

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 784 OF 2015  
(Subject –Pension)**

**DISTRICT : BEED**

**Malappa S/o Pirappa Shendule,** )  
Age : 60 years, Occu. : Pensioner, )  
R/o : At present C/o Shri Balaji Sanalage )  
(Annappa), RM 256/3 Balaji Nagar, Near Jai )  
Bhawani Chowk, Waluj MIDC, )  
Taluka and Dist. : Aurangabad. Pin. 431136.)

.... **APPLICANT**

**V E R S U S**

1. **State of Maharashtra,** )  
(Through its Secretary, )  
Irritation Department), )  
Mantralaya, M.S. Mumbai-32. )
2. **The Executive Engineer,** )  
Majalgaon Irrigation Project Division )  
Jaikwadi, Parli (Vaijanath), Dist. Beed. )
3. **The Accountant General-II,** )  
Nagpur. )

... **RESPONDENTS**

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**APPEARANCE** : Shri Avinash Khedkar, Counsel for the  
Applicant.

: Shri A.P. Basarkar, Presenting Officer for  
respondent authorities.

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**CORAM** : Hon'ble Justice Shri V.K. Jadhav, Member (J)

**RESERVED ON** : **25.06.2024**

**PRONOUNCED ON** : **01.07.2024**  
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**ORDER**

1. Heard Shri Avinash Khedkar, learned counsel appearing for the applicant and Shri A.P. Basarkar, learned Presenting Officer appearing for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the sides at the admission stage itself.

3. By filing the present Original Application, the applicant is seeking direction to the respondents to pay the applicant pension amount as per the 6<sup>th</sup> Pay Commission @ Rs. 5,935/- per month along with the difference of pension amount to the tune of Rs. 2,036/- per month w.e.f. 01.01.2006 till date with interest of 18% per annum.

4. Brief facts as stated by the applicant giving rise to the present Original Application are as follows :-

(i) The applicant was appointed as Machine Operator on 12.02.1983 in Majalgaon Irrigation Department, Parali (Vaijanath), Dist. Beed. The applicant came to be retired on attaining the age of superannuation on 31.08.2008. The applicant had put in 23 years of service in the aforesaid department.

(ii) It is the further case of the applicant that after his retirement, the pension was fixed @ 3,899/- as per 5<sup>th</sup> Pay Commission. However, as per “Hakim Commission” and 6<sup>th</sup> Pay Commission, the applicant is entitled for pension @ 5,935/- w.e.f. 01.01.2006. However, the pay fixation of the applicant was made as per 5<sup>th</sup> Pay Commission. The applicant represented his case time to time before the respondent authorities for claiming benefit of 6<sup>th</sup> Pay Commission. Accordingly, the office of respondent No. 2 i.e. the Executive Engineer, Majalgaon Irrigation Department, Parali (Vaijanath), Dist. Beed has forwarded the proposal of the applicant to the Accountant General, Nagpur pursuant to last salary received by the applicant. However, the said proposal was not decided. Hence, the present Original Application.

5. Learned counsel for the applicant submits that as per G.R. dated 30.10.2009, the benefits of minimum qualifying service of 20 years for getting pension and pensionary benefits applicable to the employees, who retired from 27.02.2009 and thereafter are prescribed. It is mentioned in the said G.R. dated 30.10.2009 that in case of the employees, who retired before the date of 27.02.2009, the Rules existing before 27.02.2009 shall be

applicable. The applicant was retired on 31.08.2008. Learned counsel submits that the department has therefore, refused to grant benefit of 6<sup>th</sup> Pay Commission to the applicant.

6. Learned counsel for the applicant submits that in a case of **Savitribai Narsayya Guddapa and Ors. Vs. The State of Maharashtra and Ors.**, reported in **2014(6) MhLj 438**, the question falls for consideration before the Division Bench of the Hon'ble High Court of Bombay Bench at Aurangabad as to whether the Government Resolution dated 30.10.2009, which provides for revised pay-scales under the Maharashtra Civil Services (Revised Pay) Rules, 2009 from 01.01.2006 to all the State Government employees and other employees under the said rules but provides that the revised provisions of pension modified under Maharashtra Civil Services (Pension) Rules, 1982 are applicable only to those employees retired from 27.02.2009 and thereafter, denying the provisions of revised pension to those employees who retired in between 01.01.2006 to 26.02.2009?. The Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad has held that the cut-off date 27.02.2009 prescribed in Government Resolution dated 30.10.2009 for payment of revised pension under the Maharashtra Civil Services (Pension) Rules, 1982, making it applicable to those employees, who

retired from 27.02.2009 and not to those employees, who retired in between 01.01.2006 to 26.02.2009, as unconstitutional and accordingly directed that within three months from the date of receipt / production of copy of the order, the State Government shall pay to the petitioners and other similarly situated employees the difference of the pension and revised pension payable.

7. Learned counsel for the applicant submits that even this Tribunal by judgment and order dated 16.03.2015 in **O.A. No. 436/2012 (Sambhaji S/o Mariba Raut Vs. The State of Maharashtra and Ors.)** has taken a similar view by referring the judgment of the Hon'ble Supreme Court to consider the case of similarly situated employees and allowed the said Original Application.

8. Learned counsel for the applicant submits that the present Original Application deserves to be allowed.

9. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent No. 3 submits that as per the G.R. dated 30.10.2009, the benefit of minimum qualifying service of 20 years for getting pension and pensionary benefits are applicable to the employees, who retired from 27.02.2009 and

thereafter. Learned Presenting Officer submits that the average emoluments of the applicant on 31.08.2008 was Rs. 11,188/-. Further the qualifying service of the applicant as per the proposal work out 23 years and 27 days. Accordingly, the amount of pension works out to Rs. 3,899/- and pension was accordingly fixed Rs. 3,899/-. The case of the applicant was finalized as per the provisions of Para No. 5.4 of the G.R. dated 30.10.2009. It is clearly mentioned in the said para No. 5.4 of the G.R. that in case of employees, who retired before the date 27.02.2009, the rules existing before 27.02.2009 shall be applicable. The applicant came to be retired on 31.08.2008.

10. Learned Presenting Officer further submits that the Government of Maharashtra has challenged the impugned judgment and order passed by the Hon'ble High Court of Bombay, Bench at Aurangabad in W.P. No. 8985/2011 and bunch of W.Ps. by filing Special Leave Petition before the Hon'ble Supreme Court and the same is now pending before the Hon'ble Supreme Court.

11. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 and 2 submits that in terms of G.R. dated 30.10.2009 particularly para No. 5.4, the

pension @ 3899/- is correctly worked out, as the applicant came to be retired on 31.08.2008. The said 6<sup>th</sup> Pay Commission Rule will not be applicable to the case of the applicant. The Accountant General-II, Nagpur has also approved the pension of the applicant. The applicant has completed service only 23 years and therefore, he has not completed the qualified service. If the applicant would have completed service of 33 years, then as per the then existing rules the retirement payment of Rs. 5,594/- shall be made applicable to him. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

12. In view of the ratio laid down by the Hon'ble High Court of Bombay, Bench at Aurangabad in a case of **Savitribai Narsayya Guddapa and Ors. Vs. The State of Maharashtra and Ors.** in W.P. Nos. 8734, 8908 & 8985 of 2011, W.P. Nos. 132 & 135 of 2012 and W.P. No. 3934 of 2013, decided on 09.05.2014, which has attained the finality, the present Original Application deserves to be allowed. Para Nos. 18, 19, 23 & 24 of the aforesaid judgment are reproduced herein below :-

*"18. In these petitions, the question which falls for consideration is, whether the Government Resolution dated 30th October, 2009, which provides for revised pay-scales under the Maharashtra Civil Services (Revised Pay) Rules, 2009 from 1.1.2006 to all the State Government Employees and other employees under the said*

*rules but provides that the revised provisions of pension modified under M.C.S. (Pension) Rules, 1982 are applicable only to those employees retired from 27.2.2009 and thereafter but denies the provisions of revised pension to those employees who retired in between 1.1.2006 to 26.2.2009?*

19. The Government Resolutions dated 22nd June, 2009 mentions the date of effecting revised pension from 1.1.2006. The Hakim Committee has never suggested any cut-off date. However, Government Resolution 30th October, 2009, prescribed cut-off date as 27th February, 2009 for revised pension. The relevant clauses of the Government Resolution 30th October, 2009 read, thus:

*“5.1 in cases where Government servant retiring from 27th February, 2009 (the date from which recommendations of Hakim Committee has been accepted) on superannuation, retiring invalid or compensation pension in accordance with the provisions of Rule 110(2)(b) of the Maharashtra Civil Services (Pension) Rules, 1982, after completing qualifying service of ten years or more but less than twenty years, pension shall be paid at 50% of the last basic pay or 50% of average basic pay received during the last 10 months, whichever is more beneficial to him. Therefore, Rule 110(2) (b) of the Maharashtra Civil Services (Pension) Rules, 1982 is deleted from 27th February, 2009. Retiring benefits to the Government servant in such cases are explained in Annexure II. Accordingly, Rule 110(2) (b) of the Maharashtra Civil Services (Pension) Rules, 1982 shall stand modified to this extent.*

*5.2 Linkage of full pension with 33 years qualifying service as per Rule 110(2) (a) of the Maharashtra Civil Services (Pension) Rules, 1982 is dispensed with from 27th February, 2009 (the date from which recommendations of Hakim Committee has been accepted). Once a Government Servant has rendered the minimum qualifying Service of twenty years, pension shall be paid at 50% of the last basic pay or 50% of average basic pay received during the last 10 months, whichever is more beneficial to him. Therefore, Rule 110(2) (a) of the Maharashtra Civil Services (Pension) Rules, 1982 is deleted from 27th February, 2009. Retiring benefits to the Government servant in such cases are explained in Annexure III. Accordingly, Rule 110(2) (a) of the Maharashtra Civil Services (Pension) Rules, 1982 shall stand modified to this extent.*

*5.3 As minimum qualifying service from 27th February, 2009 will be of 20 years, the provision of addition to*



*qualifying service of Rule 66(A) of the Maharashtra Civil Services (Pension) Rules, 1982 is deleted from 27th February, 2009. Rule 66(A) of the Maharashtra Civil Services (Pension) Rules, 1982 shall stand modified to this extent.*

*5.4 The provisions in para 5.1, 5.2 and 5.3 above shall come into force with effect from 27th February, 2009 and shall be applicable to Government Servants retiring on or after that date. The government servant servants who have retired on or after 1st January, 2006 but before 27th February, 2009 will continue to be governed by the Rules/orders which were in force immediately before coming into effect of these orders.*

*8.1 Rule 5(1) of the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and existing Table of commutation value for Pension has been changed and this rule and existing table will not be in existence henceforth. The revised Rule and table will become absolute after 27th February, 2009. In cases where the date of retirement/commutation of pension is on or after this date, the revised table of Commutation Value for pension will be used for all commutations of pension. The formula of commutation is as follows:*

***Basic Pension x 40% x 12 x commutation value at age next birthday based on the date of original application of Government Servant as per revised (Annex.IV) table.***

*8.2 In the case of those pensioners, who have retired on or before 27th February, 2009, will be eligible for payment of commutation of pension based on prerevised pay/pension as per pre-revised rates of commutation value. Such pensioners shall have following two options to commute the amount of pension that has become additionally commutable on account of retrospective revision of pay / pension. The option once exercised is final.*

*8.3 The provisions in para 8 and 8.1 above shall come into force with effect from 27<sup>th</sup> February, 2009 and shall be applicable to Government Servants retiring on or after that date. The government servant, servants who have retired on or after 1st January, 2006 but before 27th February, 2009 will continue to be governed by the Rules/orders which were in force immediately before coming into effect of these orders.*

23. *The Supreme Court, in case of Association of College & University Superannuated Teachers vs Union of India and others in Civil Appeal No.908 of 2013 (Arising out of SLP (C) No.3700 of 2012) while considering similar fact situation, in case of refusal of enhanced amount of gratuity by prescribing cut-off date, allowed the civil appeal filed by the appellants therein, holding that the cut-off date 1<sup>st</sup> September, 2009 specified in Government Resolution dated 21<sup>st</sup> August, 2009, in the facts of that case, was discriminative and same was declared unconstitutional.*

*We hold the cut-off date 27th February, 2009 prescribed in Government Resolution dated 30th October, 2009 for payment of revised pension under the Maharashtra Civil Services (Pension) Rules, 1982, making it applicable to those employees who retired from 27th 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.*

24. *In the light of discussion herein above, as a sequel to the above, we direct that within three months from the date of receipt/production of copy of this order, the State Government shall pay to the petitioners and other similarly situated employees, the difference of the pension and revised pension payable.*

*We make it clear that, we have considered the controversy only confined to the cut-off date applied in Government Resolution dated 30th October, 2009 to those retirements from 27.2.2009 vis-a-vis the employees who retired between 1st January, 2006 to 26th February, 2009 for payment of revised pension. We only declare the said cut-off date as unconstitutional. We have not tested the rest of the provisions of the said Government Resolution, since did not fall for our consideration, which shall remain unaffected.*

*Rule made absolute in above terms with no order as to costs. Writ Petitions stand disposed of."*

13. Being aggrieved by the same, the State of Maharashtra has preferred Special Leave to Appeal (C) No. 13140-13151/2015 with SLP (C) No. 19134/2016 and SLP (C) No. 1896/2016 before the Hon'ble Supreme Court and by order dated 14.10.2017, the Hon'ble Supreme Court has passed the following order :-

“O R D E R

*When the benefit has been given of the pay scale on 01.01.2006, the persons who had retired up to 26.02.2009 could not have been deprived of the benefit of revised salary for purpose of pension which was to be paid to them. In view of the aforesaid and also agreeing with the reasoning employed by the High Court, we are not inclined to interfere.*

*The special leave petitions are dismissed.”*

14. In the instant case, the retiral pension of the applicant was revised @ 3,899/- as per 5<sup>th</sup> Pay Commission. The applicant is claiming benefits as per the recommendation made by “Hakim Commission” and as per the 6<sup>th</sup> Pay Commission the applicant is claiming to be entitled for pension @ 5935/- w.e.f. 01.01.2006. The respondent authorities have denied the said benefits mainly on the basis of para No. 5.4 of the G.R. dated 30.10.2009. As per para No. 5.4 of the said G.R., the provisions of said G.R. shall come into force with effect from 27.02.2009 and shall be applicable to the Government Servants retiring on or after that date. The Government servant servants, who have retired on or after 01.01.2006 but before 27.02.2009 will continue to be governed by the Rules/orders, which were in force immediately before coming into effect of these orders. Since the Division Bench of the Hon’ble High Court of Bombay, Bench at Aurangabad in a case of **Savitribai Narsayya Guddapa and Ors. Vs. The State of Maharashtra and Ors.** in W.P. Nos. 8734, 8908 &

8985 of 2011, W.P. Nos. 132 & 135 of 2012 and W.P. No. 3934 of 2013, decided on 09.05.2014, as reproduced hereinabove, declared the cut-off date 27.02.2009 prescribed in Government Resolution dated 30.10.2009 as unconstitutional and the said view is confirmed by the Hon'ble Supreme Court, the present Original Application deserves to be allowed. Hence, the following order :-

**ORDER**

- (i) The Original Application is hereby partly allowed.
- (ii) The respondents are hereby directed to pay the revised pension @ 5,935/- per month along with difference of pension amount to the tune of Rs. 2036/- per month w.e.f. 01.01.2006 till date within a period of three months from the date of this order.
- (iii) The applicant is at liberty to file an application / representation for interest before the concerned respondent/s and upon submission of such application / representation, the respondents shall pass the appropriate order on its own merits as expeditiously as possible, preferably within a period of three months thereafter.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application is accordingly disposed of.

**PLACE : Aurangabad.**

**DATE : 01.07.2024**

**KPB S.B. O.A. No. 784 of 2015 VKJ Pension**

**(Justice V.K. Jadhav)**

**Member (J)**