

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH AT AURANGABAD**

**COMMON JUDGMENT IN ORIGINAL APPLICATION  
NOS. 771 OF 2015 & 408 of 2013**

**1. ORIGINAL APPLICATION NO. 771 OF 2015**

**DISTRICT: AURANGABAD**

Shravan Bajirao Dabhade,  
Age: 65 years, Occu: Retired,  
N-11, C-5/15-5  
Dwarkanagar, Hudco,  
Aurangabad 431 003.

**.. APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra,  
Through: Secretary,  
Home Department (Jail),  
Mantralaya, Mumbai-32.

(Copy to be served on C.P.O.,  
MAT, Aurangabad.

- 2) The Inspector General (Jail)  
Maharashtra State,  
Central Building, 2<sup>nd</sup> Floor,  
Pune-1.

- 3) The Account Officer PR-3  
Office of the Accountant General,  
Maharashtra (Accounts & Entitlement)-II,  
NAGPUR 440 001.

**.. RESPONDENTS**

**WITH**

**2. ORIGINAL APPLICATION NO. 408 OF 2013****DISTRICT: PARBHANI**

Gangadhar Rambhau Dahiwal,  
Age: 62 years, Occu: Retired,  
Additya Nagar (Hanuman Mandir)  
Pathro Road, Parbhani.

**.. APPLICANT****V E R S U S**

- 1) The State of Maharashtra,  
Through: Secretary,  
Health Department,  
Mantralaya, Mumbai-32.

(Copy to be served on C.P.O.,  
MAT, Aurangabad.

- 2) The Joint Director (Health Services),  
Malaria & Filariasis Department,  
Pune- 445203.
- 3) The Account Officer,  
Pay Verification Unit,  
Collector Office Campus,  
Aurangabad.
- 4) The District Malaria Officer,  
Dattanagar, Jintur Road,  
Parbhani.

**.. RESPONDENTS**

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**APPEARANCE** : Shri S.D. Dhongde, learned Advocate for  
the applicants in both these O.As..

: S/Shri M.P. Gude and N.U. Yadav,  
learned Presenting Officers for the  
Respondents in respective O.As..

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**CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)**  
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**C O M M O N J U D G M E N T**

**(Delivered on this 20<sup>th</sup> day of December, 2016)**

Both these Original Applications, are being disposed of, by this common judgment and order, since the issues involved in both these O.As. are one and the same.

2. The applicant in O.A. No. 408/2013 has retired on superannuation on 30.06.2007. He joined service with the respondents on 21.09.1973 and he was promoted as Health Assistant on 4.9.2000. He was granted benefit of First Assured Progress Scheme on 1.10.1994. He completed 24 years of service and was entitled to pay in the pay band of Rs. 9300-34000 with Grade Pay of Rs. 4200/- on 1.10.2006. However, he was not granted said benefit. His proposal was send to the A.G., Nagpur for grant of Second Time Bound Promotion scheme benefit on 27.06.2011. However, vide letter dated 27.11.2011, the

A.G., Nagpur informed that the applicant cannot be granted said benefit, since he has retired in between 1.10.2006 and 31.03.2010. In fact, on 1.4.2010 the Government has issued G.R. and introduced Revised Assured Progress Scheme to the employees who have completed 12 years of service in their post and this scheme is applicable twice. There is no condition that the employees who retired in between 1.10.2006 and 31.03.2010, were not entitled to get benefit.

3. In O.A. No. 771/2015, the applicant joined service with the respondents on 18.11.1977 and was promoted as Clerk in 1980 and Senior Clerk on 24.06.2003. He got retired on superannuation on 25.11.2008. The first Assured Progress Scheme benefit was granted to the applicant on 20.04.2011 and his proposal for second benefit of said scheme was submitted to the Accountant General. The Accountant General vide order dated 29.09.2011 however, rejected his claim on the ground that he got retired in between 1.10.2006 to 31.03.2010 and as such, was not entitled to said benefit.

4. The communications issued by the Accountant General in both the O.As. i.e. communication dated 27.12.2011 (Exhibit-E) in O.A. No. 408/2013 and communication dated 29.09.2011 (Annexure A-3) in O.A. No. 771/2015 have been challenged in the respective O.As. and the applicants have prayed that the said communications be quashed and set aside and the respondents be directed to grant the benefit of G.R. dated 1.4.2010 to the respective applicants with all consequential benefits including arrears of revised pension and other related benefits w.e.f. 1.10.2006.

5. In O.A. No. 408/2013, the affidavit in reply has been filed on behalf of respondent nos. 1, 2 & 4 and separate affidavit in reply is filed by the respondent no. 3. The affidavit in reply on behalf of respondent nos. 1, 2 & 4 has been sworn in by one Dr. Sanjay Venkatesh Rao Deshpande, Assistant Director of Health Services (Malaria), Aurangabad, whereas the affidavit in reply on behalf of respondent no. 3 has been sworn in by one Shri

Anil Trimbakrao Vangujare, Accounts officer in the pay verification unit, Aurangabad.

6. In O.A. No. 771/2015, the affidavit in reply on behalf of respondent no. 1 and 2 has been sworn in by one Shri Vinod Vishnupant Shekdar, Superintendent of Central Jail, Aurangabad, whereas the affidavit in reply of respondent no. 3 has been sworn in by one Kamal Motilal Mirani, Assistant Accounts Officer in the office of the Accountant General (A&E)-II, Maharashtra, Nagpur. The sum and substance of the defence is taken by the respondents is that vide G.R. dated 1.4.2010, 5.7.2010 and 1.7.2011 issued by the Government of Maharashtra, Finance Department, it has been clarified that the Government servants who retired during the period from 1.10.2006 to 31.03.2010 are not illegible for second time bound promotion scheme, since the applicants have retired during this period, they are not entitled to second time bound promotion.

7. The learned Advocate for the applicants Shri S.D. Dhongde, submits that the issue regarding grant of second time promotion given to the employees who retired in between 1.10.2006 to 31.03.2010 has been settled through various pronouncements and now the issue even the employees if retired in between this period are entitled to second time bound promotion.

8. The learned Advocate for the applicants has placed reliance on judgment delivered in **W.P. No. 8985 of 2011** by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in the case of **Smt. Savitribai Narsayya Guddapa Vs. The State of Maharashtra and others along with W.P. Nos. 8908/2011, 135/2012, 8734/2011, 132/2012 and 3934/2013.** A common judgment is pronounced in these W.Ps. on 9<sup>th</sup> May, 2014 and in paragraph no. 22 of the said judgment the Hon'ble High Court has observed as under:-

*“22.....We hold the cut-off date dated 27<sup>th</sup> February, 2009 prescribed in the Government*

*Resolution dated 30<sup>th</sup> October, 2009 for payment of revised pension under the Maharashtra Civil Services (Pension) Rules, 1982, making it applicable to those employees who retired from 27<sup>th</sup> February, 2009 and not to those employees, who retired in between 1<sup>st</sup> January, 2006 to 26<sup>th</sup> February, 2009, as unconstitutional.”*

9. It seems that the said fact of the aforesaid judgment was referred **in W.P. No. 7062 of 2014 along with W.P. Nos. 5766/2015, 4506/2015, 2364/2015, 2365/2015, 2263/2015, 9152/2015, 9153/2015, 9154/2015, 9155/2015 with Civil Appeal No. 337/2015 in W.P. No. 7062/2014.** In the said judgment, the Hon'ble High Court of Judicature at Bombay has observed in paragraph no. 17 as under:-

*“17. In case of **Bhalchandra Pandit (supra)**, the Aurangabad Bench of this Court, in its order dated 22 August, 2014, had struck down the impugned explanation as being unreasonable and violative of Article 14 of the Constitution of India. However, in doing so, the Division Bench, had relied upon the decision in case of **Savitribai N. Guddapa Vs. The State***



**of Maharashtra.** The State, instituted Review Application (St.) No. 9086 of 2015 and pointed out that the issue involved in Writ Petition No. 8985 of 2011 was different and unconnected with the issue involved in Writ Petition No. 7007 of 2011. Accepting this submission, the Division Bench at Aurangabad has recalled its order dated 22 August 2014 and restored the Writ Petition No. 7007 of 2011 for fresh adjudication. Mr. Thadani, candidly submitted that the issue involved in Writ Petition No. 8985 of 2011 is distinct and unconnected with the issue involved either in Writ Petition No. 7007 of 2011 or for that matter, the issue involved in the present batch of petitions. Thus, the recall of order dated 22 August 2015 in Writ Petition No. 7007 of 2011 upon such ground, in no manner advances the case of the State Government. The recall order upon such a ground does not imply that the Division Bench has reviewed its earlier decision on merits. In fact the Writ Petition No. 7007 of 2011 is pending adjudication in terms of recall order dated 29 January, 2016. Therefore, the submission of Mr. Thadani, learned AGP, on the basis of the position in Writ Petition No. 7007 of 2011, cannot be accepted for the aforesaid reasons. ”

10. From the various pronouncements, on which the learned counsel for the applicant has placed reliance, it is clear that the Hon'ble High Court has held that the denial of second time bound promotion to those employees, who retired in between 1.10.2006 to 31.03.2010, is not illegal and on the contrary, it is unconstitutional and therefore, rejection of second claim only on that ground is illegal.

11. The learned Advocate for the applicants has placed reliance on the order passed by this Tribunal in various O.As. i.e. in O.A. No. 810/2012 and others on 26.08.2016, wherein also all the group matters were disposed of in view of the various judgments delivered by the Hon'ble High Court with the benefit of Second Assured Career Progress Scheme provided in G.R. dated 01.04.2010 shall be made applicable in the cases of retired employees in between 1.10.2006 to 31.03.2010.

12. The learned Presenting Officer however, invited my attention to order passed by the Hon'ble Apex Court in

Special Leave to Appeal CC No. (s). 6186-6191/2015 on 24.04.2015. From the copy of the said order, it seems that this Special Leave to Appeal arising out of impugned final judgment and order dated 9.5.2014 in W.P. Nos. 8985/2011, 8909/11, 135/2012, 8734/2011, 132/2012 and 3934/2013 and order dated 16.01.2015 in RA St. No. 29199/14, 29201/14, 29206/14, 29219/14, 29210/14 and 29215/14, passed by the High Court of Bombay at Aurangabad. The aforesaid order passed in Special Leave to Appeal i.e. in the case of State of Maharashtra and Ors. Vs. Savitri Narsayya Guddapa Etc. Etc. on 24.04.2015 clearly shows that the Hon'ble Apex Court has been pleased to stay the operation to impugned judgment passed by the Hon'ble High court. It seems that this fact was not brought to the notice of this Tribunal when this Tribunal decided the group matters vide order dated 26.8.2016.

13. The learned Advocate for the applicants Shri S.D. Dhongde, invited my attention to the observation made in the judgment and order passed in W.P. No.

706/2014 along with other Writ Petitions in the case of STATE OF MAHARASHTRA AND OTHERS VS. DATATRAYA D. MEHTA AND OTHERS on 26.6.2016. He submitted that this group matters has been decided by the Hon'ble High Court of Judicature at Bombay (Civil Appellate Jurisdiction) and the judgment delivered in W.P. No. 8985 of 2011 has been discussed in paragraph Nos. 17 & 18 of the said judgment and in spite such discussion the Hon'ble High Court upheld the various judgments on the point and also held that there was neither any reason nor any occasion for issuance of the impugned clarification, which has the effect of excluding employees, who are otherwise on par with the included on the employees, in the matter of receipt of benefits under the MACP Scheme. I have perused paragraph No. 17 of the said judgment on which the learned Advocate for the applicant has placed reliance. It is true that the Hon'ble High Court has referred to the decision in the case of **SAVITRIBAI N. GUDDAPA VS. THE STATE OF MAHARASHTRA** and the Review Application (St.) No. 9086/2015 and observed that the issue involved in Writ

Petition No. 8985 of 2011 was different and unconnected with the issue involved in Writ Petition No. 7007 of 2011.

14. Respondent No. 1 has filed short affidavit on 21<sup>st</sup> October, 2016. In paragraph No. 4 of the said short affidavit it is stated as under: -

***“4. I say and submit that, the Hon’ble High Court in Writ Petition No. 8985/2011 allowed the petition by quashing and setting aside the government resolution pertains to granting of sixth pay commission after completion service period of 20 years, the said orders passed in favour of the employee. Their after (thereafter) the state government filed Special Leave Petition No. 13140-13151/2015 in the Supreme Court, in the said petition the Hon’ble Supreme Court on 09.05.2014 granted stay to the order passed by the High Court and now the said petition is pending in apex court. Hereto annex and***

***In view of this factual position, the applicant is not entitled for revised pay scale as prayed in Clause (C) in the***

***Original Application and the applicant's case is not fit otherwise for revised pay scale as claimed by applicant as per the Government Resolution dated 01/04/2010."***

15. The learned Advocate for the applicants submits that this affidavit also makes it clear that the Writ Petition No. 8985/2011 was regarding grant of 6<sup>th</sup> Pay Commission after completion of service period of 20 years. He, therefore, submits that the issue involved in this case is different.

16. The learned Advocate for the applicant has placed on record a copy of the Government Corrigendum dated 9.12.2016 issued by the Government of Maharashtra, Finance Department, Mumbai. It is taken on record and marked as Exhibit-'X', wherefrom it seems that the Government has issued Corrigendum to the G.R. dated 1.7.2011 and has given explanation as under:-

***“शुध्दीपत्रक***

*संदर्भाधीन क्र.३ येथील दिनांक १ जुलै २०११ च्या शासन निर्णयासोबतच्या*

***“परिशिष्ट-अ”*** मधील मुद्दा क्र. १ समोरील खालील स्पष्टीकरण रद्द करण्यात येत आहे.

अ.क्र.	मुद्दा	स्पष्टीकरण
9	सुधारित सेवांतर्गत आश्वासित प्रगती योजनेअंतर्गत दि. 09.90.2006 ते दि. ३१.०६.२०१० या कालावधीत सेवानिवृत्त झालेल्या कर्मचा-यांना या योजनेअंतर्गत दुसरा लाभ अनुज्ञेय आहे किंवा कसे ?	सेवेत कार्यरत असताना पदोन्नती न मिळाल्यामुळे निर्माण झालेली कुठितता घालविण्याचा या योजनेचा उद्देश आहे. त्यामुळे जरी पूर्वलक्षी प्रभावाने योजना लागू केली असली तरी आदेशाच्या दिनांकाला जे सेवेत कार्यरत आहेत त्यांनाच या योजनेचे लाभ अनुज्ञेय करण्याचा निर्णय घेतलेला आहे. म्हणून दिनांक ०१.१०.२००६ ते दिनांक ३१.०३.२०१० या कालावधीत सेवानिवृत्त झालेल्या कर्मचा-यांना या योजनेअंतर्गत दुसरा लाभ अनुज्ञेय नाही.

वरीलप्रमाणे मुद्दा १ समोरील रद्द केल्याच्या अनुषंगाने जे कर्मचारी/अधिकारी हे दिनांक १.१०.२००६ ते दिनांक ३१.०३.२०१० या दरम्यान शासन सेवेतून सेवानिवृत्त झाले आहेत अथवा ज्यांचे शासन सेवेत कार्यरत असताना सदर कालावधी दरम्यान निधन झाले आहे त्यांच्याकडून सुधारित सेवांतर्गत आश्वासित प्रगती योजनेचा दुसरा लाभ मंजूरीबाबतच्या अटीची पूर्तता झाल्यानंतर त्यांना वेतननिश्चितीचा प्रत्यक्ष लाभ हा फक्त निवृत्तीवेतन विषयक/कुटूंब निवृत्तीवेतन विषयक लाभांकरिताच म्हणजेच निवृत्तीवेतन/कुटूंबनिवृत्ती वेतन, सेवानिवृत्ती उपदान/मृत्यू उपदान तसेच रजा रोखीकरण, या लाभ मंजूरीच्या प्रयोजनार्थ अनुज्ञेय राहिल. संबंधित अधिकारी/कर्मचारी यांना दुसरा लाभ मंजूरीच्या अनुषंगाने थकबाकीची रक्कम अनुज्ञेय राहणार नाही.”

17. The learned Advocate for the applicants submits that the case of the applicants shall be considered in view of the G.R. dated 9.12.2016. The learned Presenting Officer frankly admits that the

applicants can be given relief in view of the G.R. dated 9.12.2016. In view of this, I pass following order:-

**ORDER**

1. O.A. No. 771/2015 & 408/2013 both are partly allowed.
2. The respondents are directed to grant the benefit of the Government Resolution dated 1.4.2010 in view of the G.R. dated 9.12.2016 to the applicants.  
There shall be no order as to costs.

**(J.D. KULKARNI)**  
**MEMBER (J)**