

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.1058 OF 2017**

**DISTRICT : NASHIK**

1. Shri Mukund K. Amritkar, )
  2. Shri Bapu R. Amritkar, )
  3. Shri Ravindra N. Amritkar, )
  4. Shri Dilip G. Hire, )
  5. Shri Dilip S. Dani, )
  6. Shri Shankar M. Gaikwad, )
  7. Shri Shantaram D. Patil, )
  8. Shri Sahebrao R. Gawali, )
  9. Shri Anil B. Mali, )
  10. Shri Ravising G. Bayas )
- All are retired Craft Instructors from I.T.I. )  
Nashik, Ahmednagar, Dhule )  
C/o Shri B.A. Bandiwadekar, Advocate, )  
MAT, Mumbai )..Applicants

Versus

1. The Joint Director of Vocational Education & )  
Training, Regional Office, Nashik, )  
Ramkrushan Paramhans Marg, P.B. No.456, )  
Nashik-2 )
2. The State of Maharashtra, )  
Through Principal Secretary, )  
Skill Development & Entrepreneurship, )  
Mantralaya, Mumbai 400032 )..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicants

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson  
Smt. Medha Gadgil, Member (A)

RESERVED ON : 2<sup>nd</sup> April, 2024

PRONOUNCED ON: 15<sup>th</sup> April, 2024

PER : Smt. Medha Gadgil, Member (A)

### **J U D G M E N T**

1. The applicants challenge the recovery as also denial of one increment and denial of selection grade 3-Tier monetary benefits on completion of 24 years of continuous service.

2. All the applicants have retired from the post of Craft Instructor, Group-C after putting in 32 years of service. They received monetary benefits of first and second Time Bound Promotion on completion of 12 years and 24 years of service. Their cases came to be considered, except of Shri Shankar M. Gaikwad-Applicant No.6, for promotion to the post of Group Instructor in the meeting of the Departmental Promotion Committee (DPC). Ld. Advocate for the applicants argued that despite being found fit for promotion on their being sufficient number of vacancies for the post they were not promoted till they retired from service. Moreover, the amount received by the applicants in excess was ordered to be recovered for which the Principal of the ITI where the applicants worked issued orders in the year 2013. This was followed by downward pay revision of the applicants which was done ex parte. Ld. Advocate for the applicants states that the subject regarding denial of one increment after grant of 3 Tier pay scale was subject matter of OA No.67/2008 (Shri

Ramesh G. Joshi & Ors. Vs. The State of Maharashtra & Ors.) decided by this Tribunal on 21.7.2008. The said OA was allowed in favour of the applicants with directions to the respondents to fix the pay of the applicants on the date of actual promotion with one additional increment in accordance with the provisions contained in Rule 11(1) of the MCS (Pay) Rules, 1981 and make payment accordingly within three months. He states that the applicants in the present OA are similarly situated.

3. Ld. PO relied on the affidavit in reply dated 21.2.2018 filed by Rajesh S. Mankar, Assistant Director (Tech.), Vocational Education & Training, Nashik. He referred to Rule 13 of MCS (Revised Pay) Rules, 2009 which contains pay fixation for those employees who got time scale promotion before 1.1.2006 but did not get functional promotion. In this rule nothing has been mentioned about pay fixation by giving one increment.

4. In this case we may consider the prayers of the applicants. The first prayer of being entitled for selection grade 3-Tier pay scale and one increment is concerned, it is seen that Rule 13 of MCS (Revised Pay) Rules, 2009 is not applicable in this case. The applicants had received benefit of higher pay scale scheme i.e. 2-Tier and 3-Tier pay scale. Rule 13 of MCS (Revised Pay) Rules contain pay fixation for those employees who got time scale promotion before 1.1.2006 but did not get functional promotion. Nothing has been mentioned about pay fixation by giving one increment. Rule 13 of MCS (Revised Pay) Rules, 2009 reads as under:

*“13. Fixation of pay on promotion on or after the 1st day of January 2006.—*

*(A) In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows:—*

(i) One increment equal to 3% of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promotional post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay band also, the same methodology will be followed. However, if the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum.

(ii) In the case of promotion from PB-4 to higher administrative grade+ (HAG+), after adding one increment in the manner prescribed in the rule 9, the pay in the pay band and existing grade pay will be added and the resultant figure will become the basic pay in higher administrative grade+ (HAG+). This shall not exceed Rs. 80,000, the maximum of the scale.

(B) On promotion from one grade to another, a Government servant has an option under rule 11 of the Maharashtra Civil Services ( Pay ) Rules, 1981 to get his pay fixed in the higher post either from the date of his promotion, or from the date of his next increment, viz. 1st July of the year. The pay will be fixed in the following manner in the revised pay structure:—

(i) In case the Government servant opts to get his pay fixed from his date of next increment, then, on the date of promotion, pay in the pay band shall continue unchanged, but the grade pay of the higher post will be granted. Further re-fixation will be done on the date of his next increment i.e. 1st July. On that day, he will be granted two increments; one annual increment and second on account of promotion. While computing these two increments, basic pay prior to the date of promotion shall be taken into account.

*(ii) In case of Government servant opts to get his pay fixed in the higher grade from the date of his promotion, he shall get his first increment in the higher grade on the next 1st day of July if he was promoted between 2nd day of July and 1st day of January. However, if he was promoted between 2nd day of January and 30th day of June of a particular year, he shall get his increment on 1st day of July of next year.”*

5. As regards 2<sup>nd</sup> prayer of being promoted to the post of Group Instructor from 24.1.2014 in the vacancies of the said post, it is seen that a DPC was held on 24.1.2014. At the time of DPC meeting, 16 posts under Open category and 5 posts under Reserved category i.e. total 21 posts were considered and subsequently 21 persons were selected for promotion to the post of Group Instructor. Out of 25 posts of Group Instructors, only 10 posts were filled by promotion on the basis of seniority. It is to be noted in this regard that applicants have already retired in 2011, 2014, 2015, 2016 and 2017 and hence their promotion cannot now be considered.

6. As regards recovery of pay and allowances received in excess by grant of increments or otherwise, though they got the benefit of 2-Tier/3Tier pay scale their work and responsibility had not been increased but some institutes had wrongly fixed the pay of the applicants under Rule 11(1) of MCS (Pay) Rules, 1981 and hence in order to rectify the said pay fixation excess amount was recovered from them. Prior to issuance of pay fixation the concerned employees have given an undertaking that “if any excess payment made have been found to be made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noted later on would be refunded to the Government”. Considering these facts and circumstances the concerned institutes have recovered the amount from the applicants. It is thus seen that the

applicants did not get the functional promotion to the post of Group Instructor and hence are not entitled to pay fixation under Rule 11(1) of the MCS (Pay) Rules, 1981. Since no promotion was given to them, they were not entitled for increments.

7. The present OA is distinguishable from the ratio in the above judgment in OA No.67/2008 where all the applicants were Instructors and as there had been an increase in their duties and responsibilities they were entitled for one increment. However, the applicants in this OA retired as Craft Instructor and are hence not entitled to the same benefit.

8. Similarly in OA No.1436 of 2009 & other group matters (Ramkrishna S. Narkhede & Ors. Vs. The State of Maharashtra & Ors.) decided by this Tribunal on 9.7.2010 the applicants were also retired Group Instructors and hence distinguishable from the present OA.

9. Hence, in view of the aforesaid facts and circumstances of the case, we do not find any substance in the present OA and we proceed to pass the following order:

### **ORDER**

(A) The Original Application is dismissed.

(B) No order as to costs.

Sd/-

**(Medha Gadgil)**  
**Member (A)**  
**15.4.2024**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**  
**15.4.2024**

Dictation taken by: S.G. Jawalkar.