

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3132 OF 2017

Sunil Shankarrao Parlikar,
Age : 56 years, Occu. Service,
As Civil Engineer Assistant in
Zilla Parishad, Aurangabad
R/o.: Plot No.45 Swapnanagari,
Garkheda Parisar, Aurangabad
Tq. Aurangabad, and
District Aurangabad

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural and Urban
Development Department,
"Bandhkam Bhavan" Marjan Path,
Fort, Mumbai – 32
2. The Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
3. The Executive Engineer (Works),
Zilla Parishad, Aurangabad,
District Aurangabad
4. The Sub-Divisional Engineer (Works),
Zilla Parishad, Aurangabad,
District Aurangabad
5. The Chief Accountant/
Finance Officer,
Zilla Parishad, Aurangabad

.. RESPONDENTS

AND
WRIT PETITION NO.8585 OF 2018

Shaikh Mohammad Yusuf,
Age : 53 years,
Occu. Jr.Engineer (Water Supply),
R/o.: A-55, New Nandawan Colony,
Military Premises,
Aurangabad

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural and Urban
Development Department,
"Bandhkam Bhavan" Marjan Path,
Fort, Mumbai – 32
2. The Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
3. The Executive Engineer (Water Supply),
Zilla Parishad, Aurangabad,
District Aurangabad
4. The Sub-Divisional Engineer (Water Supply),
Zilla Parishad, Aurangabad,
District Aurangabad
5. The Chief Accountant/
Finance Officer,
Zilla Parishad, Aurangabad

.. RESPONDENTS

AND
WRIT PETITION NO.6654 OF 2018

Vijaykumar s/o Madhavrao Girdhari,
Age : 59 years, Occu. Retired,

R/o.: Plot No.8,
Shivdatta Housing Society,
CIDCO, Aurangabad

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural and Urban
Development Department,
"Bandhkam Bhavan" Marjan Path,
Fort, Mumbai – 32
2. The Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
3. The Executive Engineer,
Zilla Parishad, Aurangabad,
District Aurangabad
4. The Sub-Divisional Engineer,
Zilla Parishad, Aurangabad,
District Aurangabad
5. The Chief Accountant/
Finance Officer,
Zilla Parishad, Aurangabad

.. RESPONDENTS

AND

WRIT PETITION NO.7294 OF 2018

Rahim Ahmed Farooque,
Age : 60 years, Occu.: Retired,
R/o.: Asif Colonuy, Ghati Road,
House No.11329,
Tq. and District Aurangabad

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural and Urban
Development Department,
"Bandhkam Bhavan" Marjan Path,
Fort, Mumbai – 32
2. The Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
3. The Executive Engineer,
Zilla Parishad, Aurangabad,
District Aurangabad
4. The Sub-Divisional Engineer,
Division Kannad,
Zilla Parishad, Aurangabad,
District Aurangabad
5. The Chief Accountant/
Finance Officer,
Zilla Parishad, Aurangabad .. **RESPONDENTS**

AND

WRIT PETITION NO.3592 OF 2018

Shaikh Imam Shaikh Farid Mansuri,
Age : 60 years, Occu. Retired,
R/o.: Mustafa Park Near Water Tank,
Vaijapur, Tal. Vaijapur,
District Aurangabad .. **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural and Urban
Development Department,
"Bandhkam Bhavan" Marjan Path,
Fort, Mumbai – 32

2. The Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
3. The Executive Engineer (Irrigation Dept.),
Zilla Parishad, Aurangabad,
District Aurangabad
4. The Sub-Divisional Engineer
(Irrigation Dept.),
Division Vaijapur, Tal. Vaijapur,
Zilla Parishad, Aurangabad,
District Aurangabad
5. The Chief Accountant/
Finance Officer,
Zilla Parishad, Aurangabad .. **RESPONDENTS**

AND

WRIT PETITION NO.7098 OF 2018

Sanjay Rajaram Kakade,
Age : 53 years, Occu. Jr. Engineer,
R/o.: N-9, House No.R26/142,
Raigad Nagar, CIDCO,
Aurangabad

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural and Urban
Development Department,
"Bandhkam Bhavan" Marjan Path,
Fort, Mumbai – 32
2. The Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
3. The Executive Engineer,
Zilla Parishad, Aurangabad,
District Aurangabad

4. The Sub-Divisional Engineer (Works),
Division Aurangabad,
Zilla Parishad, Aurangabad,
District Aurangabad
5. The Chief Accountant/
Finance Officer,
Zilla Parishad, Aurangabad .. **RESPONDENTS**

AND

WRIT PETITION NO.6612 OF 2018

Dadasaheb Rangnath Khajandar,
Age : 51 years, Occu. Service,
R/o.: Deepnagar, N-11, CIDCO,
Aurangabad .. **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural and Urban
Development Department,
"Bandhkam Bhavan" Marjan Path,
Fort, Mumbai – 32
2. The Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
3. The Executive Engineer (Works Dept.),
Zilla Parishad, Aurangabad,
District Aurangabad
4. The Sub-Divisional Engineer
(Irrigation Dept.), Kannad Division,
Tal. Kannad,
Zilla Parishad, Aurangabad,
District Aurangabad

5. The Chief Accountant/
Finance Officer,
Zilla Parishad, Aurangabad .. **RESPONDENTS**

AND

WRIT PETITION NO.6611 OF 2018

Suryakant Dattatrya Kulkarni,
Age : 56 years, Occu. Jr. Engineer,
R/o.: H-29, Suyog Colony,
Padampura, Aurangabad .. **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural and Urban
Development Department,
"Bandhkam Bhavan" Marjan Path,
Fort, Mumbai – 32
2. The Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
3. The Executive Engineer (Works Dept.),
Zilla Parishad, Aurangabad,
District Aurangabad
4. The Sub-Divisional Engineer (Water Supply),
Division Paithan,
Tal. Paithan,
Zilla Parishad, Aurangabad,
District Aurangabad
5. The Chief Accountant/
Finance Officer,
Zilla Parishad, Aurangabad .. **RESPONDENTS**

AND

WRIT PETITION NO.6631 OF 2018

Bhalchandra Baburao Danekar,
Age : 53 years, Occu. Service,
R/o.: Paithan, Tal. Paithan,
District Aurangabad

.. PETITIONER**VERSUS**

1. The State of Maharashtra,
Through its Principal Secretary,
Rural and Urban
Development Department,
"Bandhkam Bhavan" Marjan Path,
Fort, Mumbai – 32
2. The Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
3. The Executive Engineer (Works Dept.),
Zilla Parishad, Aurangabad,
District Aurangabad
4. The Sub-Divisional Engineer (Watter Supply),
Division Paithan, Tal. Paithan,
Zilla Parishad, Aurangabad,
District Aurangabad
5. The Chief Accountant/
Finance Officer,
Zilla Parishad, Aurangabad

.. RESPONDENTS**AND****WRIT PETITION NO.1087 OF 2018**

Omprakash Girdharilal Jaiswal,
Age : 50 years, Occu. Service,
As Civil Engineer Assistant in
Zilla Parishad, Auranabad
R/o.: House No.1079, Chhawani,

Gawalipura, Near Sai Mandir,
Aurangabad

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural and Urban
Development Department,
"Bandhkam Bhavan" Marjan Path,
Fort, Mumbai – 32
2. The Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
3. The Executive Engineer (Works),
Zilla Parishad, Aurangabad,
District Aurangabad
4. The Sub-Divisional Engineer (Works),
Zilla Parishad, Aurangabad,
District Aurangabad
5. The Chief Accountant/
Finance Officer,
Zilla Parishad, Aurangabad

.. RESPONDENTS

Mr.V.D.Sapkal, Advocate for petitioners in all
petitions

Mr.S.P.Tiwari, AGP for respondent no.1

Mr.U.B. Bondar, Advocate for respondent Nos. 2 to 5
in W.P. Nos.1087/2018, 3132/2017, 3592/2018,
6611/2018, 6612/2018, 6631/2018, 7098/2018,
7294/2018, 8585/2018

Mrs.Ashwini S. Hoge-Patil, Advocate for respondent
nos.2 to 5 in W.P. No.6654/2018

**CORAM : S.V. GANGAPURWALA
AND
R.G. AVACHAT, JJ.**

**RESERVED ON : DECEMBER 12, 2018
PRONOUNCED ON : MARCH 22, 2019**

JUDGMENT (*PER R.G. AVACHAT, J.*) :-

Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties and the learned A.G.P., heard finally.

2. All these petitions are decided by this common judgment since the issue of law and facts arise therein are common.

3. Mr.V.D.Sapkal, learned counsel appearing for the petitioners, would submit that the petitioners were initially serving on daily wages with the Zilla Parishad, Aurangabad. The petitioners were taken on C.R.T. (Converted Regular Temporary) Establishment on various dates in the cadre of Mistri Grade-1 and

Mistri Grade-II. Vide Government Resolution dated 20.05.1999, all these cadres were amalgamated in one cadre of Civil Engineering Assistant. Certain posts of the cadre of Civil Engineering Assistant were created vide the very Government Resolution. The petitioners and others were absorbed in cadre of Civil Engineering Assistant in phased manner. The petitioners were expected to pass professional examination for promotion to the post of Junior Engineer. There was exemption for employees to pass such professional examination only on their attaining age of 45 years. The Government issued resolution on 08.06.1995 for implementation of Assured Career Progress Scheme ("A.C.P.S.", for short) or grant of Time Bound Promotion ("T.B.P.", for short) Scale with effect from 15.10.1994 for Class-3 and Class-4 employees. According to learned counsel, the petitioners, on their completion of twelve years' continuous service since the dates on which they were brought on C.R.T. Establishment, became eligible for

first benefit of A.C.P.S./T.B.P. Scale. The petitioners, however, had not cleared professional examination. All of them got exemption from passing the said Examination on attaining age of 45 years. Thereafter, the Zilla Parishad issued orders granting them first benefit of A.C.P.S./T.B.P scale. According to the learned counsel, the petitioners were granted the said benefit from the date of completion of their twelve years of service. The Government, however, by its order dated 28.07.2014, issued certain directions, for implementation of which the salaries of the petitioners were sought to be re-fixed besides recovery of excess payment of the salaries.

4. According to the learned counsel, the petitioners were Class-3 employees. Some of them have retired on superannuation. There was no fault on their part. Moreover, the petitioners were, in fact, eligible for grant of benefit of A.C.P.S. on completion of twelve years of continuous service from

the date they were brought on C.R.T. Establishment. In support of his contentions, the learned counsel has placed reliance on the following authorities.

- (i) *Pandurang Kisan Wadnere and others Vs. State of Maharashtra and others*
2017 DGLS (Bom.)992
- (ii) *Nandkumar s/o Bhagwanappa Mandge and others Vs. State of Maharashtra*
(Writ Petition No.9279/2016, decided by this Court on 30th November, 2017)
- (iii) *Narendra Namdeorao Gedam Vs. Zilla Parishad, Amravati and another*
(Writ Petition No.5182/2012, decided by this Court at Nagpur on 30th January, 2014)
- (iv) *Ramkrushna s/o Bhikaji Thakre and others Vs. The Zilla Parishad, Buldhana and others*
(Writ Petition No.4915/2012, decided by this Court at Nagpur on 19th September, 2013)
- (v) *State of Maharashtra Vs. Meena A. Kuwalekar and others*
2016 (7) Bom.C.R.215

5. The learned A.G.P. would, on the other hand, justified Zilla Parishad's action of re-fixation of salaries of the petitioners with the claim for recovery of excess payment.

6. For the sake of convenience, the details as to when the petitioners were brought on C.R.T. Establishment, dates of their completion of twelve years' continuous service, on which they were granted exemption from passing professional examination on attaining their age of 45 years, on which they were granted first benefit of A.C.P.S., etc., are given in tabular form below :-

IN-SERVICE EMPLOYEES

W.P. No.	Name of petitioner	Date of CRTE	Date on which the employee completed 12 years of service	Date on which the employee was granted exemption from passing professional examination on completion of 45 years	Date on which the employee was granted First benefit of ACPS	Recovery/ Re-fixation order page No.
3132/ 2017	Sunil S. Parlikar	1.04.1988	1.4.2000	8.06.2006	8.06.2006 (page 43) by order	Page 63 by order dated

					dated 22.09.2009	22.2.2017
1087/ 2018	Omprakash G. Jaiswal	1.4.1991	1.04.200 3	20.04.201 3	20.4.2013 (page 42) by order dated 5.02.2014	Page 60 by order dated 29.2.2017
6631/ 2018	Bhalchandra B. Danekar	1.4.1990	1.4.2002	03.03.201 0	3/3/2010 (page 46) by order dated 29.11.2011	Page 64 order dated 01.6.2018
6612/ 2018	Dadasaheb R. Khajindar	22.5.1992	22.5.200 4	04.05.201 2	4.05.2012 (page 44) by order dated 13.12.2012	Page 63 Br order dated 23.4.2018
6611/ 2018	Suryakant D Kulkarni	1.4.1990	1.4.2002	12.09.200 7	12.9.2007 (Page 45 & 46) By order dated 16.9.2008	Page 64 By order dated 25.5.2018
7098/ 2018	Sanjay R Kakade	1.4.1991	1.4.2003	6.06.2010	6.06.2010 (page 54) by order dated 16.07.2011	Page 69 By order dated 12.4.2018
8585/ 2018	Shaikh Mohammad Yusuf	1.4.1990	1.4.2002	3.11.2010	Page By order dated 16.7.2011	Page 63 by order dated 23.7.2018

RETIRED EMPLOYEES

W.P.No	Name of Petitioner	Date of CRTE	Date on which the employee completed 12 years of service	Date on which the employee was granted exemption from passing professional examination on completion of 45 years	Date on which the employee was granted First benefit of ACPS	Re-fixation order page No.
3592/2018	Shaikh Imam Shaikh	1.4.1988	1.04.2000	29.6.2003	29.6.2003 Page 45	No date Page 63
6654/2018	Vijaykumar M Girdhari	1.4.1991	1.04.2003	30.9.2003	30.9.2003 Page 49 By order dated 16.9.2018	Page 67 By order dated 18.2.2017
7294/2018	Rahim Ahmed Farooque	1.4.1985	1.04.1997	1.11.2003	1.11.2003 Page 35 By order dated 20.1.2007	Page 66 By order dated 26.8.2016

We have considered the submissions canvassed by learned Counsel for the respective parties.

7. A short question that falls for consideration in these Writ Petitions is, whether

twelve years' continuous service by the petitioners from the date on which they were brought on C.R.T. Establishment, would make them entitle for first time-bound promotional scale.

8. Admittedly, the petitioners were serving on daily wages. They were brought on C.R.T. Establishment. They completed 12 years' continuous service on the dates mentioned in column no.4 against their names in the afore-mentioned chart.

9. By virtue of the Government Resolution dated 08.06.1995 (Exh.'D' in Writ Petition No.3132 of 2017), the Government introduced T.B.P.S. scheme to take effect from 22.09.1994. Said Government Resolution spells out the actual scheme in Clause 2 as under :-

"2. Details of the scheme are as follows:

Employees serving in Group "C" and "D" (prior Class 3 & 4) and holding such

posts will be given next higher pay scale in their promotional chain after regular service of 12 years. Employees for whom no promotional posts exist in their promotional chain will be given next higher pay scale as shown in appendix "A". Other salient features of this scheme are as follows:-

a] This scheme will come into force with effect from 1st October, 1994.

b] Regular procedure for promotion to be followed along with verification of seniority, passing of qualifying and departmental examinations is necessary for giving benefit under this scheme.

c] In case of employees who are Direct recruits or employees who are appointed by promotion, next higher pay scale will be admissible once after putting in regular service for twelve years.

d] Next higher pay scale under the scheme will not be admissible to such employees who have already received two or more promotions.

e] Retirement age for group "D" employees will remain 60 years even though, the group "C" pay scale of Rs.950-1400 is made admissible to such employees under this scheme. But retirement age for group "C" employees will remain 58 years even if such employees are promoted to other higher posts. Group "C" employees will not be considered for promotion to group "B" gazetted posts under this scheme.

f] Benefits of pay fixation as admissible in case of regular promotion will be given though there may be no addition in the duties and responsibilities. However, such benefit of pay fixation will not be admissible when giving regular promotion (functional promotion) in the same pay scale.

g] If an employee is receiving special pay in his original pay scale then after getting benefit of promotion under this scheme such special pay will not be admissible.

h] Name of the employee will remain in the seniority list of original cadre even

though such employee is given benefit of this scheme. He will be considered at appropriate time for regular promotion (functional promotion) as and when vacancy is available according to recruitment rules. Employees who are ineligible for regular promotion will not get benefit of this scheme. Similarly, employees refusing regular promotion will not get benefit of time bound promotion and such employees who have already received the in situ benefit of time bound promotion will be demoted to the original post. For this an indemnity bond has to be got executed from the employees while giving benefit of this scheme. However, in such cases recovery of financial benefits will not be done. These orders will apply mutatis - mutandis to employees of Zilla Parishads. These orders are issued as per consent of Finance Department UOR having number PSF 1954, dated 27th March 1995." (emphasis supplied)

10. As per Clause "B" of the Government Resolution dated 08.06.1995, the conditions for being entitled for first benefit of A.C.P.S./T.B.P. Scale, are seniority, eligibility, passing of professional/eligibility test, departmental examination etc. As the pay admissible to the next promotional avenue is to be paid under the scheme, the officials are required to fulfill all the conditions contained in the Government Resolution dated 08.06.1995.

11. The scheme was revisited in the year 2001. T.B.P. Scale was substituted by A.C.P.S. The object and purpose for introduction of A.C.P.S./T.B.P. Scale is to relieve the employees, at least partially, from the frustration which normally arises on account of stagnation in a particular post for long years on account of limited availability of promotional avenues. The scheme does not involve actual or functional promotion to the next higher post. It provides for grant of pay-scale of the next promotional higher post (ref:judgment in the case of

**State of Maharashtra Vs. Meena A. Kuwalekar and ors.,
AIR Bom R 722).**

12. It would be axiomatic from the scheme promulgated vide Government Resolution dated 08.06.1995 that for grant of first benefit of A.C.P.S./T.B.P. Scale, an employee has to be eligible for promotional post, pay scale of which he may get under the scheme. The employee should have passed departmental/examination and/or suitability test. Admittedly, none of the petitioners herein has passed professional examination i.e. suitability test. Admittedly, the petitioners were entitled for exemption from passing professional examination only on attaining 45 years of age. In the aforesaid chart, the dates have been given in column no.5 indicating the petitioners to have been granted exemption from passing professional examination. Meaning thereby, on the given dates, the petitioners became eligible for being considered for the next promotional avenue. It further indicates that on these dates only, the

petitioners became eligible and entitled for grant of first T.B.P. Scale, provided they fulfill other conditions. Learned Counsel for the petitioners does not dispute this position. He, however, meant to say that grant of A.C.P.S/T.B.P. Scale is only technically deferred/postponed until the petitioners were granted exemption from passing professional examination on completion of 45 years of age. He further meant to say that the petitioners would be retrospectively entitled for actual monetary benefits from the date of their completion of twelve years continuous service from the date on which they were brought on C.T.R.

13. If we accept the submission of learned Counsel for the petitioners, the condition that the employee should have passed suitability test/departmental examination for being considered for promotional avenue or at least, for pay scale thereof, would be an otiose. That was not meant by the Government Resolution dated 08.06.1995.

14. In our view, therefore, the petitioners would become entitle for first benefit of A.C.P.S./T.B.P. Scale only on the day, on which they were granted exemption from passing professional examination. It is true that the petitioners have, however, been granted the said benefit from the date of completion of twelve years continuous service from the dates they were brought on C.T.R. So has happened in the case of other number of employees working on the establishment of various Zilla Parishads in the State of Maharashtra.

15. The Government, therefore, by its Circular dated 28.07.2014, made the position clear. It is not that by the said Circular, the petitioners, for the first time, are made ineligible for benefit of A.C.P.S./T.B.P. Scale. The Circular reiterates the conditions contained in the Government Resolution dated 08.06.1995. The petitioners have, admittedly, not passed the professional examination. They have, in fact, been granted exemption from passing such

examination on their completion of 45 years of age. As such, grant of first benefit of A.C.P.S./T.B.P. Scale to the petitioners, long before they became eligible for the same on completion of 45 years of age when they were granted exemption from passing professional examination, was an error on the part of the employer i.e. Zilla Parishad, Aurangabad. For rectification of the said error, the pay of the petitioners came to be re-fixed. We are, therefore, not inclined to interfere with the re-fixation of the pay scales of the petitioners.

16. None of the citations referred to herein above by learned Counsel for the petitioners, would come to their help since in none of them, the provisions of Government Resolution dated 08.06.1995 were in question. Government Resolution dated 08.06.1995 says that in future, if they become ineligible for promotion, the benefit shall be taken away. True, the facts of the first two citations referred to above, would indicate that the

petitioners therein were granted T.B.P. Scale on completion of twelve years continuous service in the cadre of Mistri Grade-I/Mistri Grade II, etc. In the case of **State of Maharashtra Vs. Meena A. Kuwalekar and ors. (Supra)**, the main issue involved was, whether the period of 12 years or 24 years, prescribed as prerequisite for availing benefits under T.B.P.S. and/or A.C.P.S. is to be reckoned from the date of the initial appointment of the respondents-employees or from 01.12.1994, which is the date from which their services were treated as regularised in terms of Government Resolution dated 01.12.1994.

17. We are, however, inclined to grant relief as against recovery of the excess payment of salary made to the petitioners, pursuant to granting them T.B.P. Scale when they were not entitled thereto. The Circular dated 19.12.2015 issued by the State of Maharashtra, Rural Development Department, categorically states that recovery of excess payment

of salary pursuant to incorrectly grant of A.C.P./ T.B.P. to the employees, who have already retired or who are on the verge of retirement, shall not be made. Moreover, the circular further states that such recovery shall also not be made from Class-III and Class-IV employees. We are granting this relief because the petitioners are Class-III employees. They were in no way responsible for wrong fixation of their salary. The judicial precedent is also on the side of the petitioners. If any amount is wrongly paid on the basis of re-fixation of pay scale by the department, it cannot be recovered, as held in the case of **State of Punjab and ors. etc. Vs. Rafiq Masih (WhiteWasher) etc., AIR 2015 SC 696.**

18. For the reasons given herein above, the Writ Petitions partly succeed in the following terms :-

(i) The respondent – Zilla Parishad, Aurangabad, is hereby restrained from making recovery of actual excess payment wrongfully made to the petitioners by

virtue of grant of T.B.P. Scale before the date they were really entitled to get the same.

(ii) Rule is partly made absolute. The Writ Petitions are disposed of accordingly.

[R.G. AVACHAT, J.]

[S.V. GANGAPURWALA, J.]

NPJ/KBP