

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

12 WRIT PETITION NO.10240 OF 2016

BHAGWANT BAJRANGRAO KADAM

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Madhukar V. Dhongade, Advocate for the Petitioner.

Mr. S. P. Tiwari, AGP for Respondents-State.

Mr. G. N. Patil, Advocate for Respondent Nos.2 and 4.

...

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATED : 10th APRIL, 2019.

PER COURT:-

1. The petitioner assails the order of Tribunal dismissing the Original Application.

2. Mr. Dhongade, learned counsel for the petitioner submits that the petitioner was appointed in the year 1978. The petitioner was granted time bound promotional pay scale from the year 1994 upon completion of 12 years of service. The learned counsel submits that the petitioner is entitled to the said pay scale as per the executive instructions dated 18.03.1998 and the executive instructions dated 08.06.1995 issued by the Deputy Secretary. According to the learned counsel at the

time of retirement the respondents could not have taken up exercise of re-pay fixation. The 12 years service is to be counted from the date of initial appointment. The the benefit of time bound promotional pay scale was rightly given from 1994. The Tribunal failed to consider the said aspect.

3. We have also heard the learned counsel for the respondents.

4. The Apex Court in case of **Punjab State Electricity Board and Others Vs. Jagjiwan Ram and Others** reported in (2009) 1 Supreme Court Cases (L&S) 769 has held that regular service means service rendered after regular appointment and therefore does not include service rendered as temporary, ad-hoc or work charged employee. The employees cannot be granted benefit of time bound promotional scheme unless they completed the prescribed length of service as regular employees. The petitioner in his Original Application more particularly in paragraph 6 (iii) specifically averred that the applicant was given posting on work charge establishment from 1978 to 1987. In view of that the 12 years length of service shall be counted from the year 1987. More over, the petitioner had not passed the qualifying examination for the post of Junior Engineer. The petitioner completed 45 years of age and was eligible for exemption from passing Departmental

Examination in the year 2002. However, the petitioner was granted time bound promotional benefits from the year 1994. The same was found to be erroneous. The Tribunal has taken into consideration all these facts in the order. The grant of pay scale of Junior Engineer on the basis of the principle of time bound promotional pay scale from 1.10.1994 was against the Government Resolution dated 08.06.1995. It was necessary for the employees to pass the qualifying examination for being eligible for time bound promotional pay scale or complete 45 years of age.

5. Considering the above, no error has been committed.

6. As far as recovery is concerned, the earlier Original Application was already allowed and recovery has been quashed and set aside and refunded.

7. In view of that, writ petition is dismissed. No costs.

(A. M. DHAVALA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE