IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7248 OF 2026

1. The Maharashtra State Power Generation Company Limited
2. Superintending Engineer, the Maharashtra State Power General Company Limited
3. Executive Engineer, the Maharashtra State Power Generation Company Limited **...Petitioners**

V/s.

1. State of Maharashtra
2. Rajesh Eknath Edake **...Respondents**

Mr. Suresh Pakale, *Senior Advocate with Mr. S.B. Pawar & Ms. Kinjal Khandelwal i/b. M/s. KP Law Associates LLP for the Petitioners.*

Mr. Ravindra Vishnu Laxmi Sankpal *with* ***Dr. C.V. Ambilwade*** *for Respondent No.2.*

Mr. A.C. Bhadang, *AGP for Respondent No.1-State.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 23 JUNE 2026.

Judgment pronounced on: 07 JULY 2026.

JUDGMENT:

1) The Petitioner-Maharashtra State Power Generation Company Limited (**MSPGCL)** is aggrieved by the judgment and order dated 24

December 2025 passed by the learned Member, Industrial Court, Pune in Complaint (ULP) No.19 of 2025. The Industrial Court has partly allowed the Complaint filed by Respondent No.2-Employee and has set aside the order dated 24 October 2024 of re-fixing the pay of Respondent No.2 with further directions to re-fix his pay as per Annexure-3-Technical-III/LDC and equivalent at Sr. No.45 to the Administrative Circular No.449 dated 5 October 2019 alongwith consequential benefits. The Industrial Court also directed refund of recovered amount to Respondent No.2. In short, the Industrial Court has set aside fixation of pay of Respondent No.2 at Rs. 41,070/- w.e.f. 1 April 2018 and has directed the same to be fixed at Rs.72,875/- w.e.f. 1 April 2018.

2) Petitioner No.1- MSPGCL is a Government Company engaged in the business of power generation in the State of Maharashtra. Petitioner Nos.2 and 3 are its officials. Respondent No.2 applied for appointment in Petitioner No.1- MSPGCL on the post of Technician-3 against vacancy reserved for ex-servicemen. The post of Technician-3 carried pay scale of 11275-28240. He was selected and appointed on the post of Technician-3 and joined on 25 November 2016 at Nashik Thermal Power Station. As per the provisions of regulations applicable to Petitioner No.1, the pay of Respondent No.2 was to be fixed considering his last pay at the time of retirement from the military services. However, the pay of Respondent No.2 was initially fixed in the minimum of the scale at Rs.11,275/- plus two additional increments of Rs. 275 + Rs. 275 = 11,825.

3) Respondent No.2 thereafter produced last pay certificate issued by Senior Record Officer on 6 November 2018 certifying that his basic pay was Rs. 37,000 + class pay of Rs. 300 = 37,300/-. Respondent No. 2

requested the Petitioner- MSPGCL to fix his pay as per the applicable regulations. After continuous follow up by Respondent No.2, Chief Engineer gave directions to the Superintendent Engineer on 10 March 2021 to fix the basic pay of Respondent No.2 at Rs. 28,240 + personal pay of Rs.9060 so as to protect last pay drawn in Military Services at Rs.37,300/-. Accordingly, the pay fixation of Respondent No.2 was sanctioned as Rs. 28,240/- basic pay + Rs. 9,060/- personal pay (total of Rs.37,300/-) from the date of his appointment as Technician-3.

4) Pay revision in respect of employees and officers of MSPGCL w.e.f. 1 April 2018 was effected vide Administrative Circular No.449 dated 5 October 2019, under which pay scale for the post of Technician-3 was revised from 11275-28240 to 29035-72875. Under Annexure-III to the said Administrative Circular, the corresponding basic pay for Rs.28,240/- was indicated at Rs.72,875/-. Accordingly, by order dated 22 September 2021, revised pay fixation of Respondent No.2 was granted as per Administrative Circular dated 5 October 2019 fixing his basic pay at Rs.74,310/- w.e.f. 1 April 2018. It appears that higher fixation of basic pay at Rs.74,310/- was made in case of Respondent No.2 on account of his posting at Hydro Power Station in tribal area (Ghatghar), for which he was entitled to the benefit of one-step higher pay. Respondent No.2 was paid the arrears arising out of revision of his pay fixation. Upon his transfer to Pawana Power Station, the benefit of one-step higher pay was withdrawn and he was granted basic pay of Rs.72,875/- vide order dated 25 January 2022 corresponding to Sr.No. 45 in Annexure-III to the Administrative Circular No.449 dated 5 October 2019.

5) However, by order dated 17 August 2022, the Executive Engineer, Panshet Division suddenly brought down the pay of Respondent No.2 at Rs.37,360/- w.e.f. 1 August 2022 without any intimation to him. Respondent No.2 submitted application dated 12 September 2022 asking for details about re-fixation. He received copy of order dated 17 August 2022 on 3 September 2022. The Chairman and Managing Director of Petitioner No.1-MSPGCL formulated a committee consisting of various officials for deciding the issue of pay fixation in respect of Respondent No.2 and another employee. The committee held hearing on 26 October 2023. However, Respondent No.2 was not communicated any outcome of the same. Subsequently, Respondent No.2 learnt about rejection of his request for retention of old pay as per Option Form -J by the committee. The committee also directed HR Section and Accounts Section to jointly audit the pay of Respondent No.2 and recover the excess payment. By order dated 24 October 2024, Petitioners-MSPGCL carried out the exercise of re-fixation of pay of Respondent No.2 and reduced his basic pay to Rs.41,070/- w.e.f. 1 April 2018 directing recovery of excess pay.

6) Respondent No.2 got aggrieved by the action of the Petitioners in reducing his basic pay as on 1 April 2018 from Rs.72,875/- to Rs.41,070/- and filed Complaint (ULP) No.19 of 2025 before the Industrial Court, Pune seeking following prayers:

> (i) Declare that the Respondents have indulged in unfair labour practices within the meaning of Item 9 of Schedule IV of the Industrial Disputes Act, 1947.
>
> (ii) Direct the Respondents to fix the pay of the Complainant in accordance with the directives issued vide MSPGCL Circular No.5978 dated 01/07/2022 and Government Resolution No.पुनिवे -२०१९/प्र /क्र .१६६/सेवा-४ दि ३०/०८ /२०१९ and to release the salary of the Complainant accordingly.

(iii) “To direct the Respondent to fix the pay of the Complainant in accordance with the prescribed method of fixation of pay in the revised pay scales and to pay the arrears as directed vide Administrative Circular No.449 dated 5 October 2019 and Administrative Circular No.546 dated 09/08/2024, with effect from 01/04/2018 and 01/04/2023 respectively, as has been done in case of similarly placed other employees of the Company”.

(iv) Direct the Respondents to immediately cease and desist from any recovery being made from the salary of the Complainant, in accordance with the provisions of Government Resolution No.वेतन -१०१८/ प्र .क्र .३४/सेवा -३ दि .१७/०८/२०२३.

(v) Direct the Respondents to refund the amounts recovered from the salary of the Complainant during the months of October 2024, November 2024, and December 2024 alongwith interest thereon @ 12% per annum.

(vi) Grant interim relief to the Complainant in terms of prayer clause (iii) of the prayer.

7) Respondent No.2 prayed for interim stay on recovery. By order dated 20 February 2025, the Industrial Court restrained Petitioners-MSPGCL from making any recovery in pursuance of order dated 24 October 2024. Petitioners challenged the interim order dated 20 February 2025 by filing Writ Petition (stamp) No. 13338 of 2025, which was disposed of on 22 April 2025 without interfering in the interim order of stay.

8) The Petitioners-MSPGCL resisted the Complaint by filing written statement. Parties led evidence in support of their respective claims. By judgment and order dated 24 December 2025, the Industrial Court has partly allowed the Complaint by issuing following directions:

(i) The complaint is partly allowed.

(ii) The respondents are hereby declared to have engaged in unfair labour practice under item 9 of Sch.IV of MRTU & PULP Act, 1971 and is directed to cease and desist from engaged the same forthwith.

(iii) The order of respondents of re-fixing the pay scale of the complainant bearing No.0819 dt.24/10/2024 is hereby quashed and set aside and the respondents are directed to re-fix the pay of the complainant as per Annexure-3-Technician-III/LDC and Equivalent at sr. no.45 to the Administrative Circular No.449 dated 05/10/2019 and to grant all benefits thereof to the complainant.

(iv) If recovery from the pay of the complainant has already been made by the respondents the same shall be refunded to the complainant after making correct pay fixation of the complainant as per this order.

(v) No order as to cost.

(vi) This order to take effect after three months.

9) The Petitioners-MSPGCL are aggrieved by the judgment and order dated 24 December 2025 passed by the Industrial Court and have filed the present Petition.

10) Mr. Pakale, the learned Senior Advocate appearing for the Petitioners submits that the Industrial Court has grossly erred in allowing the Complaint of Respondent No.2 and not directing re-fixation of his pay. That the Industrial Court has erroneously set aside order dated 24 October 2024, which was never challenged by Respondent No.2. That Respondent No.2 also did not challenge the decision of High Power Committee (**HPC**) directing reduction of his basic pay. That the Respondent acquiesced in the pay fixation dated 24 October 2024 and gave up claim for fixation of basic pay of Rs.72,875/- by submitting compromise form vide letter dated 1 January 2025. That having given up claim for fixation of basic pay of Rs.72,875/-, Respondent No.2 could not have turned around and filed complaint of unfair labour practice before

the Labour Court. That there is no averment in the entire complaint as to how unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (the **MRTU & PULP Act**) is committed by the Petitioners.

11) Mr. Pakale further submits that Respondent No.2 cannot be permitted to take undue advantage of his status as ex-serviceman. That various instructions issued, both by Petitioner No.1 as well as by State Government, ensure that 'ex-serviceman' does not receive pay less than the one drawn by him while leaving Military Services. That Respondent No.2 was drawing pay of Rs.37,300/- while leaving Military Services and on that count, his basic pay was fixed at last scale of pay scale of Rs.28240 in addition to granting him personal pay of Rs.9,060. That otherwise Respondent No.2 was entitled to receive basic pay of only Rs.11,275/- as newly appointed Technician-3. That what was granted to him was merely pay protection and not pay fixation. That therefore the special benefit extended to him in the form of pay protection cannot form the basis for his fixation in revised scale pursuant to Administrative Circular dated 5 October 2019. That while fixing the pay in revised pay scale of Rs.29035-72875 the Petitioners have ensured that he does not get paid lesser wages than the one drawn by him in Military Services. That therefore, the Petitioners rightly fixed his basic pay at Rs.41,070/- as on 1 April 2018, by taking into consideration his basic pay at the time of initial appointment as Rs.39,270/- (military pay of 37360 + two increments of 955 + 955 = 39,270/-). That Petitioners have ensured that at no point of time, pay of Respondent No.2 fell below the military pay. He submits that Respondent No.2 is not entitled to receive

corresponding pay of Rs.72,875/- since Rs.28,240/- was not granted to him by way of ‘pay fixation’, but the same was granted to him only for the purpose of ‘pay protection’. That the Industrial Court has completely overlooked this position and has erroneously allowed the Complaint filed by Respondent No.2. He prays for setting aside the impugned judgment and order passed by the Industrial Court.

12) *Per contra,* Mr. Sankpal, the learned counsel appearing for Respondent No.2 opposes the Petition and supports the judgment and order passed by the Industrial Court. He submits that the Industrial Court has properly analysed the entire material on record for arriving at a conclusion that Respondent No.2 is entitled to receive corresponding basic pay of Rs.72,875/- on account of grant of basic pay of Rs.28,240/- to him. That Administrative Circular dated 5 October 2019 itself provides for grant of corresponding basic pay of Rs.72,875/- by way of fitment benefit. He submits that if Respondent No.2 is paid entry level pay in the scale meant for post of Technician-3, the entire effect of 20 years of service put in by him would be wiped out. That once the pay is protected by performing pay fixation, such protected pay forms the basis of grant of consequential benefits upon pay revision. He submits that the pay of Respondent No.2 was arbitrarily reduced without any notice and without any basis. He submits that representation dated 1 January 2025 was made only as a suggestion for avoiding litigation. That since Respondent No.2 was driven to litigation, he had subsequently withdrawn the offer made vide letter dated 1 January 2025. He submits that no interference is warranted in well considered decision of the Industrial Court. He prays for dismissal of the Petition.

13) Rival contentions urged on behalf of the parties now fall for my consideration.

14) Present case involves a unique conundrum where Respondent No.2 received the benefit of pay protection on account of his Military Service and received the benefit of fixation of basic pay of Rs.28,240/- (*last stage in the pay scale of Technician-3 of Rs. 11275-28240*) in addition to personal pay of Rs.9060/- from the date of his appointment i.e. 25 November 2016. This was done to ensure that he does not receive pay less than his military pay of Rs. 37,300/-. Otherwise, his journey on the post of Technician-3 ought to have begun in basic pay of Rs.11,275/- only (*beginning of the payscale*). Petitioner-MSPGCL undertook the exercise of revision of pay scale, which it apparently undertaken periodically at interval of five years, by issuing Administrative Circular dated 5 October 2019, under which the pay scale of the post of Technician-3 was revised from 11275-28240 to 29035-72875. Annexure III to the said Circular contains a Fitment Table, which reflected revised basic pay for Rs.28,240 as Rs. 72,875. Respondent No.2 expected that since he was directed basic pay of Rs.28,240/-, he would receive revised basic of Rs.72,875. This was indeed granted to him vide order dated 22 September 2021. However, subsequently the said pay fixation has been withdrawn vide order dated 24 October 2024 and his basic pay is brought down to Rs. 41,070/- w.e.f. 1 April 2018.

15) Petitioner-MSPGCL believes that the benefit of higher pay granted to Respondent No.2 in the form of 'pay protection' on account of his Military Service cannot form the basis for determination of his revised pay in the fitment table of Administrative Circular dated 5 October 2019.

As noted above, the Petitioner-MSPGCL draws distinction between the concepts of 'pay protection' and 'pay fixation'. It believes that the higher pay granted to Respondent No. 2 to protect his military pay cannot form the basis for further jumping in the new pay structure introduced w.e.f. 1 April 2018.

16) On the other hand, insistence of Respondent No.2 is that since he drew the basic pay of Rs. 28,240 as on 31 March 2018, the corresponding basic pay of Rs. 72,875/- indicated in the fitment table contained in Annexure-III to Administrative Circular dated 5 October 2019 must be extended to him.

17) In the light of the above rival positions taken by the parties, the short issue that fell for consideration before the Industrial Court, and which again arises for determination by this Court, is whether the basic pay granted to Respondent No.2 of Rs.28,240/- can be considered for grant of corresponding basic pay of Rs.72,875/- in terms of Annexure-III to Administrative Circular dated 5 October 2019? To paraphrase, the issue is whether the Petitioner-MSPGCL can ignore the benefit of pay protection (*Rs. 28,240*) granted to Respondent No. 2 and instead of granting him corresponding basic pay of Rs. 72,875/-, can it fix his revised pay w.e.f. 1 April 2018 by taking into consideration his last drawn military pay of Rs. 37,300?

18) Petitioners have denied the benefit of new pay structure to Respondent No. 2 on the ground that corresponding pay fixation in the revised pay structure (*Rs. 72,875/-*) on the basis of the pay protection granted to him (*Rs. 28,240/-*) results in a windfall gain for him.

Therefore, the Petitioners have withdrawn the pay fixation granted to Respondent No. 2 in basic pay of Rs. 72,875/- and have fixed his basic pay at Rs. 37,360 (*last drawn military pay*) w.e.f. 1 April 2018.

19) The Industrial Court has held that Respondent No. 2 is entitled to draw corresponding basic pay of Rs. 72,875/- w.e.f. 1 April 2018. Correctness of decision of the Industrial Court is the subject matter of challenge involved in the present Petition.

20) Respondent No.2 was discharged from Military Service after completion of his full tenure. He was not discharged on medical grounds or any other grounds before completion of the tenure. Accordingly, he became entitled for fixation of his basic pay upon re-employment in a time scale equal to the last pay drawn in Military Service under clause 28(b)(ii) of MSPGCL Employees' Service Regulations. The relevant part of the Regulations reads thus:

> Clause-28(b)(ii)-In the case of Junior Commissioned Officers and below-pay on re-employment shall be fixed at a stage in the time scale which is equal to the last pay drawn (i.e. basic pay other than allowances of any kind) ignoring the pensionary benefits.
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> Clause-28(b)(iii)- The provisions as above are, however, not applicable to the ex-servicemen who have retired earlier or who have been discharged on medical grounds or any other ground before completion of the period entitling them to the provisionary benefits but after completion of their specific bond period and to those who are not in receipt of any regular pension.

Thus, the benefit of pay protection is available only for those ex-servicemen, who complete their full tenure of Military Service. In the present case, there is no dispute about the entitlement of Respondent No. 2 to receive pay protection under Clause 28(b)(ii) of the Regulations.

21) The Government of Maharashtra has issued Government Resolution dated 30 August 2019, which also provides for pay fixation of ex-servicemen retiring after 01-01-2016 as per his pay fixed in 7th pay commission and that if there is no stage in the pay scale as per his final pay, his pay shall be fixed at next level to the final pay and remaining pay shall be granted as personal pay. Relevant part of the GR dated 30 August 2019 provides thus:

> ३अ दिनांक १ जानेवारी, २०१६ रोजी किंवा त्यानंतर सैनिकी सेवेतून सेवानिवृत्त होऊन राज्याच्या नागरी सेवेत पुनर्नियुक्त झालेल्या माजी सैनिकांची वेतननिश्चिती सैनिकी सेवेतून निवृत्त होताना त्यांची सातव्या वेतन आयोगानुसार निश्चित झालेल्या अंतिम वेतनावरच (मूळ वेतन + गुड सर्विस पे/जी.सी.बी. पे + क्लास पे/क्लास अलाऊंस + एक्स ग्रुप पे) करण्यात यावी.
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> मात्र अंतिम वेतनाइतका टप्पा वेतनस्तरामध्ये नसेल तर, अंतिम वेतनाच्या लगतच्या खालच्या वेतन टप्प्यावर वेतननिश्चिती करण्यात यावी आणि उर्वरीत वेतन वैयक्तिक वेतन म्हणून मंजूर करण्यात यावे. सदर वैयक्तिक वेतन पुढील वेतनवाढीमध्ये समायोजित करण्यात यावे. सदर वैयक्तिक वेतन सर्व प्रयोजनार्थ मूळ वेतनाचा भाग समजण्यात येईल.
>
> माजी सैनिक नागरी सेवेत ज्या पदावर नियुक्त झाला आहे, त्या पदासाठी विहीत केलेल्या वेतन स्तरातील कमाल वेतनापेक्षा सैनिकी सेवेतील अंतिम मूळ वेतन जास्त असेल, तर ... या दोन्हीमधील फरक वैयक्ति वेतन म्हणून द्यावे आणि त्या पदाच्या किमान वेतनापेक्षा सैनिकी सेवेतील अंतिम मूळ वेतन कमी असेल तर, त्या पदाच्या वेतन स्तरातील किमान वेतनावर त्याची वेतननिश्चिती करावी.

22) As per the last pay certificate issued by Senior Record Officer in the Military Services on 6 November 2018, Respondent No.2 drew basic military pay of Rs.37000 + class pay of Rs.300 =37300. It therefore became incumbent for the Petitioners to fix the basic pay of Respondent No.2 at the level of Rs.37300. The pay scale of Technician-3 at the time of appointment of Respondent No.2 in MSPGCL was Rs. 11275-28240. Therefore, basic pay of Respondent No.2 was fixed at Rs. 28,240/-, at the last stage of the pay scale. To protect his last military pay of Rs. 37,360/-, the balance amount of Rs.9,060/- was paid to him as personal pay with a

view to ensure that total of the two was Rs.37,300/-. From the date of appointment i.e. 25 November 2016 till 31 March 2018 (*day before implementation of new pay structure*), Respondent No.2 drew basic pay of Rs.28,240/-. It appears that he got posted at a tribal area (Ghatghar Hydro Power Station) on 15 March 2017 and became entitled to draw one step higher scale of Rs.11675-31975, on account of which he did draw higher basic pay of Rs.31,975/- from 14 March 2017 till 31 March 2018. However, this aspect needs to be ignored for avoiding confusion. This Court therefore proceeds on a footing that Respondent No.2 was drawing basic pay of Rs. 28240/- during 25 November 2016 to 31 March 2018.

23) MSPGCL made applicable revised pay structure in its establishment w.e.f. 1 April 2018 and Administrative Circular dated 5 October 2019 was issued for implementing the same. The pay scale of the post of Technician-3 got revised as Rs.29035-72875. As observed above, the fitment table at Annexure-III of Administrative Circular dated 5 October 2019 indicated revised basic pay of Rs.72,875/- for earlier basic pay of Rs.28,240/-. Relevant part of the Fitment Table is as under:

Existing Pay Scale				Revised Pay Scale	
11275-275-12650-370-16350-410-28240				29035-710-32585-955-42135-1060-72875	
Sr.No.	Stages(Old)	DA Component 125% of CoL No.2	32.50 % of Col No.2	Total of Col. No.2,3 and 4	Fitment in New Scale
1.	2.	3.	4.	5.	6.
45.	28240	35300	9178	72718	72875

24) The Petitioner-MSPGCL contends that though the revised basic pay for the stage of Rs.28,240/- is indeed reflected as Rs.72,875/- in the

fitment table, Respondent No.2 is not entitled to draw the same w.e.f. 1 April 2018. This is premised on a principle that the basic pay of Rs.28,240/- was never granted to Respondent No.2 as by way of 'pay fixation' but the same was granted merely by way of 'pay protection'. In my view, it makes no difference as to how Respondent No.2 started drawing basic pay of Rs.28,240/-. The fact remains that his fixation was done in the pay scale of Rs.11275-28240 at the last stage of Rs.28,240/-. He drew that basic pay for almost two years. Therefore, he is entitled to draw corresponding basic pay of Rs.72,875/- upon introduction of new pay structure w.e.f. 1 April 2018.

25) Petitioners are apparently treating fixation of basic pay of Respondent No.2 at Rs.72,875/- as a windfall gain. To my mind, it is not a windfall gain, but a natural consequence of introduction of new structure by the employer. The Petitioners themselves offered revised basic pay of Rs.72,875/- to every employee drawing basic pay of Rs.28,240/-. I therefore, do not find any logic in selecting Respondent No.2 for hostile discrimination merely because he received basic pay of Rs.28,240/- on account of benefit of pay protection due to his past Military Service.

26) Administrative Circular dated 5 October 2019 plainly provides for fixation of pay in the new pay scale at corresponding stage. The Industrial Court has discussed the relevant part of the Administrative Circular in its judgment, which is as under:

> "Administrative Circular No.449 dt.05/10/2019 provides that in Clause (B) Fixation of Initial Pay in the Revised Pay Scales w.e.f. 1/04/2018.
>
> The initial basic pay of an employees/officer appointed or promoted prior to 1/04/2018 shall be fixed in the revised pay scale held by him on officiating or permanent or temporary basis or in the revised pay scale corresponding to the higher pay scale or grade allowed to him

as personal due to grant of the benefit under the provisions of the G.O. NO.74(P) dt.30/04/1974 read with Head Office Order No.GAD/E-VI/STF/Gen/A/232/9203 dt.27/02/1975 or benefit of de-stagnation measure under the G.O. No.111(P) dt. 13/05/1982 in the following manner.

An amount equivalent to 32.50% (Thirty Two and point fifty percent) of pre-revised basic pay as on 31st March 2018 and 125% (One Hundred Twenty Five Percent) of Dearness allowance on pre-revised basic pay as on 31st March 2018 and then the basic pay in the revised scale shall be fixed w.e.f. 1/04/2018 as follows-

i. If the sum total of above is less than that of minimum of revised scale of pay, the Basic pay shall be fixed at the minimum of the revised scale of pay.

ii. If the sum total of is a stage in the revised pay scale, the Basic pay shall be fixed at that stage.

iii. If the sum total of is not a stage in the revised pay scale, the Basic pay shall be fixed at the next stage.

iv. If the sum total of is more than the maximum of the revised scale, the basic pay shall be fixed at the maximum of that scale.

v. If an employee draws less pay on 1/04/2018 in the revised pay scale in the promoted post/higher scale due to grant of G.0.74/111(P) than the pay he would have drawn on 1/04/2018 in the lower post/scale in the revised pay scale, his pay is to be fixed in the lower post/scale in the revised pay scale in the first instance and thereafter at the next immediate stage in the higher post/pay scale as on 1/04/2018 as per S.R.29(a). His/her future increments may be drawn as per normal rules by applying the provisions as per S.R.32(b). If such re-fixation of pay is to his/her advantage.

27) Thus, the Administrative Circular does not make any exception in cases of ex-servicemen while making the pay fixation. The formula prescribed therein and the Fitment Table appended thereto apply uniformly to all the employees of MSPGCL. Appointment of the Respondent No.2 as Technician-3 in the services of the Petitioners-MSPGCL prior to implementation of the new pay structure is just a

fortuitous circumstance. After he got appointed in Petitioners' service and once his pay got fixed, he became employee of MSPGCL and became entitled to draw all benefits admissible to the employees of MSPGCL. Petitioners cannot keep on tracing his originality as ex-serviceman and keep on considering the last pay drawn by him in Military Service forever. If Respondent No. 2 was to join the services of Petitioners after 1 April 2018, his pay could be fixed at Rs. 37,300/-, which is a stage available in the revised pay scale of Rs.29035-72875. However, his appointment is before coming into effect of the new pay structure. Therefore, Petitioners cannot treat him as having been appointed after 1 April 2018 and fix his pay accordingly.

28) The artificial distinction sought to be drawn by the Petitioners in 'pay fixation' and 'pay protection' does not appeal to this Court. There is no Government Resolution or even any Circular of the Petitioners which provides that the pay protection would be available to the ex-serviceman only till pay-scales are revised and that they would not be entitled to corresponding pay fixation upon implementation of revised pay scales.

29) Also, Rs. 28,240/- is the 'basic pay' fixed for Respondent No. 2. It is not a personal pay granted towards pay protection. He was granted element of personal pay of Rs. 9,060/- to protect his last military pay of Rs. 37,360/-. Thus, what needs to be ignored while performing the pay fixation as per the Administrative Circular is only the 'personal pay' of Rs. 9,060/- and not the 'basic pay' of Rs. 28,240/-. If the Petitioners intended not to consider Rs. 28,240/- as the basis for grant of any future benefits, they could have fixed basic pay of Respondent No. 2 at Rs.11,275/- and could have treated the balance pay as personal pay. This

is not done since it is impermissible in law to do so both under the Petitioners' Regulations as well as under the GR dated 30 August 2019. On the other hand, Petitioners drew a conscious distinction between 'basic pay' and 'personal pay' and only the element of personal pay could be ignored while performing pay fixation as per the Administrative Circular dated 5 October 2019. Therefore, not taking into consideration the basic pay of the Respondent No. 2 as on 31-03-2018 for re-fixation of his pay w.e.f. 01-04-2018 is clearly illegal.

30) Logically speaking also, I do not find grant of fixation of basic pay of Rs.72,875/- to Respondent No.2 as unjust in any manner. Mr. Pakale has strenuously contended that Respondent No.2 was actually entitled to draw basic pay of only Rs.11,275/- on being appointed as Technician-3 and that a mere arrangement was made to protect the pay on account of applicable instructions by offering him basic pay of Rs.28,240/-. He contends that the said pay of Rs.28,240/- granted by way of 'pay protection' cannot form basis for fixation of revised pay in the new pay structure. I am unable to agree. Even as on 25 November 2016, Petitioners lived with the reality that Respondent No.2 drew almost two and half times the basic pay than the one admissible to a new entrant on the post of Technician-3. Even after 1 April 2018, entry pay for Technician-3 is Rs.29,035 and therefore I find it difficult to comprehend the heartburn caused to the Petitioners if Respondent No.2 draws two and half times the entry pay at Rs.72,875/-. If Petitioners could bear drawal of two and half times of entry pay in pre revised pay structure upto 31 March 2018, they must bear the same reality even after 1 April 2018. If there is sudden jump in the basic pay of Respondent No.2 to Rs.72,875/- it is on account of the policy decision taken by the

Petitioners. It is Petitioners, who have decided that an employee drawing basic pay of Rs.28,240/- as on 31 March 2018 should draw revised basic pay of Rs.72,875/- w.e.f. 1 April 2018.

31) The action of the Petitioners in refixing the pay of Respondent No.2 vide order dated 24 October 2024 at Rs.41,070/- is totally arbitrary. Firstly, the exercise is undertaken without issuance of any show cause notice to Respondent No.2. He was granted revised pay fixation of Rs.74,310/- w.e.f. 1 April 2018 vide order dated 20 September 2021 (*As observed above, he got one step higher pay on account of his tribal posting at Ghatghar Hydro Power Station, otherwise his normal basic pay as on 1 April 2018 was fixed at Rs.72,875/-*). This benefit of fixation at Rs.72,875/- is arbitrarily withdrawn by order dated 24 October 2024 without offering any opportunity of hearing to Respondent No.2. It appears that before passing order dated 24 October 2024, the Petitioners had committed one more illegal act in unilaterally reducing the pay of Respondent No.2 vide order dated 17 August 2022 on a temporary basis at Rs.37,360/- without giving any intimation to him. However, since the said pay fixation was temporary and pay fixation done vide order dated 24 October 2024 is the final fixation, I would concentrate upon fixation done vide order dated 24 October 2024. However even before issuance of order dated 24 October 2024, no show cause notice was issued to Respondent No. 2.

32) Apart from gross arbitrariness in passing order dated 24 October 2024 without grant of hearing to Respondent No.2, the fixation done therein is also arbitrary. The pay of Respondent No.2 is sought to be fixed at Rs.41,070/- w.e.f. 1 April 2018 vide order dated 24 October 2024.

the relevant entry in the said order fixing basic pay of Rs.41,070/- is as under:

कर्मचाऱ्याचे नाव, एसएपी, भनिनि क्र. व पदनाम	श्री राजेश एकनाथ एडके तंत्रज्ञ ३ (राज्यस्तरीय), ०२७६३१६८/१२४७१				
अ . क्र .	सैन्य दलातील अंतिम वेतन प्रमाणपत्रानुसार नुसार मूळ वेतन व निशिचत केलेल्या वेतनाचा तपशील	वेतननिश्चिती करणेत आलेली दिनांक व वेतनश्रेणी	वेतननिश्चिती केलेले मूळवेतन	वैयक्तिक वेतन देयय (स्तंभ क्र .०५=०२-०४)	शेरा
१	२	३	४	५	६
४	महानिर्मिती कंपनी वेतन निश्चिती प्रशा . परिपत्रक कर.४४९ दि.०५.१०.२०१९ नुसार नवीन वेतननिश्चिती लागू त्याच प्रमाणे सैन्य दलातील वेतन अंवेप्र नुसार वेतन सामावून घेऊन सदर वेतनामध्ये तंत्रज्ञ ३ पदास मिळणाऱ्या दोन वेतनवाढीसह मार्च २०१७ ची एक वेतनवाढ समाविष्ट करून नवीन वेतन श्रेणीमध्ये एकस्तर वेतन निश्चिती करून वेतन निश्चिती केले असे	०१ एप्रिल २०१८ तंत्रज्ञ 3 (२९०३५-७१०-३२५८५-९५५-४२१३५-१०६०-७२८७५) तंत्रज्ञ 2 (२९९३५-९५५-३४७१०-१०६०-४५३१०-११६०-८२४३०)	४१०७०/-	-	सैन्यदलातील वेतन ३७३६० +९५५+९५५=३९२७०/- तंत्रज्ञ २ या पदाच्या वेतन श्रेणीत ४१०७० इतके वेतन निश्चित (२९ क नुसार) पुढील वेतन निश्चिती (३२ ख प्रमाणे) दि.०५.१२.२०१८ रोजी

33) It thus appears that the Petitioners took into consideration the last pay drawn by Respondent No.2 in Military Service of Rs.37,360/- and have added two increments of Rs.955/- each for arriving at the figure of Rs.39,270/-. However, the basic pay is fixed at Rs.41,070/-. (*this was apparently done by considering the 'one step higher benefit' due to posting in tribal area*).

34) Thus, what appears to have been done in the present case is that the Respondent No. 2 is denied the benefit of corresponding fitment in the new pay structure as per the Administrative Circular dated 5 October 2019. What Petitioners have done is to restrict the benefit of pay protection only till introduction of new pay structure w.e.f. 1 April 2018. They believe that the pay protection benefit granted to Respondent No. 2 cannot form the basis for further jumping in the new pay structure. Therefore, they have undertaken the exercise of once again taking into consideration his military pay while making fixation as per Administrative Circular dated 5 October 2019. Thus, the fixation based on military pay is done twice viz. at the time of initial appointment and again while refixing the pay in new pay structure. Can this be done is an issue.

35) This action on the part of the Petitioners appears to be clearly baseless and arbitrary. As on 1 April 2018, there is no occasion for the Petitioners to take into consideration last pay drawn by Respondent No.2 in Military Service. By that date, Respondent No.2 had already put in more than one and half years of service with the Petitioners. His pay fixation was already done and he was drawing basic pay of Rs.28,240/-. Therefore, his fixation ought to have been done corresponding to the basic pay of Rs.28,240/-. As observed above, Respondent No.2 cannot be married to the last pay drawn in the Military Service forever. Once his fixation is done in the Petitioners' establishment, that fixation would form the basis for grant of all subsequent benefits. Petitioners' action of restricting the benefit of pay protection only till a stage where Respondent No.2 crosses the last military pay by not extending him the benefit of new pay structure introduced vide Administrative Circular

dated 5 October 2019 is clearly illegal. It is the policy decision taken by the Petitioners to revise the pay scale of all their employees and benefit of that policy decision cannot be denied to Respondent No.2.

36) The pay drawn by the ex-serviceman has relevance only once while his reemployment. It cannot be taken into consideration again and again while extending the benefits admissible to the employees of the organization where the ex-serviceman is reemployed. Once the pay is fixed by granting the pay protection in the reemployed establishment, the further journey of the ex-serviceman must happen based on pay so fixed. The new organization cannot grant the benefit of pay protection for some time and when the employee becomes due for drawal of benefit of new pay structure after couple of years, his last military pay is once again considered for comparing his position in the new pay scale. This is exactly what is done by the Petitioners. His military pay is considered twice for fixing his pay as on 25 November 2016 (*date of initial appointment*) and 1 April 2018 (*after he put in 1 ½ years of service*). The military pay drawn by him is of no relevance as on 1 April 2018, when the Respondent No. 2 had already become the employee of Petitioners.

37) One must also take into consideration the fact that benefit of pay protection is extended to Ex-serviceman by taking into consideration contribution made by them towards the Nation as well as considering the experience earned by them in the Military. Under Regulation 28(b)(ii), the benefit of pay protection is available only to such Ex-servicemen, who are discharged from Military Service after completion of full tenure. Thus, one must complete the full tenure of Military Service to get the benefit of pay protection. The pay of ex-servicemen is protected to

ensure they do not suffer a drastic financial drop when transitioning from the Armed Forces to civilian jobs. The policy acknowledges their years of dedicated service, preventing them from being penalized financially for starting at the bottom of civilian pay.

38) The Petitioners have appreciated the above position and had extended higher basic pay of Rs. 28,240/- to Respondent No.2 from the date of initial appointment though his civilian counterpart would have received basic pay only of Rs. 11,275/-. Petitioners did not stop at offering the last-stage basic pay in the scale, but since that stage still fell short of his military pay of Rs. 37,360, additional personal pay of Rs. 9,060/- was extended to Respondent No.2. This benefit of higher pay is extended to Respondent No.2 by acknowledging the experience earned by him in 20 years of Armed Forces Service in addition to the contribution made by him to the Nation. It cannot be that this recognition would operate only for a period of one and half years and would vanish the moment new pay structure is introduced w.e.f. 1 April 2018.

39) Mr. Pakale has strenuously relied on letter of Respondent No.2 dated 1 January 2025 in support of his contention that he had given up the demand for basic pay of Rs.72,875/- and submitted a compromise proposal. I have gone through the letter dated 1 January 2025. The background in which said letter was submitted must be appreciated. By 1 January 2025, Respondent No.2 had suffered repeated arbitrary actions of the Petitioners in refixing his pay and ordering recoveries. With a view to avoid any litigation and mental agony, he suggested that if his basic pay cannot be fixed at Rs.72,875/- the same be fixed at least at the stage

of Rs.50,615/-. However, this demand of Respondent No.2 was rejected by the Petitioners, who made him to litigate on the issue of pay fixation. When this Court is satisfied about right of Respondent No.2 for fixation of basic pay of Rs. 72,875/- w.e.f. 1 April 2018, there is no question of defeating the said right merely on account of submission of letter dated 1 January 2025. It is another matter that by subsequent correspondence, Respondent No.2 withdrew the offer made vide letter dated 1 January 2025 when he was made to litigate.

40) Mr. Pakale has raised an objection that the Respondent No. 2 did not challenge order dated 24 October 2024 and decision of the HPC. Though prayers made in the Complaint did not specifically refer to order dated 24 October 2024, there is ample reference to the same in the body of the Complaint. Even otherwise, there is specific prayer for fixation of pay as per the Administrative Circular dated 5 October 2019 and for refund of the recovered amounts. Order dated 24 October 2024 had the effect of withdrawal of pay fixed in accordance with the Administrative Circular dated 5 October 2019 and also directing recovery. Therefore, it cannot be contended that there was no challenge to the fixation made vide order dated 24 October 2024. So far as the minutes of the Committee are concerned, the same cannot be treated a 'decision' by any stretch of imagination. In any case, the minutes were not contemporaneously communicated to Respondent No.2. Therefore, non-challenge to the minutes of the Committee is not fatal.

41) Conspectus of the above discussion is that the Industrial Court has correctly set aside order dated 24 October 2024 and has rightly directed re-fixation of Respondent No. 2 as per Annexure-III, Sr. No.45 of

Administrative Circular No. 449 dated 5 October 2019. No infirmity can be traced in the order of the Industrial Court, which appears to my mind to be unexceptionable.

42) Writ Petition is devoid of merits. It is accordingly **dismissed** with no order as to costs.

[SANDEEP V. MARNE, J.]