

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

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2605 OF 2017**

1. The Association of the Sub-ordinate Service of Engineers Maharashtra State Registered No.GRGAD.1066-J-dated 25/3/1968, Having its office at 1168, E-Ward, Near Geetanjali Society, Opp. Korgaonkar Lawn, Takala, Kolhapur – 416 001
2. Vivekananad Pandurang Maindargi  
Age 55 years, working as – Deputy Engineer, R/at 1182/12, E-ward, Near Nigade Samaj Mandir, 3<sup>rd</sup> Lane, Takala, Rajarampuri, Kolhapur
3. Baburao Dnyanu Kamble  
Age 57 years working as – Sectional Engineer, R/at Plot No.3, Utkarsh Bldg. Near Chetan Motors, Unchagaon (East), Kolhapur.
4. Abhakumar Narayan Narlekar  
Age 55 years, working as – Sectional Engineer, R/at Plot No.3, “Ashirwad” Dattatraya Housing Society, Opp. NCC Officer, Sambhajinagar, Kolhapur-12.
5. Ravindra Tukaram Chavan  
Age 53 years, working as – Sectional Engineer, R/at Rakasjree “B” Apartment, Flat No.3, Suvarnanagari, Bibwewadi, Pune – 411 037
6. Prakash Phadke  
Age 55 years, working as – Sectional Engineer, R/at Centre One Apt. Flat No.F-02, Tarabai Park, Kolhapur – 3.
7. Maruti Tukaram Lad  
Age 52 years, working as – Sectional Engineer, R/at Plot No.13, Indira Graha Nirman Society, Shahu Park, Kolhapur

8. Sunil Baburao Warale  
Age 52 years, working as – Sectional Engineer, R/at Plot No.13, Indira Graha Nirman Society, Shahu Park, Kolhapur
9. Dattatraya Bhairu Darwadkar  
Age 52 years, working as – Sectional Engineer, R/at 1010/1/Plot No.11, Vyankatesh colony, Apatenagar, Kolhapur
10. Shankar Krishna Raut  
Age 50 years, working as – Sectional Engineer, R/at 790/4/B, Plot No.82, N. T. Sarnaik Nagar, Raigad colony, Kolhapur.
11. Rajan Gopal Ghatage  
Age 56 years, working as – Sectional Engineer, R/at Ambai Park, Amrapali Apt. Bldg.No.41, G-8, Kolhapur-416010
12. Dilip Ramchandra Ingawale  
Age 56 years, working as – Sectional Engineer, R/at 36-B/2, Agasti Apartment E-ward, Tarabai park, Kolhapur.
13. Shriram Savtram Kakade  
Age 57 years, working as – Sectional Engineer, R/at Vinamra, Plot No.26, Degaon Road, Tq. & Dist. Satara.
14. Suresh Maruti Patil  
Age 59 years, Retired as – Sectional Engineer, R/at Vinamra, Plot No.26, Degaon Road, Tq. & Dist. Satara.
15. Ramchandra Baburao Bhosale  
Age 59 years, Retired as – Sectional Engineer, R/at Peerwadi, Tq. & Dist. Satara.
16. Sanjay Bhiku Gaikwad  
Age 59 years, Retired as – Sectional Engineer, R/at 165/3A/5, Shahu Nagar, Godoli, Tq. & Dist. Satara.
17. Balu Dattu Mogarde  
Age 58 years, Working as – Sectional Engineer, R/at Khanapur, Tq. Bhudargad, Dist. Satara.

18. Mansur Badshah Sayyad  
Age 61 years, Retired as – Sectional Engineer, R/at Sayyadwadi, Near Sai Mandir, Godoli, Tq.&Dist. Satara.
19. Vijay Dhondiba Gaikwad  
Age 55 years, Working as – Sectional Engineer, R/at Plot No.6, Varshanagar, Kolhapur.
20. Shankar Kerba Kumbhar  
Age 53 years, Working as – Sectional Engineer, R/at Asawari-A, Flat No.1304, nanded City, Sinhgar Road, Pune.
21. Suryakant Digambarrao Barbind  
Age 57 years, Working as – Sectional Engineer, R/at Flat No.1/11, Jivala Apartment, Vanvaswadi, Dist. Satara.
22. Sunil Gajanan Holankar  
Age 53 years, Working as – Sectional Engineer, R/at R.No.377/1, E-ward, Rajarampuri, 13<sup>th</sup> Lane, A-107, Mandlik Park, Kolhapur.
23. Ashok Rajaram Phadtare  
Age 56 years, Working as – Sectional Engineer, R/at Plot No.68, Rajupadhyanagar, Radhanagari Road, Kolhapur.
24. Ajit Ramchandra Anekar  
Age 58 years, Working as – Sectional Engineer, R/at Plot No.16, Karmaveernagar, MIDC, Satara, Tq. & Dist. Satara
25. Vilas Pundalik Jadhav  
Age 57 years, Working as – Sectional Engineer, R/at D-1/2, Sunder Garden, Manikbaug, Sinhagad Road, Pune – 51.
26. Chaitnya Shrikrishna Deuskar  
Age 60 years, Retired as – Sectional Engineer, R/at 9, Vishal Sahyadri Co-op, Hsg. Society, Shantinagar, Satara.
27. Dhananjay Rajaram Shinde  
Age 60 years, Retired as – Sectional Engineer, R/at 81, Zilla Parishad colony, Shahupuri, Gendami, Satara.

28. Anil Purshottam Jadhav  
Age 58 years, Working as – Sectional Engineer, R/at Plot No.16, Vighnaharta Society, Kondve, Satara.
29. Bhagwan Rajabhau Khedekar  
Age 54 years, Working as – Sectional Engineer, R/at B-05, Sai Savera, Shahaji Raje Bhosale Nagar, Hadapsar, Pune 411 028.
30. Dilip Murlidhar Phadke  
Age 58 years, Working as – Sectional Engineer, R/at A/6 Shrushti Vihar HSG. Society, Zambad Estate, Aurangabad.
31. Vishnu Dattatraya Abnave  
Age 55 years, Working as – Sub-Divisional Engineer, R/at B-1/1, Ganga Residency, Mantri Market, Hadapsar, Pune – 411 026,

**....Petitioners**

**Versus**

1. The State of Maharashtra through the Chief Secretary, Mantaralaya, Mumbai – 400 032.
2. The Principal Secretary, Irrigation Department, Mantaralaya, Mumbai – 400 032.
3. The Principal Secretary, Public Works Department, Mantaralaya, Mumbai – 400 032.
4. The Principal Secretary, General Administration Department, Mantaralaya, Mumbai – 400 032.
5. The Principal Secretary, Finance Department, Mantaralaya, Mumbai – 400 032.

**...Respondents**

Mr. Pradeep Deshmukh, a/w Mr. Yashodeep Deshmukh & Ms. Vaideshi Deshmukh, I/b Mr. Shailesh Chavan, for the Petitioners.

Mr. D. B. Khair, Special Counsel a/w Mr. Y. S. Khochare, AGP for Respondent nos.1 to 5.

**CORAM:** B. R. GAVAI &  
N. J. JAMADAR, JJ

**RESERVED ON:** 24<sup>th</sup> January, 2019

**PRONOUNCED ON:** 06<sup>th</sup> February, 2019

**JUDGMENT:-** (Per N. J. Jamadar, J.)

**1.** Rule. With the consent of the parties, rule made returnable forthwith and heard finally.

**2.** This petition assails the legality, propriety and correctness of a judgment and order passed by the learned Vice-Chairman of the Maharashtra Administrative Tribunal, Mumbai Bench, in Original Application No.837 of 2016 ('OA'), dated 2<sup>nd</sup> February, 2017, whereby the OA filed by the Petitioners herein was dismissed.

**3.** The Petitioners had filed OA No.837 of 2016 before the Tribunal seeking declaration that 'Clause 2(b)(3) of the Government Resolution (GR) dated 1<sup>st</sup> April, 2010, (whereunder Modified Assured Career Progression Scheme ("MACP Scheme") was implemented), which provided that the grant of non-functional or analogous higher pay-scale given after putting in specified years of service, without there being any increase in the duties and responsibilities of the incumbents, would be treated as the 'first benefit' under MACPS', was not applicable

to them. Consequently, the Petitioners had prayed that the Government Circular dated 13<sup>th</sup> June, 2016, whereby the second benefit under the MACP Scheme, already granted to the Petitioners, was withdrawn, be quashed and set aside.

**4.** For the sake of convenience and clarity the parties are hereinafter referred to in the capacity in which they were arrayed before the Tribunal.

**5.** Shorn of unnecessary details, the background facts can be summarised as under:

**a)** Applicant no.1 is the Association of Sub-ordinate Service of Engineers. Applicant no.2 to 31 are the members of Applicant no.1 Association. The applicants were initially appointed as 'Junior Engineers'. Some of the applicants were recruited as 'Diploma-holder Junior Engineers'. The others fall in the category of 'unqualified Junior Engineers'.

**b)** On 16<sup>th</sup> April, 1984, the Government resolved to confer the status of 'gazetted officers' upon the 'degree-holders' and other junior engineers. The degree-holder junior engineers were given the status of gazetted officers immediately. Whereas the diploma-holder and unqualified junior engineers were conferred the said status after putting in the specified years of service i.e. five years service for the junior engineers who had

completed three years diploma, seven years for two years diploma-holders, and ten years for the unqualified junior engineers. Under the said GR, two different cadres were created. The degree-holder junior engineers were designated "Assistant Engineer Grade-II". Whereas the diploma-holder and unqualified junior engineers were designated as 'Sectional Engineers'. Both the cadres i.e. Assistant Engineers Grade-II and Sectional Engineers were given the same pay-scale i.e. Rs.600-30-750-40-950.

**c)** The Government introduced Assured Career Progression Scheme ("ACP Scheme") vide GR dated 20<sup>th</sup> July, 2001, to address, *inter alia*, the issue of stagnation. By the said GR, the erstwhile Time-Bound Promotion Scheme ("TBP Scheme") was repealed. Vide GR dated 11<sup>th</sup> February, 2002, benefit of the said ACP Scheme came to be extended to the Section Engineers (applicants) after putting in 12 years service.

**d)** With the implementation of the Sixth Pay Commission Recommendation, the Government implemented MACP Scheme in terms of GR dated 1<sup>st</sup> April, 2010. It was brought into force with effect from 1<sup>st</sup> October, 2006. Under the said scheme the eligible employees/officers were entitled to 'second benefit' of the promotional pay-scale.

However, the employees who had already been promoted twice were entitled to one benefit only. The first benefit was to be given after putting in 12 years service. The second was made admissible after 12 years of the grant of first benefit. Clause 2 (b)(3) provided that while considering the admissibility of the first benefit i.e. 'non-functional pay structure', extended to the employees, after putting in a specified years of service, without there being any increase in the duties and responsibilities, shall be reckoned as the 'first benefit' under the scheme.

e) Pursuant to the MACP Scheme, the applicants were extended second benefit and their pay was fixed in the promotional pay-scale. However, on 13<sup>th</sup> June, 2016, the State Government, in Finance Department, issued a Circular and directed that the 'second benefit' extended to the applicants be withdrawn and their pay be re-fixed. The excess payment was also directed to be recovered. The Circular proceeded on the premise that the junior engineers working in the Public Works Department, Irrigation Department and Rural Development Department were given upgradation after putting in seven years of service and thereby came to be posted in the cadre of Section Engineers and, thus,

the benefit of pay revision given to them in terms of the aforesaid GR dated 16<sup>th</sup> April, 1984 constituted the first benefit under the MACP Scheme. The benefit extended to such employees under ACP Scheme, of the year 2001, constituted the 'second benefit' and, thus, such employees were not entitled to the benefit under the MACP Scheme as it would amount to the 'third benefit', which was impermissible.

**f)** Being aggrieved by the Circular dated 13<sup>th</sup> June, 2016, whereby the 'second benefit' extended to the applicants came to be withdrawn, the applicants preferred OA No.837 of 2016.

**6.** The principal contention of the applicants was that the upgradation under the GR dated 16<sup>th</sup> April, 1984 could not have been construed as a benefit within the meaning of the ACP/MACP Schemes, for when the status of gazetted officers was given to the applicants no time-bound promotion/ACP Scheme was in vogue. Even otherwise, the said upgradation does not amount to grant of non-functional pay structure, and, thus, the respondents misapplied the prescription contained in Clause 2 (b)(3) of the GR dated 1<sup>st</sup> April, 2010 and unjustifiably denied second benefit under MACP Scheme.

**7.** The respondents resisted the claim before the Tribunal on the ground that the upgradation of the Junior Engineers to

Sectional Engineers was, in fact, grant of non-functional pay structure benefit. In accordance with Clause 2(b)(3) of the GR dated 1<sup>st</sup> April, 2010, such non-functional pay structure benefit was required to be treated as the first benefit under the MACP Scheme. Despite a clear prescription for reckoning the extension of benefit of non-functional pay structure as the 'first benefit', under the MACP Scheme, the Public Works Department, Irrigation Department and the Rural Development Department had extended the 'second benefit' under the MACP Scheme to the Junior Engineers, who were upgraded as Sectional Engineers. This in effect resulted in grant of third benefit. Therefore, the mistake was required to be rectified lest it would amount to unjust enrichment at the cost of public exchequer.

**8.** The learned Vice-Chairman was persuaded to accept the aforesaid contention, raised on behalf the respondents. Construing the provisions of Clause 2 (b)(3) of the GR dated 1<sup>st</sup> April, 2010, especially, the word “अकार्यकारी” (non-functional) in the said clause, the learned Vice-Chairman came to the conclusion that the upgradation of the applicants in terms of the GR dated 16<sup>th</sup> April, 1984, to the post of Sectional Engineers, amounted to the grant of non-functional pay

structure and, therefore, the applicants case was clearly covered by Clause 2 (b)(3) of the GR dated 1<sup>st</sup> April, 2010. Thus, the OA came to be dismissed. Being aggrieved by and dissatisfied with the impugned judgment and order, the applicants have invoked writ jurisdiction of this Court.

**9.** We have heard Mr. Deshmukh, the learned Counsel for the Petitioners and Mr. Khiare, the learned Special Counsel, for the Respondents at considerable length. We have carefully perused the impugned order and the material on record. The controversy, in a sense, revolves in a narrow compass. Whether the upgradation of the junior engineers as sectional engineers, in terms of the GR dated 16<sup>th</sup> April, 1984, amounts to grant of a non-functional pay-scale and thereby falls within the ambit of Clause 2 (b)(3) of the GR dated 1<sup>st</sup> April, 2010 so as to amount the 'first benefit' thereunder, is the core question that crops up for our consideration.

**10.** Mr. Deshmukh, the learned Counsel for the Petitioners strenuously submitted that the aforesaid question must be answered in the negative. The learned Counsel mounted a two-fold challenge to the impugned order. Firstly, according to the learned Counsel for the Petitioners, the impugned order manifests a serious deficit of judicial propriety. Secondly, even

on merits, the Tribunal committed a grave error in recording a finding that the upgradation under the GR dated 16<sup>th</sup> April, 1984 constituted the 'first benefit' within the meaning of Clause 2 (b)(3) of the GR dated 1<sup>st</sup> April, 2010.

**11.** On the first count, it was urged that the learned Vice-Chairman not only deviated from the judicial discipline of respecting and following the views of the co-ordinate Benches of the Tribunal but also went on to record a contrary view despite the request of the learned Vice-Chairman for reference of the question to a larger bench of the Tribunal, arising out of similar facts/situation, having been expressly refused by the learned Chairman of the Tribunal. By order dated 22<sup>nd</sup> July, 2016 in Original Application No.86 of 2014, the learned Chairman had refused the request for reference to larger Bench recording a specific reason that the order passed by the Nagpur Bench of the Tribunal in Original Application Nos.636, 733 and 599 of 2013 and the view recorded therein, with which the learned Vice-Chairman proposed to differ, were upheld by a Division Bench of this Court, Bench at Nagpur, in Writ Petition No.6329 of 2015. The learned Chairman, thus, observed that in view of the confirmation of the said view of the Tribunal by the High

Court, which is a binding precedent, taking any other and different view was not possible or permissible.

**12.** The learned Counsel for the Petitioners would urge that despite the said order of the Division Bench of this Court in Writ Petition No.6329 of 2015 being relied upon by the Petitioners, the learned Vice-Chairman went on to adjudicate the dispute without even a reference to the said judgment. Thus, according to the learned Counsel for the Petitioners the impugned order deserves to be inferred with.

**13.** On merits of the matter, it was submitted on behalf of the Petitioners that the Tribunal did not properly construe the nature of the upgradation under the GR dated 16<sup>th</sup> April, 1984, and misdirected itself in selectively construing the provision of Clause 2 (b)(3), especially the term “अकार्यकारी” (non-functional), without appreciating the object and import of the ACP Scheme, as a whole. The Tribunal, according to the learned Counsel for the Petitioners, lost sight of the fact that the exercise of cadre restructuring, undertaken vide GR dated 16<sup>th</sup> April, 1984, was prior to the introduction of the time-bound promotion/ACP Schemes. The Petitioners could not have been deprived of the legitimate benefit, the very object which was to address the

issue of stagnation, for want of promotion, urged the learned Counsel for the Petitioners.

**14.** Per contra, Mr. Khaire, the learned Special Counsel for the Respondents stoutly supported the impugned judgment and order. It was submitted that the fact that the Petitioners, who, in a sense, were under-qualified and/or unqualified, were brought at par with qualified degree-holder engineers and given the same pay-scale, can not be simply discarded. The avowed purpose of the MACP Scheme was to provide two promotional pay-scales in the entire service period. There is no reason to exclude the benefit, which the Petitioners obtained, when they were upgraded as sectional engineers, from consideration as that itself amounted to extension of non-functional pay-scales. Mr. Khaire, however, fairly conceded that the Tribunal ought to have considered and dealt with the aforesaid judgment of this Court in Writ Petition No.6329 of 2015. The said non-consideration, according to the learned Special Counsel, however, does not affect the ultimate adjudication.

**15.** To appreciate the first challenge based on non-consideration of the orders passed by the co-ordinate Benches of the Tribunal and the order by a Division Bench of this Court in Writ Petition No.6329 of 2015 (Kawalkar's case), upholding

the said view, and its impact upon sustainability of the impugned order, it is necessary to note the factual backdrop of those proceedings.

**16.** In OA No.636, 733 and 599 of 2013, decided by the then learned Vice-Chairman, at Nagpur Bench, the issue for consideration was, whether the milk collection and extension supervisors in the Dairy Development Department were entitled to the 'second benefit' under the MACP Scheme. The second benefit was denied to them on the ground that vide notification dated 7<sup>th</sup> November, 1998, the pay scale of the milk procurement supervisors/milk distribution supervisors was revised from 1200-1800 to 1350-2200 subject to the condition of putting in seven years service. It was the stand of the Government that the said revision in pay-scale amounted to grant of a higher (non-functional) pay-scale and thus constituted the 'first benefit' under Clause 2(b)(3) of GR dated 1<sup>st</sup> April, 2010.

**17.** The learned Vice-Chairman negated the contention of the Government holding that the revision of the existing pay-scale, after putting in seven years service, could not be construed as the grant of higher pay-scale and, consequently, didn't attract the provisions of Clause 2(b)(3), above.

Resultantly, the Original Applications were allowed and the Respondents were directed to give 'second benefit' under MACP Scheme.

**18.** In OA No.233 of 2013, decided by the learned Member on 21<sup>st</sup> April, 2015, at Mumbai Bench, the applicants were Agricultural Assistants. They were denied the 'second benefit' under MACP Scheme, on the premise that vide Government Resolution dated 8<sup>th</sup> December, 1994, their pay-scale was revised to Rs.1350-30-1440-40-1800-EB-50-2200 from the then existing pay-scale Rs.1200-30-1440-EB-30-1800, after putting in seven years regular service in the said cadre and the said revision of pay, given effect to from 1<sup>st</sup> January, 1986 amounted to the 'first benefit' under Clause 2(b)(3) of the MACP Scheme.

**19.** Again, the learned Member of the Tribunal, after referring to the judgment and order passed by the Nagpur Bench in aforesaid OA Nos.636, 733 and 599 of 2013, negated the claim of the Respondents holding, *inter alia*, that the said revision in pay scale was for removal of discrepancy or anomalies and without any concomitant increase in the duties and responsibilities, and that the promotional pay-scale was not granted under the GR dated 8<sup>th</sup> December, 1994. The

learned Member further observed that Clause 2(b)(3) of the GR dated 10<sup>th</sup> April, 2011 pressed into service by the Respondents, covered the benefit which was schematic and not by way of one time grant.

**20.** In Kawalkar's case, a Division Bench of this Court upheld the order passed by the Tribunal in OA No.636, 733 and 599 of 2013. The Division Bench, *inter alia*, observed as under:

“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.”

**21.** It is evident that the Division Bench found that, in the matter of milk collection and extension supervisors, vide the GR dated 7<sup>th</sup> November, 1998, the Government had merely revised the pay of the employees working under Dairy Development Department. It was further held that since the ACP Scheme was introduced in the year 1995, for the first time, the employees could not have been granted first time-bound promotion in the year 1988. Thirdly, the revision of the pay-scale of the employees could not be considered as a time-bound promotion.

**22.** At this juncture, it may be appropriate to make a reference to the order passed by the learned Chairman of the Tribunal, in OA No.86 of 2014, dated 22<sup>nd</sup> July, 2016, on a reference made by the learned Vice-Chairman, (who passed the impugned order) expressing the difference of opinion, with the views expressed in aforesaid orders by the Tribunal and, thus, seeking the adjudication by a larger Bench. In OA No.86 of 2014, the applicants were the 'tracers' in various departments of the Government. The Government issued a resolution on 28<sup>th</sup> April, 2009 and thereby restructured the cadres so as to bring in uniformity. After referring to the aforesaid order passed by the Tribunals and the order of the Division Bench in the Kawalkar's case, the learned Chairman observed that there was

no need to refer the question to a larger Bench of the Tribunal as the issue stood concluded by the aforesaid judgment of this Court, in Kawalkar's case.

**23.** We have referred to the aforesaid proceedings, in detail, as the question involved in all these proceedings, evidently, arose out of similar facts/situation. It is pertinent to note that in all the three sets of Original Applications, referred to above, there was a revision in the pay-scale of certain categories of employees after putting in seven years of service in a specified cadre. In the case at hand also, the erstwhile under-qualified and/or unqualified junior engineers were given the designation and pay-scale of section engineers after putting in specified years of service. In all the above original applications, different Benches of the Tribunal found that revision in pay-scale at an anterior point of time, without there being any change in duties and responsibilities, could not have been construed as the benefit akin to non-functional pay-scale relatable to the prescription contained in Clause 2(b)(3) of the MACP Scheme. The Tribunals also found such revision of pay-scale, when the Assured Career Progression Scheme was not in force, could not be pressed into service to deny the benefit under the ACP/MACP Scheme, the object of which was to redress stagnation.

**24.** Since the request made by the learned Vice-Chairman, who passed the impugned order, for reference to the larger Bench was expressly declined by the learned Chairman, by passing a reasoned order, the learned Vice-Chairman, in our view, could not have recorded a discordant note in another proceeding.

**25.** It is imperative to note that the matter is not only of cleavage of opinion between the different Benches of the Tribunal. Since, a Division Bench of this Court had not only lent its imprimatur to the view of the Tribunal in Kawalkar's case but had expressly observed that the action of the Respondents in denying 'second benefit' to the milk collection and extension supervisors was unsustainable, the judicial discipline and judicial propriety warranted that the binding efficacy of the judgment of the Division Bench was honoured.

**26.** From the perusal of the impugned order it becomes evident that the learned Vice-Chairman endeavoured to distinguish the judgment of the Tribunal in the OA Nos.233, 1000 and 1003 of 2013 (Agricultural Assistant's case) by assigning certain reasons. In the process, the learned Vice-Chairman lost sight of the fact that the said judgment reproduced, in verbatim, the observations of the Nagpur Bench

of the Tribunal in Kawalkar's case. In this backdrop, it was incumbent upon the Tribunal to consider and deal with the judgment of the Division Bench of this Court in Kawalkar's case.

**27.** The importance of adhering to judicial discipline can hardly be overemphasised. If a co-ordinate Bench endeavours to over-rule the decisions of another co-ordinate Bench, it would lead to conflicting the decisions and the ultimate casualty will be the consistency and certainty in the development of law. Judicial discipline demands that a co-ordinate Bench ought to respect the decision of another co-ordinate Bench and in the event it is disposed to take a different view or doubt the correctness of the later decision, the proper and recognised course is to refer the question to the larger Bench.

**28.** The aforesaid principle of judicial discipline is fundamental. A useful reference, in this context, can be made to the observations of the Supreme Court in the case of Official Liquidators vs. Dayanand and others<sup>1</sup>, which spell out its importance as under:

“We are distressed to note that despite several pronouncements on the subject, there is substantial

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**1** (2008) 10 SCC 1.

increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.”

**29.** In the case at hand, what aggravates the situation is the fact that the request for the reference of the question to larger Bench was declined. In this scenario, the learned Vice-Chairman, could not have straight-away taken a conflicting view, especially in the face of the Division Bench order of this Court in Kawalkar's case.

**30.** Nonetheless, we would deal with the question on merits of the matter, independently. In the light of the facts, extracted above, in our view, the fate of the claim of the applicants hinges more on the construction of the GR dated 16<sup>th</sup> April, 1984 than Clause 2(b)(3) of MACP Scheme. What was the nature of the dispensation given under the GR dated 16<sup>th</sup> April, 1984 ? From

the text of the said resolution, the following salient features emerge:

- (i) The preamble indicates its object. It was decided to confer the gazetted status initially upon degree-holder junior engineers. Subsequently, it was decided to confer the gazetted status upon the under-qualified and unqualified junior engineers, also.
- (ii) While giving the gazetted status, the Government considered the aspects of the pay-scale to be given, the nomenclature of the post and the eligibility for conferring the gazetted status.
- (iii) The conferment of the gazetted status upon the degree-holder engineers was with effect from 1<sup>st</sup> April, 1981. Whereas the said status was deferred in the case of the underqualified and unqualified junior engineers, till they put in a specified years of service, that is, five years for three year diploma-holders, seven years for two year diploma-holders and ten years for unqualified junior engineers.
- (iv) Two distinct cadres were created in the Maharashtra Engineering (Civil) Services Class-II, namely Assistant Engineer Grade-II, to be manned by degree-holder

junior engineers, and Sectional Engineer, to be manned by underqualified/unqualified junior engineers after putting in specified years of service.

(v) Both the cadres were to be placed in the pay-scale Rs.600-30-700-40-950.

(vi) The posts of Assistant Engineer Class-II and Assistant Engineer Class-I, which were superior to that of the junior engineers, were to be re-designated as Assistant Engineer Grade-I and Assistant Executive Engineer, respectively.

(vii) The duties and functions which the erstwhile junior engineers were discharging and performing would thenceforth be discharged and performed by the Assistant Engineer Grade-II and Sectional Engineers.

**31.** It is evident that the aforesaid GR was an exercise in cadre review. The principal object of the aforesaid GR was to give gazetted status (Class-II) to junior engineers working at the lowest level. Not only the restructuring was done in the lowest cadre of junior engineers but also the immediately superior cadre of Assistant Engineer Class-II and Class-I were restructured. Yet, most importantly, the duties and functions which the erstwhile junior engineers discharged, were

mandated to be discharged by the Assistant Engineers Grade-II and Sectional Engineers.

**32.** The primary purpose of the aforesaid GR was, thus, restructuring of the cadre and rechristening of the designation of the post. The placement of the under-qualified and unqualified junior engineers in the newly designated post of sectional engineers was deferred, till they put in the specified years of service. It is pertinent to note that no new posts were sought to be created under the said GR. The fact that a new pay-scale was prescribed for both Assistant Engineers Grade-II and Sectional Engineers, was incidental.

**33.** In the impugned order, the Tribunal recorded that the financial upgradation brought about by the said GR qua the sectional engineer was neither promotion nor it could be termed as functional upgradation, since there was no change in the functions and responsibilities of the junior engineers, who were re-designated as sectional engineers. However, placing reliance upon the recommendations of “Hakim Committee” and Clause 2(b)(3) of the GR dated 1<sup>st</sup> April, 2010, the Tribunal was persuaded to hold that the financial benefit which accrued to the sectional engineers under the aforesaid resolution dated

16<sup>th</sup> April, 1984 was covered by the term “अकार्यकारी” (non-functional) pay structure.

**34.** For the said conclusion, the Tribunal referred to the order passed by the Tribunal in OA No.233 of 2013 (Agricultural Assistant's case) and sought to draw support to its view on the premise that the illustration of the desk officers in Mantralaya/ Legislature Secretariat being given non-functional pay-scale, given in Clause 2(b)(3), was 'schematic'. Thus, the benefit of revised pay-scale under the GR dated 16<sup>th</sup> April, 1984 was also held to be 'schematic' and not one time grant.

**35.** We are unable to agree with the aforesaid reasoning of the learned Vice-Chairman. Having held that the benefit of the pay revision under GR dated 16<sup>th</sup> April, 1984 was neither a promotion nor a functional upgradation, the Tribunal could not have held that the said upgradation was schematic. As indicated above, the entire exercise was driven by the objective of conferring the gazetted status and restructuring engineering service at the lowest level. The provision that the diploma-holder and unqualified junior engineers were to be placed in the cadre of sectional engineers, after putting in a specified years of service, was a measure to bring them at par with the degree-

holder junior engineers. It was uniformly applicable to all. There was admittedly no element of selection.

**36.** It is now well neigh recognised that the terms “promotion” and “upgradation” far from being identical and interchangeable are distinct and have specific meaning and connotation in service jurisprudence. Promotion, in common parlance, connotes advancement to a higher position. Ordinarily promotion entails both enhanced position and pay. In legal parlance, promotion can be to a higher position as well as to a higher pay -scale. There can be promotion to a higher pay scale without there being an advancement to a higher position. Upgradation, on the other hand, is mere increase in the scale of pay, without any corresponding increase in position. There are shades to upgradation also. It may be upgradation simplicitor, available to all who satisfy the eligibility criteria. It may be preceded by selection. If upgradation involves a process of selection, as distinct from mere elimination, it may have the trappings of promotion, and in that event may be subject to quota rule or principle of reservation, wherever applicable.

**37.** A profitable reference, in this context, can be made to a judgement of the Supreme Court in the case of Bharat Sanchar

Nigam Limited vs. R. Santhkumari Velusamy and others.<sup>2</sup>

wherein in the context of applicability of reservation, after a survey of the rulings relating to the promotion and upgradation, the following principles were expounded.

“29. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:

(i) Promotion is an advancement in rank or grade or both and is a step towards advancement to a higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both - that is, advancement to a higher position and advancement to a higher pay scale - are described by the common term “promotion”, does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words,

upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

(v) Where the process is an upgradation simplicitor, there is no need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.

(vi) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation.” *(emphasis supplied)*

The propositions expounded at Serial Nos.(ii), (iii) and (iv), if read cumulatively, govern facts of the case. The designation

as section engineers was available to all the junior engineers who satisfied the eligibility condition i.e. putting in a specified years of service. Secondly, there was no change in the duties and responsibilities but they were given a revised pay-scale. There was no element of selection except the process of elimination.

**38.** In the light of the above, we are of the considered view that the learned Tribunal had committed an error in construing that the exercise of restructuring of the cadres, without there being any consequent creation of new posts and any change in the duties and responsibilities, constituted the grant of non-functional pay-scale for the mere reason that the pay-scale of all the junior engineers was revised, as a class.

**39.** Another factor, which has a material bearing on the claim of the applicants is that under ACP and MACP Scheme, the basic postulate is the benefit of pay-scale of the promotional post. It is nobody's case that under the GR dated 16<sup>th</sup> April, 1984 the applicants were given the benefit of the pay-scale of the promotional post. Mere revision of the pay-scale can not be equated with the grant of pay-scale of the promotional post. On the contrary, it is pertinent to note that under the same GR, the

Government had re-designated the next higher post as Assistant Engineers Grade-I and Assistant Executive Engineers.

**40.** The learned Counsel for the Petitioners, also drew our attention to the fact that the degree-holder junior engineers whose pay-scale was also revised under the GR dated 16<sup>th</sup> April, 1984 were given the 'second benefit' under MACP Scheme. An office order issued by the Assistant Chief Engineer in the office of Chief Engineer, Nashik, dated 5<sup>th</sup> October, 2013 was placed on record to buttress the said fact. Even from the reply of the Respondents before the Tribunal, the said fact becomes clear.

**41.** Even on this count, we find that the discrimination between the degree-holder Assistant Engineers Grade-II and the Sectional Engineers, who were given the same revised pay-scale under the GR dated 16<sup>th</sup> April, 1984, is invidious. The sectional engineers, concededly, were brought at par with the Assistant Engineers Grade-II, after putting in the specified years of service. Thereafter, the absence of promotional avenues and actual promotion, leading to stagnation, affected both the Assistant Engineers Grade-II and Sectional Engineers.

**42.** In this view of the matter, the denial of the 'second benefit' under the MACP Scheme, with reference to an exercise of cadre restructuring and the revision in pay scale, in the year

1984, appears to be legally unsustainable. We are, thus, inclined to answer the aforesaid question in the 'negative'. We hold and declare that the upgradation under GR dated 16<sup>th</sup> April, 1984 does not constitute grant of non-functional pay-scale and cannot be treated as the 'first benefit' within the meaning of Clause 2(b)(3) of the GR dated 1<sup>st</sup> April, 2010. We are, thus, inclined to allow the petition.

**43.** Rule made absolute in terms of prayer Clauses (a) and (b).

**44.** If any amount is recovered from the salary of the Petitioners in pursuance of the Circular dated 13<sup>th</sup> June, 2016, the same be refunded to the Petitioners within a period of three months from today.

**45.** In the result, the Writ Petition is allowed in the above terms. There shall be no order as to costs.

**[N. J. JAMADAR, J.]**

**[B. R. GAVAI, J.]**