

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6011 OF 2018

The Secretary, Irrigation Department
Mumbai & Anr.

...Petitioners

Versus

Mahadev Shivaji Jagtap
(since deceased through his LRs.)
Lata Mahadev Jagtap & Anr.

...Respondents

Mr. N. C. Walimbe – AGP for Petitioners – State.
None for Respondents.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 04 JULY 2018

P.C. :

1] Heard Mr. Walimbe, the learned AGP for the Petitioners
– State.

2] Mr. Walimbe contends that the respondents were granted the first financial upgradation under the Time Bound Promotional Scheme (TBPS) w.e.f. 1st July 1999 and 23rd September 1999 upon completion of twelve years service as Mukadams. Thereafter, on 15th January 2007 and 1st February 2007 respectively, the respondents were

promoted as Canal Inspectors. In view of such promotion, the Maharashtra Administrative Tribunal (MAT) was not justified in directing the petitioners to award the respondents the second financial upgradation on completion of twelve years service w.e.f. 1st July 1999 and 23rd September 1999. Mr. Walimbe submits that such second financial upgradation, can only be granted to the respondents after completion of twelve years service from the date of their promotions to the post of Canal Inspectors i.e. from 15th January 2007 and 1st February 2007 respectively. He submits that the order made by the MAT is therefore contrary to the TBPS or ACPS. He submits that the purpose of grant of benefits under such schemes is to mitigate issues arising out of stagnation. He submits that since, the respondents, were already promoted to the post of Canal Inspectors on 15th January 2007 and 1st February 2007 respectively, such respondents, can claim for benefits under this scheme only after they complete twelve years service in the cadre of Canal Inspectors. For all these reasons, Mr. Walimbe submits that the impugned judgment and order dated 30th July 2013 made by the MAT warrants interference.

3] We have, with the assistance of Mr. Walimbe, perused the record as well as the reasoning in the impugned judgment and order. According to us, for reasons indicated hereafter, there is neither any jurisdictional error nor any perversity in the impugned judgment and order so as to warrant interference in exercise of our jurisdiction under Articles 226 and 227 of the Constitution of India.

4] The respondents were initially appointed as Mukadams on the Worked Charged Establishment and later on were appointed on Converted Regular Temporary Establishment (CRTE) w.e.f. 1st July 1987 and 23rd September 1987 respectively. Upon completion of twelve years service, as counted from the date of their appointments under CRTE, i.e. w.e.f. 1st July 1999 and 23rd September 1999, the respondents, were granted the first financial upgradation under the then prevalent TBPS. This means that the respondents, who, as Mukadams were drawing pay in the pay-scale of Rs.2610-4000, were, after twelve years, placed in the next higher pay-scale of Rs.3050-4590 under the TBPS. Incidentally, the pay-scale of Rs.3050-4590 was the

pay-scale, then prescribed for the next promotional post of Canal Inspectors, This means that after twelve years of service in the cadre of Mukadams, the respondents, were placed in the pay-scale of Rs.3050-4590, which was precisely the pay-scale in respect of the Canal Inspectors cadre w.e.f. 1st July 1999 and 23rd September 1999 itself.

5] Thereafter, on 15th January 2007 and 1st February 2007, respectively, the respondents were actually promoted to the post of Canal Inspectors. There was no change in the pay-scale of the respondents, since, w.e.f. the year 1996 itself, the respondents, were already enjoying the pay-scale, as applicable to Canal Inspectors cadre. Therefore, upon completion of twelve years from 1999 i.e. in the year 2011, the respondents demanded for second financial upgradation, which would have placed them in the pay-scale of Rs.5200-20200. Since this was denied, the respondents instituted Original Application No. 560 of 2012 before the MAT. By the impugned judgment and order, such relief has been granted to the respondents.

6] The TBPS or the ACPS, is no doubt to mitigate the

effects of stagnation. Therefore, as a matter of principle, if the employees have already secured promotions, then, there may be no question of such employees insisting upon TBPS or ACPS as well. However, in the present case, the undisputed facts bear out that when the respondents were promoted as Canal Inspectors, there was no corresponding increase in their salary or their pay-scale, since, from 1999 onwards, the respondents, were already drawing in the said pay-scale by virtue of the benefit of first financial upgradation. To therefore deny the respondents benefit of second financial upgradation, only because the respondents, in the meanwhile were promoted as Canal Inspectors, without, any corresponding increase in their pay-scales, would not be proper interpretation of the TBPS or the ACPS.

7] The MAT, has quite correctly, compared the case of the respondents to that of one Shri Uttam Hariba Markad, who was also the Mukadam on CRTE. Upon completion of twelve years service, Markad was given the benefit of first financial upgradation. Markad however, failed to pass the departmental examination for promotion to the post of

Canal Inspector and therefore, could not secure any promotion to the post of Canal Inspector. Upon completion of twelve years service after the award of the first financial upgradation under the TBPS, the said Markad was granted the second financial upgradation under the ACPS, thereby, placing him in the pay-scale of Rs.5200-20200 and grade pay of Rs.1800+300. The MAT, in such circumstances, has rightly observed that the TBPS or ACPS cannot be interpreted so as to award a premium for Mukadams who failed to secure promotion but penalize the respondents, on the sole premise that they have secured a promotion, without any corresponding increase in their scale of pay. In the instance referred to by the MAT, on the basis of the interpretation suggested by the petitioners, Markad, despite not securing the promotion to the post of Canal Inspector will draw salary in the pay-scale of Rs.5200-20200, which is, the pay-scale higher than the pay-scale in which the Canal Inspector draws his salary but, the employees like the respondents, who have actually been promoted to the post of Canal Inspectors will be condemned to remain in the lower pay-scale.

8] Mr. Walimbe submitted that the interpretation by the MAT might deter the employees from accepting the responsibilities assigned to the promotional post. According to us, the interpretation put-forth by the petitioners is more likely to promote such a situation. If, the employees, who accept promotion and responsibilities assigned to a promotional post are put up to disadvantage in the matter of their pay-scales, as compared to employees who failed to secure promotions, either by failing to clear the departmental examination or otherwise, then, the tendency will be to shun promotions and yet enjoy the benefits of higher pay-scales.

9] For all the aforesaid reasons, we see no good ground to interfere with the view taken by the MAT. This petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)