

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 47/2022(S.B.)

Bhagwat s/o Ananda Tupkar,
Aged about 60 years, Occupation Retired,
R/o. Teachers Colony, Dongaon Road,
Mehakar, Ta. Mehakar, Dist. Buldana-301.

Applicant.

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Water Resources Department,
Mantralaya, Mumbai-400032.
2. The Superintending Engineer,
Data Collection,
Planning & Hydrology Circle,
Jal Vidnyan Bhawan, Dinori Road,
Nashik – 422 004.
3. The Executive Engineer,
Hydrology Project Division,
Commissioner Office Premises,
Amravati – 444 602.

Respondents

Shri R.M.Fating, Ld. Counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 12th October, 2023.

JUDGMENT

Heard Shri R.M.Fating, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the Respondents.

2. The applicant was initially appointed as Technical Assistant on Work Charge Basis, as per appointment order dated 20.02.1983. Thereafter, the applicant was absorbed on the post of Civil Engineering Assistant, as per order dated 14.12.1990 w.e.f. 01.01.1989. Thereafter, the respondent no.1 the Government of Maharashtra issued one Circular dated 18.06.1998, directing Head of the Department of applicant to calculate the 12 years service for the purpose of first time bound promotion from the date of initial appointment as Technical Assistant. On the basis of this Circular, the respondents have granted first time bound promotion as per order dated 06.07.1998. Thereafter, the applicant was granted second time bound promotion as per order dated 13.12.2012.

3. The applicant was due for third time bound promotion. At the time of granting third time bound promotion, the respondents have noticed that they have wrongly granted first and second time bound promotion to the applicant. In fact, the applicant was entitled for first time bound promotion on 02.03.2000, second time bound promotion on 02.03.2012 and third time bound promotion on

02.03.2018. Therefore, the respondents have re-fixed the pay of the applicant and issued order of recovery of Rs.11,17,581/- as per order dated 24.06.2021. Therefore, the applicant approached to this Tribunal for the following reliefs-

(i) Hold and declare that the applicant is entitled for getting benefit of First, Second and Third Time Bound Promotion w.e.f. 01.03.1995, 01.03.2007 and 01.01.2016 respectively.

(ii) Quash and set aside the impugned order dated 10.03.2021 (Annexure A-16) issued by respondent no.2, thereby down grading pay and pension and also quash and set aside order of recovery dated 24.06.2021 (Annexure A-19) issued by respondent no.3. Further, quash and set aside the Govt. letter dated 19.01.2021 (Annexure A-17) and 19.05.2014 (Annexure A-18) issued by respondent no.1 on the basis of which the impugned action has been taken by the respondents, in the interest of justice;

(iii) Direct the respondents to issue revise order of Third Time Bound Promotion, correcting effects of benefits of First, Second & Third Time Bound Promotion w.e.f.

01.03.1995, 01.03.2007 & 01.01.2016 respectively and further direct the respondents to release all consequent benefits along with interest thereon, by way of re-fixation;

(iii)(a) Direct the Respondents to revise the benefits of First, Second and Third Time Bound Promotion, by correcting the effect of First time bound promotion on the post of Junior Engineer w.e.f. 01.03.1995, Second time bound promotion on the post of Sub Divisional Engineer w.e.f. 01.03.2007 and Third time bound promotion on the post of Executive Engineer w.e.f. 01.01.2016, in the interest of justice.

(iii) Direct the respondents to refund the amount of Rs. 11,17,581/- forthwith, which has illegally recovered from the amount of pensionary benefits of the applicant, along with interest thereon @ 18% per annum, in the interest of justice.

4. On 25.07.2023, the learned counsel for the applicant made statement not to press relief Clause no.-(i), (iii) and (iii)(a), following order was passed on 25.07.2023-

Ld. Counsel for the applicant submits that he is not pressing Relief Clause Nos. I, III & III (a). He is only pressing Relief Clause Nos. II & III (b). Relief

Clause No.II only to the extent to quash and Set aside order of recovery dated 24.06.2021 and Relief Clause No. III (b).

5. Now the applicant only wants to press, relief for in respect of the recovery and refund of amount along with interest.

6. The O.A. is strongly opposed by the respondents. It is submitted that as per Judgment of the Hon'ble Supreme Court in Civil Appeal No.1985 of 2022 in the case of **the State of Maharashtra and Another Vs. Madhukar Antu Patil and Another decided on 21.03.2022** has held that temporary service on Work Charge Basis cannot be counted for the purpose of time bound promotion. It is submitted by the respondents that the benefit of first and second time bound promotion was wrongly granted to the applicant. Therefore, the respondents have re-fixed the pay and recovered the excess amount which was wrongly paid to the applicant by granting first and second time bound promotion. Hence, the O.A. is without any merit and liable to be dismissed.

7. During the course of arguments the learned counsel for the applicant has filed G.R. dated 18.10.2022. It is marked Exhibit-X for the purpose of identification.

8. The learned counsel for the applicant submits that whatever amount is paid by the respondents by granting first and second time bound promotions cannot be recovered because the applicant was not at fault. The Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014** has held that the recovery after retirement is not permissible.

9. The learned counsel for the applicant has pointed out the Judgment which is relied by the respondents in the case of **the State of Maharashtra and Another Vs. Madhukar Antu Patil and Another**. In Para no.5 the Hon'ble Supreme court has held that the amount which was received by the employee, who was initially appointed on Work Charge Basis had not received those amount by misrepresentation and therefore, that amount cannot be recovered from the employee. The Hon'ble Supreme Court has held in para 5 as under-

5. However, at the same time, as the grant of first TBP considering his initial period of appointment of 1982 was not due to any misrepresentation by the contesting respondent and on the contrary, the same was granted on the approval of the Government and the Finance Department and since the downward revision of the pay scale was after the retirement of the respondent, we are of

the opinion that there shall not be any recovery on re-fixation of the pay scale. However, the respondent shall be entitled to the pension on the basis of the re-fixation of the pay scale on grant of first TBP from the year 1989, i.e., from the date of his absorption as Civil Engineering Assistant.

10. After the Judgment of the Hon'ble Supreme Court in **the State of Maharashtra and Another Vs. Madhukar Antu Patil and Another**, the Government of Maharashtra has issued the G.R. dated 18.10.2022. In the said G.R. the Government of Maharashtra has taken the following decision-

शासन निर्णय :-

राज्य शासकीय कर्मचाऱ्यांना विहित नियमित सेवेनंतर लागू करावयाची कालबद्ध पदोन्नती / सेवांतर्गत आश्वसित प्रगती योजना स्थापत्य अभियांत्रिकी सहाय्यक संवर्गास लागू करताना मा. सर्वोच्च न्यायालयाच्या उपरोक्त न्याय निर्णयानुसार पुढील प्रमाणे कार्यवाही करावी :-

(१) मा. सर्वोच्च न्यायालयाच्या निर्णयाची अंमलबजावणी करण्याच्या दृष्टीने जलसंपदा विभागातील स्थापत्य अभियांत्रिकी सहाय्यक संवर्गातील कर्मचारी या पदावरील समावेशनाच्या दिनांकापासून १२ वर्षांचा कालावधी पूर्ण केल्यावर पहिल्या कालबद्ध पदोन्नती योजनेचा लाभ घेण्यास पात्र राहतील. मा. सर्वोच्च न्यायालयाच्या सदर न्यायनिर्णयाच्या अंमलबजावणीसाठी आणि मा. न्यायाधिकरण, औरंगाबाद खंडपीठ येथे दाखल मूळ अर्ज

क्र.६१७/२०१४ मधील निर्देश लक्षात घेऊन, संदर्भाधीन शासन पत्रे, दि. १८.०३.१९९८, दि. १८.०६.१९९८ व दि. १९.०५.२०१४ याद्वारे अधिक्रमित करण्यात येत आहेत.

(२) मा. सर्वोच्च न्यायालयाच्या सदर न्यायनिर्णयानुसार सुधारित वेतन निश्चिती आणि सेवानिवृत्ती वेतन निश्चिती करावी. अशाप्रकारे सुधारित वेतन व निवृत्ती वेतन निश्चिती केल्यानंतर त्यांचेकडून यापूर्वी अदा केलेल्या रकमेपोटी कोणत्याही प्रकारची अतिप्रदानाची वसुली करण्यात येऊ नये.

(३) स्थापत्य अभियांत्रिकी सहायकांना कालबद्ध पदोन्नती / सेवांतर्गत आश्वासित प्रगती योजनेचा लाभ देताना यापुढे मा. सर्वोच्च न्यायालयाच्या सदर न्याय निर्णयानुसार काटेकोरपणे तपासणी करावी, तसेच अतिप्रदान होणार नाही याची दक्षता घ्यावी. तसेच कालबद्ध पदोन्नती / सेवांतर्गत आश्वासित प्रगती योजनेबाबत वित्त विभागाने वेळोवेळी निर्गमित केलेले शासन निर्णय देखील लागू राहतील.

11. The learned P.O. submits that the excess amount was recovered from the applicant as per the earlier Government Resolution.

12. After the Judgment of the Hon'ble Supreme Court in the case of **the State of Maharashtra and Another Vs. Madhukar Antu Patil and Another**, the Government of Maharashtra has taken

decision that the excess payment (wrongly paid) shall not be recovered from the employee after re-fixation of the pay.

13. The G.R. dated 18.10.2022 is very clear. This decision is taken by the Government of Maharashtra. The Hon'ble Supreme Court in the case of **the State of Maharashtra and Another Vs. Madhukar Antu Patil and Another** in para 5 of the Judgment has held that "re-fixation can be made in case of the Work Charge Employees. They are not entitled to get first time bound promotion by calculating 12 years service from the date of their initial appointments on Work Charge Basis. Therefore, respondent authority can re-fix the pay, but it is specifically held by the Hon'ble Supreme Court that amount which was earlier paid before re-fixation, cannot be recovered. The G.R. is in the line of Judgment of the Hon'ble Supreme Court in the case of **the State of Maharashtra and Another Vs. Madhukar Antu Patil and Another**. The State Government has decided not to recover the amount which was paid inadvertently by counting service of Technical Assistant on Work Charge Basis.

14. The applicant was initially appointed on Work Charge Basis on 20.02.1983. The respondents have granted first time bound promotion after calculating 12 years service from 20.02.1983 and the

second time bound promotion was given in the year 2007 after completion of 12 years of service. But, at the time of granting third time bound promotion, the respondents noticed that in view of Judgment of the Hon'ble Supreme Court in the case of **the State of Maharashtra and Another Vs. Madhukar Antu Patil and Another.** the applicant was not entitled to get first time bound promotion and second time bound promotion granted to him by counting his service from the date of his initial appointment as Technical Assistant on Work Charge Basis. Therefore, the pay fixation of the applicant was revised and the pay of the applicant was re-fixed. After his retirement an amount of Rs.11,17,581/- is recovered from the applicant from his pensionary benefits.

15. In view of the Judgment of the Hon'ble Supreme Court in para 5 in the case of **the State of Maharashtra and Another Vs. Madhukar Antu Patil and Another** and in view of the Government G.R. dated 18.10.2022, the said recovery itself is illegal. The respondents should not have recovered the amount as per the G.R. dated 18.10.2022. Hence, the applicant is entitled for the refund of the amount of Rs.11,17,581/-. The learned counsel for the applicant has pointed out the decision of this Tribunal in which the

respondents were directed to refund the said amount along with interest at the rate of 6%.

17. This Tribunal relying on the Judgment of the Hon'ble Bombay High Court in the case of **Prasad Vinayak Sohoni Vs. Treasury Officer, Thane & Another in Writ Petition 1192/2022 decided on 12.01.2022**, directed to pay the interest at the rate of 6% from the date of recovery till the actual payment. Hence, the following order is passed.

ORDER

1. The O.A. is partly allowed.
2. The Impugned order of recovery dated 24.06.2021 is hereby quashed and set aside.
3. The respondents are directed to refund the amount of Rs.11,17,581/- along with interest at the rate of 6% from the date of recovery till the actual refund is made to the applicant within a period of three months from the date of receipt of this order.
4. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 12/10/2023
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman .
Judgment signed on : 12/10/2023.
Uploaded on : 18/10/2023.