



Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3654 OF 2018

SHABNOOR
AYUB
PATHAN

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1. **Thane Municipal Transport Undertaking,**
Administrative Building, Wagle Agar,
Wagle Industrial Estate, Thane 400 604
 2. **The Transport Manager,**
Thane Municipal Transport Undertaking
Administrative Building, Wagle Agar,
Wagle Industrial Estate, Thane 400 604
- ... Petitioners

Vs.

1. **Atmaram Gopal Shinde,**
Age: Adult, R/at: Azad Nagar No.1,
Castle Mill, Near Pleag Chawl,
Opp. Suraj Auto Gear, Thane (West)
2. **Prakash Mogal Tribhuvan,**
since deceased through his heirs
 - 2a) Vandana Prakash Tribhuvan
 - 2b) Navnath Prakash Tribhuvan
 - 2c) Kartik Prakash Tribhuvan2a to 2c Adult, R/at Pada No.3,
Lokmanya Nagar, Opp. Subhash Tailor,
Zanjigagar, Thane (West)
3. ~~**Arun Bhau Babar**~~ (deleted)
4. **Irfan Abubakar Varekar**
5. ~~**Raghunath Balu Girdale**~~ (deleted)
6. ~~**Pandrinath B. Bhoir**~~ (deleted)
7. **Yunus Jamir Sayyed (deceased)**
 - i) Madina Yunus Sayyed - Spouse
 - ii) Chand Yunus Sayyed - son



- iii) Hussain Yunus Sayyed – son (decd.)
(iii-a) Arhan Hussain Sayyed -
Grandson
- iv) Jannat Salman Patel –
married daughter
- v) Yasmeen Shakeel Salmani -
married daughter
- vi) Basmillah Riyaz Vastad -
married daughter
All r/at Room No.10, Madina
Chsmadina Chl. Ekta Colony No.2
Shil Gao Khardi Road, Shill, Thane
- 8. **Bajirao Abaji Salunkhe**
- 9. **Salim Chandbhai Pathan**
- 10. ~~Vinod Krishna Raut~~ (deleted)
- 11. **Gulab Mubarak Shaikh**
- 12. **Kailas Sadhashiv Lohar,**
3 to 13 Adult, having place of work at
Thane Municipal Transport Undertaking
Administrative Building, Wagle Agar,
Wagle Industrial Estate, Thane 400 604 ... Respondents

**WITH
WRIT PETITION NO.3786 OF 2022**

- 1. **Thane Municipal Transport Undertaking,**
Administrative Building, Wagle Agar,
Wagle Industrial Estate, Thane 400 604
- 2. **The Transport Manager,**
Thane Municipal Transport Undertaking
Administrative Building, Road No.27/34,
Wagle Agar, Wagle Industrial Estate,
Thane 400 604 ... Petitioners

Vs.



Prabhakar Ramchandra Patil,
R/at: Hoousai Niwas, Gothivali,
P.O. Ghansoli, Navi Mumbai 400 701

... Respondent

Mr. Anand S. Kulkarni for the petitioners.

Mr. Vaibhav U. Jagdale with Mr. Pandurang Andhale for
respondent Nos.1, 2a, 4, 8, 9, 10 & 12 in WP/3654/
2018.

Mr. Amol Mhatre with Ms. Sonal Dabholkar for the
respondent in WP/3786/2022.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 13, 2026.

PRONOUNCED ON : MARCH 26, 2026

JUDGMENT:

1. By the present Petition filed under Article 227 of the Constitution of India, the Petitioners call in question the legality and correctness of the judgment and order dated 27 September 2017 passed by the learned Member, Industrial Court, Thane. By the said judgment, Complaint (ULP) No. 348 of 2014 has been partly allowed and the Petitioners have been directed to extend to the Respondents the benefits flowing from the Government Resolution dated 8 June 1995.

2. The facts giving rise to the present Petition, as placed on record, are thus. According to the Petitioners, at the relevant time there existed a requirement of Drivers and, in that background, the Respondents came to be appointed on different dates between the years 1989 and 1996 by granting relaxation in respect of the



prescribed educational qualifications. It is further their case that the promotional avenue available to a Driver is the post of Traffic Controller. The duties attached to the said post include regulation of bus turnout and routes, maintenance of necessary records, and preparation of daily turnout reports for submission to the Traffic Office. The minimum educational qualification prescribed for the said promotional post is passing of the 8th Standard. The Petitioners further submit that the State Government issued a Government Resolution dated 8 June 1995 providing for grant of promotional pay scale to employees who, though otherwise eligible for promotion, are unable to secure such promotion on account of non-availability of posts even after completion of 12 years of service. It is their case that the said Government Resolution came to be clarified by a subsequent Government Resolution dated 20 July 2001, which specifically provides, inter alia, that employees who are not eligible for promotion would not be entitled to the benefit of promotional pay scale under the earlier Government Resolution dated 8 June 1995.

3. It is the further case of the Petitioners that the Municipal Commissioner, by order dated 10 June 2002, adopted the Government Resolution dated 8 June 1995 for the benefit of municipal employees, however subject to fulfillment of the prescribed conditions of promotion, namely seniority and eligibility. It is stated that although relaxation in respect of passing of the departmental examination was granted upon completion of 15 years of service, no relaxation was granted in respect of the other essential conditions for promotion. The Petitioners have also



placed reliance on the Resolution dated 4 March 2003 passed by the Transport Committee, wherein it was clarified that while the requirement of departmental examination stood relaxed, the conditions of seniority and eligibility continued to remain mandatory and were not dispensed with. The Respondents, on the other hand, asserted that notwithstanding their lack of the prescribed educational qualifications for the promotional post, and consequently their ineligibility for promotion, they were entitled to be granted the benefit of promotional pay scale or selection grade. It was contended that denial of such benefit constituted an unfair labour practice. On this basis, the Respondents instituted Complaint (ULP) No. 348 of 2014 before the Industrial Court at Thane. The Petitioners entered appearance and filed their Written Statement opposing the Complaint. It was contended that the reliance placed by the Respondents on the Government Resolution dated 8 June 1995, read with the clarification dated 20 July 2001, was erroneous. It was also urged that reliance on the Resolution dated 4 March 2003 of the Municipal Corporation was misconceived. The Petitioners accordingly sought dismissal of the Complaint. In the proceedings, the Respondents examined Respondent No. 12, whereas the Petitioners examined their Office Superintendent, Shri Peter John Pinto. Upon appreciation of the material on record, the learned Member, Industrial Court, Thane, by the impugned judgment and order dated 27 September 2017, partly allowed the Complaint and directed the Petitioners to grant to the Respondents the benefits under the Government Resolution dated 8 June 1995 from the date of completion of 15 years of



service till the date of their appointment. Being aggrieved by the aforesaid judgment and order dated 27 September 2017 passed by the learned Member, Industrial Court, Thane in Complaint (ULP) No. 348 of 2014, the Petitioners have invoked the supervisory jurisdiction of this Court by filing the present Petition.

4. Mr. Kulkarni, learned Advocate appearing for the Petitioners, submits that the learned Industrial Court has committed a manifest error in its interpretation and application of the Government Resolution dated 8 June 1995. According to him, the said Resolution clearly postulates that fulfillment of the prescribed qualifications for the promotional post is a condition precedent for grant of promotional pay scale. It is pointed out that the learned Industrial Court has itself recorded a categorical finding that the Respondents did not possess the requisite educational qualifications for the promotional post of Traffic Controller and that their educational attainment ranged only between 2nd and 6th standard. In such circumstances, the ineligibility of the Respondents for promotion stood established. Despite recording such a finding, the learned Industrial Court proceeded to hold the Respondents entitled to the promotional pay scale, which, according to the Petitioners, is contrary to the express provisions of the Government Resolution dated 8 June 1995. It is further submitted that the learned Industrial Court has failed to properly appreciate the nature of duties attached to the post of Traffic Controller. The said post requires regulation of bus turnout and service routes, maintenance of records, and preparation of daily turnout reports to be submitted to the Traffic Office. These



functions are essentially clerical and require a minimum level of literacy and educational competence. In the absence of such basic qualifications, the Respondents could not have been considered capable of discharging the duties attached to the promotional post. In view of this, it is submitted that the Respondents, being ineligible for promotion, were not entitled to the pay scale attached to the said post under the Government Resolution dated 8 June 1995.

5. The Petitioners further contend that the learned Industrial Court has failed to give due consideration to the clarificatory Government Resolution dated 20 July 2001, which expressly provides that employees who are ineligible for promotion are not entitled to the benefit of promotional pay scale under the Government Resolution dated 8 June 1995. It is also urged that the learned Industrial Court has overlooked the order dated 10 June 2002 issued by the Municipal Commissioner, wherein it is clearly stipulated that while relaxation was granted in respect of the departmental examination, the other criteria for promotion, namely seniority and eligibility, continued to remain mandatory. Similarly, the Resolution dated 4 March 2003 passed by the Transport Committee reiterates that relaxation was confined only to the requirement of passing the departmental examination, and that the conditions of eligibility and seniority were not relaxed. It is further submitted that the impugned order suffers from non-application of mind, inasmuch as it omits the name of Gulab Mubarak Shaikh, who was at Serial No. 12 in the Complaint and was the only Complainant who entered the witness box, while at



the same time including the name of Respondent No. 13, who was not even a party to the amended Complaint. According to the Petitioners, these discrepancies demonstrate clear lack of proper application of mind. It is further submitted that the learned Industrial Court has erred in treating the Respondents, who admittedly did not possess the basic educational qualifications and were wholly ineligible for promotion, on par with those employees who were otherwise eligible but had merely not cleared the departmental examination. Such an approach, according to the Petitioners, is fundamentally flawed and renders the impugned order perverse and unsustainable in law. In support of these submissions, reliance is placed on the judgment of the Supreme Court in *Central Council for Research in Ayurvedic Sciences (CCRAS) v. Bikartan Das*, 2023 SCC OnLine SC 996.

6. Per contra, Mr. Jagdale and Mr. Mhatre the learned Advocates appearing for the respective Respondents submits that the claim of the Complainants is founded upon the Government Resolution dated 8 June 1995 issued by the General Administration Department of the State of Maharashtra. It is further submitted that a subsequent clarificatory Government Resolution dated 1 July 2011 has also been issued by the State Government on the subject. The Respondents have additionally relied upon an order passed by the Thane Municipal Corporation, whereby one Mr. Balu Awate was granted the benefit of the Assured Career Progression Scheme. It is submitted that the Complainants were admittedly employed as Drivers in the undertaking of the Respondents and had rendered continuous



service on a permanent basis. It is further submitted that the Complainants had, on several occasions, made representations seeking grant of selection grade in accordance with the applicable service rules, contending that they fall within Class C and Class D categories as contemplated under the Government Resolution dated 8 June 1995. It is also pointed out that the said Government Resolution came to be adopted by Respondent No. 1 by Resolution No. 171 dated 10 May 2000. The learned Advocate for the Respondents further submits that the Government Resolution dated 8 June 1995 was introduced with the object of addressing stagnation and dissatisfaction arising from lack of promotional avenues available to employees belonging to Class C and Class D categories. Under the said scheme, such employees are entitled to receive the pay scale of the next higher post in the promotional hierarchy upon completion of 12 years of continuous service. It is further submitted that in cases where no promotional avenue exists, the employees are entitled to the pay scale as specified in the Annexure to the said Government Resolution. The scheme was made operative with effect from the year 1994. However, it is also stipulated therein that for availing the benefits under the said Government Resolution, the employee concerned must fulfill the eligibility criteria prescribed for the higher post, including seniority and other qualifications such as passing of the departmental examination. It is expressly provided that an employee who is not entitled to promotion to the higher post would not be eligible for the benefits under the said Government Resolution. It is lastly submitted that by virtue of the said Government Resolution and its



subsequent adoption, the benefits of the Assured Career Progression Scheme came to be extended to the employees of the Respondent undertaking. They placed reliance upon *Amresh Kumar Singh and Others v. State of Bihar and Others* 2023 SCC OnLine SC 496.

REASONS AND ANALYSIS:

7. I have carefully gone through the judgment in *Amresh Kumar Singh* and I have tried to see how far it applies to the facts of the present case. The principles stated in that judgment need proper attention because they explain in simple terms what these time bound schemes are and what they are not. Many times confusion happens between promotion and financial benefit. That confusion must be cleared first before deciding anything further.

8. The Supreme Court has made the position quite clear that schemes like ACP or MACP are not actual promotions. They do not change the post of the employee. The employee continues on the same post where he was working earlier. Only the pay is increased to the next level. This is done so that the employee does not feel stuck for many years without any benefit. In other words, it is only a financial adjustment and not a real movement to a higher post. If this difference is not kept in mind, the entire issue gets mixed up. In the present case also, the Industrial Court has proceeded on this basis. It has not treated the Respondents as promoted to the post of Traffic Controller. It has only granted them a time scale benefit after long service. At first look, this approach appears to be in line with what the Supreme Court has said.



9. The Supreme Court has said that even though these schemes are meant to remove stagnation, they still operate within their own conditions. Every scheme has its own rules. It is not an open ended benefit. Therefore, even if educational qualification for actual promotion is not always required for such financial upgradation, still the Court must see what the particular scheme says. The entitlement must come from the scheme itself. It cannot be assumed just because the employee has worked for a long time.

10. In the present case, the Respondents are relying upon condition no. 3 of the modified Government Resolution dated 10 June 2002. According to them, this condition requires only completion of 15 years of service. They say nothing more is required. If this reading is correct, then the principle laid down in *Amresh Kumar Singh* will support them. This is because they are not asking for actual promotion. They are not asking to be made Traffic Controllers. They are only asking for higher pay after long service. If the scheme itself says that 15 years service is enough, then insisting on educational qualification of the higher post may not be necessary, unless clearly written in the scheme. On the other side, the Petitioners have strongly argued that eligibility and educational qualification cannot be ignored. This argument is correct if the case was about actual promotion. For promotion, qualification is necessary. No doubt about it. But here the nature of claim is different. Once it is accepted that this is only a financial upgradation, then the focus changes. The Court must then read the scheme as it is. If the modified Government Resolution dated 10 June 2002 has restricted the condition only to length of service,



then the Court cannot add more conditions from outside. It cannot import rules of recruitment into a scheme which does not expressly include them.

11. The earlier Government Resolution dated 8 June 1995 and its clarification dated 20 July 2001 do speak about eligibility. That position is not denied. But the Respondents' case is that the later modification in 2002 has changed the requirement. According to them, the scheme has shifted from strict eligibility to a time bound benefit. If that is so, then the later Resolution must be given effect. A later rule, if clear, will govern the field. The Court cannot ignore it and go back to earlier conditions, unless the later one repeats them. The Supreme Court has also clearly observed that for in situ financial upgradation, educational qualification for promotion is not always required. This directly answers the main objection raised by the Petitioners. The Respondents are not going to perform duties of Traffic Controller. They remain Drivers. Their seniority is not changed. Their position in service is not disturbed. Only their pay is increased. Therefore, the concern that they do not have qualification for Traffic Controller becomes less important in this context. That concern would matter if they were to actually work on that post. Here, they are not.

12. The object of the scheme must also be kept in mind. The Supreme Court has said that these schemes are made to reduce frustration. When a person works for 15 or 20 years on the same post without any progress, it creates dissatisfaction. To remove that, the scheme gives some financial rise. If the Respondents have completed such long service, and if the modified Resolution gives



them benefit on that basis, then denying it would go against the very purpose of the scheme. The scheme must be read in a way that it achieves its object, not defeats it.

13. Looking at the matter from this angle, the reasoning of the Industrial Court appears to be proper. The Court has treated the benefit as a time bound financial upgradation. It has not treated it as promotion. It has granted the benefit from the date of completion of 15 years of service. This is exactly what the scheme intends, if condition no. 3 is read in that manner. It cannot be said that the Court has committed any serious error only because it did not insist on educational qualification meant for a different purpose.

14. Therefore, when the law laid down in *Amresh Kumar Singh* is read together with the modified Government Resolution dated 10 June 2002, the position becomes quite clear. The Respondents, after completing 15 years of service, became entitled to the financial benefit, even if they did not have the qualification for the higher post. The benefit is only monetary. It does not change their post. The Industrial Court has understood this correctly. The impugned order, therefore, does not suffer from any legal mistake on this aspect and does not require interference.

15. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (i) Both the Petitions fail and are accordingly dismissed;
- (ii) The judgment and order dated 27 September 2017 passed by the learned Member, Industrial Court, Thane in



Complaint (ULP) No. 348 of 2014 is hereby upheld;

(iii) It is declared that the Respondents (in each petition) are entitled to the benefit of time-scale promotion in terms of condition No.3 of the modified Government Resolution dated 10 June 2002, upon completion of 15 years of continuous service from the date of their appointment as Drivers;

(iv) The Petitioners shall implement the said benefits in favour of the Respondents within a period of eight weeks from the date of this order, if not already implemented.

16. No order as to costs.
17. Both the writ petitions stands disposed of.

(AMIT BORKAR, J.)