

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD**

ORIGINAL APPLICATION NO.519 OF 2015

DISTRICT : AURANGABAD

Smt. Aruna Rajeshwar Dahale,)
R/o. N-7, F-28/4, Ayodhya Nagar,)
Aurangabad.)

....APPLICANT

VERSUS

1. The State of Maharashtra,)
Through its Secretary,)
Home Department, Mantralaya,)
Mumbai 32.)
(Copy to be served on C.P.O.)
M.A.T. Bench Aurangabad.))
2. Superintend of Police (M.T.))
Special Inspector General,)
Motor Transport, Maharashtra State,)
Pune.)
3. Superintend of Police,)
Aurangabad Rural, Aurangabad.)

.....RESPONDENTS

Shri I.D Maniyar, learned Advocate for the Applicant.

Shri I.S Thorat, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal, (Vice-Chairman)
Shri J.D Kulkarni (Member) (J)**

DATE : 18.10. 2016

PER : Shri Rajiv Agarwal, (Vice-Chairman)

ORDER

1. Heard Shri I.D Maniyar, learned Advocate for the Applicant, Shri I. S Thorat, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant requesting that the order dated 24.6.2015 issued by the Respondent no. 2 holding that the Applicant's deceased husband was not eligible to get benefit of Assured Career Progression (A.C.P) Scheme as he had already got three promotions be quashed and set aside. The Applicant is the widow of Shri Rajeshwar J. Dahale. The date of his superannuation and death is not mentioned in the Original Application. However, from the Annexure A-4 (page 22 of the Paper Book), it appears that the Applicant's husband probably retired on 31.12.2014 and died thereafter. The Applicant was granted benefit of Assured Career Progression Scheme by order dated 23.4.2014 (Annexure A-2, page 17 of the Paper Book). The Applicant was granted higher pay scale from the date he completed 12 years in the post of Assistant Police Sub-Inspector. By impugned order dated 24.6.2015

the Respondent no. 2 informed the Respondent no. 3 that the Applicant's husband was not eligible for grant of benefit of ACP Scheme under G.R dated 1.4.2010, as he had already received three promotions.

3. Learned Counsel for the Applicant argued that the Applicant had applied by letter dated 18.2.2014 that he was working as Assistant Police Sub-Inspector from 1.1.1993 in the Motor Transport Wing. He claimed that he was eligible to get benefit of A.C.P Scheme as per G.R dated 1.4.2010, a copy of which was attached to his application. Learned Counsel for the Applicant argued that G.R dated 1.4.2010 provides for benefit of Assured Career Progression Scheme on completion of 12 and 24 years of continuous and regular service. The Applicant was working as Assistant Police Sub-Inspector since 1.1.1993. He was rightly held eligible to get benefit of A.C.P Scheme in terms of G.R dated 1.4.2010 by the Respondent no. 2, by letter dated 23.4.2014. Learned Counsel for the Applicant argued that even if it is held that the husband of the Applicant was wrongfully given benefit of A.C.P Scheme, any excess payment paid to him cannot be recovered from the pensionary dues of the Applicant's husband in view of the law laid down by the Hon. Supreme Court by judgment dated 18.12.2014 in **Civil Appeal no 11527/2014 in SLP (C) no 11684 of 2014** in the case of **STATE OF PUNJAB & ORS etc. Vs. RAFIQ MASIH (White Washer) etc.** Learned Counsel for the Applicant prayed that order dated 24.6.2015 may be quashed and set aside.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that order dated 24.6.2015 from the Respondent no. 2 is perfectly legal and valid. G.R dated 1.4.2010 provides for grant of higher pay scales after completion of 12 & 24 years of service, if an employee is eligible for promotion and could not be promoted due to want of vacancies. This upgradation is called Assured Career Progression. First benefit of A.C.P scheme is admissible after 12 years of continuous service. However, para 2(A) of G.R dated 1.4.2010, clearly provides that if an employee has been given three or more promotions, he is not eligible to get benefit of this Scheme. The husband of the Applicant was given three promotions on 26.12.1983, 8.4.1988 and 11.1.1993. The Applicant's husband was clearly not eligible for grant of benefit of A.C.P Scheme. The order of the Respondent no. 2 dated 24.6.2015 is clearly in conformity with the G.R dated 1.4.2010. Learned Presenting Officer argued that the Applicant has not pointed out any order by which recovery has been ordered from the pensionary dues of Applicant's husband. However, the judgment of Hon. Supreme Court in RAFIQ MASIH's case (supra) is not applicable in the present case, as the Applicant had by letter dated 18.2.2014 had represented to the Respondent no. 3 to grant him benefit of Assured Career Progression Scheme in terms of G.R dated 1.4.2010. As the Applicant was promoted thrice, he was clearly ineligible to get benefit of ACP Scheme, and as such the letter dated 18.2.2014 of the Applicant's husband amounts to misrepresentation.

5. We find that the deceased Shri R.J Dahale was working as Mechanic, Grade-I in the rank of Assistant Police Sub-Inspector. On 18.2.2014, he made a representation to the Respondent no. 3 that he was working in that post for past 20 years and was eligible for benefit of Scheme as per G.R dated 1.4.2010, a copy of which was attached to his representation. The representation dated 18.2.2014 along with copy of G.R dated 1.4.2010 are annexed as Annexure A-I in the Original Application and these facts are admitted in para 3 of the Original Application. Para 2(A) of this G.R reads as follows:-

“२. (अ) योजनेचा तपशील: सुधारित सेवांतर्गत आश्वासित प्रगती योजना कमाल वेतन बॅंड पी बी- ३ (रु. १५६००-३९१००) + ५४०० पर्यंत ग्रेड वेतन घेणा-या कर्मचा-यांना लागू राहिल. या योजनेखाली पात्र कर्मचा-यांना त्यांच्या संपूर्ण सेवाकालावधीत कमाल दोन वेळा पदोन्नतीच्या पदाची वेतनसंरचना मंजूर करण्यात येईल. तथापि, तीन किंवा त्यापेक्षा जास्त पदोन्नती मिळालेल्या कर्मचा-यांना या योजनेचा लाभ अनुज्ञेय ठरणार नाही. मात्र ज्या कर्मचा-यास दोन प्रत्यक्ष पदोन्नती मिळाल्या आहेत त्या कर्मचा-यास या योजनेखाली फक्त एकच लाभ अनुज्ञेय होईल.”

The Applicant in her undated representation at Annexure A-4 (Page 22 of the Paper Book) in response to the Respondent no. 2's letter dated 23.4.2014 had admitted that the Applicant was promoted as Fitter Grade-III on 26.12.1983, Fitter Grade-II on 8.4.1988 and Fitter Grade-I on 11.1.1993. These facts are also mentioned in para 4 of the affidavit in reply of the Respondent no. 3 dated 2.11.2015. There is no doubt that the Applicant was promoted thrice and he was occupying the post equivalent to that of Assistant Police Sub-Inspector since 1993. As per G.R dated 1.4.2010, he was clearly ineligible to get the benefit of Assured Career

Progression Scheme. The representation dated 18.2.2014 of the Applicant's husband was contrary to the provisions of G.R dated 1.4.2010 relying on which the Applicant was seeking financial upgradation. This clearly amounts to misrepresentation. The Applicant was clearly not eligible to get any benefit under G.R dated 1.4.2010. Letter dated 24.6.2015 from the Respondent no. 2 cannot be challenged on any count. The Applicant is not eligible to get benefit of judgment of Hon. Supreme Court in RAFIQ MASIH's case, as the excess payment was made to the Applicant's husband due to his misrepresentation.

6. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

**J.D KULKARNI
(MEMBER. J)**

**RAJIV AGARWAL
(VICE-CHAIRMAN)**

**Date : 18.10.2016
Place : Aurangabad
Dictation taken by : A.K Nair**