

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.1041, 1042, 1043, 1045, 1046 & 225 OF 2017

DISTRICT : PUNE

ORIGINAL APPLICATION NO.1041 OF 2017

Shri L. S. Kadam)
Age : 59, Occu.: Retired Police Sub-Inspector,)
Residential address as 104/55, Shivajinagar)
Police Line, Shivajinagar, Pune – 411005.) **...Applicant**

Versus

1. The Addl. Chief Secretary.)
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. The Director General of Police.)
M.S, Old Vidhan Bhavan, Colaba,)
Mumbai.)
3. The Commissioner of Police.)
Pune City, Pune 411 001.)
4. The Accountant General (I) Maharashtra)
101, Maharshi Karve Road, Mumbai.) **...Respondents**

WITH

ORIGINAL APPLICATION NO.1042 OF 2017

Shri Vitthal T. Tathawade,)
Age : 58, Occu.: Retired as P.S.I.)
R/at Flat No.3/31, Near Samarth Police)
Station, Samarth Peth Police Vasahat,)
Pune - 411 011.) **...Applicant**

Versus

1. The Addl. Chief Secretary.)
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. The Director General of Police.)
M.S, Old Vidhan Bhavan, Colaba,)
Mumbai.)
3. The Commissioner of Police.)
Pune City, Pune – 411 001.)
4. The Accountant General (I))
Maharashtra, 101, Maharshi Karve)
Road, Mumbai – 400 021.)...Respondents

WITH**ORIGIINAL APPLICATION NO.1043 OF 2017**

Shri Shrikant A.Joshi)
Age : 58, Occu.: Retired as PSI,)
R/at 60/2, Kamal Residency, A4, Flat No.1,)
Sukhsagar Nagar II, Near Khandoba Mandir,)
Kondwa, Pune – 411 048.)...Applicant

Versus

1. The Addl. Chief Secretary & 3 Ors.)...Respondents

WITH**ORIGIINAL APPLICATION NO.1045 OF 2017**

Shri Ashok N. Shinde)
Age : 59, Occu.: Retired as P.S.I,)
R/at Sartapwadi, Khatate Vasti, Silver Nest)
Park, Plot No.27 & 28, Tal. Haveli, Pune 412110)...Applicant

Versus

1. The Addl. Chief Secretary & 3 Ors.)...Respondents

WITH

ORIGIINAL APPLICATION NO.1046 OF 2017

Shri Vijay B. Surve,)
 Age : 58, Occu.: Retired as P.S.I,)
 R/at 301, Matoshri, Ganesh Nagar, Pimple)
 Nilakh, Aundh Camp, Pune 411 027.)...**Applicant**

Versus

1. The Addl. Chief Secretary & 3 Ors.)...**Respondents**

WITH

ORIGIINAL APPLICATION NO.225 OF 2017

1) Shri Bharat K. Deshmukh)
 Age : 58, Occu.: Retired as P.S.I,)
 R/at Flat No.403, P. Bldg, Solapur Road,)
 Mantri Market, Hadapsar, Pune 411028.)

2) Shri Manohar Bala Wangade,)
 Age : 58, Occu.: Retired as P.S.I,)
 R/at Flat No.102, Gangapreet Hsg. Soc.)
 ITI Road.Gaikwad Nagar, Pune – 411 007.)...**Applicants**

Versus

1. The Addl. Chief Secretary & 3 Ors.)...**Respondents**

Mr. V.V. Joshi, Advocate for Applicants

**Mrs. K.S. Gaikwad with Mrs. A.B. Kololgi, Presenting Officers for Respondents
 (O.A.No.1041/2017 & 1042/2017)**

Ms Archana B. K., Presenting Officer for Respondents (O.A.No.1043/2017)

Shri A. J. Chougule, Presenting Officer for Respondents (O.A.No.1045/2017)

Ms N.G. Gohad, Presenting Officer for Respondents (O.A.No.1046/2017)

Ms S. T. Suryawanshi, Presenting Officer for Respondents (O.A.No.255/2017)

CORAM : SHRI A.P. KURHEKAR, MEMBER-

DATE : 07.06.2019

JUDGMENT

1. The common issue posed for consideration in all these Original Applications is whether the Applicants who were temporarily promoted to the post of PSI and retired from the same post are entitled to the pensionary benefits for the post of PSI they hold at the time of retirement. Since common issue is involved, all these Original Applications are decided by this common judgment.

Shortly stated facts giving rise to these applications are as follows:

2. The Applicants in all these Original Applications were initially appointed on the post of Police Constable and gradually during the course of service were promoted to the posts of Police Naik, Havaldar, A.S.I. and lastly promoted to the post of P.S.I. on temporary basis from time to time. They stand retired from service on attaining the age of superannuation in 2016 and 2017. At the time of retirement, they were in Pay-Scale of 9300-34800 plus Grade Pay of Rs.4300/- which is applicable to the post of P.S.I. They were promoted temporarily to the post of P.S.I. and stood retired from the post of P.S.I. but pension was granted for the post of A.S.I. Being aggrieved for denial of pensionary benefits to the post of P.S.I. which they hold at the time of retirement, they have filed these Original Applications invoking jurisdiction of this Tribunal u/s 19 of the Administrative Tribunal Act.

3. The chart showing that date of appointment, retirement and orders/period of promotion is as follows:-

O. A. No.	Name	Date of Joining	Date of Promotion	Date of Retirement
1041/2017	L. B. Kadam	02.09.1978	1) 29.04.2016 2) 30.06.2016 3) 31.08.2016	31.10.2016
1042/2017	Vithal T. Tathawade	03.09.1978	1) 29.04.2016 2) 30.06.2016 3) 31.08.2016 4) 28.10.2016	31.05.2017

			5) 31.12.2016 6) 03.03.2017 7) 04.05.2017	
1043/2017	Shrikant A. Joshi	03.09.1978	1) 29.04.2016 2) 30.06.2016 3) 31.08.2016 4) 28.10.2016	31.12.2016
1045/2017	Ashok N. Shinde	02.09.1978	1) 29.04.2016 2) 30.06.2016 3) 31.08.2016	31.10.2016
1046/2017	Vijay B. Surve	29.05.1979	1) 30.06.2016 2) 31.08.2016 3) 28.10.2016 4) 31.12.2016 5) 03.03.2017 6) 04.05.2017	31.05.2017
225/2017	Bharat K. Deshmukh	13.09.1977	29.04.2016	31.05.2016
225/2017	Manohar B. Wangade	02.09.1978	29.04.2016	31.05.2016

4. After retirement, the Applicants were granted pension for the post of A.S.I. in Pay Scale of Rs.5200-20,200/- + G.P. of Rs.2,800/- instead of granting pension for the post of P.S.I. in the Pay Scale of Rs.9,300-34,800/- + G.P. of Rs.4,300/-. The Applicants contend that they were promoted (though temporarily) from time to time and work of P.S.I. has been extracted from them till the date of retirement but pension has been granted for the post of A.S.I. They contend that the pension was required to be granted on the basis of last drawn pay of the post of P.S.I. with all other consequential benefits.

5. In all these O.As, the common defence raised by the Respondents is that the Applicants were promoted purely on temporary basis as per the requirement of the Department under Rule 90(3) of Police Manual, and therefore, such promotion does not confer right to receive pension on the basis of promotional pay. The Applicants were serving in the cadre of ASI, but they were temporarily promoted to the rank of PSI, and therefore, the pension needs to be fixed on the basis of their pay in the cadre of ASI. The Respondents further contend that, in

the promotion order itself, it was made clear that they will not be entitled to retiral benefits on account of the temporary promotion. This is the only defence raised by the Respondents in all these O.As.

6. Heard Shri V.V. Joshi, learned Advocate for the Applicants and Mrs. K.S. Gaikwad, learned Presenting Officer for Respondents in O.A.No.1041/2017 & 1042/2017, Ms. Archana B. K., Presenting Officer for Respondents in O.A.No.1043/2017, Shri A. J. Chougule, Presenting Officer for Respondents in O.A.No.1045/2017, Ms. N.G. Gohad, Presenting Officer for Respondents in O.A.No.1046/2017 and Ms. S. T. Suryawanshi, Presenting Officer for Respondents in O.A.No.255/2017.

7. Shri V. V. Joshi, learned Advocate for the Applicants urged that the issue posed for consideration in these Original Applications have been already dealt with and decided by this Tribunal in O.A. No.301/2017 with other connected Original Applications decided on 04.02.2019 wherein directions were given to grant retirement benefits to the Applicants therein on the basis of last drawn pay of the post from which they stand retired. He, therefore, urged to extend the same benefits to the present Applicants being similarly situated persons.

8. Per contra, learned Presenting Officers reiterated the contentions raised in reply contending that the Applicants were promoted purely on temporary basis as per requirement of the department u/r 90 (3) of Maharashtra Police Manual, 1959 Part-I and such temporary promotion does not confer right to receive the pension on the basis of pay on promotional post. Learned Presenting Officers further fairly concede that till date no Appeal or Writ Petition has been filed challenging the decision rendered by this Tribunal in O.A.No.301/2017, decided on 04.02.2019 referred to above.

9. At the very outset, it needs to be stated that there is no defence that the Applicants were not eligible for the promotional post as per Recruitment Rules. Besides there is no such defence that no substantive post for promotion were available. As such, except defence that the Applicants were temporarily promoted as per requirement of the department, no other defence of want of vacancy on promotional post or non eligibility of promotion of the Applicants is raised. This is very crucial aspect, which needs to be borne in mind while appreciating the issue involved in the present Original Applications. As stated above, this Tribunal has already dealt with these contentions in O.A.No.301/2017, decided on 04.02.2019 and, therefore, all these Original Applications are also required to be allowed on the ground of parity and consistent legal position.

10. As rightly pointed out by the learned Counsel for the Applicant that the Circular issued by Spl. I.G. (Estt.) dated 21.10.2010 as well as Circular dated 04.11.2016 issued by the same authority is in consistent to the defence now raised by the Respondents. Here, material to note that by these Circulars, the Special Inspector General of Police directed the Department to consider last drawn pay of retiring PSI to whom temporary promotion on the post of PSI has been granted. Here, it would be useful to reproduce the text of Circular which is as follows :

“उपरोक्त संदर्भाधीन विषयास अनुसरुन कळविण्यात येते की, या कार्यालयाच्या क्र. पोमसं/५/१०/अर्हता-से.नि. वे./४७/२०१०, दि.२१/१०/२०१० चे परिपत्रकान्वये तात्पुरती अभावित पदोन्नती देण्यात आलेले पोलीस उप निरीक्षक हे त्या पदावरून सेवानिवृत्त झाल्यास त्यांचे सेवानिवृत्तवेतन पोलीस हवालदार / सहायक पोलीस उप निरीक्षक या मूळ पदावरच निश्चित केले जाते. त्यामुळे त्या कर्मचा-यांचे निवृत्तीवेतनाद्वारे झाल्यास त्यांना पोलीस उपनिरीक्षकाचे शेवटच्या महिन्याच्या मूळ वेतनानुसार निवृत्तीवेतन देय ठरते.

तसेच शासन निर्णय, विता विभाग क्र सेनिवे १०९/ प्र.क्र.३३/ सेवा-४, दि.३०/१०/२००९ नुसार महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील नियम ११० (२) (ए) नुसार पुर्ण निवृत्तीवेतनासाठी दि. २७/०२/२००९ पासून (हकीम समितीच्या शिफारशी स्विकारल्या दिनांकापासून) ३३ वर्षांच्या किमान अर्हताकारी सेवेची आवश्यकता नसून शासकीय कर्मचा-याने २० वर्षांची किमान अर्हताकारी सेवा पुर्ण केल्यानंतर सेवानिवृत्तीच्या शेवटच्या १० महिन्यात अर्जित केलेल्या सरासरी मूळ वेतनाच्या ५० टक्के यापैकी जी रक्कम त्याला लाभदायक ठरेल, ती रक्कम निवृत्तीवेतन म्हणून अनुज्ञेय होईल.

वर नमूद शासन निर्णय व या कार्यालयाच्या दि. २१/१०/२०१० च्या परिपत्रकानुसार सेवानिवृत्त पोलीस उप निरीक्षक धोंडीराम शकर बनगर यांना पोलीस उप निरीक्षक पदावर देण्यात आलेली तात्पुरती पदोन्नती ही निवृत्ती वेतनासाठी देय ठरते. याबाबतचा अनुपालन अहवाल या कार्यालयास सादर करावा, ही विनंती.’’

11. Thus, it appears that, despite the acknowledgment of right of the Applicants to get pensionary benefits on the basis of last drawn pay in the rank of PSI and direction to that effect by Special Inspector General of Police, the Applicants have been deprived of from getting the pension on last drawn pay of promotional post.

12. In reply filed in O.A.Nos.1041 & 1042/2017, at one place the Respondents raised contention that the promotions granted to the Applicants came to an end at the end of 31.08.2018 and, therefore, subsequent to 31.08.2016 they cannot be treated to have continued on the post of P.S.I. However, the promotion orders produced by the Applicants makes it quite clear that even after 31.08.2016, they were again issued promotional orders (though temporary) and stand retired from the post of P.S.I. In this behalf, the order of promotion in O.A.No.1041/2017 at page No.77 and 1042/2017 at page No.34 are relevant. It is thus apparent that piece meal promotion orders were issued from time to time and the work of P.S.I. has been extracted from the Applicants.

13. Learned Presenting Officer sought to contend that the promotion orders being of temporary nature, it comes to an end on the date of retirement and, therefore, the Applicants are not entitled to the service benefits for the post of P.S.I. This submission deserves to be rejected in view of the decision rendered by this Tribunal in O.A.No.301/2017 referred to above and the legal position which will be discussed a little later. One can understand, if the employee temporarily promoted reverted back to his lower post before his retirement, as in that, he may not get the benefit of promotional pay for retiral dues. But it is understandable and defies the justification to withdraw promotion on last day

of service i.e. on the date of retirement. Such decision is unfair, arbitrary and not sustainable in law.

14. According to Respondents, all these Applicants were promoted purely on temporary basis as per Rule 90(3) of Bombay Police Manual. Rule 90 reads as follows :-

“90. Officiating appointments of Sub-Inspectors of Police:- (1) In order to enable him to make appointments by promotion, Deputy Inspector General will maintain in their offices a list of Head Constables qualified for such appointments on the following principles:-

- (a) The list of qualified Head Constables should be maintained range wise.
- (b) (i) Seniority should be fixed according to the date of passing the qualifying examination.
(ii) Inter se seniority of qualified Head Constables passing the examination at the same time should be fixed according to the date of their substantive promotion to the rank of Head Constables in the lowest grade.
- (c) The lists should be prepared every year and the new comers on the list should be placed below the Head Constables already on the list.

(2) The above principles are also applicable in the case of qualified Armed Head Constables.

(3) In case of emergency, i.e. when Sub-Inspectors in charge of Police Stations are sent out on deputation for quelling disturbances, riots, etc, the Deputy Inspector General may appoint the Senior Head Constables of such Police Stations as Sub-Inspectors subject to the following conditions:-

- (a) The power should be exercised in cases of emergencies only.
- (b) Appointments should be made on the initial pay of the Sub-Inspector's grade.
- (c) The appointments should be made for a maximum period of two months.
- (d) Such appointments should not be made, if the vacancies are for less than one month.
- (e) The I.G.P and the Government should be informed of the appointments, as soon as they are made.”

15. Thus, what transpires from the aforesaid Rule that, such temporary appointment should be for maximum period of two months and it is permissible in case of emergency. Only whereas, in the present case, except Applicants in O.A.225/2017, the Applicants in all others O.As have worked on the promotional post for more than six months. In O.A.No.1042/2017 and O.A.No.1046/2017, the Applicants have worked on the promotional post for the period of one year. The Respondents have issued promotion orders in piece meal and extended the same from time to time. There is nothing to show that these Rules have any statutory force or those have been issued under Article 309 of the Constitution of India. Suffice to say that such Rule cannot override express provisions made in Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "MCS Pension Rules"). Therefore, the denial of pensionary benefits is nothing but arbitrary and infringement of statutory rights of the Applicant.

16. At this juncture it would be apposite to refer certain Rules of MCS Pension Rules. In Pension Rules, Rule 9 Clause 36 defines 'pay' as follows :

- "36. "Pay means the amount drawn monthly by a Government servant as --
- (i)
 - (ii)
 - (iii)
 - (iv)
 - (v) In the 6th Pay Commission, the pay drawn in the prescribed pay band plus applicable grade pay but does not include any other type of pay like special pay, which the Government Servant was receiving immediately before his retirement or on the date of his death."

15. Rule 9 Clause 38 defines 'Pensionable pay' as follows :

- "38. **Pensionable pay** means the average pay earned by a Government servant during the last ten months service [or last month's pay, whichever is more beneficial to the Government Servant]"

16. Rule 9 Clause 39 defines 'Pensionable Service' as follows :

“39. Pensionable Service means service which qualifies the Government servant performing it to receive a pension from the Consolidated Fund.”

17. At this juncture, it would be also apposite to refer G.R. No.PEN1009/CR33/SER-4, dated 30th October, 2009 issued by Finance Department, Government of Maharashtra in view of recommendation of 6th Pay Commission whereby modification has been made in Pension Rules for the purpose of grant of pension and family pension, gratuity, commutation, etc. Here, Clause 5.2 of Resolution is material, which is as follows :

“5.2 Linkage of full pension with 33 years qualifying service as per Rule 110(2) of Maharashtra Civil Services (Pension) Rules, 1982 is dispensed with from 27th February, 2009 (the date from which recommendations of Hakim Committee has been accepted). Once a Government Servant has rendered the minimum qualifying service of twenty years, pension shall be paid at 50% of the last basic pay or 50% of average basic pay received during the last 10 months, whichever is more beneficial to him. Therefore, Rule 110(2) (a) of the Maharashtra Civil Services (Pension) rules, 1982 is deleted from 27th February, 2009. Retiring benefits to the Government servant in such cases are explained in Annexure III. Accordingly, Rule 110(2) (a) of the Maharashtra Civil Services (Pension) Rules, 1982 shall stand modified to this extent.”

18. Subsequently, the Government of Maharashtra has issued Corrigendum dated 9th June, 2016, which is as follows :

“Following changes are made in para 5.1 & 5.2 of the Government Resolution dated 30th October, 2009 referred to above regarding revision of pension / family pension of post 1st January, 2006 pensioners.

For the sentence “of the last basic pay”, the sentence “the basic pay fixed for the post from which an employee has been retired’ shall be substituted.”

19. Thus, the conjoint reading of G.R. dated 13th October, 2009 and Corrigendum dated 9th June, 2016 makes it abundantly clear that, for the purpose of pension, the basic pay fixed for the post from which an employee has been retired is the criteria.

20. Now, coming to the facts of the present case, there is no dispute about the qualifying service of the Applicants for grant of pension. Besides, as stated above, there is no such specific defence that the Applicants were not eligible or fulfilling the criteria for promotion in the rank of PSI, nor there is any defence of non-availability of substantive post. This being the position, in view of G.R. dated 13th June, 2009 and the Corrigendum dated 9th June, 2016, there is no escape from the conclusion that the pension of the Applicants was required to be fixed for the post from which they have been retired. Therefore, the aspect of temporary promotion pale into insignificance and it has absolutely no relevance for the denial of the reliefs claimed by the Applicants. When statutory provisions creates rights in favour of employee to get pension on the basic pay fixed for the post from which the employee has been retired, then it would not lie in the mouth of Respondents to turn around and to fix the pay on the post of ASI which they held prior to promotion. Suffice to say, harmonious construction of the Pension Rules, more particularly in view of Corrigendum dated 09.06.2016 supports and establishes the Applicants' entitlement to get pension fixed on the basis of last drawn pay.

21. Shri V. V. Joshi, learned Advocate for the Applicants in support of his contention placed reliance on the Judgment of Hon'ble Supreme Court in ***AIR 1967 SC 1889 (Roshan Lal Tandon Vs. Union of India)*** wherein Para No.6 reads as follows :

“6. It is 'true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public 'law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the

Government without the consent of the employee. It is true that Art. 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Art. 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are 'fixed by the law and in the enforcement of these duties society has an interest. In the language of juris- prudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned."

This authority is a clear answer to the defence of temporary promotion raised by the Respondents.

22. Suffice to say, the entitlement of the Applicants when found based on their status, they cannot be denied pensionary benefits under the garb of issuing temporary promotions. It is nothing but ruse to avoid the statutory liability.

23. Shri V. V. Joshi, learned Advocate for the Applicants referred the Judgment in **1985 SCC (L & S) 53 (Salabuddin Mohamad Yunus Vs. State of Andhra Pradesh)** wherein the Hon'ble Supreme Court held that, the employee has fundamental right to receive pension according to the Rules in force at the time of retirement and this right can only be taken away or curtailed in the manner provided in the Constitution. Para No.5 of the said Judgment is as follows :

"5. That, however, is not the end of the matter, because in spite of this position, the Appellant is entitled to succeed in view of the Judgment of this Court in Deokinandan Prasad's case which is a decision of a five judge Bench of this Court. We find that the Division Bench has misunderstood the ratio of that decision.

In that case, this Court held that the payment of pension does not depend upon the discretion of the State but is governed by rules made in that behalf and a Government servant coming within such rules is entitled to claim pension. It was further held that the grant of pension does not depend upon an officer being passed by the authorities to that effect though for the purpose of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect,

but the right to receive pension flows to an officer not because of the said order but by virtue of the rules. It was also held in that case that pension is not a bounty payable at the sweet will and pleasure of the Government but is a right vesting in a Government servant and was property under clause (1) of Article 31 of the Constitution of India and the State had no power to withhold the same by a mere executive order and that similarly this right was also property under sub-

clause (f) of clause (1) of Article 19 of the Constitution of India and was not saved by clause (5) of that Article. It was further held that this right of the Government servant to receive pension could not be curtailed or taken away by the State by an executive order.”

24. Shri V. V. Joshi, learned Advocate for the Applicants referred the Judgment in **1995 SCC (L & S) 1365 (A.P. Srivastava Vs. Union of India & Ors.)** wherein the question of grant of pension to a temporary Government servant who has rendered 28 years of service was in question. Para Nos. 5 and 6 are material, which are as follows :

“5. In view of the rival submissions at the bar, the question for consideration is whether there is any rationale behind the rule disentitling pension to a government servant when an order of compulsory retirement is passed in exercise of power under Rule 56 (J) of the Fundamental Rules? As has been noticed earlier after completion of a particular period of service the employer has a right to compulsorily retire the employee in public interest and similarly the employee has a right to voluntarily retire on giving three months notice. It has been held by this Court time and again that the pension is not a charity or bounty nor it is conditional payment solely dependant on the sweet will of the employer. It is earned for rendering a long service and is often described as deferred portion of payment for past services. It is in fact in the nature of social security plan provided for a superannuated government servant. If a temporary government servant who has rendered 20 years of service, is entitled to pension, if he voluntarily retires, there, is no justification for denying the right to him when he is required to retire by the employer in the public interest. In other words, the condition precedent for being entitled to pension in case of a temporary government servant is rendering of 20 years of service.

6. In view of the legal position that an order of compulsory retirement is not a punishment and pension is a right of the employee for services rendered, we see no justification for denying such right to a temporary government servant merely on the ground that he was required to retire by the employer in exercise of power under Rule 56 (J) of the Fundamental Rules. In our considered opinion a temporary government servant would be entitled to pension after he has

completed more than 20 years of service even if he is required to retire by the employer in exercise of power under Rule 56 (J) of the Fundamental Rules.”

25. Lastly, Shri V.V. Joshi, learned Advocate for the Applicants also referred the Judgment in **1971 (2) SCC 330 (Deokinandan Prasad Vs. State of Bihar & Ors.)** which has been referred by Hon’ble Supreme Court in **Salabuddin’s** case (cited supra). In **Devkinandan’s** case (cited supra) what has been held is as follows :-

“The right of the petitioner to receive pension is property under Art. 31(1) and by a mere executive order the State had no powers to withhold the same. Similarly, the said claim is also property under Art. 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution and as such the writ petition under Article 32 maintainable.”

26. Shri V.V. Joshi, learned Advocate for the Applicants in this behalf also placed reliance on the Judgment of Hon’ble Supreme Court in **K. Anbazhagan & Anr. Vs. The Registrar General (Civil Appeal No.8216-8217 of 2018 arising out of SLP (C) No(S).24328-24329/2015)**. In this matter, while deciding three appeals on the question where ad-hoc / fast tract Court Judges are entitled to count the service rendered on ad-hoc basis for pension purposes, it was held that the Appellants therein are entitled to superannuation pension for gratuity and encashment of Earned Leave. The Ho’ble Supreme Court in this matter referred to its earlier Judgment in **2018 (7) Scale 343 (Mahesh Chandra Verma Vs. The State of Jharkhand & Ors.)** wherein in Para Nos.15, 17 & 18 has been held as follows :-

“15. The appellants were not appointed to the Fast Track courts just at the whim and fancy of any person, but were the next in line on the merit list of a judicial recruitment process. They were either part of the select list, who could not find a place given the cadre strength, or those next in line in the select list. Had there been adequate cadre strength, the recruitment process would have resulted in their appointment. We do believe that these Judges have rendered services over a period of nine years and have performed their role as Judges to the satisfaction, otherwise there would have been no occasion for their

appointment to the regular cadre strength. Not only that, they also went through a second process for such recruitment. We believe that it is a matter of great regret that these appellants who have performed the functions of a Judge to the satisfaction of the competent authorities should be deprived of their pension and retiral benefits for this period of service. The appellants were not pressing before us any case of seniority over any person who may have been recruited subsequently, nor for any other benefit. In fact, we had made it clear to the appellants that we are only examining the issue of giving the benefits of their service in the capacity of Fast Track court Judges to be counted towards their length of service for pensionary and retiral benefits. To deny the same would be unjust and unfair to the appellants. In any case, keeping in mind the spirit of the directions made Under Article 142 of the Constitution of India in Brij Mohan Lal[II] and in Mahesh Chandra Verma, the necessary corollary must also follow, of giving benefit of the period of service in Fast Track courts for their pension and retiral benefits. The methodology of noncreation of adequate regular cadre posts and the consequent establishment of Fast Track courts manned by the appellants cannot be used as a ruse to deny the dues of the appellants.

17. The position in respect of the appellants is really no different on the principle enunciated, as there was need for a regular cadre strength keeping in mind the inflow and pendency of cases. The Fast Track Court Scheme was brought in to deal with the exigency and the appellants were appointed to the Fast Track courts and continued to work for almost a decade. They were part of the initial select list/merit list for recruitment to the regular cadre strength but were not high enough to be recruited in the existing strength. Even at the stage of absorption in the regular cadre strength, they had to go through a defined process in pursuance of the judgment of this Court and have continued to work thereafter.

18. We are, thus, unhesitatingly and unequivocally of the view that all the appellants and Judicial Officers identically situated are entitled to the benefit of the period of service rendered as Fast Track court Judges to be counted for their length of service in determination of their pension and retiral benefits.”

27. Ultimately, in Para No.50, the Hon’ble Supreme Court in ***K. Anbazhagan’s*** case held as follows :

“50. Although in the above case of Mahesh Chandra, Fast Track Court Judges were ultimately absorbed in the regular cadre strength but the fact that period of services as Fast Track Court Judges had been directed to be added for their pensionary benefits, does support the claim of the appellants in the present case.”

28. Now, turning to the facts of the present case, admittedly, the Respondents have extracted the work of PSI from the Applicants. On the cost of repetition, I would again like to mention that, there is no defence of non-eligibility or absence of substantive post. Therefore, harmonious construction of the Pension Rules in the light of aforesaid Judgment of Hon'ble Supreme Court clearly spells that, even if the promotion was under the garb of temporary promotion, the Respondents cannot deny retiral benefits to the Applicants on the basis of last drawn pay from which they stand retired. Needless to mention that the pension is not charity or bounty. It is the right of Government employee. The principle enunciated by Hon'ble Supreme Court in various decisions referred to above, are clearly attracted to the present set of facts. Therefore, it would be highly unjust and iniquitous to deny the pensionary benefits to the Applicants. Such pensionary benefits conferred upon them by statute cannot be taken away under the guise of temporary promotion for no fault on the part of Applicants, particularly after extracting the work of promotional post from them. This conclusion is again fortified in view of the corrigendum issued by State of Maharashtra on 09.06.2016, which specifically provides to consider basic pay fixed for the post from which an employee has been retired for the purposes of grant of pension.

29. Suffice to say, the denial of such right by the Respondents is contrary to the Rules and fundamental rights of the Applicants to receive the pension. Such statutory right cannot be taken away under the garb of executive order of temporary promotion.

30. In view of aforesaid discussion, I have absolutely no hesitation to sum up that the Applicants are entitled to the pension on the basis of last drawn pay, which was of the rank of PSI and the applications deserve to be allowed.

31. Needless to mention that normal rule is that when particular set of employees were given relief by the Tribunal all the other identical situated

persons needs to be treated alike by extending that benefits and not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be adopted without any discrimination. The Applicant in the present O.A.s are on par with the Applicants in O.A. No.301/2017 decided by this Tribunal on 04.02.2019 and, therefore, I see no reason for not extending the same benefit to these Applicants in view of the aforesaid legal scenario.

32. The necessary corollary of the aforesaid discussion leads me to sum-up that the Applicants are entitled to the relief claimed and the applications deserve to be allowed. Hence, the following order.

ORDER

- (A) The Original Application Nos.1041/2017, 1042/2017, 1043/2017, 1045/2017, 1046/2017 and 225/2017 are allowed.
- (B) The Respondents are directed to grant retirement benefits to the Applicants on the basis of last drawn pay of the post from which they stand retired and shall release all other consequential benefits to them within three months from today.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 07.06.2019

Dictation taken by : V. S. Mane