

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD****COMMON ORDER IN ORIGINAL APPLICATION NOS.
615/2016, 775/2016 AND 257/2017**
(Subject – Benefits of G.R.)**1. ORIGINAL APPLICATION NO. 615 OF 2016.****DISTRICT: PARBHANI**

Shri Manohar S/o Wamanrao Adhikar,)
 Age: Major, Occu. : Service (Retired))
 R/o Bajar Sangvi, Tq. Khultabad,)
 Dist. Aurangabad.).. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
 (Through Secretary,)
 Irrigation Department,)
 Mantralaya, Mumbai.)
- 2) **Superintending Engineer,**)
 Jayakwadi Irrigation Project Division,)
 Aurangabad, Tq. & Dist. Aurangabad.)
- 3) **The Executive Engineer,**)
 Majalgaon Canal Division No. 7,)
 Gangakhed, Tal, Gangakhed,)
 Dist. Parbhani.) **.. RESPONDENTS**

W I T H**2. ORIGINAL APPLICATION NO. 775 OF 2016.****DISTRICT: AURANGABAD/BEED**

1. **Shri Dnyanoba S/o Dashrathrao Jagtap,**)
 Age: 52 years, Occu. : Service,)
 R/o. C/o. : Deputy Executive Engineer,)
 Hydroproject Sub-Division, Aurangabad,)
 Tq. & Dist. Aurangabad.)
2. **Shri Bhimsing s/o Ramsing Maher,**)
 Age: 57 years, Occu. : Service,)
 R/o. C/o. : Deputy Executive Engineer,)
 Hydroproject Sub-Division, Aurangabad,)
 Tq. & Dist. Aurangabad.)

3. **Shri Tukaram s/o Shivaji Apte,**)
Age: 55 years, Occu. : Service,)
R/o. C/o. : Deputy Executive Engineer,)
Hydroproject Sub-Division, Anbejogai,)
Tq. Ambejogai, Dist. Beed.)
4. **Shri Balasaheb s/o Yashwantrao Naik,**)
Age: 61 years, Occu. : Pensioner,)
R/o. Pohner, Tq. Parali, Dist. Beed.)
5. **Shri Kaduba s/o Bhagaji Gagawane,**)
Age: 58 years, Occu. : Service,)
R/o. C/o. : Deputy Executive Engineer,)
Hydroproject Sub-Division, Aurangabad,)
Tq. & Dist. Aurangabad.)

.. **APPLICANTS****V E R S U S**

- 1) **The State of Maharashtra,**)
Through its Secretary,)
Water Resources Department,)
Mantralaya, Mumbai.)
- 2) **The Superintending Engineer,**)
Hydroproject (Data Collection & Planning))
Circle, Dindori Road, Hydroproject Circle)
Bhawan, Nasik.)
- 3) **The Executive Engineer,**)
Hydroproject Division, Aurangabad,)
Opp. Hedgewar Hospital,)
Near Gajanan Maharaj Temple, Aurangabad)

.. **RESPONDENTS****W I T H****3. ORIGINAL APPLICATION NO. 257 OF 2017.****DISTRICT: AHMEDNAGAR**

- Shri Jagannath S/o Narayan Ghatge,**)
Age: 59 years, Occu. : Service)
R/o C/o. Mula Irrigation Section -1, Rahuri,)
Tq. Rahuri, Dist. Ahmednagar.)

).. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
 (Through Secretary,)
 Irrigation Department,)
 Mantralaya, Mumbai.))
- 2) **Superintending Engineer,**)
 Command Area Development Authority)
 CADA, Nashik.)
- 3) **The Executive Engineer,**)
 Mula Irrigation Division, Ahmednagar,)
 Sinchan Bhawan, Aurangabad Road,)
 Fakirwada, Ahmednagar.)

.. RESPONDENTS

APPEARANCE : Shri Vishal Bakal, Advocate holding for Shri V.S. Kadam, Advocate for the Applicants in O.A. Nos. 615/2016 & 257/2017

: Shri V.B. Wagh, Advocate for the Applicants in O.A. No. 775/2016.

: Shri I.S. Thorat, Presenting Officers for the Respondents in O.A. Nos. 775/2016 and 257/2017.

: Shri D.R. Patil, Presenting Officer for the respondents Nos. 1 & 2 in O.A. No. 615/2016.

: Shri G.N. Patil, Advocate for respondent No. 3 in O.A. No. 615/2016

CORAM : B.P. PATIL, MEMBER (JUDICIAL).

DATE : 18.04.2018.

C O M M O N - O R D E R

1. The facts and issues involved in the present O.As. and the reliefs claimed therein are of similar nature and identical. Therefore, the same are decided by the common order.

2. The applicants were initially appointed as Daily Wage Labourer and thereafter, they have been brought on Converted Regular Temporary Establishment (C.R.T.E.). The details regarding initial appointment and C.R.T.E. are as follows:-

Sr No	Name of Applicant	Initial appointment	C.R.T.E. Date	Pay Scale given Post & Date
1.	Mahadeo Wamanorao Adhikar in O.A. No. 615 of 2016	21.04.1978	21.04.1983	Cleaner 18.03.2008
2.	Jagannath Narayan Ghadge in O.A. No. 257 of 2017	01.03.1980	01.03.1985	Wireless Operator 2004
3.	Dnyanoba Dashrathrao Jagtap	09.08.1985	01.01.1991	Gauge Karkoon 15.05.2009
4.	Bhimsing Ramsing Maher	01.06.1982	07.05.1988	Gauge Karkoon 14.05.2009
5.	Tukaram Shivaji Apte	01.06.1986	05.07.1991	Gauge Karkoon 14.05.2009
6.	Balasaheb Yashwantrao Naik	01.01.1985	01.02.1990	Gauge Karkoon 14.05.2009
7.	Kabuba Bhagaji Gangawane	01.06.1979	09.06.1987	Gauge Karkoon 14.05.2009

The applicants were working on different posts, but they were given work of Cleaner, Wireless Operator and Gauge Karkoon. It is their contention that they were working on the higher post, but getting pay of lower post. On 29.09.2003, the Government has issued G.R. titled as “कामानुसार हुद्दा व हुद्यानुसार वेतनश्रेणी देण्याबाबत” to grant pay scale according to allotment of work. As per

the said Government Resolution, an employee in C.R.T.E. is entitled to the pay scale of post which he is holding as per the actual work allotted to him subject to satisfying the requirement mentioned therein. It is contention of the applicants that they were working on the higher post, but the respondents were paying salary to them of the original post i.e. lower post. It is their contention that the respondents had not sent proposal to the Government for extending benefits of G.R. dated 29.09.2003 within a reasonable time and they made delay in sending their proposals. But thereafter, sometime in the year 2008 and 2009, the respondents granted benefits of the G.R. dated 29.09.2003 to the applicants by fixing their pay in the higher post in view of the impugned orders, instead of granting benefits of the G.R. w.e.f. 29.09.2003. Not only this, but in O.A. No. 775/2016, the respondents had modified the earlier order granting benefits on the basis of said G.R. dated 29.09.2003 to the applicants w.e.f. 18.03.2008 and directed to recover the amount paid to them earlier.

3. It is contention of the applicants that the similarly placed persons had filed O.A. Nos. 64, 65, 66 & 164 all of 2011, 135/2013 and 8018/2009 before the Division Bench of this Tribunal and the Tribunal has extended the benefits of the G.R. dated 29.09.2003 to those applicants with effect from the date of

said G.R. It is their contention that they are also entitled to get benefit of the scheme “कामानुसार हुदा व हुद्यानुसार वेतनश्रेणी देण्याबाबत” from the date of G.R. dated 29.09.2003, but the respondents had wrongly interpreted G.R. and granted benefits to the present applicants from the year 2009. Therefore, they have approached this Tribunal by filing the present Original Applications and prayed to quash and set aside the orders passed by the respondents for extending the benefits of the G.R. dated 29.09.2003 w.e.f. 2009 and also prayed to direct the respondents to grant service benefits of the G.R. dated 29.09.2003 to the applicant w.e.f. 29.09.2003 and to fix their pay accordingly and pay arrears to them. The applicants in O.A. No. 775/2016 have also prayed to direct the respondents to refund the amount recovered from them.

4. The respondents have filed their affidavit in reply and resisted the contentions of the applicant. It is contention of the respondents that they have no dispute about the fact that the applicants had been initially appointed as a Labourer and they were brought on C.R.T.E. and thereafter, they have been assigned work of the higher post. They have no dispute regarding the decision rendered by this Tribunal in other matters. It is their contention that as per G.R. dated 29.09.2003, the proposal to extend benefits of the G.R. to the applicants had been sent to the Government and in case of applicants in O.A. No. 775/2016, the

Finance Department (U.O.R.) took decision on 07.03.2007 and directed to give the effect of the G.R. from 14.05.2009. It is their contention that accordingly, the impugned orders have been passed and benefits of the G.R. dated 29.09.2003 has been extended to the applicants. It is their contention that the applicants had willingly waived their claim regarding arrears of the pay by giving undertaking and therefore, they are not entitled to claim benefits of the G.R. dated 29.09.2003 from the date of G.R.

5. In other O.As., it is contention of the respondents that the proposal to extend benefits of the scheme notified under G.R. dated 29.9.2003 was moved with the Finance Department and after opinion of the Finance Department, the said proposal was placed before the Cabinet, but the decision of the Cabinet is awaited. The respondents have not disputed the fact that in consultation with the Finance Department, the benefits have been given to the applicants w.e.f. 2009 and there is no illegality in the impugned orders and therefore, they prayed to reject the present Original Applications.

6. I have heard Shri Vishal Bakal, Advocate holding for Shri V.S. Kadam, Advocate for the Applicants in O.A. Nos. 615/2016 & 257/2017, Shri V.B. Wagh, Advocate for the Applicants in O.A. No. 775/2016, Shri I.S. Thorat, Presenting

Officers for the Respondents in O.A. Nos. 775/2016 & 257/2017, Shri D.R. Patil, Presenting Officer for the respondents Nos. 1 & 2 in O.A. No. 615/2016 and Shri G.N. Patil, Advocate for respondent No. 3 in O.A. No. 615/2016. I have perused the documents placed on record by both the parties.

7. Admittedly, the applicants were initially appointed on daily wages and they were brought on C.R.T.E. Thereafter, they were asked to work on the higher post, because of the ban on the recruitment process by the Government from 28.05.1986 to 31.12.1997. Admittedly, the Government has issued G.R. dated 29.09.2003 titled as “कामानुसार हुद्दा व हुद्यानुसार वेतनश्रेणी देण्याबाबत” and thereby decided to give pay scales to those employees who worked on the lower post, discharged work on the higher post as per the work done by them. The said G.R. has come into force w.e.f. 29.09.2003. Admittedly, the applicants were eligible to get benefits of the said G.R. and the respondents had sent their proposal to the Government to extend the benefits of the G.R. to them. Admittedly, the respondents extended the benefits to the applicant in the view of the said G.R. w.e.f. the year 2009. The only dispute is regarding the date since when the applicants are entitled to get benefits of the G.R. dated 29.09.2003.

8. Learned Advocates for the applicants have submitted that the issue regarding the date of enforcement of the G.R. dated

29.09.2003 was also considered by Division Bench of this Tribunal in O.As. 64, 65, 66 and 194 of 2011 in case of **Pratap Rohidas Sonavane Vs. The State of Maharashtra and Ors.** and it has been held that the said G.R. is applicable from the date of issuance of said G.R. i.e. from 29.09.2003 and therefore, applicants therein are entitled to get benefits of G.R. dated 29.09.2003 for getting their salary in the higher cadre w.e.f. 29.09.2003 and accordingly, benefits had been extended to them. They have submitted that the decision rendered by this Tribunal in O.A. No. 818/2019 has been challenged by the respondents before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in W.P. No. 10069 of 2010. The Hon'ble High Court has dismissed the said W.P. on 25.10.2010 and upheld the order passed by this Tribunal. He has submitted that thereafter, the Government i.e. the respondents filed Special Leave Petition (Civil) No. 13623 of 2012 before the Hon'ble Supreme Court and it has been dismissed on 20.04.2012. They have produced on record copies of the said judgments at paper book page nos. 33 to 40 and 53 & 34 in O.A. No. 615/2016. They have submitted that when this issue has again come before the Division Bench of this Tribunal while deciding the O.A. Nos. 64, 65, 66 and 194 of 2011, this Tribunal had directed the respondents to extend the benefits of scheme to any of the employees, whose cases are not processed earlier, their salaries should be fixed as on 29.09.2003 and they

should be allowed arrears from 29.09.2003 and such employees need not be compelled to approach the Tribunal, even if they were not applicant in those cases. Learned Advocates for the applicants have submitted that in spite of specific directions given by this Tribunal, the respondents had not extended the benefits to the applicants w.e.f. 29.09.2003. They have submitted that the decision taken by this Tribunal has been upheld up to the Hon'ble Apex Court and therefore, the same is binding on the respondents. Therefore, they prayed to allow the present Original Applications and to extend the benefits of the G.R. dated 29.09.2003 to the applicants w.e.f. 29.09.2003.

9. Learned Presenting Officers have submitted that as per the directions given by the Finance Department, the concerned department had passed the order extending the benefits to the applicants w.e.f. the year 2008-2009. They have submitted that in some of the cases, the respondents had decided to extend the benefits of the G.R. dated 29.09.2003 to those applicants from the date of G.R. and the said proposal was placed before the Cabinet for approval along with opinion of the Finance Department, but the Government has not taken decision on it. They have submitted that they acted as per the directions and order issued by the Finance Department and therefore, they supported the impugned orders.

10. In the present matters, the real dispute is regarding the date of enforcement of the G.R. dated 29.09.2003. Therefore, it is necessary to consider the provisions of G.R. dated 29.09.2003. The same is reproduced below :-

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कामानुसार हुद्दा व हुद्दानुसार वेतनश्रेणी देण्याबाबत

महाराष्ट्र शासन
सार्वजनिक बांधकाम विभाग,
शासन निर्णय क्र. संकीर्ण-१९९९/९० भाग-४/सेवा-५,
मंत्रालय, मुंबई ४०० ०३२.
दिनांक :- २९ सप्टेंबर, २००३

कलमे :-

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प्रस्तावना :-

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शासन निर्णय :-

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अ) कालेलकर करारातील तरतुदीनुसार पाटबंधारे विभाग, सार्वजनिक बांधकाम विभाग तसेच गामविकास विभागातील रूपांतरित अस्थायी अस्थापनेवर कार्यरत असलेल्या ज्या कर्मचा-यांकडून दि.२८.०५.१९८६ नंतर म्हणजेच नवीन पदे निर्माण करण्यास व रिक्त पदे भरण्यास बंदी घातल्याच्या दिनांकापासून व दि. ३१.१२.१९९७ पुर्वी, त्यांना नेमणूक दिलेल्या मूळ पदाऐवजी इतर पदांचे काम करून घेण्यात आलेले आहे आणि तसे काम करून घेताना त्यांना, त्यांचे जे पद रूपांतरित अस्थायी आस्थापनेवर घेण्यात आले होते व त्याच पदाचे वेतन देण्यात आलेले आहे, अशी सर्व कर्मचा-यांना कामानुसार हुद्दा व हुद्दानुसार वेतन देण्यात यावे.

क) कामानुसार हुद्दा व हुद्दानुसार वेतनश्रेणीस पात्र कर्मचा-यांनी वरिष्ठ पदाचे वेतन न घेता मूळ नेमणुकीच्या पदाव्यतिरिक्त अन्य वरिष्ठ वा तत्सम पदावर काम केले असले पाहिजे. मात्र त्यांना कोणत्याही प्रकारची थकबाकी देता येणार नाही.

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२. कामानुसार हुद्दा व हुद्दानुसार वेतनश्रेणी देण्याचे आदेश या शासन निर्णयाच्या दिनांकापासून लागू करण्यात यावेत म्हणजेच कामानुसार हुद्दा दिल्यानंतर नवीन हुद्दानुसार संबंधीत कर्मचा-यांची, या शासन निर्णयाच्या दिनांकापासून वेतन निश्चिती करण्यात यावी असे करतांना असा कर्मचारी आदेशाच्या दिनांकाला पाचव्या आयोगाच्या वेतनश्रेणीनुसार त्याच्या मूळ नियुक्तीच्या रूपांतरीत अस्थायी आस्थापनेवरील पदावर जे वेतन घेत असेल तो टप्पा किंवा

नंतरचा नजिकचा टप्पा त्याला ज्या वरिष्ठ नवीन पदाची वेतनश्रेणी द्यावयाची आहे त्या वेतनश्रेणीत असेल तर त्या टप्प्यावर त्याचे वेतन (त्याच्या हुद्यानुसार द्यावयाच्या वेतनश्रेणीत) निश्चित करावे, मात्र त्याला कोणत्याही प्रकारची थकबाकी देता येणार नाही.

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11. On perusal of the said G.R., it reveals that the benefits of the G.R. were given to the eligible employees from the date of issuance of the G.R. i.e. from 29.09.2003. The said issue has been decided by the Division Bench of this Tribunal in O.A. No. 818/2009 in case of **Pandhari Shripatrao Warangane & Ors. Vs. The State of Maharashtra and Ors.** on 16.02.2010 and this Tribunal granted benefits of the scheme to the applicants in those matter from the date of G.R. i.e. from 29.09.2003, when it is observed as follows:-

“9. So far as terminal clause is concerned our attention is drawn by learned Counsel for the applicants to a judgment delivered by us in O.A. Nos. 342 and 462 of 2008 wherein we have granted arrears to all the applicants therein in spite of reference to this very condition i.e. no arrears shall be payable. We interpreted that arrears means the difference of pay for the period prior to the date of G.R. This is because all the applicants are working on the higher posts since number of years prior to date of decision and they could have been in a position to claim that once they are granted

designation and pay scale that should be granted from the date since when they were working on the higher posts. In the light of view already taken by us, we will have to be consistent and will have to grant the financial benefits also to the applicants from the date of G.R. i.e. 29.03.2003.

Such a course of action would also be justifiable, if we take into consideration realities of practical life. All 5000 employees may not be processed in the year 2003. Some cases are processed in the year 2008 as in the case of applicants. If the clause "NO arrears shall be payable" is to be interpreted in a way tried to be interpreted by learned PO, employees whose cases are finalized in the year 2003 shall get the increased pay as fixed in the light of GR dtd. 29.09.2003, from the year 2003. Another set of employees whose cases are processed belatedly would start getting benefit belatedly. This would create discrimination in implementation of the Government policy as proclaimed by GR dtd. 29.09.2003. We are, therefore, inclined to follow the same view as recorded by us in earlier decision in O.A. Nos. 342 & 464 of 2008 dated 14.012.2009."

12. The decision given by the Division Bench of this Tribunal has been upheld in W.P. No. 10069 of 2010 by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad on 25.10.2010. The said decision was challenged in the Special Leave Petition (Civil) No. 13623 of 2012 before the

Hon'ble Supreme Court, but it has been dismissed by the Hon'ble Apex Court on 20.04.2012. Therefore, the said decision of this Tribunal has been attained finality and therefore, the said decision is binding on the respondents. In view of the said fact, there is no need to make interpretation of the wording of the G.R. regarding actual date of enforcement of the G.R. Therefore, in my view, in view of the decision rendered by this Tribunal which has been upheld by Hon'ble High Court and the Hon'ble Supreme Court, earlier applicants are entitled to get benefits of the G.R. dated 29.09.2003 w.e.f. 29.09.2003. The respondents had not considered the earlier decisions rendered by this Tribunal, Hon'ble High Court and Hon'ble Supreme Court. They issued impugned orders wrongly interpreting the G.R. dated 29.09.2003 without considering the decisions of this Tribunal in earlier cases. Therefore, the impugned orders issued by the respondents extending the benefits to the applicants w.e.f. the year 2008-2009 are contrary to the provisions of the G.R. dated 29.09.2003 and the said orders require to be quashed and set aside.

13. It is also material to note that the Division Bench of this Tribunal while deciding the O.A. Nos. 64, 64, 66 & 194 of 2011 on 20.06.2011 directed that the respondents should grant the benefit of the scheme any of the employees, whose cases are not processed earlier and directed to extend the benefits to those

employees w.e.f. 29.09.2003, so that the employees need not to approach this Tribunal. In spite of the directions given by this Tribunal, the respondents have passed the impugned orders, which is in contraventions of the directions given by this Tribunal and the G.R. dated 29.09.2003. Therefore, the same requires to be quashed and set aside by allowing the present Original Applications.

14. In view thereof, I pass following order:-

ORDER

1. O.A. Nos. 615/2016, 775/2016 and 257/2017 are allowed.
2. The impugned orders dated 16.04.2009, 14.05.2009 and 16.11.2016 granting benefits of the G.R. dated 29.09.2003 w.e.f. 2008-2009 to the applicants are hereby quashed and set aside.
3. The respondents are directed to extend the benefits of the G.R. dated 29.09.2003 to the applicants and to fix their salary on the higher cadre, in which they have worked since prior to 31.12.1997 as on 29.09.2003 and to pay difference of pay to them from 29.09.2003 onward.

There shall be no order as to costs.

**PLACE : AURANGABAD.
DATE : 18.04.2018.**

**(B.P. PATIL)
MEMBER (J)**