

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 586 OF 2016

DISTRICT: JALGAON

Ramchandra Murlidhar Baviskar,
Age: 60 years, Occu: Retired,
R/o Vichkhede Post Underkhede,
Taluka : Parola District : Jalgaon.

.. APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through the Principal Secretary,
Water Resource Department,
Mantralaya, Mumbai.
- 2) The Superintending Engineer,
Small Scale Irrigation (Local Sector), Circle,
Nashik.
- 3) The Executive Engineer,
Small Scale Irrigation (Water Conservation Dn.)
Jalgaon, District : Jalgaon.

.. RESPONDENTS

APPEARANCE : Shri A.D. Sugdare, learned Advocate for
the applicant.

: Smt. Deepali S. Deshpande, learned
Presenting Officer for the Respondents.

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

J U D G M E N T**(Delivered on this 9th day of January, 2017)**

1. The applicant is claiming that the letter dated 2.7.2016 issued by the respondent no. 3 i.e. the Executive Engineer, Small Scale Irrigation (Water Conservation Dn.), Jalgaon be quashed and set aside and further direction be given to the respondent no. 3 to pay gratuity amount of Rs. 365243/- to the applicant immediately.

2. Vide impugned letter dated 2.7.2016, the respondent no. 3 communicated to the applicant as under:-

“

दि. २/७/२०१६

प्रति,

रामचंद्र मुरलीधर बाविस्कर,
स्थापत्य अभियांत्रिकी सहाय्यक,
मु.पो. विचखेडे पो. उंदिरखेडे,
ता. पारोळा जि. जळगांव.

विषय :- सेवानिवृत्ती उपदान अदायगीबाबत.

संदर्भ :- आपला दि. २/०७/२०१६ चा प्राप्त अर्ज.

महोदय,

आपण सेवेत असतांना, आपणास लागू केलेला कालबद्ध पदोन्नतीचा प्रथम लाभाचा दिनांक चुकीचा दिल्याबाबत म. महालेखापाल, मुंबई यांचेकडून

सेवानिवृत्ती प्रकरणात शेरे घेण्यात आलेले असल्यामुळे सदर प्रकरणी सन १९९७ पासून सुधारित वेतन निश्चिती करून आपले निवृत्ती प्रकरण मंजूर झालेले आहे.

सन १९९४ पासून आपणास अतिप्रदान झाल्याने सदर वसूली ब-याच प्रदिर्घ कालावधीपासून असल्याने वसूली तक्ते तयार करण्याचे काम सुरु आहे. वसूली आदेश निश्चित झालेनंतर आपणास आपले सेवानिवृत्ती उपदानाची रक्कम अदा करणेत येईल.

सही/-
कार्यकारी अभियंता
लघु सिंचन (जलसंधारण) विभाग
जळगांव ”

3. The applicant was appointed as Technical Assistant on 25.07.1981 on the work charge establishment and was brought on CRT establishment on 7.11.1985. He was absorbed on the post of Civil Engineering Assistant on 28.06.1994 and worked as such till his retirement on superannuation on 31.05.2015.

4. On 10.05.2016, the Accountant General accorded sanctioned for grant of pension and gratuity. The applicant was receiving pension regularly. However, his gratuity amount of Rs. 365243/- has been withheld by respondent no. 3 on the ground that the excess amount has been paid to the applicant towards grant of time

bound promotion in the year 1994. On 2.7.2016, the respondent no. 3 has decided to recover on the gratuity amount. It is stated that the excess amount cannot be recovered in view of the Apex Court's judgment and hence, this O.A.

5. The respondent nos. 1 to 3 have resisted the claim of the applicant and submitted that the promotion was given to the applicant considering his first date of joining as 25.07.1981. However, as per the Government guidelines, the applicant was eligible for first time bound promotion in the year 1997 i.e. after 12 years he was inducted into Regular Establishment. The said order was therefore, corrected after the remarks from the Accountant General, Mumbai. The first time bound promotion was therefore, given to the applicant on 7.11.1997, at that time the applicant has given undertaking that he will pay excess amount, if paid to him. Similar undertaking was given by the applicant at the time of grant of second time bound promotion. The learned Presenting Officer has placed reliance on judgment in the case of **High Court of**

Punjab & Haryana & Ors. Vs. Jagdev Singh in Civil

Appeal No. 3500 of 2006, decided on 29th July, 2016

and particularly paragraph no. 11 of the said judgment as under:-

“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

6. Heard Shri A.D. Sugdare, learned Advocate for the applicant and Shri Deepali S. Deshpande, learned Presenting Officer for the Respondents. I have also perused the affidavit, affidavit in reply, citations and various documents placed on record by the respective parties.

7. The learned Advocate Shri A.D. Sugdare, for the applicant has placed reliance on the judgment delivered by this Tribunal in O.A. No. 663/2015 in the case of Rabhakar S/o Baburao Chaudhari Vs. The State of Maharashtra and Ors. delivered on 1.12.2016 and also G.R. dated 7.10.2016 issued by the State of Maharashtra, Finance Department. As per the said G.R., the State of Maharashtra has taken decision to consider all services of the employees whether it is temporary or permanent while granting first and second time bound promotion to the employees. In O.A. No. 663/2015, in the similar circumstances direction was issued to the respondents to re-fix the pay of the applicant in view of the G.R. dated 7.10.2016.

8. Perusal of the order of recovery and the objection taken by the respondent authority shows that the earlier time bound promotion granted to the applicant long back was considered illegal, merely because the applicant while granting the said promotion, the applicant's initially service on temporary establishment

was considered and it was the case of the respondent authorities that the temporary services ought not to have been considered while granting time bound promotion. In view of the G.R. dated 7.10.2016, the very base for objection seems to be not legal. If the decision taken by the Government vide G.R. dated 7.10.2016 is considered in proper perspective, the possibility that the impugned order of re-fixation may require modification. It is admitted fact that once amount is paid to the applicant who is Class-III employee that too long back, same cannot be recovered and on this ground, the case of the applicant may fall within the ambit of the State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No. 11527 arising out of SLP (C) No. 11684 of 2012 & ors., since, the applicant is Class III employee and has already retired.

9. In view of the discussions in foregoing paragraphs, I therefore, pass following order:-

ORDER

1. The Original Application is partly allowed.

2. The impugned order dated 2.7.2016 passed by respondent no. 3 is quashed and set aside.
3. The respondents are directed to refix the pay of the applicant in view of the G.R. dated 7.10.2016 and shall pass necessary order accordingly.
4. The respondents are directed to take proper action in this regard within a period of three months from the date of this order.
5. The respondents are also directed to pay gratuity amount to the applicant in case no Departmental Enquiry/Criminal Proceedings are pending against the applicant. Said amount shall be paid to the applicant within three months from the date of this order.

There shall be no order as to costs.

(J.D. KULKARNI)
MEMBER (J)