

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

**ORIGINAL APPLICATION NO. 963 OF 2018
(Subject – Recovery / Refund of Recovered Amount)**

DISTRICT : AHMEDNAGAR

Vitthal S/o Govind Mhashal,)
Age : 50 years, Occ. : Service,)
R/o. Saraswati Colony, Sambhaji Nagar,))
Navlewadi, At Post Tq. Akole,)
Dist. Ahmednagar (422601).)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Secretary,)
Tribal Development, Mantralaya,)
Mumbai - 400032.)
2. **The Project Officer,**)
Integrated Tribal Development Project,)
Project Rajur, Tq. Akole, Dist. Ahmednagar.)
3. **The Head Master,**)
Govt. Secondary & Higher Sec. Ashram)
School, Keli-Kotul, Tq. Akole, Dist. Ahmednagar.)

... **RESPONDENTS**

APPEARANCE : Shri R.J. Godbole, Advocate for the
Applicant.

: Shri I.S. Thorat, Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **22.11.2022.**

ORDER

1. The present Original Application is filed challenging the impugned order dated 10.01.2018 (Annexure A-1) passed by the respondent No. 2 i.e. the Project Officer, Integrated Tribal Development Project, Project Rajur, Tq. Akole, Dist. Ahmednagar thereby re-fixing the pay scale of the applicant as 16360/- instead of 17090/- and therefore, directing the respondent No. 3 i.e. the Head Master, Government Secondary and Higher Secondary Ashram School, Keli-Kotul, Tq. Akole, Dist. Ahmednagar to recover the so called excess amount within 10 installments and seeking refund of the recovered amount.

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant is M.A., B.Ed. He was initially appointed on 20.06.2001 as Lecturer in Junior College in Tribal Area Government Secondary and Higher Secondary Ashram School at Dalwat, Tq. Kalwan, Dist. Nashik as per appointment order dated 14.06.2001 (Annexure A-2) on the pay scale of Rs. 6500-200-20500. In the year 2007, he was transferred to Government Secondary and Higher Secondary Ashram School Shirve, Tq. Taloda, Dist. Nandurbar. His original pay scale was Rs. 9300-34800/-

with Grade Pay of Rs. 4600/- while serving at Shirve Tq. Taloda, Dist. Nandurbar. In view of G.R. dated 06.08.2002 (Annexure A-3) applicable to Government employees working in Tribal area, the applicant was given one step up promotional pay scale. Accordingly, he was granted higher pay scale of 16420-34800 with grade pay of Rs. 5400/- w.e.f. 01.01.2006 as per pay fixation order dated 17.06.2010 (Annexure A-4).

(b) It is further submitted that thereafter the respondent No. 2 vide communication / order dated 10.01.2018 (Annexure A-1) without extending reasonable opportunity to the applicant to put his grievance before the respondent No. 2 erroneously re-fixed the pay scale of the applicant as 16360/- w.e.f. 01.07.2006 instead of Rs. 17090/-, thereby the respondent No. 2 directed the respondent No. 3 i.e. the Head Master to recover the alleged excess amount already paid to the applicant in 10 installments from the regular salary. Accordingly, the excess amount is recovered. The said recovery is in violation of the decision of the Hon'ble Apex Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.)**

reported at **AIR 2015 SC 596**. The respondent No. 2 failed to interpret the G.R. dated 06.08.2002 in its correct perspective. As per the said G.R., if the employee has been extended higher pay scale prior to his appointment or transfer in tribal area, the said employee is ineligible to get one step promotional pay scale. In other words, employees in whose favour higher pay scale has been granted prior to their transfer at Tribal area are ineligible to claim selection grade on the ground that they have been posted in Tribal area. As on 10.01.2018, the respondents have not extended higher pay scale and as per the wordings in the said G.R., in whose favour senior grade has been extended is considered as ineligible to claim higher grade scale. Therefore, the decision of the respondent No. 2 re-fixing pay of the applicant is not proper. By communication / order dated 27.04.2018 (Annexure A-5) issued by the Assistant Project Officer, Additional Commissioner of Tribal Development, Nashik higher pay scale was extended to the applicant, but in the said letter, clause (6) makes it clear that employees in whose favour higher scale is extended, such employees are ineligible to claim benefits of higher scale on the ground that the said employee has put in more

than 12 years' service. In view of the same, the impugned communication / order dated 10.01.2018 (Annexure A-1) issued by the respondent No. 2 is unjust, improper and illegal and the same is required to be quashed and set aside and the applicant is entitled for refund of the said recovered amount. Hence, the present Original Application.

3. The affidavit in reply is filed on behalf of respondent Nos. 1 to 3 by one Shri Amrut S/o Punjaram Ahire, working as Assistant Project Officer, in the office of Project Officer, Integrated Tribal Development Project, Rajur, Taluka Akole, Dist. Ahmednagar, thereby he denied all the adverse contentions raised in the present Original Application. At the outset, it is submitted that as per the Government Circular dated 29.04.2009 (Exhibit R-1) issued by the Finance Department, the State Government has implemented the 6th Pay Commission from 01.01.2006. As per the said Circular, it is mandatory for the Government servant to submit option from as per Rule 6(1) thereof. Moreover, requisite undertaking for refund of excess amount was also required to be given. While fixing the pay of the applicant, discrepancy was found in the earlier pay fixation. The pay fixation of the applicant was done by giving wrong pay scale in the pay band of Rs. 15600-39100/- with Grade pay of Rs.

5400/-, thereby Rs. 500/- has been additionally given while fixing the pay. The Accounts Pay Verification Squad, Nashik raised objection on 09.06.2017 (Annexure R-2), thereby directed to recover the excess pay disbursed to the applicant. In view of the G.R. dated 06.08.2002 when the applicant has taken benefit of 12 years' time bound promotion scheme, he was not eligible for one step promotional pay scale. In view of the same, revised pay fixation was done in the pay scale of Rs. 9300-34800/- having Grade Pay of Rs. 4600/-, thereby the impugned order dated 10.01.2018 (Annexure A-1) came to be issued which resulted into recovery of excessive payment made to the applicant. In view of the same, earlier pay fixation order dated 02.12.2013 (Exhibit R-5) giving benefit for the period of 01.01.2006 to 31.01.2013 is wrong and the order of recovery thereby is passed by issuing the impugned order dated 10.01.2018 (Annexure A-1). In the circumstances, the representation dated 10.09.2018 (Annexure A-6) made by the applicant is misconceived and the applicant is not entitled for relief as sought for. Hence, the present Original Application is liable to be dismissed.

4. I have heard the arguments advanced at length by Shri R.J. Godbole, learned Advocate for the applicant on one hand and

Shri I.S. Thorat, learned Presenting Officer for the respondents on the other hand.

5. From the rival pleadings, it is evident that the applicant was granted pay scale of benefit of one step ahead as per G.R. dated 06.08.2002 (Annexure A-3) w.e.f. 01.01.2006 as the applicant was working in Tribal area. His pay was fixed accordingly as per the order dated 17.06.2010 (annexure A-4). He was granted monthly basic pay of Rs. 16420/- with Grade pay of Rs. 5400/-. It also appears that the pay fixation was also done on 02.12.2013 (Exhibit R-5) in the higher pay scale of one step ahead promotion of Rs. 15600-39100/- thereby he was granted monthly basic pay of Rs. 16420/- with Grade Pay of Rs. 5400/- + 500/- i.e. Rs. 5900/-. Accordingly, on 01.07.2006 he was granted basic pay of Rs. 16420/- + 670/- i.e. Rs. 17090/-. This is reflected in the impugned re-fixation of pay order dated 10.01.2018 (Annexure A-1) issued by the respondent No. 2.

6. The applicant entered into the service on 20.06.2001. In view of the same, he completed 12 years of his service on 19.06.2013. However, till then the applicant was paid salary according to the last pay fixation order dated 02.12.2013 (Exhibit R-5). The Pay Verification Unit raised objection about pay fixation

order dated 02.12.2013 vide objection dated 09.06.2017 (Exhibit R-2). In view of the same, the re-pay fixation of the applicant was done by the impugned order dated 10.01.2018 (Annexure A-1) after completion of 12 years of service of the applicant. Thereby the applicant was entitled for first time bound promotion as stated earlier. Before that the applicant was given benefit of G.R. dated 06.08.2002 (Annexure A-3), whereby he was given one step ahead promotional pay scale. Clause 3(7) of the said G.R. is as follows :-

“३(७) सर्व पदांसाठी एकस्तर पदोन्नती :-

अदिवासी व नक्षलग्रस्त क्षेत्रात काम करण्यासाठी प्रोत्साहन म्हणून गट 'अ' ते 'ड' मधील सर्व पदधारकांना संबंधित कर्मचारी / अधिकारी त्या क्षेत्रात कार्यरत असेपर्यंतच्या काळात त्यांनी धारण केलेल्या मूळ पदाच्या नजीकची वरिष्ठ / पदोन्नतीची वेतनश्रेणी व त्या अनुषंगाने वेतननिश्चितीचा लाभ देण्यात यावा. ज्या कर्मचारी / अधिका-यांना सेवांतर्गत आश्वासित प्रगती योजनेचा लाभ देण्यात आलेला आहे त्यांना आपली वरिष्ठ पदाच्या वेतनश्रेणीचा लाभ अनुज्ञेय नसेल. ही एकस्तर पदोन्नतीची योजना दि. १ जुलै, २००२ पासून अंमलात येईल आणि ती संबंधित कर्मचारी / अधिकारी अदिवासी / नक्षलग्रस्त क्षेत्रात कार्यरत असेपर्यंतच अनुज्ञेय राहिल. त्या क्षेत्रातून कर्मचारी / अधिकारी बिगर अदिवासी क्षेत्रात परत आल्यावर तो त्याच्या मूळच्या संवर्गातील वेतनश्रेणीत पूर्वीच्या वेतनाच्या अनुषंगाने वेतन घेईल.”

In view of the above-said clause 3 (7), it is the contention of the respondents that when the applicant was entitled for time bound promotion, the benefit of one step ahead promotion given to the applicant earlier is to be withdrawn. Accordingly by the impugned re-fixation of pay order dated 10.01.2018 (Annexure A-

1) done by the respondent No. 2. Thereby as on 01.07.2006 the applicant was granted monthly basic pay of Rs. 16360/-. As per the earlier pay fixation order dated 02.12.2013 (Exhibit R-5), the applicant was getting monthly basic pay of Rs. 17090/-. In view of the same, there was alleged excess payment paid to the applicant from 20.06.2013 onwards, which is ordered to be recovered in 10 installments.

7. Learned Advocate for the applicant strenuously urged before me that the impugned order dated 10.01.2008 (Annexure A-1) is issued without proper interpretation of Clause 3(7) of the G.R. dated 06.08.2002 (Annexure A-3). In this regard, he placed reliance on the decision of the Hon'ble High Court of Judicature at Bomaby in **W.P. No. 9543 of 2021 and 9 other W.Ps.** dated 14.07.2021. In the said citation case, the petitioners sought relief of order and direction against the respondents not to recover the benefit of Ekstar (One step pay scale) under the G.R. dated 06.08.2002, though the petitioners are entitled for time bound promotion and to direct the respondents to pay salary of the petitioners as per Ekstar (One step pay scale) till the petitioners working in Tribal/ PESA area as per the above-said G.R. dated 06.08.2002. In the said case, the petitioners therein were employees of the Zilla Parishad. As the petitioners were working

in the Tribal / Naxalite area, they were paid salary as per one step ahead pay scale in view of the G.R. dated 06.08.2002. The Zilla Parishad allegedly misinterpreted the said G.R. dated 06.08.2002 and contended that after completion of 12 years of services, the petitioners would be entitled for time bound promotion and not the benefit of one step pay scale and started effecting recoveries from the salary of the petitioners. During the course of hearing of the said W.Ps., learned counsel appearing on behalf of Zilla Parishad submitted that the Zilla Parishad would reconsider the decision of the recovery of alleged excess amount from the salaries being paid to the petitioners after hearing the petitioners and would apply true and correct interpretation of the said G.R. dated 06.08.2002. In view of the same, the Hon'ble High Court was pleased to set aside the recovery order and directed the Zilla Parishad to decide the representation of the petitioners in that regard within time limit and till then to continue to pay the salaries of the petitioners (one step pay scale) at the rate at which they were being paid prior to the date of recovery amount.

8. In the case in hand, it is evident that before issuing the impugned re-fixation of pay order dated 10.01.2018 (Annexure A-1) by the respondent No. 2, the applicant was not heard as

regards making applicable time bound promotion by withdrawing one step ahead promotional pay scale. Moreover, as per the observations of the Hon'ble High Court, correct interpretation of Clause No. 3(7) of the above-said G.R. dated 06.08.2002 is required to be done by the respondents.

9. Learned Advocate for the applicant also placed on record a copy of communication dated 03.11.2022 issued by the Chief Executive Officer, Zilla Parishad Nandurbar to the Block Development Officers / Block Education Officers, Panchayat Samiti Nandur, Navapur, Shahada, Taloda, Akkalkuwa & Dhadgaon to continue to pay Teachers one step promotional pay scale in view of the orders passed by the Hon'ble High Court of Bombay, Bench at Aurangabad in various W.Ps. on 20.09.2022 and 19.10.2022.

10. In the circumstances as above, issue involved in the present matter is identical. In these circumstances, the impugned order dated 10.01.2018 (Annexure A-1) issued by the respondent No. 2 re-fixing the pay of the applicant is required to be re-considered after having done the correct interpretation of the concerned G.R. dated 06.08.2002 (Annexure A-3). Otherwise also the said re-fixation is done without giving an opportunity of

hearing to the applicant. By the said re-fixation, the pay of the applicant is reduced affecting the rights of the applicant. In view of the same, the said impugned order dated 10.01.2018 (Annexure A-1) is liable to be quashed and set aside. The respondent No. 2 is required to be directed to re-consider the impugned order dated 10.01.2018 after having heard the applicant, who would be allowed to make written submissions / representation in that regard within a period of one month of the said order. The respondent No 2 to re-consider and pass the fresh order of re-fixation within a period of two months from the date of making of such representation. In view of same, the present Original Application can be disposed as follows :-

ORDER

The Original Application is party allowed in following terms:-

- (a) The impugned order of re-fixation of pay order dated 10.01.2018 (Annexure A-1) issued by the respondent No. 2 is hereby quashed and set aside.
- (b) The respondents and more particularly the respondent No. 2 is directed to reconsider the said order dated 10.01.2018 (Annexure A-1) by giving liberty to the applicant of making written submission / representation within a period of one month from the date of this order and to decide the said

representation and pass the order of re-fixation of pay by correctly interpreting the G.R. dated 06.08.2022 (Annexure A-3) in accordance with law by taking into consideration the various judgments of the Courts on this subject to be provided by the applicant within a period of two months from the date of submission of representation.

- (c) The respondent Nos. 2 and 3 shall continue to pay salary of one step promotion benefit to the applicant at the rate on which he was being paid prior to the date of recovery order.
- (d) The respondent No. 2 to communicate the order of re-fixation of pay to the applicant within a period of two weeks from the date of passing of such order. If the order that would be passed by the respondent No. 2 is adverse against the applicant, no coercive steps would be taken for the period of four weeks from the date of communication of the order.
- (e) There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 22.11.2022

(V.D. DONGRE)

MEMBER (J)