



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11916 OF 2019

1. Kiran S/o Bhaskarrao Adgaonkar,
Age : 56 Years, Occu. : Service
R/o : Rama Tawar, Flat No. 5,
Hindu Rast Chowk, Pahade Corner,
Garkheda, Aurangabad,
Tq. & Dist. Aurangabad.
2. Shahedmiya S/o Safiulla Patel
Age : 54 Years, Occu. : Service
R/o : Shahawali Road, H. No. 2320,
Near Boudha Nagar, Latur,
Tq. & Dist. Latur.
3. Satyanarayan S/o Sandulal Jajure
Age : 57 Years, Occu. : Service
R/o : 'Godawari', Near Riddhi-Siddhi
Apartment, Ghati Road, Samarthnagar,
Jalna, Tq. & Dist. Jalna.

... PETITIONERS

...VERSUS...

1. The State of Maharashtra,
Through its Secretary,
Water Supply and Sanitation Department,
Mantralaya, Mumbai-32.
2. The Member Secretary,
Maharashtra Jeewan Pradhikaran,
Express Tower, Nariman Point, Mumbai-32.
3. The Chief Administrative Officer,
Maharashtra Jeewan Pradhikaran,
CIDCO Bhava, Belapur, New Mumbai.
4. The Superintending Engineer and
President Circle Committee,
Maharashtra Jeewan Pradhikaran,
Shantipura, Chavani, Aurangabad.

... RESPONDENTS

**AND / WITH
WRIT PETITION NO. 11920 OF 2019**

1. Arun S/o Vitthalroa Gangawane
Age : 55 Years, Occu. : Service
R/o : Shreenagar, Akola Road,
Hingoli, Tq. & Dist. Hingoli.
2. Shivaji S/o Sambhaji Mandade
Age : 54 Years, Occu. : Service
R/o : Adarsh Colony, Hingoli,
Tq. & Dist. Hingoli.
3. Shridhar S/o Vyankatrao Vishnupurikar,
Age : 54 Years, Occu. : Service
R/o : Brahaman Galli, Vasmatnagar,
Tq. Vasmatnagar, Dist. Hingoli.
4. Milind S/o Harijivanrao Choudhari
Age : 56 Years, Occu. : Service
R/o : C/o Shri. Dilip Naik's House,
Near Ganeshwadi Primary School,
Risala Bazar, Hingoli,
Tq. & Dist. Hingoli.

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4. The Superintending Engineer and
President Circle Committee,
Maharashtra Jeewan Pradhikaran,
Shantipura, Chavani, Aurangabad.

5. The Superintending Engineer and
Maharashtra Jeewan Pradhikaran,
Jalbhawan, Tushar Colony,
Near Work-shop, Nanded

... RESPONDENTS

**AND / WITH
WRIT PETITION NO. 12066 OF 2019**

1. Ramesh S/o Tatyasaheb Kulkarni
Age : 56 Years, Occu. : Service
R/o : New Hanuman Nagar, Gali No.
1, Near Durga Mata Mandir,
Garkheda, Aurangabad, Tq. & Dist.
Aurangabad.
2. Ashok S/o Sopanrao Kagde
Age : 53 Years, Occu. : Service
R/o : Yeshodhan, Behind Manoram
Apartment, Adarshnagar, Beed,
Tq. & Dist. Beed.
3. Shaikh Samad S/o Noor Mohamad
Age : 56 Years, Occu. : Service
R/o : At Post Shahagad, Tq. Ambad,
Dist. Jalna.
4. Ganpat S/o Prabhu Tagad
Age : 53 Years, Occu. : Service
R/o : At Post Limbaganesh, Tq. &
Dist. Beed.
5. Kisan S/o Santoba Deokar
Age : 53 Years, Occu. : Service
R/o : C/o Shri. Prashant Muley
(Professor), Matoshrinagar, Pimper
Gavahan Road, Beed. Tq. & Dist. Beed.
6. Ramesh S/o Achutrao Bobade
Age : 53 Years, Occu. : Service
R/o : "Vitthal Mandir", Zenda Chowk,
Rangargalli, Majalgaon,
Tq. Majalgaon, Dist. Beed.

7. Suresh S/o Nivruttirao Dake
Age : 53 Years, Occu. : Service
R/o : C/o Dake Niwas, Near Gajanan
Mandir, Gajanand Nagar, Majalgaon,
Tq. Majalgaon, Dist. Beed.
8. Sopan S/o Chandrabhan Rakh
Age : 53 Years, Occu. : Service
R/o : Raigad Colony, Tuljai Chowk,
Canol Road, Beed, Tq. & Dist. Beed.
9. Pandharinath S/o Sitaram Tidke
Age : 53 Years, Occu. : Service
R/o : 'Sarswati Apartment',
Shivaji Nagar, Beed,
Tq. & Dist. Beed.
10. Malhari S/o Vitthalrao Deshpande
Age : 54 Years, Occu. : Service
R/o : Beed-by-Pass, Satara Parisar, Plot No. 30, Gut No. 151
Aurangabad, Tq. & Dist. Aurangabad.
11. Sunil S/o Madhukarrao Joshi
Age : 55 Years, Occu. : Service
R/o : Plot No. 11, Samarth Nagar,
Near New Civil Hospital, Old Jalna,
Tq & Dist. Jalna.
12. Ashok S/o Ganpatrao Shelke
Age : 54 Years, Occu. : Service
R/o : "Devki Niwas", Adarsh Colony,
Deulgaon-Raja, Tq. Deulgaon-Raja,
Dist. Buldhana.
13. Govind S/o Raosaheb Khose
Age : 53 Years, Occu. : Service
R/o : At Tandalwadi Ghat,
Post Khadki Ghat, Tq. & Dist. Beed.
14. Syed Yunus S/o Syed Jafar
Age : 55 Years, Occu. : Service
R/o : Juni Post Colony, Shensha Nagar,
Barshi Road, Beed, Tq. & Dist. Beed.

15. Abasaheb S/o Sahebrao Dhaye
Age : 55 Years, Occu. : Service
R/o : H. No. D-80/10, 11th Scheme,
Shivaji Nagar, Behind Wani Mangal
Karyalaya, Aurangabad, Tq. & Dist.
Aurangabad.
16. Laxman S/o Dagduba Hule
Age : 56 Years, Occu. : Service
R/o : 'Gitai' Main Road, Patoda,
Tq. Patoda, Dist. Beed.
17. Satish S/o Devidasrao Deshmukh
Age : 57 Years, Occu. : Service
R/o : Renukai Niwas, Nilamnagar,
Station Road, Old Jalna,
Tq. & Dist. Jalna.
18. Dnyanoba S/o Nivrutti Pawar,
Age : 57 Years, Occu. : Service
R/o : Bhagya Nagar, H. No. 17,
Vasmat Road, Parbhani,
Tq. & Dist. Parbhani.
19. Syed Akhtar S/o Syed Jafar
Age : 54 Years, Occu. : Service
R/o : Behind Panchwati Hotel,
Dharur Road, Majalgaon,
Tq. Majalgaon, Dist. Beed.
20. Krishnakant S/o Sonaji Terkar
Age : 59 Years, Occu. : Service
R/o : Vananjar Galli, Hanuman Mandir,
Tq. Ghansangvi, Dist. Jalna.

... PETITIONERS

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3. The Chief Administrative Officer,
Maharashtra Jeewan Pradhikaran,
CIDCO Bhava, Belapur, New Mumbai.
4. The Superintending Engineer and
President Circle Committee,
Maharashtra Jeewan Pradhikaran,
Shantipura, Chavani, Aurangabad.

... RESPONDENTS

**AND / WITH
WRIT PETITION NO. 13733 OF 2019**

Janardhan S/o Ramrao Mundhe
Age : 54 Years, Occu. : Service
R/o : Venkatesh Nagar, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.

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President Circle Committee,
Maharashtra Jeewan Pradhikaran,
Shantipura, Chavani, Aurangabad.

5. The Superintending Engineer and
Maharashtra Jeewan Pradhikaran,
Jalbhawan, Tushar Colony,
Near Work-shop, Nanded

... RESPONDENTS

**AND / WITH
WRIT PETITION NO. 14602 OF 2019**

Arvind S/o Manohar Joshi
Age : 58 Years, Occu. : Retired,
R/o : "Laxmi Sadan", Plot No. 71,
Behind Maha Rana Pratap School,
Alok Nagar, Satara Parisar,
Deolai Road, Aurangabad,
Tq. & Dist. Aurangabad.

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CIDCO Bhava, Belapur, New Mumbai.
4. The Superintending Engineer and
President Circle Committee,
Maharashtra Jeewan Pradhikaran,
Shantipura, Chavani, Aurangabad.

... RESPONDENTS

**AND / WITH
WRIT PETITION NO. 15520 OF 2019**

1. Pandit S/o Murlidharrao Kendre
Age : 56 Years, Occu. : Service,
R/o : 'Prasad', Prashant Nagar,
Ambajogai, Tq. Ambajogai, Dist. Beed.

2. Deepak S/o Apparao Jadhwar
Age : 55 Years, Occu. : Service,
R/o : Vaidhyanath Nagar, In front of
Tahsil, Dharur, Tq. Dharur, Dist. Beed.
3. Parmeshwar S/o Haribhau Bhise
Age : 55 Years, Occu. : Service,
R/o : Omshanti Colony, Near Sent
Anthoni School, Ambajogai,
Tq. Ambajogai, Dist. Beed.
4. Shivaji S/o Marotrao Wankhede
Age : 56 Years, Occu. : Service,
R/o : Parbhani, Tq. & Dist. Parbhani.
5. Suryakant S/o Balajirao Tandale
Age : 55 Years, Occu. : Service,
R/o : Devani, Tq. and Dist. Latur.
6. Shankar S/o Bapu More
Age : 60 Years, Occu. : Retired,
R/o : More Colony, Near Pat Bandhare
Colony, At. Post. Tq. Jath, Dist. Sangali.
7. Vilas S/o Dattatrya Chougule
Age : 55 Years, Occu. : Service
R/o : Plot No. 5, Datta Colony,
Deokar Panand, Kalamba Road,
Tq. and Dist. Kolhapur.
8. Bapusaheb S/o Nanasaheb Pawar
Age : 54 Years, Occu. : Service
R/o : 'Kalaprasad Niwas', Ward No. 3,
Behind S.R.V.M. School,
At. Post. Tq. Jath, Dist. Sangali.
9. Annasaheb S/o Pandurang Karande
Age : 55 Years, Occu. : Service
R/o : At Post: Dhalgaon,
Tq. Kavthe Mahankal, Dist. Sangli.

10. Sanjay S/o Dattu Kale
Age : 53 Years, Occu. : Service
R/o : Plot No. 111, Gandharva Nagari,
A-Ward, Phulewadi, Ring Road, Kolhapur,
Tq. and Dist. Kolhapur.
11. Rajaram S/o Tukaram Mali
Age : 57 Years, Occu. : Service
R/o : Mali Nagar, Khande Rajuri Road,
Malgaon, Tq. Miraj, Dist. Sangli.
12. Yeshwantrao S/o Vishnu Patil
Age : 56 Years, Occu. : Service
R/o : Plot No. 34, Karadge Point,
Radhanagari Road, Behind A1,
Garage, Kolhapur, Tq. Kolhapur,
Dist. Kolhapur.
13. Malappa S/o Jakappa Kumbhar
Age : 52 Years, Occu. : Service
R/o : At Post: Sordi, Tq. Jath,
Dist. Sangali.
14. Hanumant S/o Durga Wadar
Age : 55 Years, Occu. : Service
R/o : Yash Residency Apartment,
Flat No. 7, Near Datta Mandir,
South Shivaji Nagar, Vikas Chowk,
Sangali, Tq. and Dist. Sangali.
15. Mahadev S/o Rachling Jangam
Age : 55 Years, Occu. : Service
R/o : Plot No. 4, Survey No. 84-B,
Jyotirling Colony, Godoli, In front of
Guruprasad Flour Mill, Satara,
Tq. and Dist. Satara.
16. Sunil S/o Shamrao Kamble
Age : 56 Years, Occu. : Service
R/o : Fauji Colony, In front of
Mahatma Gandhi Hospital,
At Post: New Pargaon,
Tq. Hatkangale, Dist. Kolhapure.

17. Babasaheb S/o Kalappa Koregave
Age : 56 Years, Occu. : Service
R/o : At Post: Mangaon,
Tq. Hatkangale, Dist. Kolhapure.
18. Ashok S/o Ishwar Khade
Age : 59 Years, Occu. : Retired,
R/o : Devendra Apartment,
Government Colony, Vishram Bag,
Sangali, Tq. and Dist. Sangali.
19. Maruti S/o Laxman Parkhe
Age : 57 Years, Occu. : Service
R/o : At Post: Kasar Kandgaon,
Tq. Ajra, Dist. Kolhapur.
20. Virappa S/o Basappa Matwadkar
Age : 57 Years, Occu. : Service
R/o : 158, Wani Galli, Ajra,
Tq. Ajra, Dist. Kolhapur.
21. Shankar S/o Bapu Patil
Age : 53 Years, Occu. : Service
R/o : Satya Priya Plaza, Flat No. S-2,
E-Ward, Ingle nagar, Behind Ram
Mangal Karyalaya, Kolhapur,
Tq. and Dist. Kolhapur.

... PETITIONERS

...VERSUS...

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Through its Secretary,
Water Supply and Sanitation Department,
Mantralaya, Mumbai-32.
2. The Member Secretary,
Maharashtra Jeewan Pradhikaran,
Express Tower, Nariman Point, Mumbai-32.
3. The Chief Administrative Officer,
Maharashtra Jeewan Pradhikaran,
CIDCO Bhavan, Belapur, New Mumbai.

4. The Superintending Engineer
Maharashtra Jeewan Pradhikaran Circle,
Central Building, First Floor, Pune - 1.
- 5 . The Superintending Engineer and
President Circle Committee,
Maharashtra Jeewan Pradhikaran,
Shantipura, Chavani, Aurangabad.

... RESPONDENTS

-
- Adv. R. P. Bhumkar for the Petitioners
 - Ms. V. P. Dama, AGP for the State
 - Adv. Vinod Patil for Respondent Nos. 2 and 3 in WP Nos. 11916/2019, 11920/2019, 13733/2019
 - Adv. A. G. Vasmatkar for Respondent Nos. 2 and 3 in WP Nos. 12066/2019, 14602/2019 and 15520/2019
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CORAM : **ARUN R. PEDNEKER AND
VAISHALI PATIL - JADHAV, JJ**
DATED : **13.02.2026**

JUDGMENT (PER VAISHALI PATIL-JADHAV, J) :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
2. By these petitions filed under Article 226 of the Constitution of India, the petitioners are challenging the orders dated 04.09.2019 and 23.10.2019, by which the earlier time bound promotion granted to the petitioners from the date of their appointment on work charge establishment is reversed and is granted from the date of their absorption as Civil Engineering Assistant.

All these petitions are decided by this common judgment since the issues of law and facts arising therein are common.

3. **BRIEF FACTS OF THE CASE :-**

The petitioners were appointed by the Maharashtra Water Supply and Sewerage Board, some in 1985 and some in 1986, on the posts of Mustering Karkoon, Mistry, Tracer etc., on Work Charge Establishment (hereinafter referred to as "WCE") in the pay scale of Rs.260-10-390. By the Government Resolution dated 31.09.1989, fourteen cadre posts such as Technical Assistant, Mustering Karkoon, Mistry Grade-I, Mistry Grade-II, Tracer etc., were amalgamated into a single cadre known as "Civil Engineering Assistant" (hereinafter referred to as "CEA"). By Government Resolution dated 08.06.1995, the Time Bound Promotion Scheme was introduced. The Irrigation Department, took a policy decision on 28.10.1994 and made it clear that if a person is appointed as a Technical Assistant or on any other post and acquires the necessary qualification for CEA, such person shall be directly absorbed as a CEA. Another circular dated 29.11.1996 was issued wherein it was clarified that, temporary employees shall also be absorbed and that, even those who have completed the one-year course of CEA shall be absorbed as CEA.

The Water Supply Department by Government Resolution dated 12.06.1997, granted permission to the Maharashtra Jeevan Pradhikaran i.e. respondents for creation of new cadre i.e. CEA. In accordance with the scheme, the present petitioners were absorbed as CEA in the year

12/23

1989 and were granted pay scale of Rs.1200-30-1410. By orders dated 07.11.2015, 30.12.2015, 11.04.2016, 18.04.2016, 17.06.2016, 07.09.2016, 17.09.2016, 18.11.2016 and 28.06.2017, the petitioners were granted first Time Bound Promotion (hereinafter referred to as "TBP") after completion of 12 years from their initial date of appointment, which was on WCE. Subsequently, by orders dated 04.08.2019 and 23.08.2019, which are impugned in these petitions, the first TBP granted to the petitioners from the date of their initial appointment on WCE is revised, and the first TBP is now granted from the date of their absorption as CEA. Revised pay fixation was made on the ground that the petitioners were not entitled to the first TBP from the date of their appointment, as their earlier services were rendered on WCE and a higher pay scale was already granted to them when they were absorbed as CEA.

SUBMISSIONS :-

4. The learned Advocate Mr. R.P. Bhumkar for the petitioners would submit that, as the respondents did not take any steps to grant the benefit of time bound pay scale, certain employees who were possessing the qualification equivalent to those of the petitioners herein, approached before the High Court Bench at Nagpur by filing Writ Petition Nos. 3815/2012, 3466/2012 and 3807/2012. By judgment dated 29.08.2013, this Court held that Civil Engineering Assistants, who

had initially worked in the cadre of Technical Assistant, Mustering Karkoon, Mistry and Tracer would be entitled to the pay scale applicable to the cadre of Junior Engineer on completion of 12 years service from the date of their initial appointment. The said judgment was challenged before the Hon'ble Supreme Court by Special Leave Petition (Civil) No.151-153 of 2014, which came to be dismissed on 31.01.2014. After considering these judgments, the respondents had initially granted the first TBP after completion of 12 years of service from the date of their initial appointment.

5. The learned Advocate for the petitioners would submit that in identical facts, similarly situated employees were granted benefit of first TBP from the date of their initial appointment by the learned Maharashtra Administrative Tribunal (hereinafter referred to as "MAT") in Original Application No.538/2018 (Shivprakash R. Ghatge Vs. State of Maharashtra and others). The State of Maharashtra had challenged the said judgment by filing Writ Petition No.6882/2021 (State of Maharashtra and others Vs. Shivprakash Ramchandra Ghatge), where the Principal Seat dismissed the said writ petition vide order dated 20.10.2021 by observing that identical issues raised in these bunch of writ petitions were also raised in Writ Petition No.3118/2021 (State of Maharashtra and others Vs. Madhukar Antu Patil), which was dismissed by order dated 09.09.2021. The order passed by the principal seat in

Shivprakash (supra) was challenged by way of Special Leave to Appeal (c) No. 20683/2022 (State of Maharashtra and others Vs. Shivprakash Ramchandra Ghatge), which was dismissed on 17.03.2025. The judgment and order passed by the Principal Seat in Madhukar (supra) was challenged in the Hon'ble Supreme Court in Civil Appeal No.1985/2022 (The State of maharashtra and another Vs. Madhukar Antu Patil and another), which was partly allowed vide order dated 21.03.2022 by holding that first TBP shall be applicable from the date of absorption as CEA. Learned Advocate Mr. Bhumkar would submit that the Hon'ble Supreme Court dismissed the SLP in Shivprakash (supra) and as the order in the SLP is later in time than the judgment of Supreme Court in Madhukar (supra), it follows that the order in Writ Petition of Shivprakash (supra) is confirmed. After dismissal of the SLP, the State of Maharashtra implemented the order of the High Court and has granted benefit of first TBP from the initial date of appointment on WCE. The learned Advocate for the petitioners would then submit that, by following the above-mentioned decision, the impugned orders need to be quashed and set aside and the petitioners should be granted first TBP from their initial date of appointment, being similarly situated.

6. Per-contra, learned Advocate, Mr. A. G. Vasmatkar appearing for the respondents- Maharashtra Jeevan Pradhikaran refuted the claim made by the petitioners. He would submit that the TBP

scheme was introduced by the Government Resolution dated 08.06.1995, in which it is specifically mentioned in clause (c) regarding the eligibility of TBP only after completion of 12 years on regular service. The petitioners are regularized by their absorption as CEA in the year 1989 and hence, the respondents have rightly given them first TBP from the date of their absorption as CEA and, were granted higher pay scale than WCE.

7. The learned Advocate in support of his contention relied on the judgment of the Hon'ble Supreme Court in Madhukar (supra) and submitted that, the respondent therein was identically situated and the Hon'ble Supreme Court has conclusively settled the issue by a reasoned judgment dated 21.03.2022 and granted benefit of first TBP from the date of absorption as CEA. He would submit that, this judgment should be followed, as it is delivered after granting leave to appeal, which is prior in time, whereas the SLP in Shivprakash (supra) was simply dismissed without considering any merit as the Court was not inclined to interfere with the judgment and order passed by the High Court. He therefore, prayed for dismissal of the writ petitions.

8. Learned Advocate Mr. Vinod Patil adopted the arguments made by learned Advocate Mr. A. G. Vasmatkar and also submitted that all the Government Resolutions regarding the TBP issued by Irrigation

Department are adopted by the respondents – Maharashtra Jeevan Pradhikaran.

9. We have heard and considered the submissions canvassed by the learned counsel for the respective parties.

CONSIDERATION AND CONCLUSION :-

10. There is absolutely no dispute about the factual aspects as regards the initial dates of appointment on WCE on pay scale of Rs.260-10-390, date of absorption as in the cadre of CEA on pay scale of Rs.1200-30-1410, grant of first TBP from their initial date of appointment and that by way of impugned letters it is revised and granted from the date of absorption as CEA.

11. In view of the contentions raised and submissions made by the parties, the issue for consideration is, whether the petitioners are entitled to the first TBP from their initial date of appointment on WCE or from the date of their absorption as CEA. The second question would be whether the judgment of the Hon'ble Supreme Court dated 21.03.2022 in Madhukar (supra), would be applicable or the order passed by the Principal Seat in Shivprakash (supra) will be applicable against which, the SLP is dismissed by order dated 17.03.2025.

In the present case, if the second issue is answered, the first issue will be answered automatically.

12. To avoid the rigmarole, it would be apposite to refer to the observations made by the Supreme Court in Civil Appeal No.12309/1996 (**Kunhayammed and Ors Vs. State of Kerala and Ors**), wherein the Supreme Court has thoroughly dealt with the concept of merger and its applicability in various situations in the following paragraphs :-

"43. We may look at the issue from another angle. The Supreme Court cannot and does not reverse or modify the decree or order appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage.

To sum up our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction

disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties,

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by Sub-rule (1) of Rule (1) of Order 47 of the C.P.C.”

13. The same ratio is adopted in *Khoday Distilleries Ltd., and Ors. Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.*, [2019 (4) SCC 376] and *P. Singaravelan and others Vs. The District Collector, Tiruppur and others* [(2020) 3 SCC 133].

. As such the exposition of law enunciated in *Kunhayammed* (supra) is squarely applicable in the present situation. The SLP against the order in case of *Shivprakash* (supra) was simply dismissed without observation on merits by a non- speaking order as the Court was not

inclined to grant leave to appeal against the judgment and order passed by the High Court, hence, the order of the High Court has not merged into the order passed in SLP, whereas, the judgment and order passed by the High Court in Madhukar (supra) has merged into the judgment of the Hon'ble Supreme Court passed in Madhukar (supra) as it is passed after grant of special leave to appeal.

It is now well settled that dismissal of an SLP against the judgment of the High Court is not an affirmation of the same. The Supreme Court in the case of **Kunhayammed (supra)** and **Khoday Distilleries (supra)** has held that an order refusing SLP may either be a speaking or a non-speaking one and it does not attract the doctrine of merger in any case. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed. The law declared by the Supreme Court in the case of Madhukar Patil (supra) is binding upon us under Article 141 of the Constitution of India and the contrary view taken in Shivprakash (supra) by the Division Bench of this Court cannot be accepted as a good law merely because SLP against the order in the case of Shivprakash (supra) has been dismissed.

14. The Hon'ble Supreme Court in Madhukar (supra) has held that, the employees therein were absorbed in the year 1989 on the
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newly created post of CEA, which carried a different pay scale, therefore, they would be entitled for TBP after completion of 12 years service from the date of their absorption on the post of CEA. Services rendered by the employee on work charge basis should not have been considered for grant of benefit of first TBP. If the employee would have been absorbed on the same post on which he was serving on WCE, the position would have been different. The benefit of TBP shall be applicable when an employee has worked for 12 years in the same post and in the same pay scale. Merely because the benefit of first TBP was granted after the approval of the Department cannot be a ground to continue the same, if ultimately it is found that the employee was entitled to the first TBP on completion of twelve years of service only from the year of absorption as CEA. The Supreme Court in Madhukar Patil (supra) further observed that the High Court as well as the Tribunal have committed a grave error in quashing and setting aside the revision of pay scale and the revision in pension, which were on re-fixing the date of grant of first TBP from the date of his absorption as CEA. After making these observations, the Hon'ble Supreme Court quashed and set aside the judgment and order passed by the High Court as well as MAT. It is observed and held that, the employee shall be entitled to first TBP after completion of twelve years of service from the

year 1989 i.e. from the date on which he was absorbed on the post of CEA and his pay scale and pension are to be revised accordingly.

15. The petitioners herein being identically situated and facing similar orders are squarely covered by the judgment in Madhukar (supra). Although after dismissal of SLP, the State of Maharashtra has implemented the order in Shivprakash (supra), the petitioner cannot claim the benefit granted to similarly placed employees as in the case of Shivprakash (supra) without being entitled for the same. The Supreme Court in the case of *Basawaraj and another Vs. Special Land Acquisition Officer [(2013) 14 SCC 81]* has held that Article 14 of the Constitution of India is not meant to extend wrong decisions. The said provision does not envisage negative equality but only a positive aspect. Thus, if some other similarly situated persons have been granted some relief / benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly

wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision.

Otherwise also, the object and purpose for introduction of TBP Scheme is to relieve the employees, at least partially, from the frustration which normally arises on account of stagnation in a particular post for long years on account of limited availability of promotional avenues. The scheme does not involve actual or functional promotion to the next higher post. It provides for grant of pay-scale of the next promotional higher post and in the present case, the petitioners were granted higher pay-scale when they were absorbed as CEA.

16. In the result, the orders dated 04.09.2019 and 23.10.2019 require no interference at the hands of this Court and the writ petitions are dismissed. Rule stands discharged accordingly. No order as to costs.

[VAISHALI PATIL – JADHAV, J.]

[ARUN R. PEDNEKER, J.]