

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

WRIT PETITION NO.12409 OF 2019

K ANANDKRISHNA SATTYANARAYAN MUDALIAR
VERSUS
MAHARASHTRA STATE ROAD TRANSPORT CORPORATION
THROUGH ITS DIVISIONAL CONTROLLER AND OTHERS

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Mr. B. R. Kawre, Advocate for the Petitioner.

Mr. A. D. Wange, Advocate for Respondent Nos.1 to 3.

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**CORAM : SANDEEP V. MARNE, J.
DATED : 16th DECEMBER, 2022.**

PER COURT:-

1. By this petition petitioner challenges judgment and order dated 04.01.2019 passed by the Member, Industrial Court, Aurangabad dismissing petitioner's complaint ULP No.11 of 2013.

2. The grievance of petitioner before the Industrial Court was about stepping up of pay on par with junior. It appears that initially the case of petitioner was compared with one Mr. N. C. Chincholkar and petitioner was granted benefit of stepping up of pay. However, petitioner and Mr. Chincholkar were not working on the same category especially after transfer and re-categorization of petitioner at Aurangabad. After his transfer petitioner came to be re-categorized at Aurangabad on the post of Clerk, whereas Mr. Chincholkar continued in another category of Building Inspector. The audit discovered the error in the year 2005 and in pursuance of objection, order was passed withdrawing the benefit of stepping up pay granted to petitioner and an amount of Rs.26,600/- came to be recovered from petitioner's pay.

Faced with the difficulty that Mr. Chincholkar was working in another category, petitioner compared his case with Smt. S. V. Dharmadhikari on the ground the date of initial appointment of petitioner was 21.02.1981, whereas the date of appointment of Smt. Dharmadhikari was 07.07.1982. However, what is lost sight of by petitioner is the fact that upon his transfer to Aurangabad, he came to be placed at the bottom of the seniority list of the Clerk. Therefore, though petitioner is appointed in service prior to Smt. Dharmadhikari, he lost his seniority and became junior to Smt. Dharmadhikari. Since, petitioner is junior than Smt. Dharmadhikari, there is no question of comparing the pay of petitioner with Smt. Dharmadhikari.

3. Thus on both the counts of Mr. Chincholkar belonging to different category and Smt. Dharmadhikari being senior to petitioner, petitioner clearly was not eligible for granting benefit of stepping up of pay. The Industrial Court has rightly rejected petitioner's complaint.

4. However, there is only one area that where order of the Industrial Court would require modification. In pursuance of the corrective action taken by respondent in the year 2005 the pay of petitioner has been re-fixed and recovery of Rs.26,600/- has been effected. The Apex Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(4) SCC 334** has held that if excess payment has been made for a period in excess of five years in respect of Class III and Class IV employee, the same shall not be effected. In the present case the recovery appears to be in respect of the period from 1995-2007. Therefore, such recovery was clearly impermissible in law.

5. Accordingly present petition is disposed of with a modification of the order of the Industrial Court and with a direction to respondent-Corporation to refund the amount recovered from petitioner in pursuance of the re-fixation of his pay after withdrawal of the benefit of stepping up of pay. The amount be refunded within a period of three months from today.

6. Writ Petition is accordingly disposed of.

(SANDEEP V. MARNE)
JUDGE