was done. Learned Counsel submitted that after the applicant was transferred at Latur, the Superintending Engineer, Beed

Irrigation Project Circle, Beed unnecessarily made re-fixation of pay of the applicant holding that the applicant was not entitled for increment during the period of suspension and revised the pay excluding the increments in the relevant period which has caused great prejudice to the applicant.

7. Learned Counsel further submitted that the applicant stood retired on 30-09-2020 and as the pension papers of the applicant were not complete and were not forwarded to the office of A.G., he could not get the pension. Learned Counsel submitted that the pay fixation done by Superintending Engineer, Beed Irrigation Project Circle vide Order No.63/2022 and 64/2022 is incorrect, contrary to the Government Resolutions holding field at the relevant time as well as contrary to the Government policy contained in Rule 10 of the Notification dated 22-04-2009. Learned Counsel submitted that revised pay fixation done vide Order No.63/2022 and 64/2022, therefore, deserves to be quashed and set aside and pay fixation done by the Chief Engineer, Pune vide Office Order No.43/2019 needs to be restored. The applicant has also sought directions for considering the benefit of Assured Career Progression

Scheme while fixation of pay of the applicant, and accordingly, while determining the amount of pension and pensionary benefits.

8. The Government has resisted the contentions raised and the prayers made in the O.A. Respondent nos.3 and 4 have filed affidavit in reply. It is contended that after fixation of the pay of the applicant w.e.f. 01-01-2016, service book and other record were forwarded to the Accounts Officer, Beed vide his letter dated 10-06-2021. After receipt of the aforesaid record, the Pay Verification Unit raised certain objections and returned the papers to the Superintending Engineer, Beed for further necessary action.

9. It is further contended that on the basis of the objections raised by the Pay Verification Unit further steps were taken by the Superintending Engineer, Beed and after carrying out the re-fixation of pay the Orders No.63/2022 and 64/2022 were issued by respondent no.4. It is further contended that while doing re-fixation of pay, respondent no.4 has rightly not given to the applicant benefit of increment during the period from 17-12-2014 to

18-01-2016. Respondents have, therefore, prayed for dismissal of the O.A.

10. After having heard the learned Counsel appearing for the parties and the learned P.O. and after having perused the documents on record, the only question which falls for consideration is "whether the applicant can be held entitled for the increments during the period of his suspension from 17-12-2014 to 18-01-2016".

11. According to the applicant, he is held entitled for the increments of the said period vide order dated 02-08-2018. As against it, it is the contention of respondents that applicant has wrongly interpreted the order dated 02-08-2018 (paper book page 33-34). I deem it appropriate to reproduce hereinbelow the said order as it is in vernacular:

गोपनीय/पोच देय डाकेने

निलंबन कालावधी नियमित करणेबाबत.
श्री गिराराज किशनराव जोशी,
सहाय्यक मुख्य अभियंता, जलसंपदा विभाग, पुणे.

महाराष्ट्र शासन
जलसंपदा विभाग,

आदेश क्र. ११७४३ - यु० - १४७३ / (१४७३) / - / क्ष -
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 च प्र) ि , च्या नि - () नुसार त्यांचेवरील
 प्रस्तावित ि क्षेविरूद्ध भि ण ि . . च
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 ि श्री. ि । ि , ट ख ि
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 विषयक बाबी वगळता उर्वरीत सव प्रयोजनाकारिता "निलंबन कालावधी"
 म्हणूनच नियमित करण्याचा निणय ण .

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12. Perusal of the aforesaid order makes it clear that before making such order, opportunity of hearing was given to the applicant. The order so passed clearly reveals that period of suspension was directed to be held as the period

of suspension for all purposes except for the purpose of pension. It was clarified in the said order that during the period of suspension the applicant shall be paid salary and allowances @ 50% for first three months and for the remaining period @ 75%.

13. Learned Counsel for the applicant has relied upon the notification dated 22-04-2009 issued by the Finance Department, and more particularly, clause 10 thereof (paper book page 47). It reads thus:

“10. Date of next increment in the revised pay structure.- *There will be a uniform date of annual increment, viz, 1st July of every year. Employees completing 6 months and above in the revised pay structure as on the 1st day of July will be eligible to be granted the increment. The first increment after fixation of pay on the 1st day of January 2006 in the revised pay structure will be granted on the 1st day of July 2006. Accordingly, all Government servants who earned their last increment between the 2nd day of January 2005 and the 1st day January 2006 would get their next increment on the 1st day of July 2006.*

Provided that, in the case of Government servants whose date of increment falls on the 1st day of January 2006, the increment will be drawn in the pre-revised scale and pay fixed in accordance with these rules after including this increment. The next increment in the revised pay structure in such cases will be drawn on the 1st day of July 2006:

Provided further that, in the case of employee who had been drawing maximum of the existing

scale for more than a year as on the 1st day of January 2006, the next increment in the revised pay structure shall be allowed on the 1st day of January 2006. Thereafter, the provision of Rule 10 would apply:

Provided also that, in cases where an employee reaches the maximum of his pay band, shall be placed in the next higher pay band after one year of reaching such a maximum. At the time of placement in the higher pay band, benefit of one increment will be provided. Thereafter, he will continue to move in the higher pay band till his pay in the pay band reaches the maximum of PB-4, after which no further increments will be granted.

Note.- In cases where two existing scales, one being a promotional scale for the other, are merged, and the junior Government servant, now drawing his pay at equal or lower stage in the lower scale of pay, happens to draw more pay in the pay band in the revised pay structure than the pay of the senior Government servant in the existing higher scale, the pay in the pay band of the senior government servant shall be stepped up to that of his junior from the same date and he shall draw next increment in accordance with Rule 10.”

14. There cannot be a dispute about the aforesaid provision. However, aforesaid provision does not deal with the issue whether the increments are payable during the period of suspension. I have gone through the entire text of the aforesaid notification. It nowhere touches to the aspect of the entitlement of the Government servant to receive increment during the period of Suspension.

15. The G.R. dated 26th December, 2011 provides the manner of granting increment to the Government employee remaining on extraordinary medical leave without medical certificate, (a) for the period less than 6 months and, (b) for the period more than 6 months. The G.R. provides that the Government employee remaining absent as above for less than 6 months in the period between 1st July to 30th June will be entitled for the increment, whereas the Government employee remaining on leave for more than 6 months from 1st July till 30th June will not be entitled for such increment. The aforesaid Circular, thus, supports the version of the respondents and not of the applicant.

16. G.R. dated 23-05-2014 provides for the pay fixation of the Government employee in the event his suspension is revoked or cancelled before completion of the departmental proceedings against him or before conclusion of the criminal prosecution against him. It provides that in such event pay of the Government servant shall be fixed on the basis of his pay as on the previous date of his suspension. The aforesaid G.R., however, does not speak about the entitlement of the increment during the period of suspension.

17. Lastly, the Government Circular dated 08-09-2016. I have carefully gone through the said Circular also. It also does not provide for increments during the period of suspension.

18. In the above circumstances, it does not appear to me that any error has been committed by the respondents in re-fixation of the pay vide the office order no. 63/2022. In the earlier fixation of pay vide office order no. 43/2019, the applicant was given increment which fell due during the period of suspension. In fact, it could not have been given and the said mistake was rectified by the office order no. 63/2022.

19. In the order passed on 02-08-2018, the Government has held the suspension period of the applicant from 17-12-2014 to 18-01-2016 as suspension period for all purposes except for pension. Applicant did not challenge the said order. It has, therefore, attained finality. As per the said order during the aforesaid period the applicant was not entitled for the annual increments. In the order no. 63/2022, the increment which fell due on 01-07-2015 has been rightly not given to the applicant.

20. The order no. 64/2022 has also been revised for the same reason. In the circumstances, the said order also cannot be held erroneous. After having considered the entire facts and circumstances involved in the present matter, it does not appear to me that any error has been committed by the respondents in issuing the order no. 63/2022 and 64/2022. I, therefore, see no reason for causing interference in the said orders.

21. In the result, the following order is passed:

ORDER

O.A. is dismissed, however, without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 25.4.2023