

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 377/2023 (S.B.)**

Kishor Nilkanthrao Avdhut,  
Aged about 68 years,  
Occ. Retired from service, R/o Plot No. 196,  
Shiv Nagar, Nagpur - 09.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through it's Secretary,  
Industry, Labour and Energy Department,  
Maharashtra, Mumbai- 400 032.
- 2) The Director,  
Printing and Stationery Department,  
Charni Road, Mumbai - 04.
- 3) The Manager,  
Central Jail Press, Wardha Road,  
Nagpur - 20.

**Respondents**

**WITH****ORIGINAL APPLICATION NO. 379/2023 (S.B.)**

Hasanraj Jairamaji Bante,  
Aged about 74 years,  
Occ. Retired from service, R/o Plot No. 16,  
Gopal Nagar, Nagpur - 22.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through it's Secretary,  
Industry, Labour and Energy Department,  
Maharashtra, Mumbai- 400 032.

- 2) The Director,  
Printing and Stationery Department,  
Charni Road, Mumbai - 04.
- 3) The Manager,  
Central Jail Press, Wardha Road,  
Nagpur - 20.

**Respondents**

**WITH**

**ORIGINAL APPLICATION NO. 380/2023 (S.B.)**

Budhaji Zimanji Surkar,  
Aged about 68 years,  
Occ. Retired from service,  
R/o Behind Saraswati Night High School,  
Fakirwadi, Choti Dhantoli,  
Nagpur - 440 012.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through it's Secretary,  
Industry, Labour and Energy Department,  
Maharashtra, Mumbai- 400 032.
- 2) The Director,  
Printing and Stationery Department,  
Charni Road, Mumbai - 04.
- 3) The Manager,  
Central Jail Press, Wardha Road,  
Nagpur - 20.

**Respondents**

**WITH**

**ORIGINAL APPLICATION NO. 381/2023 (S.B.)**

Late Maroti Gopalrao Patil,

Through its Legal heir Smt. Chandrakala W/o Maroti Patil,  
Aged about 68 years, Occ. Housewife,  
R/o Plot No. 19, Wardha Road,  
Chandak Layout, Chatarpati Nagar,  
Nagpur - 440 015.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through it's Secretary,  
Industry, Labour and Energy Department,  
Maharashtra, Mumbai- 400 032.
- 2) The Director,  
Printing and Stationery Department,  
Charni Road, Mumbai - 04.
- 3) The Manager,  
Central Jail Press, Wardha Road,  
Nagpur - 20.
- 4) Senior Account Officer/PR-1,  
Indian Audit & Accounts Department,  
Office of the Accountant General (A & E)- III,  
Maharashtra, Civil Lines, Nagpur.

**Respondents**

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**Shri S.G.Ingale, Id. Advocate for the applicants.**

**Shri S.A.Sainis, Id. P.O. for the respondents.**

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

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**JUDGMENT**

**Judgment is reserved on 02<sup>nd</sup> April, 2024.**

**Judgment is pronounced on 12<sup>th</sup> April, 2024.**

Heard Shri S.G.Ingle, ld. counsel for the applicants and Shri S.A.Sainis, ld. P.O. for the Respondents.

2. These four O.As. involving identical issue are being decided by this common judgment.

3. The applicants in O.A. Nos. 377 & 379/2023 were holding the post of Type Distributor. By order dated 22.01.1998, under the scheme of time bound promotion, these applicants were granted pay scale of the post of Display Compositor since the post of Type Distributor and Compositor had the same pay scale. By order dated 22.01.1998 the applicant in O.A. No. 380/2023, and husband of the applicant in O.A. No. 381/2023 who were holding the post of Compositor were granted pay scale of Display Compositor under the scheme of time bound promotion. Subsequently, Pay Verification Unit raised an objection with regard to pay fixation of the applicants after grant of benefit of time bound promotion. It came to the conclusion that excess payment was made to these employees. Based on this objection excess payment was quantified at Rs. 1,33,176/-, Rs. 72,512/-, Rs. 1,35,201/- and Rs. 83,040/- to be recovered from the applicants in O.A. Nos. 377, 379, 380 and 381/2023, respectively. According to the applicants, these recoveries were impermissible under the law. Hence, these O.As. seeking refund.

4. The applicants, in support of their claim, have, *inter alia* relied on the judgment of the Hon'ble Bombay High Court in W.P. No. 6874/2016.

5. Respondent no. 3 has resisted these O.As. on the following grounds. The O.As. are barred by limitation. The applicants cannot claim parity with Mr. R.R.Jangade who had approached this Tribunal and whose contention regarding recovery being impermissible was accepted by the Tribunal, and upheld by the Bombay High Court by judgment dated 26.02.2020, because they did not avail legal remedy. The objection raised by Pay Verification Unit regarding payment of excess amount was well founded. All these employees had executed an undertaking that they would refund excess payment, if made. The undertaking would bind them.

6. The applicants claim parity with Mr. R.R.Jangade who had challenged recovery of amount said to have been paid in excess, by filing O.A. No. 122/2010. The O.A. was allowed. The Hon'ble Bombay High Court, while upholding the judgment of this Tribunal, by judgment dated 26.02.2020, held :-

*6. The respondent's eligibility for time bound promotion has not been disputed. Undisputedly petitioner was holding post of Distributor in the revised pay scale was Rs. 950-1500 which was similar for the next*

*promotional post of Compositor. It is not in dispute that the higher pay scale after unification for the post of Distributor and Compositor was of the post of Display Compositor in the pay scale of Rs. 1320-2040.*

7. *Petitioner was appointed as Distributor in the year 1979 and after revision his pay scale was made to Rs. 950-1500. The State Government has issued Government Resolution dated 08.06.1995 for grant of time bound promotion on completion of 12 years service. After introduction of Time Bound Promotion Scheme vide order dated 06.10.1995, next higher pay scale of Display Compositor was granted to the respondent since there was no higher pay scale to next promotional post of Compositor.*

8. *We have gone through the Government Resolution dated 01.11.1995 by which certain clarifications were given for smooth implementation of Time Bound Promotion Scheme floated under Government Resolution dated 08.06.1995. Clarification No. 11 clarifies the eventuality when the pay scale for lower and next promotional post is the same. It provides that if on implementation of one step promotion, designation changes on promotion but the pay scale remains the same then on complying remaining conditions, the higher pay scale shall be given. Herein, the higher pay scale to the post of Distributor was directly of the post of Display Compositor in the pay scale of Rs. 1320-2040 which was later on revised as Rs. 4000-6000. Though the respondent invoked Rule 11(1)(a) of the Pay Rules, it has no relevance in fixation of pay scale in Time Bound Promotion Scheme. The interpretation of both Government Resolutions including clarifications are self sufficient to justify the order dated 22.01.1998 granting pay scale of Display Compositor.*

9. *In view of aforesaid, we do not find any error committed by the learned Member of Maharashtra Administrative Tribunal, hence writ petition being devoid of merit stands dismissed. No order as to costs.*

Cases of the applicants in this batch of O.As. stand on par with that of Mr. R.R.Jangade.

7. The applicants have further relied on the judgment of this Tribunal dated 25.07.2023 in O.A. No. 72/2023. Said O.A. was filed by wife of one Rangarao Maske. Rangarao Maske, too, was granted benefit of time bound promotion which was subsequently sought to be

withdrawn. His wife filed O.A. No. 72/2023. While allowing the O.A. this

Tribunal held:-

*4. Claim of the applicant is sought to be defeated on the ground that directions to refund the amount were applicable only to R.R.Jangde. This stand cannot be sustained. In support of this conclusion reliance may be placed on the legal position incorporated in Circular dated 28.02.2017 issued by Law and Judiciary Department of Government of Maharashtra.*

*2: The Hon'ble Tribunal, in Para 8 of aforesaid Judgment, has observed as under:-*

*"If a principle of general applicability is capable of being culled out from a particular pronouncement of this Tribunal, then similarly placed employees, though not before the Tribunal should be given the benefit thereof without actually moving this Tribunal for relief. If on the other hand, the relief is person specific, then of course, this direction will not apply."*

*Therefore, the Hon'ble Tribunal has directed the undersigned to inform all the concerned departments regarding applicability of general judicial principle as explained in Para 8 of the aforesaid Judgment.*

*3. The Hon'ble Supreme Court in the case of State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava reported in 2015 (1) SCC 347 has laid down similar principle, thus:*

*"Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently"*

These observations fully support stand of the applicants.

8. So far as contention of the respondents regarding binding nature of undertaking given by the applicant is concerned, reliance may be placed on following observations in O.A. No. 527/2022 decided by this Bench on 30.10.2023 :-

*8. In the case of **the State of Maharashtra Vs. Rekha Vijay Dube (Mrs.)** in para 9 the Division Bench of Hon'ble Bombay High Court has held as under:-*

*9. The other reason for which we are not inclined to hold that Jagdev Singh (supra) has application to the facts of this case is because of situations (i) and (iii) forming part of paragraph 18 of Rafiq Masih (supra). Situation (i) clearly bars recovery from employees belonging to Class III/Group 'C' service. Further, situation (iii) bars recovery from employees when excess payment has been made for a period in excess of 5 (five) years before the order of recovery is issued. We are not inclined to accept the contention of Mr. Pathan that although recovery from employees belonging to Class III/Group 'C' cannot be made in terms of situation (i) (supra) while in service, such recovery could be made from retired Class III/Group 'C' employees who have either retired or are due for retirement within one year of the order of recovery. If we were to accept Mr. Pathan's contention, it would lead to a situation that although there could be a declaration given by a Class III/Group 'C' employee while in service that excess payment could be recovered from him from future salary to be paid to him, which cannot be recovered in terms of situation (i), but in terms of situation (ii), as interpreted in Jagdev Singh (supra), recovery could be effected from his retirement benefits after the relationship of employer-employee ceases to subsist. Rafiq Masih (supra), very importantly, carves out situation (v) (supra) too, proceeding on the premise that recovery from retirement benefits, by asking the retired employee to refund excess amount, if any, received by him, if found to be iniquitous and arbitrary and thereby causing hardship, such a step ought to be avoided. This being the reasoning it would be far-fetched that what the employer (State) cannot resort to against a Class III/Group 'C' employee while he is in service, such employer would be empowered to do so after retirement of the Class III/Group 'C' employee. If accepted, the same would amount to a distorted interpretation of the situations in Rafiq Masih (supra), which has to be eschewed. We are of the considered opinion that the*



*Tribunal was right in distinguishing Jagdev Singh (supra) by observing that paragraph 11 of the said decision must be confined to Class I/Group 'A' and Class II/Group 'B' officers. Mr.Pathan has not been able to show that the original applicants gave the declaration/undertaking in pursuance of a statutory rule. That not having been shown, the contention raised by him on the basis of Jagdev Singh (supra) has to be rejected. We, however, leave the question open as to whether Jagdev Singh (supra) would apply to cases of Class III/Group 'C' employees who by giving declaration, mandated by a statutory rule, undertake to refund any sum received in excess of their entitlement.*

*9. Hence, in view of the Judgment of Division Bench of Hon'ble Bombay High Court in the case of **the State of Maharashtra Vs. Rekha Vijay Dube (Mrs.)** even if the undertaking was given that cannot be a ground to recover the excess amount from Class-III retired employee.*

The employees in these cases belonged to Class-III.

9. For the reasons discussed hereinabove, the O.As. are allowed in the following terms. All the impugned orders of recovery are quashed and set aside. **The recovered amount shall be refunded to the applicants within two months from today** failing which the unpaid amount shall carry interest @ 6 % per annum. No order as to costs.

**Member (J)**

**Dated :- 12/04/2024**

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 : 12/04/2024  
and pronounced on

Uploaded on : 15/04/2024