

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NOS.805 TO 807 OF 2016

DISTRICT : PUNE

ORIGINAL APPLICATION NO.805 OF 2016

Mrs. Rekha Vijay Dubey.)
Age : 60 Yrs., Occu.: Retired as Tailoring (Craft))
Instructor and residing at Mangal Society, B-2,)
101-Alandi Road, Behind Saprass Police Chowky,)
Khadaki (E), Pune.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Women & Child Development,)
New Administrative Building,)
Mantralaya, Mumbai.)
2. The Commissioner,)
Women & Child Development, 28,)
Queen Garden, Pune – 1.)
3. The Deputy Commissioner,)
Women & Child Development, 28,)
Queen Garden, Pune – 1.)
4. The Superintendent,)
Pandit Jawaharlal Nehru Udyog Kendra,)
Yerwada, Pune - 6.)
5. The Secretary,)
Finance Department, Mantralaya,)
Mumbai – 32.)

6. The Senior Accounts Officer,)
 Indian Audit and Accounts Department,)
 Office of Accountant General)
 (Accounts & Entitlements) 1,)
 Pratishtha Bhavan, Old CGO Building,)
 101, Maharshi Karve Marg,)
 Mumbai – 20.)
7. The Accounts Officer,)
 Koshagar Bhavan, Pay Verification Unit,)
 Collector Office Compound, Pune.)
8. The District Women & Child)
 Development Officer, Pune.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.806 OF 2016

Mr. Sitaram Mamtaji Pote.)
 Age : 59 Yrs., Occu.: Retired as Crafts Instructor)
 and residing at Survey No.29, Opp. R.K. Puram,)
 Behind Laxmi Auto, Munjaba Wasti, Dindori,)
 Pune - 15.)...**Applicant**

Versus

1. The State of Maharashtra & 7 Ors.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.807 OF 2016

Mr. Shashikant K. Chinchkar.)
 Age : 59 Yrs., Occu.: Retired as Wireman Radio)
 Instructor and residing at Krushnai, Survey No.)
 58, Gokul Nagar, Kondwa Budruk, Pune – 48.)...**Applicant**

Versus

1. The State of Maharashtra & 7 Ors.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicants.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 05.12.2018

JUDGMENT

1. In these Original Applications, the challenge is to the orders dated 25.01.2016 as well as orders dated 30.11.2016 and 01.12.2016 passed during the pendency of this application raising objection to the fixation of pay granted to the Applicants as well as withdrawing the benefits with retrospective effect and direction for recovery of excess money paid to them from retiral benefits.

2. As all these O.As are arising from common facts and the Applicants are similarly situated, these applications are being disposed of by common order from the point of convenience.

Facts of O.A.805 of 2016

3. The Applicant herein was initially appointed as Tailoring (Craft) Instructor on 17.09.1981 in the pay scale of Rs.1400-2600. On 24.08.1997, he was granted benefit of higher pay scale of Rs.5000-8000 under 3 Tier Pay Scale w.e.f.17.09.1993. Later, on 02.06.2011, he was granted benefit of 2nd Time Bound Promotion (TBP) / Assured Career Progression Scheme (ACPS) in the Selection Grade w.e.f.18.09.2005 and was placed under Pay Scale of Rs.9300-

34800 Grade Pay 4800. Accordingly, the monetary benefits were extended to the Applicant. He stands retired on 31.08.2014.

Facts of O.A.806 of 2016

4. The Applicant herein was initially appointed as Craft Instructor on 04.08.1986 at Industrial School, Yerwada, Pune in the Pay Scale of Rs.1400-2600. Later, on 28.09.2007, he was granted benefit of higher pay scale w.e.f.01.08.1998 and was placed under Pay Scale of Rs.5000-8000 under 3 Tier Pay Scale. Later, again on 02.06.2011, he was granted benefit of 2nd TBP / ACPS in Selection Grade w.e.f. August, 2010 and was placed under Pay Scale of Rs.9300-34800 Grade Pay 4800. Accordingly, monetary benefits were extended to the Applicant. He stands retired on 31.10.2014.

Facts of O.A.807 of 2016

5. The Applicant herein was initially appointed as Wireman Radio Instructor on 30.10.1986 at Industrial School, Yerwada, Pune in the Pay Scale of Rs.1400-2600. Later, on 28.09.2007, he was granted benefit of higher pay scale w.e.f.01.11.1998 and was placed under Pay Scale of Rs.5000-8000 under 3 Tier Pay Scale. Later, again on 02.06.2011, he was granted benefit of 2nd TBP / ACPS in Selection Grade w.e.f. November, 2010 and was placed under Pay Scale of Rs.9300-34800 Grade Pay 4800. He stands retired on 31.07.2015.

6. Controversy arose, when the Service Books of all these Applicants were submitted to Respondent No.7 – Accounts Officer and objections were raised by the Pay Verification Unit about fixation of pay and TBP granted to the Applicants. In all these O.As, the common objection is that the pay scale granted to the Applicants i.e. 9300-34800 with Grade Pay 4800 as benefit of 2nd TBP / ACPS is

incorrect and in absence of Government Resolution by Women & Child Development to that effect, they are not entitled to it.

7. In view of objections raised by Pay Verification Unit, the Respondent No.4 by impugned order dated 25.01.2016 informed the Applicants that they were paid excess amount because of grant of incorrect benefit and excess amount will be recovered from their pensionary benefits. This order does not specify exact alleged excess amount paid to the Applicants.

8. In so far as objections of Pay Verification Unit is concerned, in fact, even before retirement of the Applicants, some communications were exchanged within the departments for necessity of Government Resolution by Women & Child Development so as to avoid further complications in grant of pension to the Applicants. The Divisional Deputy Commissioner, Women and Child Welfare Development by his letter dated 21.10.2014 addressed to Respondent No.2 – Commissioner, Women and Child Development opined that the Applicants are entitled to pay scale of Rs.9300-34800 as their educational qualification is on par with the Instructors working in other Departments. However, he requested for issuance of G.R. at the Government level as a policy decision. Thereafter, on the basis of communication dated 31.10.2014, the Respondent No.3 – Deputy Commissioner, Women and Child Development by his letter dated 30.10.2014 addressed to Respondent No.1 – Principal Secretary, Women and Child Welfare Development also endorsed the view expressed in letter dated 21.10.2014 and proposed for issuance of G.R. on the basis of G.R. of Finance Department dated 01.02.1990. In the said letter, he also opined that the educational qualification of the Applicants is on par with the Instructors working in other Departments. However, nothing was materialized.

9. Meantime, the Applicants were retired on attaining the age of superannuation. Initially, provisional pension was granted but that was also

discontinued and gratuity has been withheld. Other benefits like GPF, GIS and Leave Encashment were granted.

10. The Applicants contend that only because of inaction on the part of Women and Child Welfare Development Department in non-issuance of separate G.R, they have been put to greater hardship and injustice is being caused to them by withholding regular pension on the basis of last pay drawn.

11. In fact, the other Departments viz. Social Welfare Cultural Affairs, Sports & Tourism, Higher Technical Education have issued G.Rs. on the basis of G.R. issued by Finance Department on 01.02.1990. However, nothing was done in so far as Women and Child Welfare Development Department is concerned. Initially, Women and Child Welfare Development Department and Social Welfare Department was one Department but in 1993, a policy decision was taken and two separate Departments viz. Women and Child Welfare Development Department and Social Welfare Department were created in view of bifurcation.

12. The Applicants contend that the Respondent No.5 i.e. Secretary, Finance Department had issued G.R. on 10.12.1998 in pursuance of Notification of 5th Pay Commission wherein for the post of Craft Instructor, the pay scale has been mentioned 4000-6000 instead of 4500-7000 and this discrepancy occurred because of failure of Respondent No.1 to implement the provisions of higher pay scale as provided under G.Rs. issued by Finance Department on 01.02.1990 and 05.06.1992. As such, the Applicants were subjected to discrimination because of lethargy and apathy on the part of Social Welfare Department in not taking timely action.

13. On the aforesaid pleadings, the Applicants have filed these O.As to quash and set aside the impugned order dated 25.01.2016 pertaining to recovery sought to be ordered by Respondent No.4 and for grant of regular pension, gratuity and other consequential service benefits.

14. During the pendency of these O.As, the Respondent No.8 – The District Women & Child Development Officer, Pune by his letter dated 30.11.2016 withdrawn the pay scale (9300-34800) granted to the Applicants as 2nd Time Bound Promotion / ACPS with retrospective effect and put them in pay scale of Rs.5200-20200 Grade Pay 2700 w.e.f.04.08.2010. On the same line, the Respondent No.4 – Superintendent, Pandit Jawaharlal Nehru Udyog Kendra, Pune where the Applicants were actually working at the time of retirement also issued communication dated 01.12.2016 revising the pay scale by withdrawing the pay scale granted to them earlier and gave direction for recovery of excess amount paid to them. In view of this subsequent development, the Applicants amended the O.As and challenged the impugned orders dated 30.11.2016 and 01.12.2016. They also prayed for grant of retiral benefits on the basis of last pay drawn under pay scale of Rs.9300-34800 Grade Pay 4800 with all other consequential benefits.

15. The Respondents resisted the applications by raising common ground and have filed common reply, which is taken on record in O.A.No.805/2016.

16. Initially, the Respondents have filed Affidavit of Smt. Smita D. Nivatkar, Deputy Secretary, Women and Child Labour Department (which is at page 80 of Paper Book) wherein the stand taken is that the recommendation of Chatopandhyay Commission (2/3 Tier pay scale) were not made applicable to the Instructors in Industrial Training Institutes and Technical Schools and it was made applicable only to trained Teachers. In Affidavit, it is further stated that the post of Applicants are isolated posts. In absence of G.R. for applicability of 2/3 Tier pay scale, the proposal in respect of these employees for revised pay scale was not presented before the Pay Anomaly Committee within the stipulated time. She further stated in the Affidavit that the process to make revised pay scale applicable to the Applicants has been initiated, but it will take at least six months' time. What is pertinent to note that, in Affidavit Page 80, the eligibility and

entitlement of the Applicant is not challenged, but the technical objection was raised pertaining to non-issuance of G.R. by Social Welfare Department.

17. Thereafter, the Respondents have filed Affidavit-in-reply sworn by the same Official Smt. Smita D. Nivatkar, Deputy Secretary (Page 98 of the Paper Book). In this Affidavit also, the same contentions were reiterated as raised in Affidavit at Page 80. As per her Affidavit, the process for giving benefits of 2/3 Tier pay scale to the Applicants was initiated, which requires the coordination of Finance Department, General Administration Department and Higher & Technical Department. Thus, this Affidavit discloses that the process was initiated to implement 2/3 Tier pay scale to the Applicants, but was not materialized and the file was moving from one table to another table.

18. Later on again, the Respondent No.1 filed Additional Affidavit-in-reply (Page 135 of the P.B.) resisting the applications on the ground that the recommendations of Dr. Chatopadhyay Commission (2/3 Tier pay scale) had been made applicable to the Instructors working in Government, ITI, Government and Non-Government granted Technical Secondary and Higher Secondary Technical Schools. However, Instructors like Applicants are covered by separate scheme / pay scale, and therefore, the Applicants are not entitled to the pay scale of Rs.9300-34800 which was already granted and availed by the Applicants till the date of retirement. It is further contended that Women & Child Development Department has been formed a separate administration department in June, 1993 with objectives to focus on promoting the survival, protection, development, rehabilitation of women, children and beggars. These departments are running homes viz. Children Homes, Observation Homes for children, Shelter Homes for women, Beggars Home, etc. The Applicants are working as Instructors in Pandit Jawaharlal Nehru Udyog Kendra, Pune where juveniles are admitted as inmates as per order of Juvenile Justice Board. It is not

regular School imparting education to the students like other educational institutes. As such, the G.Rs referred by the Applicants in their pleadings are applicable to academic Schools where regular education is imparted and it is not applicable to institutes like Observation Homes, Juvenile Homes run by Women & Child Development Department. In these institutes, only informal education is given to the inmates. The Applicants' posts of Instructors are isolated posts (which have no channel of promotion). The Instructors are already availing the benefit of ACP Scheme, and therefore, they are not entitled to 2/3 Tier pay scale as recommended by Chatopadhyay Commission which is made applicable to Teachers, Instructors in academic Schools.

19. The Respondent No.1 again filed Affidavit-in-reply sworn by Smt. Smita D. Nivatkar, Deputy Secretary, Women & Child Development (Page 208 of P.B.) wherein the plea has raised in reply at Page No.135 are reiterated. For the first time, the Respondent No.1 in this Affidavit-in-reply opposed the claim of the Applicants contending that they are not entitled to 2/3 Tier pay scale, as they are not working in academic Schools. The G.Rs referred and relied upon by the Applicants pertain to Instructors, Teacher working in regular Schools where education, training is being imparted. Whereas institutes like Observation Home, Juvenile Homes, etc. are being run by Women & Child Development Department are not academic Schools. In the School, inmates are admitted with a short duration to focus on their survival, protection, development and rehabilitation.

20. Again, Affidavit-in-reply is filed on behalf of Respondent Nos.1, 2, 3, 4 and 8 sworn by Shri Vijay A. Taware, District Women & Child Development Officer, Pune (Page 215 of P.B. which filed after the amendments to the applications). In this reply, the same contentions has raised by Respondent No.1 in its Affidavit-in-reply are reiterated denying the entitlement of the Applicants to the relief claimed.

21. In response to Affidavit-in-reply filed on behalf of Respondents, the Applicants in O.A.806/2016 has again filed common Rejoinder ascertaining their entitlement to the 2/3 Tier pay scale already granted to them in pursuance of Dr. Chatopadhyay Commission and attributed discrimination to the Respondents. It is further contended that now the stand taken by the Respondents that they are not entitled to 2/3 Tier pay scale as per Dr. Chatopadhyay Commission is in fact inconsistent and contrary to their stand taken in O.A.No.202/2015 decided by this Tribunal on 19.01.2017.

22. In view of the contentions raised by the parties and the submissions advanced at the Bar, the issues involved in the present O.As are two-fold. First, whether the orders of recovery whereby 2/3 Tier pay scale benefits granted to the Applicants way back in 2011 now withdrawn and recoveries sought to be made are sustainable in law and facts. Second issue is whether the Applicants are entitled to pension on the basis of last pay drawn in the pay scale of Rs.9300-34800 in absence of G.R. of Women & Child Development Department.

23. Shri K.R. Jagdale, learned Advocate for the Applicants vehemently urged that the impugned action of recovery of the amount from retiral benefits is not at all sustainable in law, as mandated by the Hon'ble Supreme Court in ***Civil Appeal No.11527/2014 (State of Punjab & Ors. Vs. Rafiq Masih (White Washer), decided on 18th December, 2014.*** The learned Advocate for the Applicants further pointed out that this Judgment known as ***White Washer's*** case has been followed consistently by this Tribunal in so many O.As and the orders of recovery are quashed. On this line of submission, he submitted that there is nothing to deviate from this law laid down by the Hon'ble Apex Court which has been consistently followed and implemented till date.

24. As regard withdrawal of 2/3 Tier pay scale benefit and to re-fix the pay scale of the Applicants in the lower pay scale for the purposes of pension and other retiral dues, he strenuously urged that the Applicants are subjected to discrimination and great hardship. He has pointed out that, on the basis of G.R. dated 01.02.1990 issued by Finance Department, other various Departments have issued G.R. upgrading the pay scale of the Instructors, but Women & Child Development Department failed to issue independent G.R. depriving the Applicants from getting the pension on the basis of pay scale of Rs.9300-34800 which they were drawing at the time of retirement. He further emphasized that it happened because of lethargy and inaction on the part of Women & Child Development Department, and therefore, the Applicants cannot be blamed for creating such appalling situation. On this line of submission, he prayed to the relief sought.

25. Per contra, Shri A.J. Chougule, learned Presenting Officer countered that, at the time of pay fixation, the Applicants gave Undertakings that, in case of excess payment, they would refund the same and, therefore, in view of Judgment of Hon'ble Supreme Court in ***Civil Appeal No.3500 of 2006 (High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh)***, decided on 29th July, 2016, recovery is illegal. As regard pensionary benefits on the basis of last pay drawn in the pay scale of Rs.9300-34800, he sought to contend that, in absence of G.R. by Women & Child Development Department and its applicability to the Applicants, the relief sought in this behalf cannot be granted. He further sought to contend that the Recruitment Rules for the post of Applicants differs from those who are working as Instructors in regular academic School and in absence of G.R. implementing the applicability of 2/3 Tier pay scale to the Applicants, the relief prayed for to grant pensions on the basis of last pay drawn is not permissible.

26. It is a matter of regret that though the Applicants stand retired in 2014 and 2015, their final pension is not yet fixed and gratuity is also withheld because of the objections raised by Pay Verification Unit about the entitlement of the Applicants to pay scale of Rs.9300-34800 with Grade Pay 4800 which has already granted as availed by them as 2nd Time Bound Promotion / ACPS while in service. This action of withdrawal or benefits are now being taken after retirement. It is quite clear from the pleadings and stand taken by the Respondents that it occurred only because of absence of G.R. by Women & Child Development Department though other Departments have issued independent G.R. on the basis of G.R. issued by Finance Department on 01.02.1990. As there was no such G.R. by Women & Child Development Department, the Notification which was issued in pursuance of 5th Pay Scale Commission, the pay scale of Crafts Instructor has been shown 4000-6000 instead of 4500-7000.

27. In-so-far as the aspect of recovery is concerned, it is no more in *res-Integra* that such action of recovery from the retiral dues of the Applicants who are Class-C employees is not permissible in view of the Judgment of Hon'ble Apex Court in **Rafiq Masih's** case. At this juncture, it would be apposite to reproduce Para No.12 of the Judgment which reads as follows.

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law.

- (i) Recovery from employees belong to Class-III and Class-IV services (or Group 'C' and Group 'D' services).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

- (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) *In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

28. In the present case, no mistake or fraud can be attributed to the Applicants to deny them relief as mandated by the Hon'ble Supreme Court. In fact, their pay scale was upgraded by the Department at their own on completion of their 12 years and 24 years of service and they were lastly placed in the pay scale of 9300-34800 Grade Pay 4800. As such, the Judgment of the Hon'ble Apex Court is clearly attracted and holds the field.

29. The Judgment of Hon'ble Supreme Court in ***Rafiq Masih's*** case has been consistently followed by this Tribunal in ***O.A.No.923/2015 decided on 18.02.2016 (Balkrishna B. Nikam Vs. Government of Maharashtra & 3 Ors.)*** which has been confirmed by Hon'ble High Court in ***Writ Petition No.7404/2016 (The State of Maharashtra & Ors. Vs. Shri Balkrishna B. Nikam) decided on 03.10.2016***. As the legal position in respect of recovery from the retiral dues is well settled, it is not necessary to refer the other Judgments passed by this Tribunal on this point.

30. Shri A.J. Chougule, learned P.O, however, sought to distinguish the facts in view of the Judgment of Hon'ble Apex Court in ***Jagdev Singh's*** case (cited supra). Relying on this Judgment, the learned P.O. sought to contend that, in the present case also, the Applicants have given undertaking at the time of fixation of pay that in case of excess payment, they would refund the same. In-so-far as ***Jagdev Singh's*** case is concerned, it was a case of Group 'A' Officer. It is in that context,

the Hon'ble Apex Court held that the recovery would be permissible from retired employee who belongs to Group 'A' on the basis of Undertaking given by him.

31. At the fag end of the final arguments, the learned P.O. has placed on record the undertakings of the Applicants in these O.As. In-so-far as undertaking purported to be given by the Applicant in O.A.No.807/2016 is concerned, it bears the date 08.05.2011. Undertaking purportedly given by the Applicant in O.A.No.806/2016 bears no date whereas the Undertaking purportedly given by the Applicant in O.A.No.807/2016 bears date 15.11.2010. However, there is no endorsement on these purported Undertakings about its acceptance by the concerned authorities. These copies of Undertakings are at Pages 240 to 243 of the Paper Book. *Necessitas non habet legem* is an age-old maxim which means necessity knows no law. The Applicants being Group 'C' employees, they are not in a position to bargain with the Government who is in stranger position. This aspect cannot be forgotten.

32. In the case of **Jagdev Singh** (cited supra) matter relates to the retired Judicial Officer (Group 'A' Officer). In view of Undertaking given by him, the order of recovery was upheld. Whereas in the present case, the Applicants are Group 'C' employees and the copies of Undertakings furnished at the fag end of trial, does not bear any endorsement about its acceptance by the authorities concerned. As such, the facts are quite distinguishable and the Judgment in **Rafiq Masih's** case holds the field.

33. In view of above discussion, in so far as recovery aspect is concerned, there is no escape from the conclusion that the recovery is not permissible and order to that effect needs to be quashed.

34. Now, question comes about the pensionary benefits on the basis of last pay drawn. As discussed above, the stand earlier taken by the Respondent No.1 is that, because of non-issuance of G.R. by Women & Child Development Department implementing 2/3 Tier pay scale to the Applicants, they are not entitled to get pension on the basis of pay under pay scale of Rs.9300-34800 Grade Pay 4800. Whereas, on the basis of G.R. issued by Finance Department dated 01.02.1990, other Departments have issued G.Rs. which are placed on record at Page Nos.39, 52, 60, 65, 72 and 77. At this juncture, it is apposite to note that the communication exchanged between Department *inter-se*. In this behalf, letter written by Divisional Deputy Commissioner dated 21.10.2014 as well as letter written by Deputy Commissioner, Women and Child Development Department dated 30.10.2014 to the Principal Secretary, Women & Child Development Department are relevant. Those letters are at Page Nos.28 and 30 of the P.B. In these letters, the Department expressed its opinion that the Applicants are eligible and entitled to the benefits of pay scale on par with trained Instructors but the difficulty faced was because of non-issuance of separate G.R. by Women & Child Development Department. As such, there was recommendation and proposal to extend the same benefit to the Applicants on the ground of parity as well as eligibility. However, unfortunately, it was not materialized. Even after filing these applications, the Department has sought time to take necessary steps to that effect, but failed to do so. As such, suffice to say that the absence of G.R. by Women & Child Development Department was the only hurdle in the way of Applicants to get pensions on the basis of last pay drawn.

35. At this juncture, it will not be out of place to mention that the stand taken now by the Respondents that the Applicants are not entitled to 2/3 Tier pay scale as per Dr. Chatopadhyay Commission recommendation is in fact contrary to their stand taken in ***O.A.No.202/2015 (Shri Ravindra B. Ahire & Ors. Vs. The State of***

Maharashtra & 2 Ors.) decided by this Tribunal on 19.01.2017, as noted by the then Hon'ble Member (J) in this proceedings in order dated 03.04.2017. In that matter, the Applicants were occupying isolated posts of Instructors in ITI and claimed eligible to get benefit of ACP Scheme. Whereas, the Respondents' defence was that, they were eligible to get benefit of Selection Grade and therefore, they cannot claim benefit of ACP Scheme.

36. It is thus apparent that the Applicants are subjected to discrimination and disparity in the ground of pay scale. In fact, they were already placed in pay scale of Rs.9300-34800 and benefits were extended to them and after retirement only, the objections are being raised. Had Respondent No.1 issued separate G.R. on the basis of G.R. of Finance Department dated 01.02.1990, the Applicants would not have faced this situation. Undoubtedly, it is in the domain of Government and Pay Commission to fix pay for various posts having regard to their nature of work, qualification, service conditions and so on. However, there is no denying that there should be parity amongst the employees who are similarly situated. In the present case, non-issuance of G.R. by Women & Child Development Department seems the only reason and hurdle in the way of Applicants to get the pensionary benefits on the basis of last pay drawn. It must be borne in mind that the employee is mainly dependent on his salary and on pension after retirement. Pension is not charity. It is his right guaranteed under the law. Pension is the only source of livelihood after retirement. It is common knowledge that employee is rest assured about future assuming certainty of pension as well it's quantum. Therefore, it would be iniquitous and unjust to deprive them from similar pension being paid to similarly situated employees, if otherwise entitled to it. Therefore, it would be appropriate to give directions to Respondent No.1 in this behalf and if necessary, to issue G.R. to that effect.

38. For the aforesaid reasons, I have no hesitation to sum-up that the impugned orders pertaining to recovery and withdrawing the benefits of 2/3 Tier

pay scale needs to be quashed. As regard, regular pensionary benefits, the Respondent No.1 needs to consider above aspects and issuance of appropriate G.R. within time limit, so that the Applicants should get their retiral dues at the earliest. With this, I set to pass the following order.

ORDER

- (A) The Original Application Nos.805 to 807 of 2016 are partly allowed.
- (B) The impugned orders dated 25.01.2016 as well as impugned orders dated 30.11.2016 issued by Respondent No.8 and impugned order dated 01.12.2016 issued by Respondent No.4 are quashed and set aside. There shall be no recovery of alleged excess amount paid to the Applicants from their retiral benefits.
- (C) In view of discussion and observation made by this Tribunal in the Judgment, particularly Para No.35 to 37, the Respondent No.1 is directed to consider the aspect and the necessity of issuance of G.R. as a special case, having regard to the discrimination and hardship faced by the Applicants amongst the other factors and to issue necessary orders, as the case may be, within three months from today and it shall be communicated to the Applicants as well as to the Respondent Nos.2, 3, 4 and 8.
- (D) On receipt of necessary orders from Respondent No.1, as the case may, the Respondent Nos.2, 3, 4 and 8 shall take further necessary action within one month and to issue fresh orders, as the case may be regarding regular pensions and gratuity and inform Applicants accordingly.

- (E) In case, the Applicants are aggrieved by the decision to be taken by Respondent No.1 as well as Respondent Nos.2, 3, 4 and 8, they will be at liberty to avail remedy in accordance with law.
- (F) No order as to costs.
- (G) The copy of this Judgment be forwarded to Secretary, Women & Child Development Department, Mantralaya, Mumbai for necessary action in view of the direction given in the Judgment.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 05.12.2018

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2018\12 December, 2018\O.As.805 to 807.2016.w.12.2018.Recovery.doc