

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH: CALCUTTA  
(Circuit at Port Blair)**

OA No. 351/00144/2014  
OA No. 351/00148/2014  
OA No. 351/00142/2014

Reserved on: 12/04/2016  
Pronounced on: 19.04.2016

Present:

The Hon'ble Mr. Justice V.C. Gupta, Judicial Member  
The Hon'ble Ms. Jaya Das Gupta, Administrative Member


**OA No. 351/00144/2014**

1. Mr. Mohd. Rafique working as Laboratory Technician in the establishment of Dr. B.R. Ambedkar Institute of Technology (erstwhile known as Dr. B.R. Ambedkar Polytechnic), Phargaon, Port Blair.
2. Mr. G.S. Rajan working as Laboratory Technician in the establishment of Dr. B.R. Ambedkar Institute of Technology (erstwhile known as Dr. B.R. Ambedkar Polytechnic), Phargaon, Port Blair.
3. Mr. Ashok Kumar working as Laboratory Technician in the establishment of Dr. B.R. Ambedkar Institute of Technology (erstwhile known as Dr. B.R. Ambedkar Polytechnic), Phargaon, Port Blair.
4. Mr. Vinod Kumar working as Laboratory Technician in the establishment of Dr. B.R. Ambedkar Institute of Technology (erstwhile known as Dr. B.R. Ambedkar Polytechnic), Phargaon, Port Blair.

.....Applicants

FOR THE APPLICANTS : MR. R.P. SINGH, COUNSEL

Versus

1. Union of India (through the Secretary, Ministry of Human Resource & Development) Department of Higher Education, Technical Section-II, New Delhi-110001.
  2. The Lt. Governor, Andaman & Nicobar Islands, Raj Niwas, Port Blair-744101.
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3. The Chief Secretary, A & N Administration, Secretariat Building, Port Blair.
4. The Secretary (Education), A & N Administration Secretariat Building, Port Blair.
5. The Principal, Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Govt. Polytechnic), Pahargaon, Port Blair, South Andaman.
6. The Administrative Officer, Principal, Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Govt. Polytechnic), Pahargaon, Port Blair South Andaman.
7. Shri Utpal Sharma, Principal, Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Govt. Polytechnic), Pahargaon, Port Blair, South Andaman.
8. Shri A.K.Baral, the then administrative Officer, Dr. Ambedkar Institute of Technology presently posted as Assistant Director (Admn.) directorate of Panchayats, Port Blair, South Andaman District.

....Respondents

FOR THE RESPONDENTS :MR.T.LALL, COUNSEL

## 2. OA No. 351/00148/2014

1. Mr.M.Aboobaker working as Workshop Instructor in the establishment of Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Polytechnic), Phargaon, Port Blair.
2. Mr. Moideen Kutty, working as Workshop Instructor in the establishment of Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Polytechnic), Phargaon, Port Blair.
3. Mr.Lakhbir Singh, working as Workshop Instructor in the establishment of Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Polytechnic), Phargaon, Port Blair.
4. Mr.Abhainath, working as Workshop Instructor in the establishment of Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Polytechnic), Phargaon, Port Blair.

5. Mr.T. Tharres Dawood, working as Workshop Instructor in the establishment of Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Polytechnic), Phargaon, Port Blair.

....Applicants

FOR THE APPLICANTS : MR.R.P.SINGH, COUNSEL

Versus

1. Union of India (through the Secretary, Ministry of Human Resource & Development) Department of Higher Education, Technical Section-II, New Delhi-110001.
2. The Lt. Governor, Andaman & Nicobar Islands, Raj Niwas, Port Blair-744101.
3. The Chief Secretary, A & N Administration, Secretariat Building, Port Blair.
4. The Secretary (Education), A & N Administration Secretariat Building, Port Blair.
5. The Principal, Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Govt. Polytechnic), Pahargaon, Port Blair, South Andaman.
6. The Administrative Officer, Principal, Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Govt. Polytechnic), Pahargaon, Port Blair South Andaman.
7. Shri Utpal Sharma, Principal, Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Govt. Polytechnic), Pahargaon, Port Blair, South Andaman.
8. Shri A.K.Baral, the then administrative Officer, Dr. Ambedkar Institute of Technology presently posted as Assistant Director (Admn.) directorate of Panchayats, Port Blair, South Andaman District.

....Respondents

FOR THE RESPONDENTS : MR.T.LALL, COUNSEL

3. **OA No.351/00142/2014**

Shri Subrat Kumar working as Workshop Instructor in the establishment of Dr. B.R.Ambedkar Institute of Technology

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(erstwhile known as Dr. B.R.Ambedkar Polytechnic),  
Phargaon, Port Blair.

....Applicant

FOR THE APPLICANTS : MR.R.P.SINGH, COUNSEL

Versus

1. Union of India (through the Secretary, Ministry of Human Resource & Development) Department of Higher Education, Technical Section-II, New Delhi-110001.
2. The Lt. Governor, Andaman & Nicobar Islands, Raj Niwas, Port Blair-744101.
3. The Chief Secretary, A & N Administration, Secretariat Building, Port Blair.
4. The Secretary (Education), A & N Administration Secretariat Building, Port Blair.
5. The Principal, Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Govt. Polytechnic), Pahargaon, Port Blair, South Andaman.
6. The Administrative Officer, Principal, Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Govt. Polytechnic), Pahargaon, Port Blair South Andaman.
7. Shri Utpal Sharma, Principal, Dr. B.R.Ambedkar Institute of Technology (erstwhile known as Dr. B.R.Ambedkar Govt. Polytechnic), Pahargaon, Port Blair, South Andaman.
8. Shri A.K.Baral, the then administrative Officer, Dr. Ambedkar Institute of Technology presently posted as Assistant Director (Admn.) directorate of Panchayats, Port Blair, South Andaman District.

....Respondents

FOR THE RESPONDENTS : MR.T.LALL, COUNSEL

## O R D E R

MS.JAYA DAS GUPTA, AM:

As these three matters are analogous in nature they are being disposed of by this common order. It is worthwhile to

mention that while the Applicants in OA No. 351/00144/2014 are working as Laboratory Technician, the applicants in OA Nos. 351/00142/2014 and OA No. 351/00148/2014 are working as Workshop Instructor in the establishment of Dr. B. R. Ambedkar Institute of Technology (erstwhile known as Dr. B. R. Ambedkar Polytechnic), Phargaon, Port Blair. They are all Group 'C' employees. However, for the sake of convenience, we would like to deal with the facts of OA No. 351/00144 of 2014 filed by Mohd Rafique and three others).

2. It is the case of the Applicants that their names having been sponsored by the local Employment Exchange, they appeared at the selection conducted by the Respondents and upon being found suitable, on the recommendation of the Departmental Promotion Committee, they were appointed as Laboratory Technician on 7<sup>th</sup> February, 1987 against existing vacancies on ad hoc basis as at that relevant time the recruitment rules were not finalized. Their ad hoc service was extended from time to time. The recruitment rules were finalized on 12/01/1990 and consequently, they were appointed on regular basis with effect from 30<sup>th</sup> April, 1990 on the selection process based on Recruitment Rules. In the order of their regular appointment it was specifically made known to them that their ad hoc service shall be valid for the purpose grant of annual increments etc. Accordingly, they were granted annual increments during the ad hoc period and such was also taken into consideration for computing pay in terms of 5<sup>th</sup> Central Pay Commission and granting the first financial up gradation

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under ACP w.e.f. 09.08.1999. Thereafter, the Respondents vide order dated 16/07/2002 informed the applicants that there has been excess payments made to them while granting them first financial up gradation under ACP by wrongly counting their qualifying service and accordingly issued corrigendum altering the date of grant of ACP from 09/08/1999 to 04/04/2002. However, the applicants' pay were re fixed on the implementation of 6<sup>th</sup> CPC taking the date of first ACP as 09/08/1999. The applicants submitted representations which were rejected. After such rejection, the appointment order dated 24/07/1990 was amended by adding 'NOT' in paragraph 1 of the earlier order of appointment and accordingly re fixed their pay w.e.f. 3-0/04/1990 by way of taking away the benefit of increments without any show cause or prior notice thereby jeopardizing their service career in one stroke. Hence by filing the OA No. 351/00144/2014 (Mohd. Rafique and three others) Under Section 19 of the Administrative Tribunals Act, 1985 they have prayed for the following relies:

"(A) An order be passed permitting the applicants to join together and file the instant original application under Rule 4 (5) (a) of Central Administrative Tribunal (Procedure) Rules, 1987 as the cause of action and the nature of relief prayed for is same having common interest in the matter;

(B) An order do issue quashing the impugned orders dated 16/07/2014 (Annexure 16) and consequential orders thereto order dated 25/07/2014 (Annexure A 17 colly.) and order dated 02/09/2014 (Annexure A 18 Coolly) respectively;

(C) An order do issue to release the amount if any recovered from the salary of the applicants on account afresh re fixation of pay vide impugned order dated 02./09/2014 (Annexure A 18 colly.);

(D) Any such order or orders be passed and or direction or directions be given as this Hon'ble Tribunal may deem fit and proper;

(E) Cost and incidentals to this application."  
(extracted as such)

3. On the other hand, the Respondents filed their reply in which while generally agreeing with the stand taken by the applicants in their pleadings, the Respondents stoutly denied the grant of the reliefs claimed by them in the OA. According to the Respondents, 09 (nine) posts of Laboratory Technicians were created vide order No. 1959 dated 06/05/1986. In absence of Recruitment Rules, the posts of Laboratory Technician were filled up on ad hoc basis in the year 1987 by inviting names of the candidates from the Local Employment Exchange and holding DPC. Such adhoc appointments were put to an end when the regular Recruitment Rules came into effect and fresh appointment order was issued to the applicants vide order No. 271 dated 25/07/1990. The Respondents have not agreed to count the ad hoc service for extending various service benefits, as per their reply in paragraph 3 (g) in which it has been stated that as per the DoP&T order under Chapter 21 (6) (7) of Complete Manual Cum Establishment and Administration, since the Recruitment Rules were not finalized at the time of initial appointment on ad hoc basis, there could not be any regular appointment. As per the aforesaid provision of the DoP&T, it was not feasible to regularize the adhoc appointment of the applicants. It has been stated that as

per the conditions mentioned in the order of adhoc appointment No. 271 dated 25/07/1990 though the adhoc service were to be counted for the purpose of sanction of annual increment such conditions was subsequently withdrawn vide No. 468 dated 25/07/2014 (Annexure-A/17) stating that the past service on ad hoc basis from their initial appointment shall not be counted valid for the purpose of sanction of annual increment and other service benefits. Accordingly, the Respondents have prayed for dismissal of this Original Application.

4. We have heard the learned counsel for both sides substantively and perused the records and the annexures appended thereto. We have also gone through the decisions relied on by the learned counsel for the Applicants.

5. The issues arise for our consideration in these cases are as to WHETHER:

- (i) The terms of regular appointment can be changed, after a lapse of long time, in the instant case, after about 24 years;
- (ii) Ad hoc service can be counted for granting the financial up gradation under ACP/MACP;
- (iii) Over payment made due to wrong fixation or grant of financial up gradation under ACP/MACP not due to the fault of the employee

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concerned can be recovered after a gap of long years.

6. Before proceeding to answer on the above issues, it is apt to extract the relevant portion of the initial letter of ad hoc appointment of the applicants as Laboratory Technician which is as under:

“ANDAMAN AND NICOBAR ADMINISTRATION  
OFFICE OF THE PRINCIPAL  
GOVERNMENT POLYTECHNIC  
DOLAYGUNJ

Post Blair dated 07 the Feb., 1987

Order No.13

In exercise power vested in him vide A & N Gazettee Notification No. 110 dated 9.1.87 (F.No.20-90/86-D III dated 9.1.87) the Principal, Government Polytechnic, Port Blair hereby appoints the following persons as Laboratory Technician Group C against the existing vacancy purely temporary and **ad hoc basis** for a period of six months or earlier at a basic pay of Rs. 1400/- p.m. in the scale of Rs. 1400-40-1800-EB-50-2300 with effect from their reporting for duty in the Government Polytechnic, Port Blair.

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In respect of matters not specified above, they shall be governed by the relevant rules and orders in force from time to time in respect of Government servants on their category serving under the Andaman and Nicobar Administration.

1. Shri Brij Bhan
2. Shri Deepak Kumar Ghosh;
3. Shri Nagesh Lall;
4. Mohd. Rafique.

Sd/- (Bhagat Singh)  
Principal”

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7. The regular appointment order dated 24<sup>th</sup> July, 1990 issued after the Recruitment Rules came into effect, is annexed at Annexure-A/5 which is extracted hereunder for ready reference:

“ANDAMAN AND NICOBAR ADMINISTRATION  
OFFICE OF THE PRINCIPAL  
GOVERNMENT POLYTECHNIC  
DOLAYGUNJ

Post Blair dated 24<sup>th</sup> July, 1990

Order No.271

In exercise of the powers vested in him vide A & N Gazette Notification No. 110 dated 9.1.87 (F. No. 20-9/86 D.III dated 9.1.87) the Principal, Government Polytechnic, Port Blair hereby appoints of the following persons as Laboratory Technician Group C post against the existing vacancy on temporary basis in the scale of pay of Rs. 1400-40-1800-EB-50-2300 with effect from 30.04.1990 in the Government Polytechnic, Port Blair. However, their past services **on ad hoc basis from their initial appointment will be counted valid for the purpose of sanction of annual increment etc.**

In addition to basic pay they shall be entitled to Dearness Allowances, Special Compensatory Allowance and House Rent Allowances as admissible under the rules.

Their appointment will be subject to:-

- (a) Taking an oath of allegiance to the Constitution of India or taking a solemn affirmation to that effect in the prescribed form;
- (b) Submission of declaration in the prescribed form regarding his marital status and if they have more than one wife living or having a spouse living marries in any case in which such marriage is void be reason of its taking place during the life time of such spouse, subject to their being exempted from the operation of the requirement in this behalf.
- (c) Their character and antecedents are verified through the police and they found

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suitable for Government service as a result thereof;

- (d) They shall be on probation for a period of two years.

Sl.No.	Name of persons
1.	Shri D.K.Ghosh;
2.	Shri Nagesh Lall
3.	Shri Mohd. Rafeeqe;
4.	Shri K.Kumar
5.	Shri G.S.Rajan
6.	Shri Ashok Kumar
7.	Shri Vindo Kumar Singh.

Their services shall be liable to termination at any time on one month notice in writing without assigning any reason thereof;

In respect of matters not specified above, they shall be governed by the relevant rules and orders in force from time to time in respect of Government servants of their category serving under the A&N Administration.

Sd/-(A.P.Pednekar)  
Principal"

8. The aforesaid terms and conditions given in the appointment order, quoted above, were changed by the Respondents unilaterally vide order No. 468 dated 25<sup>th</sup> July, 2014 (Annexure-A/17) which is quoted hereunder for ready reference:

"ANDAMAN AND NICOBAR ADMINISTRATION Dr. B.R.Ambedkar Institute of Technology, Pahargaoon.

Port Blair, dated 25<sup>th</sup> July, 2014.

#### ORDER No. 468

Whereas, the following persons were appointed vide order No. 271 dt. 25.7.1990 recruited through an Independent recruitment process in the year 1990 in the post of Laboratory Technician; and

Sl.No.	Name	Present Status
01	Shri D.K.Ghosh	Retired
02	Shri Mohd. Rafeeqe	

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03	Shri G.S.Rajan	
04	Shri Vinod Kumar Singh	
05	Shri Nagesh Lall	Expired.
06	Shri K.Umar	Retired.
07	Shri Ashok Kumar	

Whereas, while issuing fresh appointment order to these incumbents **without any specific rules and regulation given the benefit of pay protection for the ad hoc service rendered by them** by adding the term "*However, their past service on ad hoc basis from their initial appointment will be counted valid for the purpose of sanction of annual increment etc.*"; and

Whereas, on verification of the file DPC has not recommended for pay protection in its proceeding; and

Now, therefore, the undersigned convey the approval of the Competent Authority towards amendment of the clause mentioned in the appointment order No. 271 dt. 25.7.1990 at para 1 shall be substituted as under "However, their past service on ad hoc basis from their initial appointment will **not** be counted valid for the purpose of sanction of annual increment and **other service benefits**".

Sd/-Administrative Officer"

9. It is seen that the terms and conditions mentioned in the initial orders of regular appointment dated 24.7.1990 were significantly changed by the subsequent order dated 25<sup>th</sup> July, 2014 i.e. after a lapse of about 24 years, that too, without giving any opportunity of being heard or calling for their representation, in compliance with the principle of *audi alteram partem*. The order of appointment is a contract between the employer and the employee and any changes of the conditions, after such a long time, without giving any opportunity goes against the well settled principles of natural justice. Hence, the order dated 25<sup>th</sup> July, 2014 deserves to be quashed and set aside.

10. It is a established fact that as per Rules for extending the benefit under ACP/MACP only regular service has to be counted and service rendered on casual, adhoc or contractual basis shall not qualify for the benefit under ACP/MACP scheme. It is noted that ACP scheme was in force from 09.08.1999 to 31.08.2008 and MACP scheme came into effect from 01.09.2008.

11. The learned counsel for the applicants relying on the decision of the Hon'ble Apex Court in the case of **Lt. Governor, Through Sec A&N & Ors Vs. Parimal Halder & Anr** dated 13/01/2015 in Special Leave to Appeal ( C) No(s) 31187/2013 (Arising out of the judgment and order dated 04/03/2013 in WPCT No. 683/2012 passed by the High Court of Calcutta) argued that since the appointment of the applicants from the very beginning was in a pay scale and not on a fixed pay the applicants are entitled to pay protection taking into consideration their initial appointment on adhoc basis. The relevant portion of the aforesaid decision is extracted hereunder for ready reference:

"Since the appointment of the respondents from the very beginning was in a pay scale and not on a fixed pay, we are of the view that the High Court was fully justified in allowing pay fixation to the respondents, with effect from the date of their appointment in the first instance on ad hoc basis."

However, we note that the pay protection was given while fixing pay in the initial regular appointment vide Annexure-A/17.

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12. Regarding recovery of over payment made to the applicants, our mind is reminiscent and redolent with the decision of the Hon'ble Apex Court in the case of **State of Punjab ad Others etc. Vs. Rafiq Masih (White Washer) etc**, Civil Appeal No. 11527 of 2014 (arising out of SLP ( C) No. 11684 of 2012 dated 18<sup>th</sup> December, 2014 in which the Hon'ble Apex Court in paragraph 12 held as under:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery where payments have mistakenly been made by the employer, in excess of their entitlement. Be it as it may, based on the decisions referred to herein above, we may as a ready reference, summarize the following few situations wherein recoveries by the employers, would be impermissible in law:

- (i) **Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' Service);**
- (ii) Recovery from retired employees, or employees who are due to retire within one year of the order of recovery;
- (iii) **Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued;**
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly even though he should have rightfully been required to work against an inferior post;
- (v) In any other case, where the Court arrives at the conclusion that recovery if made from the employee would be iniquitous or harsh or arbitrary to such an extent, as

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would far outweigh the equitable balance of the employer's right to recovery."

Admittedly, the Applicants are Group C employees and they were enjoying the higher pay for more than five years. The benefit of payment of annual increments were granted to them from 1987-1988 which were terminated after more than about 23 years by the order dated 25/07/2014. According to sub paragraph (i) and (iii) of paragraph 12 of the decisions of the Hon'ble Apex Court in the case of **Rafiq Masih** (supra), quoted above, recovery in such cases would be impermissible in law.

13. In view of the above all these three Original Applications are disposed of with the following directions:

- (a) The order No. 468 dated 25/07/2014 which changed the terms and conditions of the appointment made vide order No. 271 dated 24/07/1990 and order No. 648 dated 02/09/2014 by which pay was re fixed as a fall out of the order dated 24<sup>th</sup> July, 2014 are hereby quashed and set aside for the reasons cited supra.
- (b) For calculating the period of eligibility under ACP and MACP regular service from the initial date of appointment has to be taken into account. When the pay is fixed on regular appointment, the pay shall not be fixed on initial stage of the pay scale but the effect of all increments earned during adhoc period shall be given to the applicant(s) while fixing the pay on regular

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appointment i.e. the pay from 30.04.1990 will not be fixed at initial of scale Rs. 1400-2300/- but after getting effect to increments earned during adhoc service from order dated 07.02.1987 (A/3);

- (c) If upon complying with the above directions, it emerges that some recovery is to be made from the applicants; such recovery shall not be made as per the decision of the Hon'ble Apex Court in the case of **Rafiq Masih** (supra) quoted above, and, if any recovery has already been made, the same shall be refunded to the applicants;
- (d) The Respondents shall consider the cases of the applicants in other two cases viz; OA No. 351/00148/2014 and OA No.351/00142/2014 in the light of the directions given above and extend the same reliefs as awarded to the applicants in OA No. 351/00144/2014 if they are similarly circumstanced applicants.
- (e) The above direction be complied with within three months from the date of getting a certified copy of this order.

14. There shall be no order as to costs.