

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

WRIT PETITION NO. 2418 OF 2016

The State of Maharashtra
through the Divisional Joint Director,
Agriculture, Kolhapur Division ...Petitioner
Versus
Gurubasappa Shidramappa Halakunde ...Respondent

**WITH
WRIT PETITION NO. 2374 OF 2016**

The Divisional Joint Director,
Agriculture, Kolhapur Division ...Petitioner
Versus
Rajaram Yashwant Chavan ...Respondent

**WITH
WRIT PETITION NO. 2420 OF 2016**

The Divisional Joint Director,
Agriculture, Kolhapur Division ...Petitioner
Versus
Sanjay Kisan Thorat ...Respondent

**WITH
WRIT PETITION NO. 9351 OF 2016**

The State of Maharashtra & Anr. ...Petitioners
Versus
Arjun Babulal Dhende & Anr. ...Respondents

**WITH
CIVIL APPLICATION NO. 135 OF 2018
IN
WRIT PETITION NO. 9351 OF 2016**

Maharashtra State Agriculture
Assistant Union, Pune ...Applicant

In the matter of :

The State of Maharashtra & Anr.

...Petitioner

Versus

Arjun Babulal Dhende & Anr.

...Respondents

Mr. N. C. Walimbe – AGP for the State.

Mr. Gaurav A. Bandiwadekar i/b. Mr. Bhushan Bandiwadekar for Respondents in WP 2418 of 2016, 2374 of 2016 and 2420 of 2016.

Mr. Shantanu Chandratre I/b. Mr. C. T. Chandratre for Respondent Nos. 1 and 2 in WP 935 of 2016 and for Applicant in CA 135 of 2018.

**WITH
WRIT PETITION NO. 2419 OF 2016**The Divisional Joint Director,
Agriculture, Kolhapur Division

...Petitioner

Versus

Somnath Laxman Rathod

...Respondent

Mr. N. C. Walimbe – AGP for the State.

Mr. Gaurav A. Bandiwadekar I/b. Mr. Bhushan Bandiwadekar for Respondent.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.****DATE : 01 AUGUST 2018****ORAL JUDGMENT :**

1] Heard the learned counsel for the parties.

2] Rule in each of these petitions. With the consent of
and at the request of the learned counsel for the parties,

Rule is made returnable forthwith.

3] In all these petitions, the challenge is to the common judgment and order dated 21st April 2015 made by the Maharashtra Administrative Tribunal (MAT) disposing of Original Application Nos. 233 of 2013, 1000 to 1003 of 2013 instituted by the respondents seeking for some benefits under the Revised Assured Career Progression Scheme (ACPS). Since common issues of law and fact arise, in all these petitions, and further since, the challenge is to the judgment and order dated 21st April 2015 made by the MAT, it is only appropriate that all these petitions are disposed of by a common judgment and order. The learned counsel for the parties agree to the adoption of such a course.

4] Mr. Walimbe, the learned AGP for the petitioner State points out that the respondents, after receipt of the first financial upgradation after completion of 12 years service vide orders dated 25th October 2010 had in fact been granted a higher non functional pay-scale. Mr. Walimbe submits that the respondents were therefore not eligible for receipt of any further financial upgradation under the ACPS.

Mr. Walimbe, without prejudice, further submits that in any case, the respondents were not eligible for grant of any further final financial upgradation under the ACPS until they complete 12 years from the date of receipt of non functional pay-scale. Mr. Walimbe submits that the case of the respondents was covered by the principles of paragraph 2(3) of the GR dated 1st April 2010 issued by the Finance Department. He submits that since these aspects have not been considered by the MAT in making the impugned judgment and order, the same warrants interference.

5] Mr. Gaurav Bandiwadekar and Mr. Shantanu Chandratre for some of the respondents (original applicants) point out that none of the respondents were beneficiaries of any revised pay scale as such and therefore, the award of non functional pay cannot deprive the respondents of the benefits under ACPS. They point out that the MAT in the impugned judgment and order has relied upon the judgment and order dated 26th February 2015 of the Nagpur Bench of the MAT in Original Application Nos. 636, 733 and 599 of 2013. They point out that the judgment and order dated 26th February 2015 of the Nagpur Bench of the MAT

has since been upheld by the Division Bench of this Court in Writ Petition No. 6329 of 2015 decided on 23rd November 2015. For these reasons, they submit that the issues raised in the present petitions stand covered by the judgment of the Division Bench in Writ Petition No. 6329 of 2015 and therefore these petitions are liable to be dismissed.

6] Since there was no serious dispute that the issues raised in the present petitions are covered by the ***judgment and order dated 23rd November 2015 in Writ Petition No. 6329 of 2015 (State of Maharashtra & Ors. vs. Subhash Eknath Kawalkar & Ors.)*** we had adjourned these matters from time to time in order to enable Mr. Walimbe to find out whether any Special Leave Petition had been instituted by the State questioning the judgment and order dated 23rd November 2015 in Writ Petition No. 6329 of 2015. Despite several adjournments, Mr. Walimbe, was unable to make any clear statement in this regard. Instead, the learned counsel for the respondents state that they have checked the website of the Hon'ble Supreme Court and there is no Special Leave Petition

instituted against the judgment and order dated 23rd November 2015.

7] In the aforesaid circumstances, we would follow the judgment and order dated 23rd November 2015 in Writ Petition No. 6329 of 2015 delivered by the Co-ordinate Bench at Nagpur and on the basis of the same, dismiss the present petitions.

8] The contentions now raised by Mr. Walimbe stands squarely answered in the judgment and order dated 23rd November 2015, where it is observed as follows :

“On hearing the learned Counsel for the parties and on a perusal of the impugned order, it appears that the Tribunal was justified in allowing the original application filed by the respondents. It was the case of the petitioners before the Tribunal that the petitioners had granted the first time bound promotion to the respondents in the year 1988 in pursuance of the Government Resolution dated 1.1.1986. We, however, find on a reading of the Government Resolution of the year 1986 that by the said Government Resolution, the State Government had merely revised the pay of the employees working in the milk scheme. The Tribunal rightly held that the case of the petitioners that they had granted time bound promotion to the respondents three times and therefore, the time bound promotion granted to them on the third occasion was withdrawn by the orders that were

challenged before the Tribunal, was not correct. The Tribunal rightly held that the assured progressive scheme was framed by the policy of the Government in the year 1995 for the first time and hence, the petitioners could not have been granted the first time bound promotion in the year 1988. The Tribunal rightly held that the reliance placed by the petitioners on the Government Resolution revising the pay scale of the employees could not be considered as a time bound promotion. The Tribunal held that the respective respondents were granted time bound promotion by the petitioners only on two occasions firstly in the year 1995 w.e.f. 1.10.1994 and secondly in the year 2006 and 2008 after completion of 12 years of service from 1994. We find that the order of the Tribunal is just and proper and the Tribunal has rightly set aside the action on the part of the State Government of withdrawing the second time bound promotion, granted to the respondents.

Since the order of the Tribunal is just and proper, the writ petition is dismissed with no order as to costs."

9] For the aforesaid reasons, we dismiss these petitions.
Rule is discharged. There shall be no order as to costs.

10] In view of dismissal of the petition, civil application no. 135 of 2018 does not survive and is disposed of.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

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Kishandas
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