

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 1025 OF 2019**

**DISTRICT : AURANGABAD**

**Dr. Sangeeta Suresh Patil,** )  
Age. : 47 years, Occ. Service as )  
Assistant Professor (Ophthalmic Surgery))  
Government Medical College & Cancer )  
Hospital, Aurangabad, )  
C/o Govt. Medical College & Hospital, )  
Aurangabad, Tq. & Dist. Aurangabad )  
R/o Venketesh Hospital, )  
Near Tapdiya Nagar, )  
Darga Road, Shanoorwadi, Aurangabad.)

.. **APPLICANT**

**V E R S U S**

**1. The State of Maharashtra,** )  
Through the Principal Secretary, )  
Medical Education & Drugs )  
Department, Mantralaya, )  
Mumbai- 32. )

**2. The Director,** )  
Medical Education & Research, )  
4<sup>th</sup> Floor, Govt. Dental College & )  
Hospital, Saint Georges Hospitals )  
Compound, P. Dimelo Road, Fort,) )  
Mumbai - 400 001. )

**3. The Dean,** )  
Government Medical College and )  
Cancer Hospital, Aurangabad. )

.. **RESPONDENTS**

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**APPEARANCE** : Shri Shamsunder B. Patil, counsel for  
Applicant.

: Shri V.R. Bhumkar, Presenting Officer for  
respondent authorities.

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**CORAM** : **JUSTICE P.R. BORA, VICE CHAIRMAN.  
AND  
VINAY KARGAONKAR, MEMBER (A)**  
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**DATE** : **30.11.2023.**  
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**ORAL - ORDER**

1. Heard Shri Shamsunder B. Patil, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents.

2. The applicant has preferred the present Original Application seeking the following reliefs :-

*“(A) This Original Application may kindly be allowed.*

*(B) The order dated 6<sup>th</sup> September 2019 passed by the respondent No. 1 – Government of Maharashtra, Medical Education and Drugs Department, Mumbai thereby rejecting the application of the applicant for counting the service rendered by the applicant from 8.3.2000 to 7.5.2009 as a qualifying service for the purpose of length of service for voluntary retirement and other service benefits etc. may kindly be quashed and set aside.*

*(C) By appropriate order or direction it be declared that the first date of joining the government service of the applicant is 8.3.2000 and accordingly the applicant is entitled for all the service benefits with effect from 8.3.2000 and the Government may further be directed to issue necessary orders accordingly.*

*(D) By appropriate order or direction it be held and declared the service rendered by the applicant from 8.3.2000 to 7.5.2009 is regularized in view of Government Resolution dated 22.1.2009.*

*(E) Any other appropriate orders be passed in the interest of justice.*

*(F) Costs of this application be awarded.*

3. Applicant completed his MBBS and M.S. (Ophthalmic) from Government Medical College, Aurangabad in January, 2000. Vide order dated 5.7.2000 she was appointed on a sanctioned vacant post of Lecturer at Government Medical College, Aurangabad on temporary basis in the pay scale of Rs. 2200-4000 for the period of 120 days. The applicant was thereafter continued in the service. Previously the applicant had filed Original Application No. 439/2000 seeking directions against the respondents to continue her services till the Maharashtra Public Service Commission (for short the MPSC) selected candidate is appointed on the said post. Accordingly, the said O.A. was allowed by the Tribunal with an order that the services of the applicant shall be continued till the regularly selected candidate is recommended by the MPSC.

4. As is contended in the Original Application, from the year 2000 to 2007 the MPSC did not advertise the post of Lecturer. In the year 2008, the MPSC issued an advertisement for the post of Lecturer and in the said recruitment process the applicant was selected and recommended by the MPSC. On recommendation of the MPSC, the applicant was appointed w.e.f. 29.4.2009 and thereafter till date the applicant is discharging the duties. In the passage of time, the applicant

was promoted to the post of Associate Professor. In the year 2017 i.e. on 1.1.2017 the applicant had made an application to the Government with a request that service rendered by her before her regular appointment by the MPSC shall be counted while determining the total period of her qualifying service. Vide the communication dated 6.9.2019 the request of the applicant was rejected by the Medical Education & Drugs Department. Aggrieved by the said order the applicant has approached this Tribunal by filing the present application.

5. Shri Shamsunder Patil, learned counsel for the applicant submitted that the applicant was appointed vide order dated 5.7.2000 on a sanctioned vacant post. Leaned counsel pointed out that in the order of appointment it is specifically mentioned that the said appointment was made according to the provisions under the Recruitment Rules applicable for the recruitment in the said College. Learned counsel submitted that after resuming the duty vide the aforesaid order, the applicant did continuously work on the said post without any interruption, though on a temporary basis. Thereafter in the year 2009, the applicant was recommended by the MPSC for appointment on the post of Lecturer and accordingly the

applicant came to be appointed as Lecturer on the same post on which she was working as an ad-hoc appointee.

6. Learned counsel submitted that since the initial appointment of the applicant was in consonance with the recruitment rules and when the applicant discharged the duties uninterruptedly till the date of her regular appointment on the recommendation of the MPSC, the services rendered by the applicant prior to year 2009 are liable to be considered for the purpose of counting the period of qualifying service. Learned counsel submitted that rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 is quite clear that the services rendered even in the capacity of temporary employee need to be considered for the purposes of qualifying service.

7. Learned counsel placing his reliance on the judgment delivered by this Tribunal on 23.11.2021 in **O.A. No. 550/2019 (Kashinath s/o Govindrao Ghumre vs. The State of Maharashtra & Ors.)** submitted that the facts in the present case are identical with the said matter and, as such, the decision rendered in the said judgment would squarely apply to the facts of the present matter.

8. Learned counsel for the applicant has also relied upon another judgment of the principal seat of this Tribunal at Mumbai in **O.A. No. 50/2019 (Shri Vithal Tulshiram Jadhav vs. the State of Maharashtra & Ors.)** decided on 2.2.2022. The learned counsel has also relied upon the judgment in **Writ Petition No. 4922/2011 (Dnyaneshwar s/o Laxmanrao Kedare vs. the State of Maharashtra & Ors.)** delivered by the Division Bench of Hon'ble Bombay High Court, Bench at Aurangabad. Learned counsel, in the circumstances, prayed for directions against the respondents to consider the period of service rendered by the applicant during the period between 8.3.2000 till date of her appointment on recommendation of the MPSC vide order dated 8.5.2009.

9. Respondents have resisted the contentions raised by the applicant in the O.A., as well as, the prayers made therein. Respondent nos. 1, 2 & 3 have filed joint affidavit in reply to oppose the O.A. filed by the present applicant. The respondents have contended that the temporary service rendered by the applicant cannot be counted for the purposes of pension/voluntary retirement. It is the further objection raised on behalf of the respondents that the initial appointment of the applicant was a stopgap temporary arrangement at local level.

According to the respondents, the service period of the applicant can be counted from the date of his absorption or regularization and not from any prior date.

10. Respondents have relied upon the judgments delivered by this Tribunal, first in **O.A. No. 568 (Dr. Satish s/o Baburao Mane & Ors. vs. the State of Maharashtra & Ors.) with O.A. No. 569 of 2013 (Dr. Dnyanoba Mukundrao Darade vs. the State of Maharashtra & Ors.)** and another is delivered by the principal seat of this Tribunal at Mumbai in **O.A. Nos. 95/2015 (Dr. Kashinath s/o Ganpatrao Choudhary vs. the State of Maharashtra & Ors.) with O.A. No. 902/2012 (Dr. Shivaji s/o Balabhau Sukre & Ors. vs. the State of Maharashtra & Ors.)**. Learned P.O. vehemently argued that the issue, which has been raised in the present matter, is squarely answered by the principal seat of this Tribunal at Mumbai by delivering the judgment in **O.A. nos. 568 & 569 both of 2013** on 29.9.2015. Learned P.O. relying on the aforesaid judgments submitted that since a view has been taken at the principal seat of this Tribunal at Mumbai, the coordinate Benches may not take any contrary view. Learned P.O., in the circumstances, has submitted for rejecting the O.A.

11. We have duly considered the submissions made on behalf of the applicant, as well as, the respondents. We have also perused the documents placed on record. It is not in dispute that the applicant came to be appointed on temporary basis vide order dated 8.3.2000. It is also not disputed that from the said date till her recommendation from the MPSC, the applicant has been discharging the duties continuously on the said post. It is further not in dispute that in the year 2009 the applicant was selected through the MPSC and was appointed on the same post of Lecturer.

12. Respondents have declined to entertain the request of the applicant in respect of counting her qualifying service from the date of initial appointment on the ground that the employee can only stated to be in substantive employment, if he is appointed by following the due process for such appointment or by the bodies like the MPSC. According to the respondents, the service rendered by the applicant prior to her appointment by the MPSC cannot be considered for any purposes. Reliance has been placed as noted above on 02 judgments delivered by the Principal Seat of this Tribunal at Mumbai in **O.A. No. 568/2013 with O.A. No. 569/2013** and another delivered by this Tribunal in **O.A. No. 95/2015 with O.A. No. 902/2012**.



13. Rule 30 of the M.C.S. (Pension) Rules, 1982 pertains to the qualifying service. The said rule reads thus :-

**“30. Commencement of qualifying service**

*Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:*

*Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency:*

*\*[Provided further that, in cases where a temporary Government servant retires, on Superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of Superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.]*

**Exception-**

*The rules regarding grant of terminal benefits to temporary Government servants \*[except those mentioned in the second proviso] who retire without being confirmed in any post in Government service are embodied in Appendix II.*

*\* Proviso inserted by Not. No. PEN 1088/1167/SER-4 dated 5.5.1990 with effect from 1.1.1986.*

*\* The words “except those mentioned in the second proviso” by Not. No. PEN 1088/1167/SER-4 dated 5.5.1990 with effect from 1.1.1986.*

**Note 1.-** *If a Government servant is holding a temporary post when the permanent post on which he holds a lien is abolished in the circumstances described in the rule 81, or*

*if, at or very shortly after the abolition of the permanent post, he is appointed to a newly created temporary post, his service in the temporary post is pensionable service.*

**Note 2.-** *In case of the employees of former India States who have been absorbed in Government service previous pensionable service rendered by them under the same State should it immediately followed by Government service be taken into account for purposes of pension on his final retirement from Government service. Pensionable service rendered under different States should be taken into account for purposes of pension provided that the employees were transferred or sent on deputation from one State to another under a written agreement between the Governments of the States concerned.*

*[The term "immediately" appearing in Note 2 above includes a break in service if it does not exceed six months, between the date on which the service was terminated and the date of his re-employment in service].*

*The question whether the previous service in Indian States is pensionable or not should be determined in accordance with these rules as if those rules were applicable to that service.*

**Note 3.-** *See rule 57."*

14. The initial appointment of the applicant though was on temporary basis, it is evident that same was made in accordance with the provisions of the Recruitment Rules. Thereafter the applicant had continuously worked with the respondents uninterruptedly till year 2009 i.e. till she was appointed on recommendations of the MPSC. Plain reading of rule 30 of the M.C.S. (Pension) Rules, 1982 demonstrates that the period of service rendered by the applicant as ad-hoc or temporary employee also is liable to be considered for the

purposes of pension and alike reliefs. Rule 33 of the M.C.S. (Pension) Rules, 1982 also referred in the judgment delivered by this Tribunal. Though the respondents have heavily relied upon the judgment delivered by the Division Bench of this Tribunal at Mumbai in **O.A. No. 568/2013 with O.A. No. 569/2013**, the same may not apply to the facts of the present matter.

15. In no case the initial appointment of the present applicant can be said to be illegal or irregular. As has come on record, during the relevant period the post was not advertised by the MPSC and, as such, there was no recruitment. First order of appointment dated 8.3.2000 issued in favour of the present applicant also reveals that same was made in accordance with the Recruitment Rules. It is also mentioned therein that the proposals are forwarded to ensure that the services are continued even thereafter. It is the matter of record that till the applicant came to be appointed on recommendations of the MPSC, she continuously discharged the duties of her post.

16. Learned counsel for the applicant has placed reliance on the judgment of the Division Bench of Hon'ble Bombay High Court in the case of **Devidas Bhiku Borker & Ors.**

**vs. State of Maharashtra & another, 2011 (6) Mh. L.J. 331.** In the said matter the Godown keepers were initially appointed in temporary capacity and subsequently were appointed by following the due process of law by the MPSC. In the said matter the Tribunal had rejected the request of the applicants therein for counting of services of the applicants prior to their regular appointment. Setting aside the said judgment of the Tribunal the Hon'ble High Court held that the past services rendered by the applicants therein as seasonal Godown Keeper should be taken into consideration for the purposes of computing the entitlement and quantum of their pension and directions were accordingly issued.

In another judgment in **Writ Petition No. 581/2008 (The State of Maharashtra & Ors. Vs. Tulshidas Vishwanath Dhanwade & Ors.)** decided on 23.9.2019 the Division Bench of the Hon'ble Bombay High Court, Bench at Aurangabad has held that the law does not draw any distinction between the post being a temporary post or a permanent post. As long as the appointment is permanent with benefit of increments in the pay scale being granted, if a temporary post is subsequently made a permanent post and the appointee on the permanent post against a temporary post becomes permanent appointee on

a permanent post, the benefit would be from the date of initial appointment.

In one another judgment in the case of **the State of Maharashtra through the Principal Secretary, Public Health Department vs. Dr. Omprakash Gurupad Kanade, Writ Petition No. 405/2020** delivered on 8.1.2020 the Division Bench of Hon'ble Bombay High Court, Bench at Aurangabad has taken the same view. In recent judgment in **Writ Petition No. 4922/2011 (Dnyaneshwar s/o Laxmanrao Kedare vs. the State of Maharashtra & Ors.)** delivered on 11.9.2023, the Hon'ble Bombay High Court, Bench at Aurangabad held that the services of the Government employee for the purposes of pension are to be considered from the date of his initial appointment, may be temporary or on ad-hoc basis.

17. In view of the law laid down by the Hon'ble High Court in the aforesaid judgments, we see no difficulty in allowing the present Original Application. We reiterate that the applicant discharged the duties of her post w.e.f. 8.3.2000 till she was appointed on recommendations of the MPSC vide order dated 7.5.2009 without any break. The said period of service has to be considered while counting the qualifying service.

18. For the reasons stated above, following order is passed: -

**ORDER**

- (i) The temporary services rendered by the applicant on the post of Medical Officer during the period between 8.3.2000 to 7.5.2009 be taken into account while computing the period of qualifying service of the applicant for all service purposes.
- (ii) The Original Application is allowed in the aforesaid terms without any order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 30.11.2023**