

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.884 OF 2022

1. State of Maharashtra,
through its Secretary (CAD),
Water Resources Department,
Mantralaya, Mumbai – 400 032
2. Chief Engineer,
Water Resources Department,
1st Floor, Sinchan Seva Bhavan,
Civil Lines, Nagpur – 440 001

...PETITIONERS

VERSUS

Pundlik Dadaji Pipare
Aged about 58 years,
Occupation – Retired,
R/o. Flat No.001, Nirmiti Heights,
Eishwari Society, Beltarodi Road,
Nagpur – 440 027

...RESPONDENT

Shri Uday Dastane, Special Advocate for the petitioners.
Shri M.V. Samarth, Senior Advocate with Shri R.M. Fating,
Advocate for the respondent.

**CORAM : A.S. CHANDURKAR AND
URMILA JOSHI-PHALKE, JJ.**

RESERVED ON : JULY 19, 2022.

PRONOUNCED ON : AUGUST 22, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties finally.

2. **RULE.** Rule made returnable forthwith.

3. The order passed by the Maharashtra Administrative Tribunal, Nagpur dated 18/02/2021 granting second benefit of Assured Career Progression Scheme (hereinafter referred to as 'ACPS' in short) from 01/10/2006 is under challenge in this petition.

4. The respondent-Pundlik Dadaji Pipare is qualified as the Diploma holder in Civil Engineering. He was initially appointed as 'Technical Assistant' in Class-III on pay scale of Rs.260-10-390-15-420-15-495 vide appointment order dated 04/06/1982. He joined the service on 23/06/1982. The said pay scale was revised as Rs.975-1540 with effect from 01/01/1986 as per the provisions of M.C.S. (Revised pay) Rules, 1988. As per the contention of the petitioners-State Government vide Government Resolution dated 31/01/1989, the respondent was absorbed on the new post of 'Civil Engineer Assistant' with higher pay scale of Rs.1200-30-1440-E.B.-30-1800 by order dated 25/09/1989 with effect from 01/01/1989 by fixing the revised pay with additional two increments.

5. As the respondent had completed 12 years of regular service from his initial date of appointment as 'Technical Assistant', therefore, the Superintending Engineer, Chandrapur, Irrigation Project Circle vide order dated 02/09/1998 granted the first benefit under the time bound promotion, thereby sanctioning the pay scale of next promotional post of 'Civil Engineer Assistant' with effect from 01/10/1994. Thus, respondent was granted further higher pay scale of Rs.1640-60-2600-E.B.-75-2900 within a period of five years after having been absorbed on the post of 'Civil Engineer Assistant'. It is clarified by the Government under Clause No.11 of the Government Resolution dated 01/11/1995 issued by Finance Department that as per the policy decision taken by the Administrative Department, the respondent who had got higher pay scale at the time of absorption in the newly created cadre of 'Civil Engineer Assistant' in 1989 was bound to get the said benefit of higher pay scale of promotional post under the time bound promotion after rendering 12 years of regular service on the post of 'Civil Engineer Assistant' in the year 2001. As per the contention of the petitioners that the same was granted erroneously to the respondent in the year 1994 itself. Thereafter respondent was promoted vide order dated 07/07/1999 as 'Junior Engineer Class-III (Group C)' on pay scale as per the 5th Pay Commission at Rs.1640-60-2600-E.B.-75-2900 and as per 6th Pay Commission at Rs.5500-175-9000 and he had joined the

promotional post on 23/09/1999. By the Government Resolution dated 20/07/2001, the Government of Maharashtra introduced an ACPS with effect from 01/08/2001 and replaced Time Bound Promotion Scheme. The said scheme was introduced for employees/officers drawing the pay scale of Rs.8000-13,500/- and below and who had completed 12 years of regular service on the same post. It was further clarified that those who had received two or more promotions would not be entitled for the benefit under the ACPS.

6. The Government Resolution dated 11/02/2002 issued by the Irrigation Department by which the benefit of ACPS was granted to the 'Junior Engineers' who had rendered 12 years of service on the post of Sectional Engineer. The said benefit was not given to the respondent as he got said benefit under the Time Bound Promotion Scheme. The respondent was not eligible for the benefit under the ACPS in view of Clause 2(6) of the said Government Resolution dated 20/07/2001. It further appeared that by the Government Resolution dated 06/11/2007, the post of the respondent as 'Junior Engineer Class-III (Group-C)' was appointed by selection on the basis of seniority, holding the post of 'Junior Engineer' as 'Sectional Engineer Group-II' i.e. on the pay scale as per the 5th Pay Commission Rs.6500-200-10500 and as per 6th Pay Commission Rs.9300-34800 + Grade Pay Rs.4400 on 01/04/2005 in the

light of provision under Rule 3(b) of the Sectional Engineer (Civil) Group-B in the Maharashtra Service of Engineers (Recruitment) Rules, 1997 (hereinafter referred to as 'the Recruitment Rules, 1997'). It is the contention of the petitioner that paragraph No.2(d)(1) amply clear that the second benefit would be admissible as per the terms and conditions mentioned in the Government Resolution dated 20/07/2001. The petitioner No.2 vide order dated 20/11/2019 has granted second benefit of higher pay scale of promotional post of 'Deputy Engineer' to the respondent with effect from 01/10/2006 (which is the next promotional post to the post of Sectional Engineer (Civil)), under the Modified Assured Career Progression Scheme (hereinafter referred to as 'MACPS' in short) after completion of 12 years of regular service from the date 01/10/1994 on which first benefit was granted on pay scale of Rs.15600-39100 + Grade Pay Rs.5400. As per the contention of the petitioners that though on 01/04/2005, the respondent was actually appointed as a Sectional Engineer (Civil) in the pay scale of Rs.6500-200-10500 (5th Pay Commission), therefore, the respondent got higher Pay Scale of promotional post within a period of less than two years which is contrary to the Government Resolution dated 11/02/2002. The respondent had completed 30 years of service in the year 2012 and as per the provisions of Government Resolution dated 02/03/2019, the petitioner No.2 vide order dated 12/12/2019 had granted third benefit

under the MACPS in respect of 7th Pay Commission to the respondent with effect from 01/01/2016 in the higher Pay Scale of next promotional post of 'Executive Engineer (Civil)'.

7. It is contended by the petitioner that the respondent was due for retirement on 30/06/2020. During the course of scrutiny of service book case of papers of pensionary benefits of the respondent, the petitioner No.2 observed that the Department had wrongly granted second benefit under the ACPS to the respondent, therefore, issued communication to petitioner No.1 vide letter dated 03/06/2020 for seeking guidance in respect of counting of 12 years of regular service while granting the second benefit to the respondent on the post of 'Sectional Engineer'. Being aggrieved with the said communication and as pensionary benefits of the respondent were not released by the petitioner No.2, the respondent had made representation to petitioner No.2 for releasing his benefits under the ACPS and MACPS. The respondent retired on 30/06/2020 by virtue of superannuation. As the representation of the respondent was not considered and decided by the petitioners he had preferred Original Application No.324/2020 before the Maharashtra Administrative Tribunal, Nagpur as he was aggrieved with the communication dated 03/06/2020. The learned Tribunal passed the impugned order on 18/02/2021 and set aside the

communication dated 03/06/2020 and granted second time bound promotion from 01/10/2006 and directed the petitioners to comply with the order within 30 days. Being aggrieved by the order of the Tribunal, present writ petition is filed by the State of Maharashtra and Water Resources Department of the State of Maharashtra.

8. In response to the notice, respondent appeared and opposed the writ petition on the ground that there is no cause of action to file this writ petition. He had admitted that he was appointed as 'Technical Assistant' vide order dated 04/06/1982 thereafter post of 'Technical Assistant' was absorbed on the post of 'Civil Engineer Assistant' vide order dated 25/09/1989. He received the benefit of first time bound promotion on the post of 'Junior Engineer' on completion of 12 years of continuous service with effect from initial date of appointment i.e. 23/06/1982 and he was granted benefit of first time bound promotion with effect from 01/10/1994. He was absorbed as 'Civil Engineer Assistant' with effect from 01/01/1989. As per the contention of the respondent that it was neither upgradation nor promotion it was only merger in new cadre by abolishing earlier post without changing original job and responsibilities. He further contended that the newly created cadre of 'Civil Engineer Assistant' was neither a promotion nor upgradation, therefore, he was bound to get the said benefit of higher

pay scale of promotional post, therefore, contention of the petitioner that erroneously time bound promotional benefit was granted to him is incorrect. He further submitted that as he was continuously working on the post of 'Civil Engineer Assistant' with clean and unblemished service record he was promoted as 'Junior Engineer' vide order dated 07/07/1999 and he joined on the promotional post on 23/09/1999. As per his further contention that in accordance with provisions in Government Resolution dated 16/04/1984, the cadre of Junior Engineer has accorded status as 'Assistant Engineer-Grade-II' to the Graduate Junior Engineers and also accorded status as 'Sectional Engineer' to the Diploma Holder Junior Engineers. As he was Diploma holder Junior Engineer status as to 'Sectional Engineer' was granted to him with effect from 01/04/2005 upon completion of five years service on the post of Junior Engineer. The gradation of Sectional Engineer is not a separate cadre and no roster of seniority list is kept separately for this post, therefore, from Junior Engineer to Sectional Engineer is only an upgradation by changing nomenclature. The petitioner No.1 issued Government Resolution dated 11/02/2002 in consonance with the provision in the Government Resolution dated 20/07/2001 thereby time bound promotion is granted to the Sectional Engineer on completion of 12 years of service on the said post. The said Government Resolution dated 11/02/2002 is pertaining to the first time bound promotion who

had received first benefit in accordance with the provision in the Government Resolution dated 20/07/2001. As he had received the first benefit of time bound promotion with effect from 01/10/1994 the first benefit of ACPS was not granted to him.

9. It is the contention of the respondent that his upgradation under the Government Resolution dated 16/04/1984 does not constitute grant of non-functional pay structure. He denied the contention of the petitioners that second benefit under the ACPS was granted to him erroneously. He also denied that third benefit under the MACPS was granted to him erroneously. He submitted that upon completion of 12 years continuous service from the date of first time bound promotion, petitioner No.2 issued the benefit of second time bound with effect from 01/10/2006 and third benefit from 01/01/2016. He submitted that he received the said benefit in accordance with the provisions, therefore, there is no merit in the contention of petitioners and petition is liable to be dismissed.

10. Heard Shri Dastane, learned Counsel for the petitioners. He submitted that the representation of the respondent and the Original Application filed by him was pre-mature as no decision was taken

adverse to the interest of the respondent and as he had not suffered any injury, he is not an aggrieved person. He further submitted that the Maharashtra Administrative Tribunal had no jurisdiction to interfere with the internal communication between the petitioners dated 03/06/2020. The respondent had no cause of action to approach before the Maharashtra Administrative Tribunal. He further submitted that the post of 'Sectional Engineer' is a promotional post in the light of provisions of the Recruitment Rules, 1997. The Maharashtra Administrative Tribunal ought to have considered the same but the Tribunal had not considered the same and wrongly held that the post of Sectional Engineer is only an upgradation. He further submitted that the benefit within the meaning of ACPS and MACPS when the status of the Gazetted Officer was given to the applicants when 'no time bound promotion/ACPS was in vogue. He submitted that the issue involved in the present petition is whether the respondent is entitled to the benefits especially the second benefit granted by petitioner No.2. He vehemently submitted that bare perusal of difference between the promotion order of 'Junior Engineer' and 'Sectional Engineer' is issued in concurrence with the MACPS while the same is not required to be done in case of appointment of the Junior Engineer as the same being a non-gazetted post. The upgradation to the post of Sectional Engineer is not upgradation simplicitor because it is made by selection in accordance

with the rules so framed. The appointment to the post of Sectional Engineer also enhances the status of the respondent to that of a Gazetted Officer and, therefore, it is a promotion. It is evident from the scheme of the ACPS that the entitlement of any employee shall be subject to his stagnation on a particular post for minimum period prescribed under the scheme (initially it was 12 years and subsequently it was reduced as 10, 20, 30 years). He submitted that in the light of the various provisions envisaged in various Government Resolutions sufficiently shows that the post of Junior Engineer to the post of Sectional Engineer is a promotion and not only upgradation but the learned Presiding Officer of the Tribunal wrongly relied upon one paragraph of the judgment of the Hon'ble Bombay High Court in the case of ***Association of the Sub-Ordinate Service of Engineers Maharashtra State and ors. Vs. State of Maharashtra and ors. 2019 (4) Mh.L.J. 629***. He submitted that in the above referred judgment the Division Bench of this Court was dealing with the question whether the upgradation under the Government Resolution dated 16/04/1984 could have been construed as a benefit within the meaning of the ACPS / MACPS schemes, when the status of the Gazetted Officer was given to the applicants when 'no time bound promotion/ACP scheme' was in vogue. He submitted that the judgment passed by the Tribunal is completely erroneous and liable to be set aside.

11. In support of the contention learned Counsel for the petitioner relied upon *State of Orissa and ors. Vs. Mesco Steels Limited and anr. (2013) 4 SCC 340* wherein Hon'ble Apex Court considered maintainability of pre-mature writ petition. *Jagmittar Sain Bhagat and ors. Vs. Director, Health Services, Haryana and ors. (2013) 10 SCC 136* (this case law is not relevant with the present issue). He also relied upon :

(i) *Chiranjilal Shrilal Goenka Vs. Jasjit Singh and ors. (1993) 2 SCC 507*

(ii) *Chunchun Jha Vs. Ebadat Ali and anr. AIR 1994 SC 345*

(iii) *South East Asia Shipping Co. Ltd. Vs. Nav Bharat Enterprises Pvt. Ltd. (1996) 3 SCC 443*

(iv) *Soma Devi Jain Vs. Union of India and ors. 2006 (86) DRJ 285 (DB)*

(v) *Vice Chairman and Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. and anr. Vs. Shishir Reality Private Limited and ors. 2021 SCC OnLine SC 1141*

(vi) *Bharat Sanchar Nigam Limited Vs. R. Santhakumari Velusamy and ors. (2011) 9 SCC 510*

(vii) Pande Petroleum Vs. State of Maharashtra through its Secretary, Revenue and Forest Department and ors. 2021 SCC OnLine Bom 5531

(viii) Mayur Vasant Sonawane Vs. State of Maharashtra and anr. 2022 SCC OnLine Bom 860

He thus submitted that the impugned order passed by the Tribunal was liable to be set aside.

12. On the other hand, Shri M.V. Samarth. learned Senior Counsel for the respondent submitted that admittedly the respondent had joined service as 'Technical Assistant' on 23/06/1982. Said post of Technical Assistant was absorbed on the post of 'Civil Engineer Assistant' vide Order dated 25/09/1989. Said absorption was neither upgradation nor promotion. Respondent had received benefit of first time bound promotion upon completion of 12 years i.e. from 23/06/1982 to 01/10/1994. On 07/07/1999, he was promoted as 'Junior Engineer' and he joined the promotional post on 23/09/1999. As per the Government Resolution dated 16/04/1984 the status of Gazetted Officer-Class-II who were graduate Junior Engineers had accorded status as 'Assistant Engineer Grade-II' and 'Diploma Holder Junior Engineers' accorded the status as 'Sectional Engineer'. Thus, his post of the 'Junior Engineer'

termed as a 'Sectional Engineer' was neither promotion nor he got the higher pay scale, it was only upgradation. On completion of 12 years of service as a Sectional Engineer he received the second benefit under the ACPS with effect from 01/10/2006. He further submitted that in view of judgment of the Hon'ble Bombay High Court in the case of Association of the Sub-Ordinate Service of Engineers Maharashtra State and ors. Vs. State of Maharashtra and ors. (*supra*) it is held that functional upgradation cannot be counted while determining their entitlement for grant of financial upgradation under the provisions of ACPS/MACPS. He submitted that the second benefit under the ACPS and third benefits under the MACPS was rightly granted to the respondent, the Tribunal had rightly considered the same hence, no interference is called for.

13. We have given thoughtful consideration to the submissions made by both the parties. The entire issue revolves around whether the respondent is entitled for the second benefit under the ACPS. To ascertain the fact whether the respondent is entitled for the said benefit we would like to refer the chronological events.

- (i) The respondent who was qualified as Diploma holder in Civil Engineering was appointed as 'Technical

Assistant Class-III' on pay scale Rs.260-10-390-15-420-15-495.

(ii) Vide Government Resolution dated 31/01/1989 respondent was absorbed on the post of newly created cadre of 'Civil Engineer Assistant'.

(iii) Respondent received first benefit under the time bound promotion vide Order dated 02/09/1998 thereby sanctioning the Pay Scale of next promotional post of Junior Engineer to the Civil Engineer Assistant with effect from 01/10/1994 on higher pay scale 1640-60-2600-E.B.-75-2900.

(iv) Respondent was promoted on 07/07/1999 as 'Junior Engineer' and he joined the promotional post on 23/09/1999. As per 6th Pay Commission he was drawing 5500-175-9000.

(v) Government of Maharashtra introduced ACP scheme vide Resolution dated 20/07/2001 with effect from 01/08/2001.

(vi) Admittedly, respondent was not granted benefit under the ACPS as he had not completed 12 years continuous service on the same post and he had received

the benefits under the scheme of earlier time bound promotion in the year 1994.

(vii) As per Government Resolution dated 06/11/2007 the post of respondent as 'Junior Engineer, Class-III (Group-C)' were accorded the upgradation as 'Sectional Engineer Group-II' from 01/04/2005.

(viii) The petitioner No.2 vide order dated 20/11/2019 had granted second benefit of higher pay scale of promotional post of Deputy Engineer to the respondent with effect from 01/10/2006 (which is the next promotional post to the post of Sectional Engineer – Civil) under the MACPS.

(ix) As the respondent had completed 30 years of service in the year 2012, petitioner No.2 vide Order dated 12/12/2019 had granted third benefit under the MACPS with effect from 01/01/2016.

14. In the light of above factual circumstances it is necessary to see the scheme introduced by the State Government which is known as ACP Scheme and MACP Scheme.

15. It is needless to say that the Government of Maharashtra with a view to deal with the problem of stagnation and hardship faced by the employees due to the lack of opportunities of promotions introduced the ACPS with effect from 2001 i.e. from 01/08/2001 and replaced the Time Bound Promotion Scheme for employees/officers. As per the introduced ACP scheme following conditions are imposed :

(a) Under the above scheme employees/officers drawing the Pay Scale of Rs.8000-13500/- or below are eligible for the benefits.

(b) The benefit of the said scheme would be granted to the employees who had completed 12 years of continuous service on the said post.

(c) The employees who were promoted twice or more would not be eligible for the said benefit.

(d) Under the said scheme employees are entitled for pay scale of promotional post. Likewise, the employees working on isolated post would be entitled for pay scale as per the Annexure-I.

(e) As per Clause-VI of the said scheme employees who received the benefit as per Government Resolution dated 08/06/1995 would not be entitled for the said benefit under the scheme of ACP dated 01/08/2001.

16. The said ACP scheme was replaced by the Government of Maharashtra in the year 2010 known as Modified Assured Career

Progression Scheme. As per the said MACPS there shall be three financial upgradation counted from the direct entry grade on completion of 10, 20, 30 years service respectively. Financial upgradation under the Scheme would be admissible whenever person has spent 10 years continuously in the same grade pay. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands. Thus, the MACPS contemplates merely placement on the personal basis on the immediate higher grade pay and grant of financial benefits only and it would not amount to functional promotion of the employees concerned.

17. Admittedly, in the present case the respondent had received the first benefit under the time bound promotion with effect from 01/10/1994. He received the said time bound benefit before introduction of ACPS. The ACPS was introduced on 01/08/2001 i.e. within seven years after first benefit under the Time Bound Promotion Scheme was granted to the respondent. It is the part of record that the respondent who was qualified as Diploma holder joined as a 'Technical Assistant' as per his appointment order dated 04/06/1982 and actually he joined from 23/06/1982. Thereafter the post on which respondent was working 'Technical Assistant' was absorbed in accordance with the

Government Resolution dated 31/01/1989. Though petitioner had claimed that the respondent was absorbed as a 'Civil Engineer Assistant' with a higher pay scale but the Government Resolution dated 25/09/1989 nowhere states that that the Technical Assistants were absorbed on higher pay scale. The wordings of the said Resolution only shows that the employees who are working as a 'Technical Assistant' are absorbed as 'Civil Engineer Assistant'. The said resolution nowhere discloses that respondent or the other employees who are working as a 'Technical Assistant' are absorbed on higher pay scale.

18. It is vehemently submitted by the learned Counsel for the petitioner that the respondent had got higher pay scale on his absorption as well as due to his promotion to the higher post as 'Junior Engineer', therefore, benefit under first time bound was wrongly granted to him. But as observed in view of the Government Resolution dated 25/09/1989, the absorption of the respondent from 'Technical Assistant' to 'Civil Engineer Assistant' was not the upgradation on higher pay scale. The respondent was promoted as 'Junior Engineer Group-C' on 23/09/1999. Before he was promoted the benefit of first time bound promotion was granted to him vide order dated 02/09/1998 with effect from 01/10/1994 as he worked as 'Technical Assistant' and absorbed post 'Civil Engineer Assistant' continuously for 12 years.

19. It is vehemently submitted by the learned Counsel for the petitioner that twice respondent was promoted, firstly as a 'Junior Engineer' vide order dated 07/07/1999 and as 'Sectional Engineer' in the year 2005. Therefore, respondent was not entitled for second benefit under the ACPS. As discussed above for getting the benefit under the ACPS the employee had to work 12 years continuously on the said post. If the employee was promoted twice or more he would not be eligible for the benefit under the ACPS. It was submitted by the respondent that the upgradation from 'Junior Engineer' to 'Sectional Engineer' is not the promotion it was only upgradation, therefore, petitioner No.2 rightly granted the second benefit under the ACP scheme. To buttress his contention he placed reliance on the judgment of this Court in the case of Association of the Sub-Ordinate Service of Engineers Maharashtra State and ors. Vs. State of Maharashtra and ors. (*supra*) wherein it is held that :

“the denial of second benefit under the MACPS with reference and exercise of cadre re-structure and revision in pay scale in the year 1984, appears to be illegal and unsustainable. We are thus, inclined to answer the aforesaid question in the ‘negative’. We hold and declare that the upgradation under GR dated 16th 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 1st April, 2010”

20. The same issue was recently dealt by the Aurangabad Bench of this Court in Civil Writ Petition No.8009/2021 (*Suhas s/o Prabhakarrao Dharasurkar & ors. Vs. The State of Mah. & ors.*) along with Writ Petition No.9791/2021 (*Raju s/o Pralhadrao Balurkar & ors. Vs. The State of Mah. & ors.*) decided on 02/08/2022 and it was held that the issue involved in the present petitions is no more *res-integra*, and is squarely covered by the judgment of this Court passed in Writ Petition No.2605/2017 in the case of Association of the Sub-Ordinate Service of Engineers Maharashtra State and ors. Vs. State of Maharashtra and ors. (supra) wherein it was held that non functional upgradation to the post of Sectional Engineer cannot be counted as set-off for financial upgradation admissible under ACP/MACP Scheme. We have no reason to take a different view. Thus, the facts on record shows that after first benefit granted to the respondent, for getting second benefit as per the condition implied in the scheme the respondent firstly had to work on the Pay Scale of Rs.8000-13,500/-, secondly the benefit of the said scheme would be given to the employees who had completed 12 years of continuous service on the said post. Therefore, for getting second benefit under the ACPS respondent had to complete 12 years continuous service on the post of 'Junior Engineer'. Admittedly, respondent was promoted in the year 1999 i.e. on 23/09/1999 after he received the first benefit. Thus, after receipt of first

benefit under the Time Bound Promotion Scheme respondent was promoted as a 'Junior Engineer' within five years. Therefore, he had to work continuously for 12 years on the post of 'Junior Engineer' to receive the second benefit. In accordance with the view taken by this Court in both the judgments referred above though the Government Resolution dated 06/11/2007 shows that Junior Engineers who are Diploma holders are accorded the post as 'Sectional Engineer' and as per the Government Resolution dated 06/11/2007 the respondent was promoted as a 'Sectional Engineer' but this Court has already taken a view that it is only an upgradation and not promotion. Therefore, it could not be said that the respondent was again promoted in the year 2005 as a 'Sectional Engineer'. Thus, the various provisions discussed above amply clear that the respondent worked as a 'Junior Engineer' from 1999 to 2005. In the year 2005 i.e. from 01/04/2005 he was upgraded as Sectional Engineer. Petitioner No.2 vide Order dated 20/11/2019 had granted second benefit of higher pay scale as promotional post of 'Deputy Engineer' to the respondent with effect from 01/10/2006. Thus, after his promotion as a 'Junior Engineer' he had received second benefit under the ACPS within 7 years for which he was not entitled.

21. As the ACPS Clause (2) specifically states that the benefit of the said Scheme would be given to the employees who had completed

12 years of continuous service on the said post, the case of the petitioners did not cover under the same, therefore, contention of the petitioners that respondent had received the second benefit erroneously is sustainable. The respondent would not be entitled for the second benefit from 01/10/2006 as on that day he had completed only seven years of service. He would be entitled for the said benefit after completing 12 years of service as a 'Junior Engineer' and on upgradation post as a 'Sectional Engineer'.

22. The petitioners had also challenged the jurisdiction of tribunal on the ground that the Original Application filed by the respondent was pre-mature. The communication dated 03/06/2020 which was challenged by the respondent before the Maharashtra Administrative Tribunal was addressed to the Secretary, Water Resources Department, Mantralaya, Mumbai wherein it is stated that as per the ACPS respondent is entitled for the ACPS after completing 12 years of service and guidance was sought. Thereafter respondent had made representation and claimed his retiral benefits in the light of the benefits given to him under the ACPS and MACPS. The said representation was not considered by the petitioners. To buttress his contention petitioners relied upon the catena of decisions. The petitioners had relied upon

discussed about the maintainability of pre-mature writ petition. After going through the judgment it appears that it is held by the Hon'ble Apex Court that after careful reading of the said communication it shows that it was a communication from the Joint Secretary as by the former letter the Joint Secretary to the Government had instructed the Director of Mines to take action in perusance to the certain directions issued by the Chief Minister. Thus, the facts are not identical with the present case and are not helpful to the petitioners. The petitioner also relied upon *Somadevi Jain Vs. Union of India* (*supra*) wherein Hon'ble Delhi High Court held that it is well settled that a writ lies only when the right of some party has been affected. In other words, a writ lies only when a cause of action has arisen. Hon'ble Delhi High Court has referred the judgment of the Hon'ble Apex Court in the case ***Calcutta Gas Company Ltd. Vs. State of West Bengal AIR 1962 SC 1044*** wherein it is held that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why an each principle should apply in the case of a petitioner under Article 226 of the Constitution. In the case of ***State of Punjab and anr. Vs. Suraj Prakash Kapur AIR 1963 SC 507*** wherein Constitution Bench of the Hon'ble Apex Court observed that the existence of a right and the infringement thereof are the foundation of the exercise of the

jurisdiction of the High Court under Article 226 of the Constitution. The basis of entitlement of a writ under Article 226 of the Constitution is hence a legal injury from violation of a legal right of a person. The writ is maintainable by a person who is aggrieved by an order which is to his detriment, pecuniary or otherwise, or causes him some prejudice in one form or other. As observed by Lord Denning in *Gambia Vs. N'Jie (1961) AC 617 (634)* that a person can be said to be aggrieved who has a genuine grievance because an order has been made which prejudicially affects his interest.

23. In our opinion, in the present case, respondent had filed Original Application as his retiral benefits were not granted by the petitioners. Petitioner No.2 made a communication with petitioner No.1 by which the right of the respondent was affected. By that communication the respondent was prejudiced, therefore, contention of the petitioners that application filed by the respondent was pre-mature is not sustainable in the eyes of law.

24. In the above facts and circumstances, it is crystal clear that respondent is entitled for second benefit only after he completes 12 years of continuous service on the said post. Admittedly, in the present case, respondent had received the first benefit under the Time Bound

Promotion Scheme on his completion of 12 years of continuous service with effect from 01/10/1994. For getting the second benefit under the ACPS as per the conditions imposed either he had to work on the same post as a 'Civil Engineer Assistant' for next 12 years or he had to work as a 'Junior Engineer' continuously for 12 years. The facts on record shows that after getting first benefit within five years he was promoted as a 'Junior Engineer'. In the year 2005, the post of 'Junior Engineer' was upgraded as 'Sectional Engineer'. As held by this Court in the judgment of Association of the Sub-Ordinate Service of Engineers Maharashtra State and ors. Vs. State of Maharashtra and ors. (supra) the non-functional upgradation to the post of 'Sectional Engineer' is not the promotion. Though respondent was upgraded as a 'Sectional Engineer' in 2005 then also the second benefit which was given under the ACPS appears to be within seven years and not after completing 12 years on the said post. Therefore, there is a substance in the contention that said benefit was given erroneously from 01/10/2006. Respondent would be entitled for the second benefit on his completion of 12 years of service by counting his service as a 'Junior Engineer' as well as 'Sectional Engineer'. As he was promoted as a Junior Engineer 07/07/1999, the period of 12 years is to be counted from 07/07/1999. Therefore, the writ petition would succeed by observing that the second benefit granted by petitioner No.2 to the respondent from 01/10/2006 is erroneous.

The Tribunal had not considered the said aspect and the conditions imposed in the scheme of ACPS. The object behind the said scheme is to be taken into consideration. The ACPS contemplates mere placement on personal basis in a higher pay scale. The respondent was put on higher pay scale of 'Junior Engineer' before he completes 12 years of continuous service as a 'Civil Engineer Assistant' and the benefit given under the ACPS to the respondent was from 01/10/2006 i.e. before completing 12 years. Hon'ble Apex Court in the case of ***Union of India and ors. Vs. M.V Mohanan Nair (2020) 5 SCC 421*** observed that both ACP and MACP Schemes are in the nature of incentive schemes devised with the object of ensuring that the employees who are unable to avail of adequate promotional opportunities, get some relief from stagnation in the form of financial benefits. The object behind both the Schemes is to provide relief against the stagnation. Therefore, the order passed by the Tribunal directing the petitioners to release the benefits of the respondent which was granted under the second benefit is liable to be quashed and set aside. The third benefit admittedly given to the respondent is after completing 30 years of service in the light of provisions made in an improved MACP scheme.

25. In the result we proceed to pass the following order :

(a) The writ petition is allowed.

(b) The order passed by the Maharashtra Administrative Tribunal, Nagpur in Original Application No.324/2020 by which petitioners are directed to release the amount which the respondent is entitled under the second benefit of ACPS is quashed and set aside.

(c) The petitioner No.2 is at liberty to modify the order granting the second benefit of ACPS by considering his continuous 12 years of service on the said post from 07/07/1999 and shall release the amount accordingly.

(d) Civil application No.1788/2022 is disposed of.

26. Rule is made absolute in the aforesaid terms. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

**Divya*