

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**WRIT PETITION NO. 9052 OF 2018
WITH CA/5891/2022 IN WP/9052/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded ... Petitioner

Versus

Dilip S/o. Sadashiv Chincholkar,
Aged Major, Occupation Service,
R/o. Patbandhare Vasahat, Mudkhed,
Ta. Mudkhed, District Nanded ... Respondent

**WITH
WRIT PETITION NO. 9054 OF 2018
WITH CA/5909/2022 IN WP/9054/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded ... Petitioner

Versus

Milind S/o. Bhikaji Narwade,
Aged Major, Occupation Service,
R/o. Patbandhare Vasahat, Mukhed,
Ta. Mukhed, District Nanded ... Respondent

**WITH
WRIT PETITION NO. 9055 OF 2018
WITH CA/5905/2022 IN WP/9055/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded ... Petitioner

Versus

Maroti Hiranman Kamble,
Aged Major, Occupation Service,
R/o. Patbandhare Vasahat,
Mudkhed, District Nanded

... Respondent

**WITH
WRIT PETITION NO. 9053 OF 2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded

... Petitioner

Versus

Ramrao S/o. Yankoba Dhade,
Aged Major, Occupation Service,
R/o. C/o. Shamrao Jadhav,
Chaitanya Nagar, Patbandhare Vasahat,
Nanded, Ta. & District Nanded

... Respondent

**WITH
WRIT PETITION NO. 9059 OF 2018
WITH CA/5898/2022 IN WP/9059/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded

... Petitioner

Versus

Maroti Vyankatrao Nikam,
Aged Major, Occupation Service,
R/o. Patbandhare Vasahat, Mudkhed,
District Nanded

... Respondent

**WITH
WRIT PETITION NO. 9056 OF 2018
WITH CA/5901/2022 IN WP/9056/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
2. The Superintending Engineer,

Upper Painganga Project,
Sinchan Bhavan, Nanded

... Petitioner

Versus

Rama Pairoji Patingrao,
Aged Major, Occupation Service,
R/o. Yehaegaon (T), Ta. Kalamnuri,
District Hingoli

... Respondent

**WITH
WRIT PETITION NO. 9057 OF 2018
WITH CA/5900/2022 IN WP/9057/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded

... Petitioner

Versus

Ramchandra Sidappa Bhalke,
Aged Major, Occupation Service,
R/o. C/o. Milind Narwade,
Patbandhare Vasahat, Mudkhed,
District Nanded

... Respondent

**WITH
WRIT PETITION NO. 9058 OF 2018
WITH CA/5902/2022 IN WP/9058/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded

... Petitioner

Versus

Venkat Purbaji Ghule,
Aged Major, Occupation Service,
R/o. C/o. Shamrao Jadhav,
Chaitanya Nagar, Patbandhare
Vasahat, Nanded, District Nanded

... Respondent

WITH

**WRIT PETITION NO. 9060 OF 2018
WITH CA/5894/2022 IN WP/9060/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
 2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded
- ... Petitioner

Versus

Shaikh Tajul Shaikh Kashim,
Aged Major, Occupation Service,
R/o. C/o. Shamrao Jadhav,
Chaitanya Nagar, Patbandhare
Vasahat, Nanded, District Nanded

... Respondent

**WITH
WRIT PETITION NO. 9061 OF 2018
WITH CA/5899/2022 IN WP/9061/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
 2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded
- ... Petitioner

Versus

Shankar Yadavrao Kubde,
Aged Major, Occupation Service,
R/o. Patbandhare Vasahat,
Mudkhed, District Nanded

... Respondent

**WITH
WRIT PETITION NO. 9062 OF 2018
WITH CA/5895/2022 IN WP/9062/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
 2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded
- ... Petitioner

Versus

Aliyarkhan Latifkhan Pathan,

Aged Major, Occupation Service,
R/o. C/o. Shamrao Jadhav,
Chaitanya Nagar, Patbandhare Vasahat,
Nanded, District Nanded

... Respondent

**WITH
WRIT PETITION NO. 9063 OF 2018
WITH CA/5906/2022 IN WP/9063/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded

... Petitioner

Versus

Namdeo Nagoba Dahale,
Aged Major, Occupation Service,
R/o. Patbandhare Vasahat,
Mudkhed, District Nanded

... Respondent

**WITH
WRIT PETITION NO. 9064 OF 2018
WITH CA/5904/2022 IN WP/9064/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded

... Petitioner

Versus

Shamrao Ranba Jadhav,
Aged Major, Occupation Service,
R/o. Chaitanya Nagar,
Patbandhare Vasahat,
Nanded, District Nanded

... Respondent

**WITH
WRIT PETITION NO. 9065 OF 2018
WITH CA/5896/2022 IN WP/9065/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
2. The Superintending Engineer,

Upper Painganga Project,
Sinchan Bhavan, Nanded

... Petitioner

Versus

Pandurang Gangaram Chavan,
Aged Major, Occupation Service,
R/o. C/o. Milind Narwade,
Patbandhare Vasahat, Mudkhed,
District Nanded

... Respondent

**WITH
WRIT PETITION NO. 9066 OF 2018
WITH CA/5908/2022 IN WP/9066/2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded

2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded

... Petitioner

Versus

Raghunath Mohangir Gosavi,
Aged Major, Occupation Service,
R/o. C/o. Shamrao Jadhav,
Chaitanya Nagar, Patbandhare Vasahat,
Nanded, District Nanded

... Respondent

**WITH
WRIT PETITION NO. 9067 OF 2018**

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded

2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded

... Petitioner

Versus

Bhagwan Hausaji Khillare,
Aged Major, Occupation Service,
R/o. C/o. Shamrao Jadhav,
Chaitanya Nagar, Patbandhare Vasahat,
Nanded, District Nanded

... Respondent

WITH

WRIT PETITION NO. 9068 OF 2018

1. The Executive Engineer,
Upper Painganga Project,
Division No. 08, Nanded
 2. The Superintending Engineer,
Upper Painganga Project,
Sinchan Bhavan, Nanded
- ... Petitioner

Versus

Pandurang Sadoji Govande,
Aged Major, Occupation Service,
R/o. Patbandhare Vasahat,
Mudkhed, District Nanded

... Respondent

...
Advocate for the petitioners in all WPs : Mr. Anand Chawre
Advocate for the respondent : Mr. B.A. Dhengle (in all matters)
...

CORAM : **MANGESH S. PATIL, J.**

RESERVED ON : **06 JULY 2022**
PRONOUNCED ON : **21 JULY 2022**

JUDGMENT :

Heard learned advocate Mr. Chawre for the petitioners.
Rule. Rule is made returnable forthwith. Mr. Dhengle waives service for the respondents in all these writ petitions.

2. The matters are heard finally at the stage of admission at the joint request of both the sides.

3. The dispute pertaining as to the appropriateness and legality of the pay fixation of the respondents who are serving in the petitioner – establishment pursuant to the sixth pay commission arises in all these matters. These are being disposed of by this common judgment.

4. It is pertinent to note that even Industrial Tribunal in the judgments and orders under challenge had clubbed some of these matters. Though those have been disposed by separate judgments but the reasoning is the same in *verbatim*.

5. The only short question that arises for determination in all these writ petitions is as to if the employees who were getting salaries in accordance with the fifth pay commission and after having received higher scale pursuant to the Assured Career Progression Scheme (ACPS) are entitled to fixation of their pay according to sixth pay commission treating their earlier pay or what they were getting after receiving ACPS benefit.

6. Primarily these employees can be grouped into following four categories :-

- i) Staff Car Driver;
- ii) Operator;
- iii) Mukadam;
- iv) Choukidar – Cleaner – Helper - Majur

7. The learned Industrial Tribunal has found the pay fixation illegal and incorrect on the ground that in spite of getting ACPS benefit, their pay was fixed as if they were in the original scale of the previous post. It has also referred to the Government Resolution dated 29-04-2009 which provided a guideline for the pay fixation to the effect that in respect of the employees who were getting higher pay scale on

account of ACPS would be entitled to an additional increment of Rs.200/- in the grade pay of the new scale.

8. The Industrial Court has also quoted as an instance pay of one Maruti V. Nikam, Mukadam, who incidentally happens to be the petitioner in writ petition no. 9059 of 2018, fixed by the concerned office in the pay band of Rs. 5200 – 20200 with a grade pay of Rs.1900/- and adding the increment of Rs.200/-, the grade pay has been made Rs.2100/-. According to the learned Member of the Industrial Tribunal, the pays of the respondents – employees have not been fixed in accordance with the Government Resolution and, thus, the petitioners has indulged in an unfair labour practice under item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971 (MRTU and PULP Act) and has further directed the petitioner to correct the pay fixation and to pay the arrears within three months failing which it would be liable to pay additional 9% per annum as interest from the date of the complaints till realization.

9. Admittedly, except the petitioner in writ petition no. 9068 of 2018, rest of the petitioners had received the benefit under the ACPS prior to coming into effect revised pay scale with effect from 01-01-2006 in accordance with the sixth pay commission report. There is also no dispute about the fact that they all belong to isolated posts where there is no further promotional opportunities. In order to implement and give effect to the sixth pay commission, the State Government promulgated Maharashtra Civil Services (Revised Pay)

Rules, 2009 (hereinafter the Rules of 2009). Both the sides are unanimous that the respondents' pay has to be fixed in tune with these rules.

10. Rule 14 of the Rules of 2009 lays down the manner in which fixation of pay of employees who had received benefit of Time Bound Promotion or ACPS before 01.01.2006. Clause no. (1) is applicable to the employees who have got ACPS benefit prior to 01-01-2006 but have been promoted subsequently, whereas clause (2) is applicable to the employees who had got the benefits of ACPS prior to 01-01-2006 but have not got any promotion thereafter but had the promotional opportunities available. Clause (3) is applicable to the employees who got the ACPS benefit prior to 01-01-2006 but have no further promotional opportunities like the respondents. It reads thus :-

“ (3) If an employee who got the benefits of Time Bound Promotion or Assured Career Progression Scheme prior to the 1 day of January 2006 has no further promotion opportunities, his pay band and grade pay will be the one corresponding to the existing pay scale prior to getting the benefits of Time Bound Promotion or Assured Career Progression Scheme and his pay in the revised pay structure shall be fixed in the manner prescribed in the rule 7 or 11, as the case may be. In addition, he will be entitled to the additional grade pay as mentioned below:-

(a) Rs.200 - if the grade pay corresponding to the pay scale entitled to him prior to getting the benefits of the above scheme is upto Rs.2000;

(b) Rs. 300 - if the grade pay corresponding to the pay scale entitled to him prior to getting the benefits of the above scheme is above Rs.2000, but not more than Rs.4000;

(c) Rs. 400 - if the grade pay corresponding to the pay scale entitled to him prior to getting the benefits of the above scheme is above Rs. 4000, but not more than Rs. 5000; and

(d) Rs. 500 - if the grade pay corresponding to the pay scale entitled to him prior to getting the benefits of the above scheme is above Rs.5000.”

11. A bare look at this clause would clearly indicate that even in respect of the employees who had got the benefit of ACPS prior to 01-01-2006 having no promotional opportunities the pay band and the grade pay will be corresponding to the existing pay scale '**prior to getting the benefits of ACPS**' and the pay in the revised pay structure has to be fixed as prescribed in rule 7 or 11 which provide for general rules for fixation of initial pay in the revised pay structure. It is apparent that the only additional benefit such an employee who has received ACPS prior to 01-01-2006 but has no promotional opportunities is that in addition to the revised pay structure and the pay band he would get an additional amount of Rs. 200/- to Rs. 500/- depending upon the pay scale, as an additional grade pay.

12. If one bears in mind this clause, it is quite evident that the pays of the respondents have been fixed strictly in accordance with these rules. The respondents are putting up a challenge to their pay fixation on the ground that in spite of having received the benefit of ACPS prior to the sixth pay commission, their revised pay structure has been fixed without taking into account the fact that they were receiving

pay in a higher scale of such benefit and still the pay was revised by taking into consideration their existing pay scale prior to getting the ACPS benefit. They have not put up any other ground to challenge or dispute their pay fixation.

13. The learned Member of the Industrial Tribunal has not even adverted to rule 14 and clause (3) of the Rules of 2009 and seems to have got swayed away by the logic than by law.

14. Needless to state that since it is a matter of pay fixation which takes place in accordance with the rules framed by the State Government, the enquiry could be limited in ascertaining as to if the pay scale has been fixed strictly in accordance with these rules without bringing in any other extraneous considerations *de hors* the Rules of 2009.

15. For the sake of convenience, it would be appropriate to assimilate the pay of each of the respondents, as mentioned herein-above in the categories in which they have been serving.

16. The following chart would point out the scale of pay of each of these respondents under the fifth pay commission, their pay scale after they got the ACPS benefit, the pay fixed after the sixth pay commission which is after taking into account the scale that was being drawn by them after receiving the ACPS :-

Sr. No	WP No.	Name	Post	5 th Pay Scale		6 th Pay Scale (01/01/2006)		5 th PC Pay	6 th PC Pay	6 th PC Pay as on 01/01/2006
				5 th Pay Scale	ACPS Pay Scale	6 th Pay Scale	ACPS Pay Scale			
(I) STAFF CAR DRIVERS										
1	9056/2018	Shri. R. P. Patingrao	Staff Car Driver	3050-4590	4000-6000	5200-20200 (G.P. 1900)	5200-20200 G.P. 2100 (1900+200)	5000	5000*1.86= 9300 i.e. 9300	9300 +G.P. 2100 (1900 +200)
2	9057/2018	Shri. R. S. Bhalke	Staff Car Driver	3050-4590	4000-6000	5200-20200 (G.P. 1900)	5200-20200 G.P. 2100 (1900+200)	4800	4800*1.86= 8928 i.e. 8930	8930 +G.P. 2100 (1900 +200)
3	9058/2018	Shri. V. P. Ghule	Staff Car Driver	3050-4590	4000-6000	5200-20200 (G.P. 1900)	5200-20200 (G.P. 1900+200)	4900	4900*1.86= 9114 i.e. 9120	9120 +G.P. 2100 (1900 +200)
4	9067/2018	Shri. B. H. Khillare	Staff Car Driver	3050-4590	4000-6000	5200-20200 (G.P. 1900)	5200-20200 G.P. 2100 (1900+200)	4800	4800*1.86= 8928 i.e. 8930	8930 +G.P. 2100 (1900 +200)
(II) OPERATOR										
5	9062/2018	Shri. Aliyarkhan Latifkhan Pathan	Operator	3050-4590	4000-6000	5200-20200 (G.P. 1900)	5200-20200 G.P. 2100 (1900+200)	4600	4600*1.86= 8556 i.e. 8560	8560 + G.P. 2100 (1900 +200)
(III) MUKADAM										
6	9054/2018	Shri. M. B. Narwade	Mukadam	2610-4000	3050-4590	4440-7440 (G.P. 1600)	4440-7440 G.P. 1800 (1600+200)	3575	3575*1.86= 6649 i.e. 6650	6650 + G.P. 1800 (1600 +200)
7	9059/2018	Shri. M. V. Nikam	Mukadam	2610-4000	3050-4590	4440-7440 (G.P. 1600)	4440-7440 (G.P. 1600+200)	3500	3500*1.86= 6510 i.e. 6510	6510 +G.P. 1800 (1600 +200)
8	9061/2018	Shri. S. Y. Kubade	Mukadam	2610-4000	3050-4590	4440-7440 (G.P. 1600)	4440-7440 G.P. 1800 (1600+200)	3875	3875*1.86= 7207 i.e. 7210	7210 + G.P. 1800 (1600 +200)
9	9064/2018	Shri. S. R. Jadhav	Mukadam	2610-4000	3050-4590	4440-7440 (G.P. 1600)	4440-7440 (G.P. 1600+200)	3500	3500*1.86= 6510 i.e. 6610	6510 + G.P. 1800 (1600 +200)
10	9065/2018	Shri. P. G. Chavan	Mukadam	2610-4000	3050-4590	4440-7440 (G.P. 1600)	4440-7440 G.P. 1800 (1600+200)	3500	3500*1.86= 6510 i.e. 6610	6510 + G.P. 1800 (1600 +200)
11	9066/2018	Shri. R. M. Gosavi	Mukadam	2610-4000	3050-4590	4440-7440 (G.P. 1600)	4440-7440 G.P. 1800 (1600+200)	3800	3800*1.86= 7068 i.e. 7070	7070 +G.P. 1800 (1600 +200)
12	9068/2018	Shri. P. S. Govande	Mukadam	2610-4000	-	4440-7440 (G.P. 1600)	-	3300	3300*1.86= 6138 i.e. 6140	6140 +G.P. 1600
(IV) CHOUKIDAR - CLEANER-HELPER-MAJUR										
13	9053/2018	Shri. R. V. Dhade	Choukidar	2550-3200	2610-4000	4440-7440 (G.P. 1300)	4440-7440 G.P. 1500 (1300+200)	3370	3370*1.86= 6268 i.e. 6270	6270 + G.P. 1500 (1300 +200)
14	9052/2018	Shri. D. S. Chincholkar	Cleaner	2550-3200	2610-4000	4440-7440 (G.P. 1300)	4440-7440 G.P. 1500 (1300+200)	3440	3440*1.86= 6398 i.e. 6400	6400 +G.P. 1500 (1300 +200)
15	9055/2018	Shri. M. H. Kamble	Cleaner	2550-3200	2610-4000	4440-7440 (G.P. 1300)	4440-7440 G.P. 1500 (1300+200)	3440	3440*1.86= 6398 i.e. 6400	6400 +G.P. 1500 (1300 +200)
16	9060/2018	Shri. Shaikh Taju Sk. Kasim	Helper	2550-3200	2610-4000	4440-7440 (G.P. 1300)	4440-7440 G.P. 1500 (1300+200)	3720	3720*1.86= 6919 i.e. 6920	6920 +G.P. 1500 (1300 +200)
17	9063/2018	Shri. N. N. Dahale	Majur	2550-3200	2610-4000	4440-7440 (G.P. 1300)	4440-7440 G.P. 1500 (1300+200)	3370	3370*1.86= 6268 i.e. 6270	6270 + G.P. 1500 (1300 +200)

17. Reference by the Industrial Tribunal to the pay of one of the respondent – Mr. M.V. Nikam is factually incorrect. His pay has been fixed according to the chart shown above and not as mentioned in the judgments under challenge.

18. In view of the above state of affairs, the orders passed by the learned Member of the Industrial Tribunal which are under challenge in all these petitions are not sustainable in law.
19. The writ petitions are allowed.
20. The orders passed by the Member of the Industrial Tribunal under challenge are quashed and set aside.
21. Rule is made absolute.
22. Pending civil applications are disposed of.

[MANGESH S. PATIL]
JUDGE

arp/-