

Date : 30.06.2020

O.A.NO.31 OF 2019

D.K. Zote

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

1. Heard Shri C.T. Chandratre, learned Advocate holding for Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. At the request of learned P.O. for the Respondents two weeks time is lastly granted for filing reply.

3. S.O. to 14.07.2020.

Sd/

(A.P. Kurhekar)
Member(J)

prk

Date : 30.06.2020

O.A.NO.98 OF 2020

S.D. Bari

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

1. Heard Shri C.T. Chandratre, learned Advocate holding for Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. Learned P.O. for the Respondents submits that affidavit-in-sur-rejoinder will be filed during the course of the day. Statement is accepted. It be taken on record.
3. The matter is adjourned for hearing at the stage of admission.
4. Adjourned to 21.07.2020.

Sd/-

(A.P. Kurhekar)
Member(J)

prk

Date : 30.06.2020

O.A.NO.161 OF 2020

A.A. Zajan

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

1. Heard Shri C.T. Chandratre, learned Advocate holding for Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. The O.A. is filed for retiral benefits despite retirement of the applicants in between 2016 to 2019. Therefore on 25.02.2020 directions were given by this Tribunal to ensure grant of provisional pension to the applicants and submit compliance report on or before 18.03.2020. However, till date no compliance is made.

3. Learned P.O. for the Respondents submits that she has no instructions from the Department.

4. It pains to note that though the Applicants retired long back they seem to have been deprived of the pension. There is no compliance of the order passed by this Tribunal on 25.02.2020. It is therefore necessary to initiate appropriate Contempt proceedings against the Respondents No.1 and 4.

5. Respondents No.1 and 4 are directed to file affidavit to explain why suo motu contempt proceedings, should not be initiated against them for non-compliance of the order passed by this Tribunal on 25.02.2020.

6. Affidavits be filed on or before next date. Besides, reply should also be filed, if any.

7. Adjourned to 14.07.2020. Hamdast granted.

Sd/-

(A.P. Kurhekar)
Member(J)

prk

Date : 30.06.2020

O.A.NO.924 OF 2019

P.S. Pawar

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

1. Heard Shri C.T. Chandratre, learned Advocate holding for Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. Today learned P.O. has filed affidavit-in-sur-rejoinder of Respondent No.1. It is taken on record.
3. The matter is adjourned for hearing at the stage of admission.
4. Adjourned to 21.07.2020.

Sd/-

(A.P. Kurhekar)
Member(J)

prk

Date : 30.06.2020

O.A.NO.203 OF 2020

A.Y. Yadav

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

1. Heard Shri C.T. Chandratre, learned Advocate holding for Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. Applicant is under suspension by virtue of order dated 09.01.2020 which is passed in contemplation of the Government. Thus, period of more than three months is over and therefore, competent authority was required to take review of suspension in terms of G.R. dated 09.07.2019.
3. Learned P.O. for the Respondents seeks one week time to take instructions from the Respondents about placing of matter before the Review Committee.
4. Adjourned to 07.07.2020.

Sd/-

(A.P. Kurhekar)
Member(J)

prk

Date : 30.06.2020

O.A.NO.627 OF 2019

P.B. Pawar

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

1. Heard Shri C.T. Chandratre, learned Advocate holding for Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. On request of learned C.P.O. for the Respondents one week time is granted for issuance of appropriate orders by the Government which is already granted for consideration for long time.

3. Adjourned to 07.07.2020.

Sd/-

(A.P. Kurhekar)

Member(J)

prk

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 287 OF 2020**

DISTRICT : MUMBAI

Dr P.N Kakade)...**Applicant**

Versus

The State of Maharashtra & Others)...**Respondents**

Shri Mihir Desai, Senior Counsel i/b Shri Nilesh Y. Ukey, learned advocate for the Applicant.

Ms S.P Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula R. Bhatkar (Chairperson)**

DATE : **30.06.2020**

ORDER

1. Heard Shri Mihir Desai, learned Senior Counsel i/b Shri Nilesh Y. Ukey, learned advocate for the Applicant and Ms S.P Manchekar, learned Chief Presenting Officer for the Respondents.

2. The applicant working as a District Malaria Officer in the office of Respondent no. 2 is retiring today, i.e. on 30.6.2020. He joined service on 17.7.1993. He received 5th Pay Commission in the year 1996 which falls in the pay scale of Rs. 6500-10500. Thereafter, 6th Pay Commission was made applicable from 1.1.2006 wherein the pay scale of this grade was Rs. 9300-34800. However, the applicant has completed 12 years of service on 17.7.2005, that is prior to the date of application of 6th Pay Commission on 1.1.2006, as he was given benefit of 12 years upgrading his pay scale. As per 7th Pay Commission, the applicant falls in the matrix of Rs. 84900/-. He received the order dated 8.5.2020 issued by Dr. Santosh Gaikwad, Joint Director, Health Services (Malaria, Filariasis & Water Borne), directing that the earlier pay scale given to the applicant was not correct, but instead of pay scale of Rs. 8000 to 13500 he should have been given the pay scale of Rs. 7450-11500 w.e.f 2005. It

is further directed that the excess amount which is paid to the applicant erroneously is to be recovered immediately.

3. The applicant made representation on 26.5.2020, where he claimed that the present pay scale is correct and he should not be given the lower pay scale as per the directions given in the order dated 18.5.2020. Learned Senior Counsel Shri Mihir Desai submits that the applicant should not have been given the lower pay scale and his earlier pay scale is the correct pay scale and accordingly, his pension and retirement benefits are to be paid. However, as it is the first date, he confines his submission to a limited relief that the order of recovery be stayed. In support of his submission, he relies on the judgment of the State of Punjab & Others Vs. Rafiq Masih (White Washer) etc. reported in 2015 (4) SCC 334. He submits that the applicant is going to retire today and therefore, no recovery is permissible in view of the ratio laid down in the above judgment of the Hon'ble Supreme Court.

4. Ms Manchekar, learned C.P.O in reply submits that as it is the first date, she wants time to take instructions from the concerned Department. She further submits that while giving the higher pay scale to any employee in Government service, routinely an undertaking is taken from the employer that if any mistake is found in future in a given higher pay scale, then the Government can recover the excess amount paid to the said employee. On this point she relies on the judgment of Hon'ble Supreme Court in High Court of Punjab & Haryana & Others Vs. Jagdev Singh reported in 2016 (14) SCC 267. She submits that subject to verification the applicant must have given such an undertaking to the Respondents when the higher pay scale was given to him. She points out that the judgment in Rafiq Masih relied by the Learned Senior Counsel for the applicant is not applicable under the circumstances in view of the ratio laid down in the case of Jagdev Singh, wherein Rafiq Masih is considered.

5. Learned Senior Counsel, Shri Mihir Desai while replying has pointed out that the case of the present applicant falls under clause 5 (ii) & (iii) of Para 12 of the judgment in Rafiq Masih (White Washer) etc. The facts in Jagdev Singh's case are different as he was given a higher pay scale on 7.1.2002 and recovery notice was issued on 18.2.2004, i.e. within 5 years when the excess payment was made first.

6. In the case of Rafiq Masih, in para 12, the Hon. Supreme Court has given the five categories where the recovery by the employees would be impermissible in law. Whether the case of the applicant falls in clause (ii) & (iii) in para 12 of Rafiq Masih's case can be considered after State files the reply. If the undertaking given by the applicant is found then how far the ratio laid down in the case of Jagdev Singh can be made applicable in view of clause (iii) of para 12 of Rafiq Masih's case can be tested. The case of the applicant on the point of his entitlement to the higher pay scale which is given to him will be considered when the arguments will be heard finally and after receiving the reply of the Respondents.

7. Till then the Respondents shall not recover any amount which as per the impugned order Respondents have paid in excess to the applicant.

8. Issue notice to the Respondents either by personal service, email or by post in view of Covid-19 Pandemic.

9. S.O to 30.7.2020. Respondents to file reply and serve the copy of the reply in advance to the applicant on or before 28.7.2020.

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 30.06.2020
Dictation taken by : A.K. Nair.

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 1133 OF 2018**

DISTRICT : MUMBAI

Smt B.A Kale & Others)...**Applicant**

Versus

The State of Maharashtra & Others)...**Respondents**

Shri A. Deshpande, learned advocate for the Applicants.

Ms S.P Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula R. Bhatkar (Chairperson)**
Shri P.N Dixit (Vice-Chairman) (A)

DATE : **30.06.2020**

PER : **Justice Mridula R. Bhatkar (Chairperson)**

ORDER

1. Heard Shri A. Deshpande, learned advocate for the applicants and Ms S.P Manchekar, learned Chief Presenting Officer for the Respondents.

2. In this Petition, 98 Nurses who are working under the Health Department of the State of Maharashtra pray that they are to be promoted to the post of Sister Tutors, Specialized Nurses as per their respective qualifications and specializations as per their date of posting. It is contended that in the year 2017, the Respondents prepared a final seniority list and they promoted Nurses who were junior in service to the present applicants to the post of Sister Tutors, Public Health Nurses, Psychiatric Nurses or Pediatric Nurses. It is contended that when those Nurses were promoted, why these 98 applicants were not promoted in the year 2017.

3. As per the reply filed by the State, the candidates are promoted by way of nomination based on the G.R issued by G.A.D dated 25.6.2005. The said G.R is

further based on the judgment of the Supreme Court in (i) A. Umarani Vs. Registrar, Cooperative Societies, Tamilnadu & Others, Civil Appeal No. 1413/2003 dated 28.7.2004 and (ii) Smt Chanchal Goyal Vs. State of Rajasthan in Civil Appeal No. 7744/1997 dated 18.2.2003.

4. The learned counsel for the applicants submitted that the Respondents have published a provisional seniority list of 2020 as on 1.6.2020 and is likely to promote the Nurses. If at all such promotion takes place then the applicants will be adversely affected in their services. Hence, he prays for interim relief or the matter be heard finally on urgent basis.

5. It is to be noted by both the parties, but as per the submissions made by learned Counsel for the applicants, to our query, the objections were not raised by the applicants when the seniority list of 2017 was prepared. However, subsequently, the representation was made after promotions were given to other candidates. It is also submitted that from 2011 such representations are made and copies of such representations are annexed herewith. It is further submitted by the learned counsel for the applicants that no objections are raised to the provisional/temporary seniority list published on 1.6.2020 as the matter was pending.

6. Respondents are directed to submit the reply given to such representations if any and also make clear the policy decision in respect of promotion by nomination. It is further directed that the Respondents should comply with the order dated 8.8.2019 in view of para 6 that why the draft Recruitment Rules of 22.6.2015 and 20.12.2017 are not yet finalized and also file affidavit to explain the status of finalization of said draft Recruitment Rules.

7. S.O to 16.7.2020. Parties to note that the matter will be finally decided on the next date.

Sd/-
(P.N Dixit)
Vice-Chairman (A)

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 30.06.2020
Dictation taken by : A.K. Nair.

30.06.2020

O.A 289/2020

Mr Jamil A. Shaikh ... Applicant
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Shri K.R Jagdale, learned advocate for the applicant and Smt K.S Gaikwad, learned Presenting Officer for the Respondents.
2. In view of these written submission, allowed to withdraw the Original Application. Hence disposed off.

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

Akn

30.06.2020

O.A 276/2020

Shri T.B Gadekar ... Applicant
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Shri S.S Dere , learned advocate for the applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents,

2. Pursuant to the order dated 25.6.2020 the officers Shri Shantaram Londhe, Law Officer, Deputy Director of Education, Mumbai Region, Ms Nisha Vaidu, Programme Assistant, Nirantar Education Officer, Zilla Parishad, Thane and Shri Vishal Bapat, Senior Assistant, Education Department (Sad), Z.P, Thane.

3. Today the applicant is retiring. Hence in fact the Petition in respect of correction of date of birth of the applicant from 25.6.1962 to 25.6.1964 has become infructuous. However, there is one report dated 18.11.2004 sent by Mr Mogul, Education Officer, Zilla Parishad, Aurangabad to the Director of Education, Secondary and Higher Secondary, Pune, requesting him to take action.

4. It is found that the applicant has made application for correction of his date of birth after 5 years from the date of his entry level service in Government set up and there are other issues. On the point of delay, however, the Respondents is directed to file one short affidavit as to what action was taken by the Department after receiving the report of Mr Mogul, Education Officer, Zilla Parishad, Aurangabad.

5. S.O to 28.7.2020.

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

Akn