

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.695/2015

DISTRICT – AURANGABAD

1. Late Ashok s/o Limbaji Supekar,

Through Legal Representatives :

1-A. Smt. Lalita w/o Ashok Supekar,
Age : 56 years, Occ : Household,

1-B. Pradeep s/o Ashok Supekar,
Age : 36 years, Occ : Business,

1-C. Rajendra s/o Ashok Supekar,
Age : 33 years, Occ : Business,

Applicant Nos. 1-A to 1-C are R/o.
Plot No.29, Vidhyanikeetan Colony,
Opp. to Totala Hospital,
Jalna Road, Aurangabad,
Tq. & Dist. Aurangabad.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Finance Department,
Mantralaya, Mumbai-400 032.

2. The Accountant General-II (A & E),
Pension Wing, Old Building,
In front of Ravi Bhavan, Nagpur.

3. The Divisional Commissioner,
Revenue Department, Aurangabad,
Tq. & Dist. – Aurangabad.

4. The Collector,
Aurangabad.

...RESPONDENTS

APPEARANCE :Shri S.K.Mathpati, learned Advocate
for the applicant.

:Smt. Sanjivani Ghate-Deshmukh,
learned Presenting Officer (PO) for the
respondents.

CORAM : Hon'ble Shri J.D.Kulkarni, Member (J)

DATE : 27th January, 2017

J U D G M E N T
[Delivered on 27th day of January, 2017]

During the pendency of the O.A. applicant died and his Legal Representatives are brought on record. For the purpose of convenience those are referred to as the "applicant".

2. Deceased Ashok Limbaji Supekar was initially appointed as a Junior Clerk in Tahsil Office, Vaijapur, Dist. Aurangabad on 08-12-1981. On 12-09-2007, the applicant got retired on medical ground and invalid pension was granted to him. The applicant was given benefit of time bound promotion as per G.R. dated 08-06-1995 with effect from 01-10-1994. Order in this

regard was issued by the Collector, Aurangabad. The applicant was also promoted as Senior Clerk. The time bound promotion scheme was renamed as "Service Assured Progress Scheme" by the Government on 20-07-2001.

3. The applicant met with an accident on 01-10-2006 and was required to retire on medical ground on 12-09-2007. The applicant has completed 25 years, 9 months and 4 days' service. On 01-04-2010, respondent no.1 declared revised/modified assured career progress scheme and introduced second phase of time bound promotion scheme. Clause 2(C) of the said G.R. dated 01-04-2010 provides that after completion of 12 years' continuous service after grant of first phase benefit, the applicant is entitled to second phase of revised pay scale. Said Scheme has been made applicable with effect from 01-10-2006.

4. Respondent no.4 i.e. Collector, Aurangabad passed a common order on 03-06-2011 and declared number of employees including the applicant at Sr.No.53 of the list of eligible candidates for second phase of benefit of assured progress scheme.

5. On 22-06-2011, the applicant requested the competent authority to re-fix his pay in view of order passed by the Collector on 03-06-2011. On 01-07-

2011, the Government has taken policy decision that benefit of scheme of clause 2(C) of the G.R. dated 01-04-2010 will not apply to the employees who have retired in between 01-10-2006 to 31-03-2010. In view of this decision though the respondent no.4 has passed order granting benefit of Second Assured Progression Scheme to the applicant as per G.R. dated 01-04-2010, the applicant could not get the said benefit since he got retired on 12-09-2007.

6. According to the applicant, similarly situated employees have filed Writ Petition No.8985/2011 and 8486/2011 before the Hon'ble High Court and the Hon'ble High Court came to the conclusion that the cut-off date 27th February, 2009 prescribed in the G.R. dated 30-10-2009 is unconstitutional. Hon'ble High Court has given direction to the Government to pay difference of pension and revised pension to the employees who are similarly situated, and therefore, the applicant is also entitled to claim such relief.

7. Respondents submitted that the applicant's case could not be considered in view of the G.R. dated 01-07-2011 wherein it has been declared that the Government servants who have retired in between 01-10-2006 to 31-03-2010 are not entitled to benefits of second phase of Assured Progress Scheme. Respondent no.4 admitted in the reply affidavit that

this Tribunal in O.A.No.834/2011 vide order dated 23-12-2003 directed respondent authorities to extend benefit of time bound promotion scheme to the employees who have complied with the provisions of Government Resolution dated 01-04-2010. It is further stated that the said judgment was assailed before the Hon'ble High Court in the Writ Petition No.7062/2014 and the said Petition was rejected vide order dated 24-06-2016.

8. From the facts of the case it is clear that the Collector has passed the order whereby the applicant has been held eligible for the Second Time Bound Promotion pay scale as per G.R. dated 01-04-2010 but the said order could not be implemented because a clarification (G.R.) was issued by the Government of Maharashtra on 01-07-2011. In the said G.R. dated 01-07-2010 it was held that those employees who have retired in between 01-10-2006 to 31-03-2010 were not eligible for being considered for the Second Time Bound Promotion. Admittedly, said embargo has been held unconstitutional by this Tribunal and the same view has been confirmed by Hon'ble the High Court.

9. Learned Advocate for the applicant has placed on record a copy of resolution dated 9th December, 2016 passed by the Government of Maharashtra which is marked as Exhibit-X for the purpose of identification.

From the said G.R. it seems that the embargo has been removed vide G.R. dated 01-07-2011 subject to certain conditions. The decision taken by the Government in this regard by G.R. dated 09-12-2016, is as under:

“वरीलप्रमाणे मुद्दा १ समोरील रद्द केल्याच्या अनुषंगाने जे कर्मचारी/ अधिकारी हे दिनांक ०१.१०.२००६ 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 आश्वसित प्रगती योजनेचा दुसरा लाभ मंजूरीबाबतच्या अटीची पूर्तता झाल्यानंतर त्यांना वेतननिश्चितीचा प्रत्यक्ष लाभ हा फक्त निवृत्तीवेतन विषयक/कुटूंब निवृत्तीवेतन विषयक लाभांकरिताच म्हणजेच निवृत्तीवेतन/कुटुंबनिवृत्ती 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.”

10. From the aforesaid circumstances, it will be clear that the case of the applicant will have to be considered in view of the G.R. dated 01-04-2010 read with G.R. dated 09-12-2016. Hence, the following order:

ORDER

- (i) O.A. is partly allowed.
- (ii) It is hereby declared that the applicant is entitled to the benefit of clause 2(C) of the G.R. dated 01-04-2010 second phase of modified Assured Career Progress Scheme.
- (iii) Respondents are directed to take decision on the applicant's representation in view of the G.Rs. dated 01-04-2010 and 09-12-2016 and shall grant the consequential benefits,

as may be admissible, to the applicant in view of these G.Rs.

- (iv) Decision in this regard be taken within 3 months from the date of this order and communicated to the applicant in writing.
- (v) In the circumstances, there shall be no order as to costs.

(J. D. Kulkarni)
MEMBER (J)

Place : Aurangabad
Date : 27-01-2017.