

(2016) 03 BOM CK 0184

In the Bombay High Court

Case No : Civil Application No. 16225 of 2015 In Writ Petition No. 5269 of 2012

Shridhar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 134

Citation : (2017) MCR 159

Hon'ble Judges : S.S. Shinde and P.R. Bora, JJ.

Bench : Division Bench

Advocate : Mrs. U.T. Pathan and Mr. T.W. Pathan, Advocates, for the Petitioner; Mr. D.R. Kale, AGP, for the Respondent No. 1/State; Mr. S.S. Kulkarni, Advocate, for the Respondent Nos. 2 and 3

Final Decision : Disposed Off

Judgement

S.S. Shinde, J.—Brief facts giving rise for filing the Petition, are as under:

The petitioner possesses Master Degree in the stream of Commerce, and joined as Junior Assistant in the Year 1979 with the Maharashtra State Co-operative Tribal Development Corporation Ltd., and in the Year 2000 worked as Accountant. The Government of Maharashtra decided to establish a separate Financial and Development Corporation for the welfare of tribals, and as such by the Government Resolution No.2396/45/Pra.Kra.-39/Ka-3, dated 9th December, 1998, the Shabari Tribal Financial and Development Corporation Ltd. came into existence. Accordingly, the staff for STFD Corporation Ltd. came to be filled in from the Maharashtra State Co-operative Tribal Development Corporation Ltd., and other similar Organisations vide Government Resolution Tribal Development Section G.R. No.TDC/1099/Pra.Kra.-7/Ka-3 Mantralaya Extension, Mumbai-32, dated 13th December, 1999. Thus, the vacancies of STFD Corporation Ltd. came to be filled in and the petitioner came to be appointed as Branch Manager at Yawatmal. [The copy of Government Resolution is placed on record by the petitioner at Exhibit-A along with memo of Petition.]

2. It is further the case of the petitioner that, the petitioner came to be appointed as Branch Manager on the scale of Rs.2000-60-2300-Eff.Bar.-75-3200-100-3500/- by the order of Managing Director, Maharashtra State Cooperative Tribal Development Corporation Ltd., Nashik-2, O.W. No.TDC/Adm./EST-1/2213/2000 Nashik-2, dated 27th January, 2000. The petitioner has placed on record copy of appointment letter along with memo of Petition. It is further the case of the petitioner that, the petitioner since then i.e. since 27th January, 2000, till filing the present petition, is serving as Branch Manager in STFD Corporation Ltd. with utmost dedication and sincerity with hardworking with unblemished record. At present, he is working at Kinwat, District Nanded.

3. It is further the case of the petitioner that, the Government of Maharashtra by order O.W.No. TDC/Adm./EST-2/1844/2006 Nashik-2, dated 8th February, 2006, introduced 50% increment in basic salary, [minimum 200 maximum 1500] incentive etc. in the naxlite affected area for the employees of Maharashtra State Co-operative Tribal Development Corporation Ltd. Copy of said order is placed on record along with memo of Petition.

4. It is further the case of the petitioner that, the scheme of one stage promotion, incentive and increment in the basic scale was extended for the employees of STFD Corporation Ltd. as it is the sister Organization and service Rules of both are one and the same, as such, by communication O.W.No. STFD Corp.Ltd./Adm./EST/ 674 /2006 Nashik-2, dated 22.02.2006, same was communicated to the petitioner. [The petitioner has placed on record copy of said communication along with memo of Petition.]

5. According to the petitioner, there are various Government Resolutions and Government Decisions by which the Government of Maharashtra has introduced and granted certain incentives and special packages to its employees working in the tribal areas, naxlite affected areas or extra sensitive areas. The petitioner has placed on record of such Government Resolutions along with memo of Petition.

6. It is the further case of the petitioner that, the Managing Director of STFD Corporation Ltd. was pleased to grant incentive and one stage promotion etc. benefits to the petitioner, and other Branch Managers by order O.W.No.STFD Corp.Ltd./Adm./527/10/Nashik-2, dated 11th January, 2010. The said order is placed on record by the petitioner along with memo of Petition.

7. It is further the case of the petitioner that, he got a jolt of unpleasant surprise when he came to know that, he is dis-entitled for the benefits which he has already availed by virtue of special package for the naxlite affected and extra sensitive tribal area, by order of Managing Director of STFD Corporation Ltd, Nashik-2, bearing O.W.No. STFD Corp.Ltd./Admn. /EST/AW/854 /2011 Nashik-1, dated 17th September, 2011. Copies of said letter and orders are placed on record along with memo of Petition. Hence this Petition.

8. The learned counsel appearing for the petitioner submits that, the petitioner

has rendered services in naxlite affected area and the extra sensitive areas and is eligible for the benefits given by the Government of Maharashtra. The impugned order of recovery from the petitioner came to be passed without hearing the petitioner. It is submitted that, no enquiry was caused before passing the impugned order of recovery or till filing of this Petition. The petitioner rendered services in Naxlite area. It is submitted that, the petitioner started discharging his duties as Branch Manager from January, 2000, and therefore, absolutely there is no question of availing periodical promotions in respondent Corporation. Since beginning till the date he is working as Branch Manager. It is submitted that, another Branch Manager rendering service at Chandrapur was availing all benefits.

9. During the pendency of this Writ Petition, the petitioner has filed Civil Application No.16225/2015, praying therein for withdrawal of the amount deposited by the respondent Corporation. Relying upon the averments in the Civil Application, the learned counsel appearing for the petitioner submits that, the Government of Maharashtra vide order dated 8th February, 2006, introduced 15% increment in basic salary [minimum 200 maximum 1500] incentive in the naxlite affected area for the employees of the respondent - Corporation. The scheme of one stage promotion, incentive and increment in the basic scale was extended to the petitioner. It is submitted that, abruptly even without giving opportunity to the petitioner to offer his explanation, the impugned order directing recovery has been passed. During pendency of this Petition, the petitioner, on attaining age of superannuation stood retired. Therefore, in view of the judgment of the Supreme Court in the case of State of Punjab and others v. Rafiq Masih [White Washer] and others, (2015) 4 SCC 334 amount already paid cannot be recovered.

10. It is further submitted that, after filing this Writ Petition, the Government of Maharashtra, Finance Department, issued a Circular No.Pension-2013/PK-46/Ser-4 dated 17th December, 2013, thereby issuing directions as per para 3 of the said Government Resolution that, the Officers/employees, those who retired from the Nakshal affected and tribal area on or after 01.01.2006 shall be given benefit of pay in the pay band plus grade pay as on the date of retirement and in case if they received more pensionary benefit then the admissible pension, the same shall be recovered under Rule 134 of the Maharashtra Civil Services [Pension] Rules, 1982. However, subsequently, the Government issued another Government Circular bearing No.Pension/2013/PK-46/Ser-4, dated 15th February, 2014, thereby stayed the said instructions contained in the Government Circular dated 17th December, 2013. The learned counsel appearing for the petitioner invited our attention to the contents of both Circulars. It is further submitted that, the recovery of excess amount disbursed due to wrong fixation of pay is stayed by the respondent State Government by issuing Circular dated 17.12.2014. It is further submitted that, keeping in view the financial liabilities of the petitioner, the impugned order deserves to be quashed and set aside. Therefore, relying upon the pleadings in the Petition, averments in the

Civil Application and annexure thereto, the learned counsel appearing for the petitioner prays that, the Petition may be allowed.

11. The learned counsel appearing for the petitioner during the course of hearing tendered across the bar the decision in the case of Shabari Adiwasi Vitta Va Vikas Mahamandal Maryadit v. Assistant Labour Commissioner and another in Appeal [PGA] No.1/2012, and also the order passed by the Bombay High Court Bench at Nagpur in the case of Shabari Adiwasi Vitta Va Vikas Mahamandal Maryadit v. Assistant Labour Commissioner and Controlling Authority and others in Writ Petition No. 5009/2012, decided on 4th February, 2013.

12. The respondent Nos. 2 and 3 have filed affidavit-in-reply and additional affidavit in reply in Writ Petition, as well as in reply to the Civil Application filed by the petitioner. The learned counsel appearing for the respondent Nos. 2 and 3 relying upon the averments in the affidavit in replies submits that, the present petitioner had already taken/availed higher pay scale after completion of 12 years of service under time bound promotion scheme, therefore, the petitioner is not entitled for higher pay scale from the respondent Nos. 2 and 3 on the ground that, he has worked in tribal and Naxlite area. In view of order bearing No.SAFD Corp.Ltd./ account/1278/2012, Nashik-2, dated 13.04.2012, order No.TDC/RMY/ adm/EST/160/2012 Yawatmal, dated 17/18.05.2012 and order O.W. No.SFTD Corp. Ltd./adm /EST/1349/2012 dated 29.05.2012, by which recovery of amount of wrongful availment of additional higher pay scale by petitioner @ Rs.3000/- p.m. from monthly salary of the present petitioner is legal and proper. Hence, he submits that, the Writ Petition is devoid of merit. The petitioner has no prima facie case on merit for granting any relief, hence, Petition is liable to be dismissed in limine.

13. It is further submitted that, the petitioner has availed wrongfully additional higher pay scale on the ground that, he has worked in tribal/Naxlite area, for which he is not legally entitled at all, as he has taken higher pay scale under time bound promotion scheme upon completion of 12 years of service. However, this wrongful benefits availed by the petitioner needs to be recovered. It is further submitted that, in the beginning of the service career, the present petitioner was working with the tribal development Corporation. In the Year 1998, Shabari Tribal Financial Development Corporation came into existence [in short "STFDC"]. Accordingly, staff of SFTDC has been filled in from Maharashtra State Tribal Development Corporation. At the time of appointment with the Tribal Development Corporation, the petitioner was drawing scale of Rs. 1640-2900/- as Accountant. As the present petitioner has completed 12 years of service, higher pay scale of Rs. 2000-3500/- has been granted to the petitioner by order dated 19.07.1999, under time bound promotion scheme. The learned counsel appearing for the respondent Nos. 2 and 3 invited our attention to the order dated 19th July, 1999, which is placed on record with the affidavit in reply.

14. It is further submitted that, the order dated 8th February, 2006, which is placed on record at Exhibit-C of the Petition, is self-explanatory. In the said

order, it is clearly stated that, additional pay scale and benefits thereunder shall not be applicable to the employees/officers who have availed the higher pay scale and benefits under time bound promotion scheme. It is further submitted that, on 6th August, 2002, Deputy Secretary of GAD, Mantralaya, Mumbai, has issued Government Resolution prescribing directive principles for appointment of officers in Naxlite area and granting different benefits. In the said Government Resolution, it is specifically stated that, the employees who have already availed benefits under time bound promotion scheme, are not entitled for additional pay scale and benefits. The benefits of additional pay scale availed by the petitioner are required to be recovered as he has availed the said benefits contrary to the Government policy. Therefore, there is no other alternative for the respondents but to recover the same from the monthly wages or from the pensionary benefits of the present petitioner. The learned counsel appearing for the respondent Nos. 2 and 3 invited our attention to the contents of the Government Resolution dated 06.08.2002, which is placed at Exhibit-R2 of the reply.

15. It is submitted that, when the office of respondents found that, the present petitioner has availed the benefits of additional higher pay scale wrongly, the respondent i.e. Managing Director of STFDC on 17.09.2011, has issued order of recovery against the present petitioner along with other five employees. Amongst those six employees, three employees have been retired from services, employee at serial No. 3 Mr. N.B.Tumpalliwar has filed proceeding under Payment of Gratuity Act before the appropriate Authority, which has been allowed. Therefore, the present respondent No. 2 has filed Writ Petition No. 5009/2002. On 04.02.2013, said Writ Petition has been disposed off by the Bombay High Court, Bench at Nagpur. Apart from it, the order dated 17.09.2011, has been accepted by other employee namely Mr. D.L.Gaikwad, who is working as Branch Manager at Jawhar Branch office. In support of aforesaid contention, the learned counsel invited our attention to the copy of monthly pay-sheet for the month of August, 2012, which is annexed along with reply.

It is submitted that, the petitioner has not challenged the order dated 17.09.2011. Therefore, the order passed by the respondent no. 2 is just, proper and legal, and no interference is warranted by this Court and the same deserves to be confirmed. The impugned orders under challenge in the Writ Petition are not contrary and well within the four corners of law. That, the present petitioner has wrongly interpreted the Government Resolution dated 06.08.2002.

16. It is submitted that, the recovery initiated against the present petitioner is not by way of punishment, but for wrongly availing the benefits of additional higher pay scale by the petitioner, when higher pay scale has already been granted to him under time bound promotion scheme. Hence, the question of conducting departmental enquiry does not arise. Further the contention raised by the petitioner in ground VI that, in identical case Branch Manager at Chandrapur has availed all the same benefits are not correct. It is submitted that, Branch Manager at Chandrapur is already retired from the service and has filed

proceeding before the appropriate authority under Payment of Gratuity Act. The order passed by the appropriate authority as well as appellate authority under Payment of Gratuity Act is/was under challenge in Writ Petition No. 5009/2012 before the Bombay High Court, Bench at Nagpur. Recently, the said Writ Petition has been disposed of observing that, findings recorded by the appellate authority on point Nos. 2 and 3 in the impugned order would not operate against the petitioner [i.e. respondent No.2 herein], if the petitioner raises the said question before a court or an appropriate authority. It is further submitted that, the present petitioner has wrongly availed the benefits of additional higher pay scale under the pretext that, he is working in Nexlite area. In fact, benefits of higher pay scale has already been granted to him under time bound promotion scheme upon completion of 12 years of service. Therefore, as per the Government Resolution he is not entitled.

17. The learned counsel appearing for the respondent Nos. 2 and 3 disputed the entitlement of the petitioner for the amount, which is mentioned in the Civil Application. He further invited our attention to the averments in the additional affidavit in reply filed on behalf of the respondent Nos. 2 and 3. He further invited our attention to the averments in para 1 of the affidavit in reply and submits that, total recoverable amount from the petitioner is Rs.5,69,142/-, and the petitioner is entitled for balance amount of Rs.6,85,908/-. It is submitted that, the petitioner was working as Accountant in the pay scale of Rs. 1640-60-2600-75-2900/-. The petitioner has rendered the services on the same post for 12 years, and therefore, was entitled for promotion to the higher post. But, the higher post was not available/vacant; therefore, pay scale of senior post of Manager Accounts has been awarded to him in the pay scale of Rs.2000-60-2300-75-3200-100-3500/-.

18. It is further submitted that, while working with the respondent on the post of account higher pay scale under time bound promotion scheme has already been granted and the petitioner has availed the same. While transferring the services from Maharashtra State Cooperative Tribal Development Corporation Ltd. Shabri Adiwasi Vitta Va Vikas Mahamandal Maryadit, the present petitioner has lien over his services with the respondent No. 2. That, the petitioner has been posted as Branch Manager in the same pay scale which he has already been awarded vide order dated 27.01.2000. It is further submitted that, the Managing Director came to know that, the present petitioner and other five similarly situated employees have wrongly availed higher pay scale for which they are not legally entitled. Therefore, by order bearing No.854/2011, dated 17.09.2011, the Managing Director passed the order and withdrew the additional pay scale, and directed to recover the same from the concerned. This order is not challenged under this Petition, therefore, the petitioner is not entitled for seeking any relief against the respondent Nos. 2 and 3, therefore, the present Writ Petition is devoid of its merits and deserves to be dismissed in limine.

19. It is further submitted that, in view of the order dated 17.09.2011, the

respondent no.2 has issued letter to the petitioner on 13.04.2012. This letter has been issued to him in the capacity and officiating the post of Branch Manager at Branch office Kinwat. In the said letter, the petitioner was directed to submit report about the recovery of amount to the office of respondent No. 2 but instead of submitting compliance report, the present petitioner has approached this Court challenging letter dated 13.04.2012 bearing Outward No.1278/2012. It is to be noted here that, the present petitioner has challenged the said order dated 13.04.2012 and order dated 29.05.2011 by which the respondent No.2 has decided to recover the amount of Rs.3000/- per month from the monthly salary w.e.f. March 2012. The implementation and execution of this order is stayed by this Court during pendency of the Writ Petition. Therefore, the amount could not be recovered from the present petitioner. Meantime, the petitioner has retired from the services on 31.07.2013 due to superannuation. It is submitted that, if the petition is allowed then respondents will not be able to recover the amount which the petitioner has wrongfully availed.

20. We have heard the learned counsel appearing for the parties at length. With their able assistance, perused the pleadings in the Petition, annexure thereto, affidavit-in-reply/additional affidavit in reply filed by the respondents, the relevant Government Resolutions, and the Judgments cited across the Bar by the learned counsel appearing for the parties. It appears that, the Government of Maharashtra, Tribal Development Department, issued the Government Resolution dated 13th December, 1999, so as to create various posts to start functioning of Shabari Tribal Financial and Development Corporation within 100 days from issuance of such Government Resolution. Out of the requirement of 150 posts for the said Corporation, in first stage, the Government has granted permission to create 72 posts. However, it is observed in the said Government Resolution that, newly created posts should be filled in from the employees of the Maharashtra State Co-operative Tribal Development Corporation Ltd. It is observed in the said Government Resolution that, the service conditions of the said employees who will be appointed on 72 posts in Shabari Tribal Financial and Development Corporation would be same like the employees of respondent No. 3 Corporation, meaning thereby that the service conditions would be governed by the same set of procedure/rules applicable to the Maharashtra State Co-operative Tribal Development Corporation Ltd. It is also mentioned in the said Government Resolution that, the Managing Director of the respondent No. 3 Corporation should look after the affairs of the respondent No. 2 Corporation until further orders. It appears that, on 27th January, 2000, the order was issued by the respondent No. 2 whereby the petitioner was appointed as Accountant in the pay scale of Rs. 2000-60-2300-EB-75-3200-100-3500/-. It is mentioned in the said order that, by protecting the pay of the petitioner, he is being transferred to the Shabari Tribal Financial and Development Corporation Ltd. The said office order reads thus:

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deZpk&;kiqjrh e;kZnfr jkghy0

4- egkjk"V~ jkT; lgdkjh vkfnoklh fodkl egkeaMGkdMhy loZ izdkjP;k f"kyYd jkt
rlsp minkukph o Hkfo"; fuokZg fu/khph jDde "kklukps fu.kZ;kuqlkj "kcjh
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5- Isok oxZpk vkns"k fLodkjY;kuarj "kcjh egkeaMGkadMwu fnY;k tk.kk&;k
fu;qfDr vkns"kkizek.ks fu;qDrhP;k fBdk.kh :tq Ogkos ykxsy0

6- Isok oxZpk vkns"k fLodkjY;kuarj rks ekxs ?ksryk tk.kkj ukgh0

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dMhy izHkkj brj vf/kdkjh@deZpkjh ;kapdMs ns.;kph O;oLFkk d:u R;kauk fnukad
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2- egkO;oLFkkid foRr@xksaMou ukf"kd@ukxiwj

3- izknsf"kd O;oLFkkid] izknsf"kd dk;kZy;] ;orekG

4- mi izknsf"kd O;oLFkkid] mi izknsf"kd dk;kZy;] ik<+a jdoMk

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[The true translation of the office order dated 27th January, 2000, reads thus:

READ:(1) Government Resolution (TDF) No. TDFC/1099/ C.N.No. 7/O-3/dated 13-12-1999.

O.No.TDFC/Admn./Estt.-1/2213/2000

Nashik-2, Dated : 27th January 2000.

ORDER

In exercise of the powers derived from the Government Resolution under reference the service of the following employee/officer is being transferred w.e.f. dated 27-01-2000 as per the written option given by him against the post mentioned before his name to the office of Shabri Tribal Development and Finance Corporation Ltd. Nashik by protecting his present pay scale mentioned against his post.

Name

Present post and place of working

Present pay-scale

Post prevailing at Shabri Corporation.

Pay-Scale.

2

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6

Shri.S. S.Dhale

Accountant Sub - Divisional office Pandhark a--wada

Rs. 2000-3500

Manager

Rs.2000-60- 2300- EB-75- 3200-100- 3500

Conditions for transferring service are as under :

1. This order is not related with any other service unless the independent Service Rules of Shabri Tribal Finance Development Corporation are not framed till then the Service Rules of the Maharashtra State Co-operative Tribal Development Corporation shall be applicable. Till the final decision from the Government is received the lien shall be deemed to be continued on the post pertaining to the Maharashtra State Co-operative Tribal Development Corporation. Only for the reason of transfer made under the Shabri Corporation the lien shall not be

continued.

2. Service rendered in the Maharashtra State Cooperative Tribal Development Corporation shall be deemed to be continued.

3. The prevailing date of joining on the post held at the Maharashtra State Cooperative Tribal Development Corporation shall be deemed to be the date of joining for the services to be rendered with the Shabri Corporation for seniority purpose. However, this condition shall be confined to the employee who have transferred and joined in the month of January and February 2000 at Shabri Corporation on the post of Manager.

4. All kinds of balance leave, gratuity as well as amount of Provident Fund etc. shall be transferred as per Government Resolution to the Shabri Tribal Finance and Development Corporation.

5. After having accepted the service transfer order from Shabri Corporation, applicant shall have to join his services as per appointment order on such transferred place.

6. Once service transfer order is accepted it shall not be taken back.

The concerned Regional Manager/General Manager should make arrangement for relieving the aforesaid employee/Officer by handing over their charge to the other employee/ Officer from dated 27-01-2000. Similarly by updating their service books they should be submitted to the head office of the Shabri Corporation immediately. Similarly the account relating to the amount to be paid or to be recovered from the employee should also be get completed.

Sd/-

Managerial Director,

M.S.Co-Op.Tribal Development

Corporation Ltd. Nashik-2.

Copy to :-

(1) Shri.S.S.Dhale, Accountant, Sub Divisional Office, Pandharkawada.

(2) General Manager(Finance/Gondwan) Nashik/Nagpur.

(3) Regional Manager, Regional Office, Yevatmal.

(4) Sub Regional Manager, Sub Divisional Office, Pandharkawada.

(5) Personal file of Shri. Dhale.

Copy to :

(1) Managerial Director, Shabari Tribal Finance and Development Corporation Ltd. Nashik.

With a request to submit the joining report of transferred Officer/employee to the Corporation.

Copy submitted for information with respect to :-

Hon. Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.]

21. It further appears that, the Managing Director of Shabari Tribal Financial and Development Corporation Ltd. has further issued the office order on 28th January, 2000, mentioning therein that, the petitioner is appointed as Manager in the pay scale of Rs.2000-60-2300- EB-75-3200-100-3500/- Branch at Yevatmal and the petitioner should join at the said place on 28th January, 2000.

22. It appears that, the Government of Maharashtra, Department of General Administration issued Government Resolution bearing No.TRF-2000/Pra.Kra. 3/ Twelve, dated 6th August, 2002, thereby issuing guide lines for appointment of the efficient Officers/employees in the Naxlite area so as to make administration in the naxlite area more sensitive, functional and the said administration should be made aware about the difficulties faced by the people residing in the said area. In the said Government Resolution, guide lines are laid down for appointment of the officers/employees in the naxlite area. In clause 2 of the said Government Resolution, the provision is made for the officers/employees, who are already working in the tribal/naxlite affected area so as to give them more facilities. In the said clause, there is provision in respect of paying incentive allowance to the officers/employees working in naxlite affected area, and the area declared as extra sensitive in tribal area. The said officers/employees would receive 15% of the basic pay towards incentive, however, same should not exceed Rs.1500 per month. There is no incentive provided for unaffected tribal area. The clause 2 (b) of the Government Resolution dated 6th August, 2002, reads thus:

2- jkT;krhy vkfnoklh@u{kxyzLr Hkkxkr dk;Zjr vlysY;k vf/kdkjh@deZpk&;kauk l|0 fLFkrhr vuqKs; vlysY;k fofo/k loyrh [kkyhy fooj.kkrhy LraHk 2 izek.ks lq/kkfjr dj.;kpk fu.kZ; "kklukus ?ksryk vkgs%&

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[The true translation of the above mentioned clause 2 (b) reads thus:

2. Government has decided to revise the various facilities presently admissible to the Officers/Employees working in the Tribal/Nakshal affected area in the State in the following statement as mentioned in column No.2.

(B) Incentive Allowance :

As per Government Resolution Tribal Development Department No.Estt-1097/
CN-18-O-15, dated 05th February 1999 working in Tribal Area :

(a) Employees/Officers serving in Government Department.

(b) Employees and Officers of Zilla Parishad.

(c) Full time teaching and non-teaching employees of Govt granted Educational Institutions such as Primary, Secondary and Higher Secondary School.

(d) Agricultural and Nonagricultural Universities and the colleges affiliated thereto and the teaching/nonteaching employees to whom following incentive allowance is admissible.

1. As per Govt. Resolution issued by the Tribal Development Department dated 05th February 1999 the incentive allowance up to 15 % i.e. minimum from Rs.200/- to maximum upto Rs.1500/- per month shall be admissible to the Officers/Employees serving in the Nakshal affected area as well as in the highly sensitive Tribal area where their Head Office is situated.

2 However, there is no any kind of increase made in the prevailing incentive allowance being paid to the employees serving in the general Tribal area.

Pay-scale

Rate of incentive.

3] However, as per the provision made under para 5(7) of the Govt. Resolution dated 05/02/1999 the "incentive allowance shall not be admissible to the employees working in the (Aadiwasi Up- -Yojana) in the Sub Tribal Area including in the Municipal Corporation/Municipal Council. This condition is being rejected for this purpose.]

Less than Rs.3,000/-

Rs.100/-

Rs.3050/- to 4589/-

Rs.200/-

Rs.4590/- to 6499/-

Rs.300/-

Rs.6500/- to 9999/-

Rs.400/-

Rs.10,000/- and above.

Rs.500/-

In clause 3 of the said Government Resolution, further provision is made for granting additional facilities to those officers/employees who are working in the tribal/naxlite affected area, wherein some concession about exemption from paying the house rent is granted. There are other some additional facilities are also provided. The clause 3 sub-clause (7) and clause 4 of the said Government Resolution reads thus:

3- ojhy ifjPNsn&2 e;/s uewn dsysY;k izpfyr loyrh O;frfjDr vkfnoklh@u{kxyzLr Hkkxkrhy dk;Zjr vf/kdkjh@ deZpk&kauk [kkyhyizek.ks vfrfjDr loyrh eatwj dj.;kr ;rs vkgrs%&

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vkfnoklh o u{kxyzLr {ks=r dke dj.;klkBh izksRIkgu Eg.kwu xV v rs M e/khy in/ kkjkdauk lacaf/kr deZpkjh@vf/kdkjh R;k {ks=r dk;Zjr vlis ;ZUrP;k dkGkr R;kauh /kkj.k dsysY;k ewG inkP;k uthdph ofj"B inksUurhph osruJs.kh o R;k vuq"kaxkus osrufu"phrhp ykHk ns.;kr ;kok0 T;k deZpkjh@vf/kdk&kauk IsokarxZr vk"okflr izxrh ;kps uspk ykHk ns.;kr vkysyk vkgs R;kauk vk.k[kh ofj"B inkP;k ors uJs.khp ykHk vuqKs; ulsy0 gh ,dLrj inksUurhph ;kstuk fnukad 1 tqyS 2002 iklwu veykr ;sbZy vkf.k rh lacaf/kr deZpkjh@vf/kdkjh vkfnoklh@u{kxyzLr {ks=r dk;Zjr vlis ;ZUrp vuqK;s jkghy0 R;k {ks=rwu deZpkjh@vf/kdkjh fcxj vkfnoklh {ks=r ijr vkY;koj rks R;kP;k ewGP;k laoxkarhy ors uJs.khr iwohZP;k ors ukP;k vuq"kaxkus osru ?ksbZy0

4- ;k vkns"kk}kjs vuqKs; dj.;kr vkysY;k fofo/k lq/kkfjr o uohu loyrh Inj vkns"k fuxZfer dsY;kP;k fnukadkiLwu veykr ;srhyrFkkfi0

ifjPNsn 3@7 e/khy ,dLrj inksUurhph loyr fnukad 1 tqyS 2002 iklwu veykr ;sbZy0

[The true translation of the clause 3 sub-clause (7) and clause 4 of the said Government Resolution reads thus:

3. In addition to the prevailing facilities as mentioned in para 2 above following additional facilities are being granted to the employees/Officers working in the Tribal/Nakshal affected area:-

(7) One Rank Promotion for all posts :-

The concerned employee/officer holding the post in the cadre "A" to "D" working in the Tribal and Nakshal affected area shall get the higher/nearest promotional pay scale as an incentive on its original post till he renders his services in the above said area and accordingly he should be granted benefit of such pay fixation of such promotional post. However, the employees/officers who have already got benefit of In Service Assured Progressive Scheme, to such employees benefit of Higher Pay Scale shall not be admissible. This one rank promotional scheme shall come into force from 1st July 2002 and it shall be confined to the employees/officers till they shall work in the Tribal/Nakshal affected area. After relieving from the service of aforesaid area to the non-tribal area such officer/employee shall get pay scale of his original cadre as per his earlier pay of salary.

4. By this order the various revised facilities and new facilities shall be admissible and come into force from the date of passing of this order. However, one rank promotional facility made available in para 3(7) shall come into force from the date of 1st July, 2002.]

[emphasis supplied]

23. Upon perusal of the order dated 28th January, 2000, it appears that, at the relevant time, the petitioner was working as Accountant with the respondent no. 3 Corporation, and he was transferred as Manager in the pay scale of Rs.2000-60-2300-EB-75-3200-100-3500/- in respondent No. 2 Corporation. It was mentioned in the conditions of transfer that, the prevailing date of joining on the post held at the Maharashtra State Co-operative Tribal Development Corporation shall be deemed to be the date of joining for the services to be rendered with the Shabri Corporation for seniority purpose. However, this condition shall be confined to the employee who have been transferred and joined in the month of January and February 2000 at Shabri Corporation on the post of Manager. It is also mentioned in the condition that, till the final decision from the Government is received the lien shall be deemed to be continued on the post pertaining to the Maharashtra State Co-operative Tribal Development Corporation. The petitioner has not brought to the notice of this Court that, as a matter of fact subsequently separate Rules are framed governing the services of the employees in respondent No. 2 Shabari Tribal Financial Development Corporation Ltd. Therefore, in view of the afore-mentioned conditions while transferring the services of the petitioner, the promotion granted to the petitioner on completion of 12 years service in respondent No. 3 Corporation cannot be ignored. It appears that, the petitioner completed 12 years of service in respondent no. 3 Corporation and by order dated 19th July, 1999, the petitioner was granted higher pay scale of Rs.2000-60-2300-EB-75-3200-100-3500/-. Therefore, in view of sub-clause (7) of clause 3 of the said Government Resolution, the employees/officers who have already got benefit of In Service Assured Progressive Scheme, subsequently, second time benefit of Higher Pay Scale is not admissible. The relevant portion of the said sub-clause (7) of clause 3 of the Government Resolution dated 6th August, 2002, reads thus:

"However, the employees/officers who have already got benefit of In Service Assured Progressive Scheme, to such employees benefit of Higher Pay Scale shall not be admissible".

24. Therefore, the respondents are justified in withdrawing the benefit received by the petitioner by virtue of receiving higher promotional pay scale on transfer of his service in respondent No. 2 Corporation. Admittedly, the impugned order of recovery of the said amount has been passed when the petitioner was in service. Therefore, merely because the petitioner is retired from service on attaining the age of superannuation, during the pendency of this Petition, cannot be a ground to ask the respondents to stop recovery of the amount which the petitioner has received on account of getting higher promotional pay scale after transfer of his services to the respondent No. 2 Corporation.

However, it appears that, the petitioner, for working in the partially affected tribal area, has received some benefits, excluding the amount received towards the higher promotional pay scale, the same could not have been recovered by the respondents. The petitioner is able to demonstrate that, the place i.e. Yavatmal,

where he rendered the services is included in the Government Resolution as partially affected tribal area. The respondents have given details of dues recoverable amount, and also payable amount to the petitioner, in additional affidavit filed on behalf of the respondent Nos. 2 and 3 on 15th January, 2016. In pursuant to the interim orders passed by this Court, the respondent Nos. 2 and 3 have deposited the amount of Rs.15,69,210/- in the registry of this Court. It would be apt to reproduce herein below the chart showing details of dues recoverable from the petitioner and the amount payable to him:

Sr.No.

Particulars of dues

Amount

1

Staff advance of Br. Office Yawatmal

Rs.2,372=00

2

Other advances of Br. Office Yawatmal

Rs.64,147=00

3

Staff advance of Br.Office Kinwat

Rs.22,222=00

4

Other advance of Br. office Kinwat

Rs.34,890=00

5

Aadivasi Vikas Mahamandal Karmachari Pat Sanstha M. Yawatmal

Rs.37,915=00

6

Ekstar Pay recovery [1/7/2002 to 31/03/2010]

Rs.1,98,625=00

7

Ekstar Pay recovery [1/4/2010 to 31/03/2013]

Rs.78,738=00

8

6th Pay difference recovery [1/1/2010 to 30/11/2010]

Rs.80,159=00

9

6th Pay difference recovery [26/09/2012 to 31/07/2013]

Rs.39,714=00

10

Income tax deductions [TDS] as per old calculation of gratuity amount

Rs.10,360=00

11

Total

Rs.5,69,142=00

12

(+) amount withdrawn by the petitioner as per order of Hon''ble Court

Rs.1,50,000=00

13

Total recoverable amount

Rs.7,19,142=00

14

Amount deposited in the office of this Hon''ble Court by the respondents under protest

Rs.15,69,210=00

15

Balance amount

Rs.8,50,068=00

16

Difference of gratuity/earn leave amount

[a] old calculation amount 15,69,210 [less]

[b] Revise calculation 14,05,050=00

[c] Balance amount of Rs.1,64,160=00 to be refunded to the respondent No. 2.

Rs.1,64,160=00

17

Balance amount payable to the petitioner Shri S.S.Dhale

Rs.6,85,908=00

25. Upon careful perusal of the afore-mentioned chart, there is no dispute that, the petitioner has already withdrawn Rs.1,50,000/-, in pursuant to the order passed by this Court. The respondent Nos. 2 and 3 at serial No. 17 of the said chart have stated that, balance amount payable to the petitioner is Rs.6,85,908/-. Since the afore-mentioned amount is not in dispute, we allow the petitioner to withdraw the amount of Rs.6,85,908/-. After withdrawing the aforesaid amount by the petitioner, remaining amount should be given to the concerned respondent/respondents. The concerned respondent Corporation shall keep and maintain remaining amount separately, till the decision is taken afresh in the light of discussion herein after.

26. In the light of the discussion in foregoing paragraphs, we have reached to the conclusion that, the petitioner was not entitled to receive the benefit of additional/higher pay scale after his services were transferred to the respondent No. 3 Corporation, in view of the fact that the petitioner was granted higher pay scale of Rs.2000-3500/- by order dated 19.07.1999, under time bound promotion scheme. Therefore, the respondents are entitled to recover the excess amount paid to the petitioner, if any, since the impugned order has been passed before the petitioner stood retired from the services on attaining the age of superannuation. However, so far amount towards incentives which is received by the petitioner on account of rendering services in partially affected tribal area is concerned, as per the provisions of relevant Government Resolution placed on record, the amount disbursed on said count may not be recovered by the respondents. Upon careful perusal of the material placed on record including the additional affidavit filed by the respondent Nos. 2 and 3, an information in respect of how much amount the petitioner has received towards incentive for discharging services at Yevatmal, which is partially affected tribal area, has not been placed on record. Therefore, we direct respondent Nos. 2 and 3 to hear the petitioner on said aspect, and keeping in view the relevant Government policies and the fact that, the petitioner has rendered services in partly affected tribal area, shall calculate amount disbursed to the petitioner, however, excluding the amount disbursed to the petitioner on account of payment of higher promotional pay scale, during discharge of service by the petitioner with the respondent No. 2 Corporation. Such exercise to be done as expeditiously as possible, and preferably within 12 weeks from today. We make it clear that, till such exercise is done, and decision is taken by the respondents about entitlement of the petitioner for receiving incentives on account of rendering service in partly affected tribal area, the respondent Nos. 2 and 3 shall not utilize the balance amount for any other purpose, and maintain the said amount as indicated above.

We make it clear that, in case decision goes against the petitioner, petitioner may be at liberty to challenge the said decision, however, restricted to receive the incentives on account of rendering services in partially affected tribal area while working with the respondent No. 2. Subject matter of enquiry and hearing to the petitioner before the respondent Nos. 2 and 3 stands restricted only to the extent of incentives on account of rendering services in partly affected tribal/naxlite area, and not higher promotional pay scale, which was wrongly granted to the petitioner contrary to the provisions in sub-clause (7) of clause 3 of the Government Resolution dated 6th August, 2002.

27. Petition is partly allowed. Rule made absolute in above terms. Petition stands disposed of. In view of disposal of the Writ Petition, Civil Application is also partly allowed and the same stands disposed of.