

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.807/2016

DISTRICT: - AHMEDNAGAR

Madhukar s/o. Nanasaheb Jadhav,
Age : 60 years, Occ : Retired,
R/o. Morge Vasti, Siddhivinayak Mandir Road,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Water Resources Department,
Mantralaya, Mumbai.
- 2) The Executive Engineer,
Mula Irrigation Division,
Ahmednagar.
- 3) The Indian Audit & Account Department,
Office of the Accountant General,
(Accounts & Establishment-1),
Pratishtha Bhavan, Old C.G.O. Building,
Maharshi Karve Marg, 2nd Floor,
Mumbai.
- 4) District Treasury Officer,
Ahmednagar.

...RESPONDENTS

APPEARANCE :Shri V.B.Wagh, Counsel for
Applicant.

:Shri D.R.Patil, Presenting Officer for
the respondent nos.1, 3 & 4.

:Shri Shamsundar B. Patil, Counsel
for respondent no.2.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on : 13-04-2023.

ORAL ORDER:

1. Heard Shri V.B.Wagh, learned Counsel for the applicant, Shri D.R.Patil, learned Presenting Officer for the respondent nos.1, 3 & 4 and Shri Shamsundar B. Patil, learned Counsel for respondent no.2.

2. The applicant entered into Government service on 20-03-1978 on the work charge establishment. He was absorbed on the post of Civil Engineering Assistant (CEA) on 07-08-1989. Before that, applicant was brought on Converted Regular Temporary Establishment (CRTE) on 20-03-1983. Accordingly, the first Time Bound Promotion Scheme (TBPS) of the higher post was granted to the applicant on 01-10-1994. Second benefit of Assured Career Progression Scheme (ACPS) was granted to the applicant w.e.f. 01-10-2006. The applicant retired on 31-07-2014 on attaining the age of superannuation. After his retirement, Accountant General (A.G.), Nagpur raised an objection as about the grant of TBPS/ACPS benefits and on that count has directed for re-fixation of his pay as well as pension. After passing of the said order by A.G. Nagpur, apprehending that on the basis of the said order if the pay

of the applicant is re-fixed, recovery is likely to be directed against the applicant, the applicant has approached this Tribunal and sought interim stay for recovery on the basis of the said order. Interim stay to recovery was granted which has been continued from time to time thereafter.

3. Shri V.B.Wagh, learned Counsel appearing for the applicant submitted that in view of the judgment delivered by the Hon'ble Apex Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc., (AIR 2015 SC 596)**, the recovery may be impermissible after retirement of the applicant. Learned Counsel submitted that in the pay fixation at the relevant time, there was no role of the applicant and the pay fixation was done by the competent persons and accordingly the pay and allowances are given to the applicant. The learned Counsel submitted that no error has been committed in granting first and second benefit of ACPS to the applicant from the respective dates. Learned Counsel in the circumstances has prayed for setting aside the communication dated 23-03-2015 issued by the respondent no.2 and the communication dated 27-11-2015 issued by respondent no.3 thereby giving direction for re-

fixation of his pay, benefits of time bound promotion and Assured Career Progression Scheme (ACPS) and directing to recover the amount.

4. Respondents have resisted the contentions raised in the O.A. as well as the prayers made therein. Respondent no.2 is the contesting respondent. In the affidavit in reply submitted on behalf of respondent no.2, it has been clarified that the applicant was entitled for benefit of first time bound promotion on 19-03-1995 for the reason that he was taken on CRTE w.e.f. 20-03-1983. It is contended that while considering the period of 12 years for granting benefit of first time bound promotion, the services of the applicant were liable to be considered from the date on which the applicant was brought on CRTE. It is further contended that since the applicant was brought on CRTE on 20-03-1983, the applicant was entitled for benefit of first time bound promotion on 19-03-1995 and for second ACPS on 20-03-2007, whereas the applicant was granted first time bound promotion on 01-10-1994 and benefit of ACPS on 01-10-2006. Respondent no.2 has further contended that mistake so occurred has to be rectified by re-fixation of pay of the applicant.

5. In the reply filed on behalf of the Government authorities, similar defense has been raised.

6. Shri Wagh, learned Counsel appearing for the applicant has assailed the impugned order on two grounds; first that, while revising the pay after retirement of the applicant, no notice was given to the applicant and no opportunity of hearing was also given to the applicant and second that, in view of the judgment of the Hon'ble Apex Court in the case of **Rafiq Masih**, recovery on account of excess payment made to the Government servant is impermissible after his retirement.

7. Shri Shamsundar B. Patil, learned Counsel for respondent no.2 has relied upon the judgment of the Hon'ble Apex Court in the case of **State of Maharashtra & Anr. V/s. Madhukar Antu Patil & Anr. (Civil Appeal No.1985/2022)** delivered on 21-03-2022. Learned Counsel submitted that identical facts existed in the said matter before Hon'ble Apex Court and the Hon'ble Apex Court has held and approved the right of the Government of re-fixation of pay in the event of any mistake occurred in previous pay fixation and has accordingly confirmed the

order of revised pay. Learned Counsel was fair in submitting that in the said matter Hon'ble Apex Court, however, did not approve action of the respondents directing recovery of the payment made in excess of the entitlement of the applicant after his retirement.

8. Learned P.O. has adopted the arguments advanced by Shri Shamsundar B. Patil, learned Counsel for respondent no.2.

9. I have duly considered the submissions advanced by the learned Counsel appearing for the applicant, learned P.O. appearing for the respondent nos.1, 3 & 4 and learned Counsel representing respondent no.2. I have perused the documents filed on record. It is not in dispute that the applicant was taken on CRTE on 20-03-1983. Even the applicant has mentioned the said date in his application. It is the case of the applicant himself that he was entitled for the TBPS/ACPS from the said date. Further there cannot be a dispute about the fact that the benefit of first TBPS was liable to be granted in favour of the applicant after he completed 12 years of service on the subject post. Benefit of first TBPS was, therefore, liable to be granted in favour of the applicant 12 years after 20-03-1983. Benefit

of first TBPS was, however, granted in favour of the applicant on 01-10-1994 i.e. before completing the period of 12 years. Same will be in respect of second benefit of ACPS. Benefit of second ACPS was liable to be granted in favour of the applicant 12 years after 20-03-1995. The date of second ACPS would be 20-03-2007, whereas the applicant has been granted benefit of second ACPS on 01-10-2006. Said error was pointed out by the A.G. Office Nagpur and accordingly pay fixation has been directed. In the circumstances, there appears no error in the direction given of re-fixation of pay of the applicant. It is obvious that after the pay is re-fixed, it would be revealed that the applicant has been paid some excess amount than his entitlement. The revision in the pay would also result in decrease of the amount of pension payable to the applicant to some extent.

10. Relying on the judgment in the case of **Rafiq Masih**, cited supra, learned Counsel Shri Wagh has sought to contend that after retirement of the applicant not only the recovery of the excess amount paid to the applicant is impermissible even re-fixation of pay also cannot be permitted. Learned Counsel, therefore, has sought

quashment of both the orders impugned in the present O.A. I am, however, not convinced with the submission so made. The Hon'ble Supreme Court in the case of Madhukar Antu Patil, cited supra, in the identical fact situation has held the re-fixation of pay permissible.

11. Now, the question arises whether the respondents can be permitted to recover amounts paid to the applicant in excess of his entitlement because of the wrong fixation of pay at the relevant time after retirement of the applicant. In so far as this aspect is concerned, to that extent the judgment delivered by the Hon'ble Apex Court in the case of Rafiq Masih, cited supra, would apply. In the affidavits in reply filed on behalf of the respondents it is not their case that wrong pay fixation of the applicant was at the instance of the applicant or that any active role was played by the applicant in such wrong pay fixation. The Hon'ble Apex Court in the case of Madhukar Antu Patil, cited supra, while upholding the re-fixation of the pay of the applicant by the State, restrained it from effecting any recovery on the basis of the revised pay fixation observing that, the pay fixation previously done was not due to any misrepresentation by the said Madhukar Antu Patil. In the

aforesaid circumstances, the only prayer which deserves to be granted in the present O.A. is to restrain the respondents from effecting any recovery even in the event of re-fixation of the pay.

12. For the reasons discussed hereinabove, I deem it appropriate to pass the following order:

ORDER

[i] The request of the applicant to hold and declare him entitled for the time bound promotion scheme w.e.f. 01-10-1994 and Assured Career Progression Scheme w.e.f. 01-10-2006 stands rejected.

[ii] The request of the applicant to quash and set aside the communication dated 23-03-2015 stands rejected.

[iii] The request of the applicant to quash and set aside the order dated 27-11-2015 is partly allowed.

[iv] It is directed that there shall not be any recovery even in the event of re-fixation of the pay scale. It is clarified that the applicant shall be entitled for pension on the basis of re-fixation of the pay scale on grant of

first TBPS w.e.f. 19-03-1995 and for the ACPS w.e.f.
20-03-2007.

[v] O.A. stands partly allowed in the aforesaid terms
without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 13.04.2023.

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