

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.809/2019(S.B.)**

1. Ambadas S/o Shriramji Manke,
Age 60 years, R/o Mangaldham Colony,
Amravati. Retired on 31/3/2017.
2. Nandkishor S/o Manik Ajankar,
Age 59 yrs., Near Kiran No.2,
Balwadi, Bypass Road, Amravati.
3. Ramesh S/o Damodhar Karanjkar,
Age 61 yrs. R/o Lahane Lay-out,
P.no. 101, Samarth Nagar, Buldhana.
4. Sharad S/o Bhaurao Choudhari,
Age 55 yrs. Sushant Colony,
Near Mohan Nagar, V.M.V. Road,
Amravati.
5. Narendra S/o Nagorao Kharbade,
retired 30/11/2018, Age 59,
Priya Township, Amravati.
6. Baban S/o Anandrao Badkhal,
Age 58, Dip Nagar, Sindhaniya nagar,
Yavatmal.
7. Mohanshing S/o Sampat Ingle,
Age 59, R/o Chandanpur,
Tal. Chikhali, District. Buldhana.
8. Sheshrao S/o Marotrao Yawale,
Age 58, R/o 46, New colony,

Dastur Nagar, Amravati.

All are retired Milk Procurement Supervisor under R.

No.3. Except sr.no.8 retired Milk Procurement Officer.

Applicants.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Agriculture, Animal husbandry,
Dairy development and Fisheries Department,
Mantralaya, Mumbai - 32.
- 2) The Commissioner,
Dairy Development Department,
Administrative Building, Varli Sea Face,
Abdul Gaffarkhan Marg, Mumbai-18.
- 3) The Regional Dairy Development Officer,
Congress Nagar, Amravati.

Respondents

Shri B.Kulkarni, Ld. Counsel for the applicants.

Shri M.I.Khan, Ld. P.O. for the respondents.

With

ORIGINAL APPLICATION NO.1196/2023(S.B.)

1. Narendra S/o Baburao Nimbalkar,
Retired, Age about 62 years,

- R/o Hanuman Nagar,
Tukum Ward No.9, Chandrapur.
2. Sunil S/o Balaji Bingewar,
Retired Age 60 yrs., plot No. 55,
Sarswati Nagar, Near Hanuman Mandir,
Nagpur-34.
 3. Smt. Anita Widow of Datatray Kale,
Age 51 yrs. R/o Balaji Ward No.2,
Near Krishna Mandir, Chandrapur.
 4. Madhukar S/o Ukandrao Ingale,
Retired Age 61 yrs. Plot no.110,
Awasthi Nagar, behind Police Line Takli,
Nagpur-13
 5. Duryodhn S/o Tulshirm Pawankar,
Age 60, Anand Nagar, Takiya Ward,
Bhandara.
 6. M.B.Chikte,
Retired, Aged 62 yrs.
R/o flat No.201, Jijai Complex Gondhni Road,
Gondhni, Nagpur.
 7. S.M.Suke,
retired R/o Age 62 yrs.
Plot. No.78, Prerna Nagar,
Gajanan Mandir road Nagpur.
 8. Dattu.L.Dharpure,
retired, r/o Wadi Nagpur, 21.
 9. Subhash Yeknath Kawalkar,

retired, R/o Aged about 59 years,
R/o Pt. No.B/27, Ramna Maruti Nagar,
Nagpur-9.

10.Ghanshyam Hariji Gabhane,
age 57. R/o Manish Nagar, Nagpur.

11.Khushal.L.Pandhare,
age 57 Ramna Maruti Nagar, Nagpur-9.

Sr.no, 1 to 9 are retired Milk Procurement
Supervisor/retired Milk Procurement officer.
under R. No.3.Except sr.no.3 wife/widow LR. of retired
Milk Procurement Officer Kale.

Applicants.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Agriculture, Animal husbandry,
Dairy development and Fisheries Department,
Mantralaya, Mumbai, 32.
- 2) The Commissioner,
Dairy Development Department,
Administrative Building, Varli Sea Face,
Abdul Gaffarkhan Marg, Mumbai-18.
- 3) The Regional Dairy Development Officer,
Civil Lines Nagpur 440 001.

Respondents

Shri B.Kulkarni, Ld. Counsel for the applicants.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).
Dated: - 20th March, 2024.

COMMON JUDGMENT

Judgment is reserved on 15th March, 2024.

Judgment is pronounced on 20th March, 2024.

Heard Shri B.Kulkarni, learned counsel for the applicants and Shri M.I.Khan, learned P.O. for the respondents.

2. Identical issue is involved in these O.As. and hence they are being decided by this Common Judgment.

3. Applicants 1 to 7 in O.A.No.809/2019 retired as Milk Procurement Supervisor whereas applicant no.8 is working as Milk Procurement Officer. Applicants 1 to 9 in O.A.No.1196/2022 retired as Milk Procurement Supervisor / Officer whereas applicants 10 and 11 are still working. Common grievance of the applicants is that by equating revision in pay scale with higher non-functional pay scale and treating it as the first benefit, they should not be denied benefits of time bound promotions to which they are entitled.

4. The impugned order in O.A.No.809/2019 states-

उपरोक्त संदर्भीय पत्रान्वये त्यांचे अधिनस्त कार्यरत असलेल्या / सेवानिवृत्त झालेल्या दुध संकलन पर्यवेक्षक या संवर्गातील कर्मचा-यांना सुधारीत सेवांतर्गत आशवासित प्रगती योजनेचा लाभाचे अनुषंगाने प्राप्त झालेल्या प्रस्तावातील कर्मचा-यांचा / सेवानिवृत्तधारकांचा प्रस्ताव दिनांक १२.०७.२०१९ रोजी प्रादेशिक कार्यालयाचे स्तरावर विभागीय पदोन्नती समितीच्या सभेमध्ये ठेवण्यात आले असता, समितीमध्ये घेण्यात आलेल्या ठरावानुसार सोबत जोडलेल्या विवरणपत्रात नमुद कर्मचा-यांना /सेवानिवृत्तीधारकांना त्यांचे नावासमोर दर्शविण्यात आलेल्या कारणास्तव त्यांना दुसरा तिसरा लाभ देण्यात आलेला नाही.

शासन निर्णय दिनांक ०२.०३.२०१९ मधील तरतुदीनुसार विवक्षित सेवाकालावधीनंतर संबंधित पदाच्या कर्तव्ये व जबाबदारीत वाढ न होता अकार्यात्मक वा तत्सम उच्च वेतन संरचना मंजूर करण्यात आलेला / येणारा लाभ हा योजनेखाली पहिला लाभ समजण्यात येईल, असे नमुद असल्यामुळे सदर बाब विचारात घेवून आवश्यक ती कार्यवाही करण्यात यावी असे सुचित केलेले आहे. खात्याचे पत्र सोबत जोडण्यात येत आहे.

त्यामुळे संदर्भीय प्रस्तावातील दुध संकलन पर्यवेक्षक या संवर्गातील त्यांचे अधिनस्त कार्यरत असलेल्या / सेवानिवृत्त झालेल्या कर्मचा-यांना वित्त विभागाचे शासन निर्णय दिनांक ०२.०३.२०१९ मधील परिच्छेद क्रमांक VI अनुसार तिसरा लाभ देय ठरत नाही. तेव्हा आपले अधिनस्त असलेल्या कार्यरत /

सेवानिवृत्त संबंधित कर्मचा-यांना आपले स्तरावरून कळविण्यात यावे.

टिप : दुध संकलन पर्यवेक्षक यांना कृषि व पदुम विभाग. शासन निर्णय क्रं. दुविअ-2789/8881/सीआर-519/भाग-2/पदुम-7/दिनांक 14 डिसेंबर, 1998 अन्वये विवक्षित कालावधीनंतर म्हणजेच प्रथम नियुक्तीच्या दिनांकापासून 7 वर्षांनंतर पुढील वेतनश्रेणी लागू करण्यात आली होती. तसेच 12 वर्षांनंतर कालबद्ध पदोन्नती / आशवासित प्रगतीचा लाभ मंजूर करण्यात आला होता. सहाव्या वेतन आयोगातील तरतूदीनुसार विवक्षित कालावधीनंतर देण्यात आलेला लाभ हा पहिला लाभ समजण्यात यावा असे नमूद असल्याने दुध संकलन पर्यवेक्षक यांना 7 वर्षांनंतर पहिला लाभ तसेच 12 वर्षांनंतर दुसरा लाभ गृहीत धरून 24 वर्षांचा लाभ देण्यात आला नसल्याने काही दुध संकलन पर्यवेक्षकांनी न्यायालयामध्ये प्रकरण दाखल केले होते. त्यानुषंगाने मा. न्यायालयाने दिलेल्या न्याय निवाड्याप्रमाणे जे दुध संकलन पर्यवेक्षकांनी न्यायालयामध्ये दाद मागितली अशांना 24 वर्षांनंतरचा आशवासित प्रगती योजनेचा लाभ देण्यात आलेला होता. परंतु जे दुध संकलन पर्यवेक्षक न्यायालयामध्ये गेले नाही अशांना 24 वर्षांचा लाभ देण्यात आलेला नाही. त्याचप्रमाणे सातव्या वेतन आयोगामध्ये शासन निर्णय दिनांक 2-3-2019 मधील परि कं. VI नुसार विवक्षित कालावधीनंतर देण्यात आलेला लाभ हा पहिला लाभ समजण्यात यावा असे स्पष्ट नमूद आहे. संबंधित कर्मचा-यांना 7 वर्षांचा, 12 वर्षांचा तसेच 24 वर्षांचा लाभ यापूर्वी देण्यात आला असल्याने आता 30 वर्षांचा तिसरा लाभ देय ठरणार नाही.

5. The impugned communication in O.A.No.1196/2022 dated 22.07.2019 (Annexure A-5) reads as under-

विषय :- विभागातील दुध संकलन पर्यवेक्षक संवर्गातील कर्मचा-यांना सातव्या वेतन आयोगामध्ये तीन लाभाच्या सुधारित सेवा अंतर्गत आशवासित प्रगती योजनेचा लाभ अनुज्ञेयतेबाबत.

संदर्भ :- प्रादुविअ/अम/अ-३/दूसंप/आप्रयो/२०१९/११८८, दि.१८.०६.२०१९.

उपरोक्त विषयाबाबत संदर्भित पत्राच्या अनुषंगाने कळविण्यात येते की, तीन लाभाच्या सुधारित सेवांतर्गत आशवासित प्रगती योजनेच्या वित्त विभागाच्या दिनांक ०२.०३.२०१९ च्या शासन निर्णयात या

योजनेचा लाभ अदा करण्याबाबतच्या अटी स्पष्टपणे नमूद करण्यात आलेल्या आहेत.

शासन पत्र दिनांक २०.१२.२०१२ अन्वये " वित्त विभाग शासन निर्णय दिनांक १ एप्रिल २०१० मधील परि.क्र.२(ब)(३) मधील तरतुदीनुसार विवक्षित सेवाकालावधीनंतर संबंधित पदाच्या कर्तव्ये व जबाबदारीत वाढ न होता अकार्यात्मक वा तत्सम उच्च वेतनसंरचना मंजूर करण्यात आलेला/येणारा लाभ हा या योजनेखाली पहिला लाभ समजण्यात येतो. त्यामुळे ज्या अधिकारी/कर्मचा-यांना अशी अकार्यात्मक वेतनश्रेणी वाढ मिळालेली आहे/मिळणार आहे त्यांना या योजनेतर्गत श्रेणीवाढ झाल्यानंतर त्या पदावर १२ वर्षांच्या अर्हताकारी सेवेनंतर एकदाच म्हणजेच दुसरा लाभ अनुज्ञेय होतो." असे कळविण्यात आले आहे.

तसेच शासन निर्णय दि.०२.०३.२०१९ मध्ये सुध्दा विवक्षित सेवाकालावधीनंतर संबंधित पदाच्या कर्तव्ये व जबाबदारीत वाढ न होता अकार्यात्मक वा तत्सम उच्च वेतनसंरचना गंजूर करण्यात आलेला/येणारा लाभ हा या योजनेखाली पहिला लाभ समजण्यात येईल, असे नमूद आहे. त्यामुळे कर्मचाऱ्यांना तिसरा लाभ अनुज्ञेय करणेपूर्वी सदर बाब विचारात घेणे आवश्यक आहे. तसे फायदे देण्यापूर्वी उपरोक्त बाब विचारात घ्यावी.

6. In these O.As. stand of the contesting respondents is as follows. As per G.R. dated 14.12.1988, pay scale of Milk Procurement Supervisors who had worked for 7 years was upgraded without there being either change in nature of their duties or additional

responsibilities. This was to be taken as the first benefit of Revised Assured Progress Scheme / Time Bound Promotion. Second time bound promotion could be given only 12 years thereafter. As per Clause - 2(b)(3) of G.R. dated 01.04.2010 grant of higher non-functional pay scale counts as first benefit of time bound promotion. G.R. dated 02.03.2019 provides for grant of third benefit of time bound promotion on completion of service of 30 years before 31.12.2015. Considering this position the impugned orders cannot be interfered with.

7. The applicants have relied on Common Judgment of this Bench dated 26.02.2015 in O.A.Nos.636, 733 and 599/2013. The opening portion of this Judgment articulates the issue for determination as follows-

The applicants in these O.As are Milk Collection and Extension Supervisors in the Dairy Development Department. They are aggrieved that they have been denied the benefits of time bound (Assured) promotional pay scale as per the G.R. dtd. 1/4/2010 on completion of 24 years of service.

This Bench held –

After having heard the arguments on both sides and after going through the record placed before us, I find that the G.R, dtd. 1/4/2010 which is at the centre of the controversies raised in these O.As contains the Scheme of Assured Promotion on completion of 24 years' service. The scheme further clarifies that the benefits of higher pay scale are available only up to a maximum of two times during an employee's service. Para 2 (b) (3) of the G.R. states as follows :-

"विवक्षित सेवाकालावधिनंतर संबंधित पदाच्या कर्तव्ये व जबाबदारी वाढ न होता, अकार्यात्मक वा तत्सम उच्च वेतनसंरचनेचा (Non functional pay structure) करण्यात आलेला/येणारा लाभ हा या योजनेखालील पहिला लाभ समजण्यात येईल. उदा. मंत्रालय / विधान मंडळ सचिवालयातील कक्ष अधिका-यांना चार वर्षांच्या नियमित सेवेनंतर देण्यात येत असलेली अकार्यात्मक वेतन संरचना."

8. Thus, as per the above provisions of the G.R., if during the first 12 years, an employee has already received the benefits of a higher non-functional pay scale without a rise in duties and responsibilities of the post, it will amount to grant of the first benefit under the scheme. Hence, if he has also received the benefits of the G.R. dt.8/6/1995 on completion of 12 years of service, he cannot get further benefits of the scheme. According to the respondents, the applicants were granted the higher (non- functional) pay scale of Rs. 1350-2200 after 7 years of service in the post as per the notification dt. 7/11/1998. Hence, this is deemed to be the first time benefit of a higher pay scale.

This Bench further held-

In that view of the matter, I hold that the pay scale of Rs. 1350-2200 cannot be construed to be a higher pay scale introduced over the pay scale of Rs.975-1540 or 1200-1800. Hence, the respondents cannot be held to be correct in assuming that grant of pay scale of Rs. 1350-2200 after 7 years' service amounts to a higher (non-functional) pay scale. It therefore cannot be counted as the first benefit of grant of a higher pay scale. Consequently, the revision of pay scale to R.1350-2200 does not attract the provisions of Para 2(b) (3) of the G.R. dtd. 1/4/2010. Hence, the applicants are deemed to have received the benefits of higher pay scale (time bound

promotion) for the first time on completion of 12 years of service and they were correctly granted the benefits of 2nd time bound promotion on completion of further 12 years of service, which was the 2nd benefit and not the 3rd as presumed by the respondents.

This Judgment was maintained by the Hon'ble Bombay High Court as well as Hon'ble Supreme Court.

8. Relying on the Judgment dated 26.02.2015, this Bench decided O.A.Nos.378 to 381 of 2016 by Common Judgment dated 20.02.2017 and held-

3. These applicants like the applicants in above referred three O.As. are Milk Collection and Extension Supervisors in the Dairy Development Department. The sum and substance of case of the applicants therein was that the respondents considered the last ACP granted to the applicants as third one cancelled it effectively and made the orders of recovery. This Tribunal by its order dated 26.2.2015, after discussing in-extenso the facts, instruments and other circumstances held inter alia that the first benefit was really not a benefit but it was higher pay scale and so holding the very fundament of the case of the respondents was knocked down and the O.As were allowed.

4. The State carried the above referred order of this Tribunal to the Hon'ble High Court by way of W.P.No.6329/2015 (State of Maharashtra V/s Subhash Eknath Kawalkar). The Division Bench of the Hon'ble Bombay High Court at Nagpur Bench by an order dated 23.11.2015 upheld the order of this Tribunal referred to above and dismissed the said writ petition. The Hon'ble High Court observed that the case of the State that they granted the first time bound promotion to the applicants in 1988 by the resolution of 1.1.1986,

was incorrect because thereby only the pay scale had been revised. The Tribunal's finding was held to be correct that the scheme was really introduced in the year 1995 for the first time and, therefore, the State could not have granted first time bound promotion in the year 1988.

5. The mainstay of the case of the present applicants in these O.As is that they are squarely covered by the above referred judgment of this Tribunal affirmed by the Hon'ble High Court. The State in the impugned communication of 27.4.2016 has expressed the view that the benefit would go only to the applicants in those O.As. and subject to their right to challenge the order of the Hon'ble High Court before the Hon'ble Supreme Court, the Government had approved giving effect to the orders of the Hon'ble High Court which the order of this Tribunal had merged into.

6. The above discussion must have made it quite clear that the present applicants are exactly similarly placed as the applicants of three O.As. above referred to. The orders thereon were confirmed in the writ petition and, therefore, on parity of reasoning and principle of similarly placed persons, these O.As. also will have to be allowed in the line of those three O.As. Having said that, however, I am at complete loss to understand as to why the State should insist on each similarly placed employee to move the Judicial Forum for redressal in the matters which are concluded. There are inevitably certain principles that emanate from the judicial determination and more particularly this would be so in case of the Constitutional Courts like the Hon'ble High Court. When those principles have been settled and are capable of being implemented, in my opinion, without driving each and every similarly placed employee to litigation, it would always be desirable, proper and appropriate to apply those principles to the others who are so similarly placed as they are even if they were not parties thereto. This to my mind after all has to be the norm of State behaviour in a law and rule governed system of

public administration. I would commend to the State to shun the insistence on every employee being made to move the Tribunal or Judicial Forum for redressal with regard to those aspects of the matter which are concluded by orders of this Tribunal and more particularly by the orders of the Hon'ble High Court and the Hon'ble Supreme Court.

These rulings squarely apply to the facts of both these O.As.. Hence, the impugned orders in both the O.As. are quashed and set aside. The respondents shall not treat the revision in pay scale of the applicants as grant of first benefit, and extend all admissible benefits to the applicants accordingly. Amount of accrued benefits shall be paid to the applicants within three months from today. The O.As. are allowed in these terms with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 20/03/2024
rsm.

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 20/03/2024.
and pronounced on
Uploaded on : 20/03/2024.