

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 202 OF 2017
(Subject – Pay Scale as per G.R./Regularization)**

DISTRICT : AURANGABAD

Shri Ashok S/o Bhanudas Wagh,)
Age : 56 years, Occu. : Service,)
R/o At post Bhadji, Tq. Khultabad,)
District Aurangabad.)

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra.**)
- 2) **The Principal Secretary,**)
Revenue and Forest Department,)
Mantralaya, Mumbai-32.)
- 3) **The Chief Conservator of Forest,**)
Aurangabad Region, Vanvrutta,)
Osmanpur, Aurangabad.)
- 4) **The Deputy Conservator of Forests,**)
Aurangabad Region, Vanvrutta,)
Osmanpur, Aurangabad.)
- 5) **The Range Forest Officer,**)
Khultabad Range, Tq. Khultabad,)
District Aurangabad.)

.. **RESPONDENTS**

APPEARANCE : Shri A.S. Shelke, Advocate for the Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
Presenting Officer for the Respondents.

CORAM : **B.P. PATIL, ACTING CHAIRMAN.**

DATE : **07.08.2019.**

ORAL - ORDER

1. The applicant has approached this Tribunal with a request to direct the respondent authorities to confer the benefits of the G.R. dated 31.01.1996 w.e.f. 01.11.1994 with all consequential benefits and also prayed to direct the respondent No. 2 to decide the representation submitted by the Maharashtra Rajya Van Kamgar Kruti Samiti on 20.01.2016 within stipulated time.

2. It is contention of the applicant that he is working as Vanmajor on daily wages with the respondent No. 5 at Khultabad Range w.e.f. 01.09.1985. He worked continuously for the period of more than five years prior to 01.11.1994. It is his contention that the Government of Maharashtra in its Revenue and Forest Department took a policy decision for regularization of services of daily rated employees working in the Forest Department and issued the G.R. dated 31.01.1996. The Government decided to regularize the services of the daily wagger employees, who worked for 240 days a year for the period of five years prior to 01.11.1994. It is his contention that he worked continuously for more than five years i.e. from 01.11.1989 to 31.10.1994 and he rendered service of more than 240 days in a

year excluding the service under EGS. It is his contention that he has fulfilled parameters laid down in the G.R. dated 31.01.1996. It is his contention that on the basis of said G.R. dated 31.01.1996, the respondent No. 5 submitted the information regarding the applicant to the higher authorities for regularization of his services, but the respondent No. 2 i.e. the Secretary had not taken decision on it. Therefore, the applicant has made several representations with the respondents, but no response has been received to him from the respondents and therefore, he has filed O.A. No. 675/2003 before this Tribunal and prayed to direct the respondents to send the proposal for regularization as per the G.R. dated 31.01.1996 and also prayed to direct the Secretary of the department to take decision on the said proposal within stipulated time. The said O.A. No. 675/2003 was decided by this by the Division Bench of this Tribunal on 28.02.2005. While disposing the said O.A., this Tribunal has observed that the case of the applicant squarely falls within the parameters of the scheme and therefore, this Tribunal directed the respondents particularly the respondent No. 2 to take decision on the proposal within a stipulated time frame i.e. within a period of 2 months from the receipt of the copy of the order. It is his contention that in spite of service of

the copy of the order issued by this Tribunal on the respondent authorities, the services of the applicant has been terminated w.e.f. 01.04.2004. The applicant thereafter submitted representation on 26.08.2010 with the respondents to comply with the order passed by this Tribunal in O.A. No. 675/2003 and to regularize his services w.e.f. 01.11.1994. But the respondents had not taken cognizance on his representation. Thereafter, he has filed another representation dated 16.09.2010 with a request to absorb him as Vanmajoor w.e.f. 01.11.1994.

3. It is further contention of the applicant that on 16.10.2012, the Government of Maharashtra in its Revenue and Forest Department issued the G.R. to confer the benefits of regularization in favour the daily wager employees working in the Forest Department. On the basis of said G.R., the respondent No. 4 issued the order dated 22.11.2012 and appointed the applicant in Group- D category in the pay scale of Rs. 4440-7440 with Grade Pay of Rs. 1300/-. The applicant was absorbed in the service. It is his contention that he is fulfilled the eligible criteria as provided under G.R. dated 31.01.1996, but he has not been regularized on the basis of the said G.R. dated 31.01.1996, but he has been regularized w.e.f. 01.06.2012 as per the G.R. dated 16.10.2012. Therefore, the applicant has approached this

Tribunal and prayed to direct the respondent authorities to confer the benefits of the G.R. dated 31.01.1996 w.e.f. 1.11.1994 with all consequential benefits and also prayed to direct the respondent No. 2 to decide the representation filed by the Maharashtra Rajya Van Kamgar Kruti Samiti on 20.01.2016.

4. The respondent Nos. 1 to 5 have resisted the claim of the applicant by filing their affidavit in reply. They have denied that the applicant was appointed on daily wages w.e.f. 01.09.1985 with the respondent No. 5 at Khultabad Range. It is their contention that the applicant worked with the respondent No. 5 in the year 1988-89 under EGS, which is under the control of the Collector. In the year 1989-90, the applicant worked some time on EGS and some time on plan and in the year 1990-91 to 1994-95, he worked on plan on daily wages. It is their contention that as per the G.R. dated 31.01.1996, the Government took a policy decision to regularize the services of the daily wages employees, who were working on the plan/non-plan. As per the said G.R., the respondent authority had regularized the services of daily wagers, who were eligible and completed 240 days service in each calendar year for five years continuously and regularized their services on 01.11.1994. As per the condition mentioned in the said G.R., the service rendered by some

persons in the Forest Department has to be considered excluding the work done by them under EGS scheme. It is their contention that the applicant worked on daily wages with the respondents in the year 1.11.1989-90 for 209 days and he worked on EGS for 145 days during the said period. It is their contention that the applicant worked for more than 240 days in a year thereafter during the year 1990 to 1994. The applicant had not worked for 240 days in a year continuously for five years as per the G.R. dated 31.01.1996 and therefore, he has not been regularized on the basis of the G.R. dated 31.01.1996.

5. The respondent Nos. 1 to 5 have admitted the fact that this Tribunal has passed order in O.A. No. 675/2003 on 25.02.2005 and directed the respondent No. 2 i.e. Secretary to take a decision on the proposal within a stipulated time i.e. two months from the receipt of copy of the order. It is their contention that during the pendency of the O.A. No. 675/2003, the applicant was terminated from the service on 01.04.2004, but this fact might not have been noticed by this Tribunal while passing the order dated 28.02.2005. Thereafter, the applicant has filed representations on 26.08.2010 and 16.09.2010 and requested to allow him to rejoin the service by way of reappointment. Thereafter, G.R. dated 16.10.2012 has been

issued by the Government and the Government decided to regularize the services of daily wagers employee, who are in service continuously for the period of five years and who rendered 240 days of service in a year during the period from 01.11.1994 to 30.06.2004. The applicant fulfilled the criteria mentioned in the G.R. dated 16.10.2012 and therefore, he was regularized accordingly. He was not eligible for regularization in the service on the basis of G.R. dated 31.01.1996. Therefore, he was not regularized on the basis of the G.R. dated 31.01.1996 and therefore, he is not entitled to claim benefits of the said G.R. On these grounds, they have prayed to reject the present Original Application.

6. I have heard Shri A.S. Shelke, learned Advocate for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

7. Learned Advocate for the applicant has submitted that the applicant was working as daily wager employee in the Forest Department since the year 1985. He worked more than 240 days in a calendar year from the year 1985 onwards. He was eligible to get benefit of regularization as per the provisions

of the G.R. dated 31.01.1996, but he was not considered and therefore, he has filed representations with the respondents. But the respondents had not decided his representations and therefore, he approached this Tribunal by filing O.A. No. 675/2003. In that O.A., the respondents admitted the fact that the information/ proposal regarding regularization of services of the applicant on the basis of the G.R. dated 31.01.1996 was forwarded to the respondent No. 2 i.e. the Secretary and therefore, this Tribunal disposed of the said O.A. No. 675/2003 on 25.02.2005 and directed the respondent No. 2 i.e. the Secretary to take decision on the proposal within a stipulated time i.e. within a period of two months from the receipt of copy of the order. He has submitted that in spite of that, the respondents had not taken any steps and had not decided the proposal of the applicant. The applicant was terminated thereafter. The applicant has made several representation thereafter also with the respondents and requested to regularize his services, but they have not considered his request. Thereafter, on 16.10.2012, the Government issued G.R. and extended the benefits of the G.R. dated 31.01.1996 to the employees i.e. the daily wagers who have worked 240 day in a year continuously during the period from 01.11.1994 to

30.06.2004. On the basis of the said G.R., the respondents regularized the services of the applicant and accordingly, benefit of regularization of service was granted to him as per the said G.R. dated 16.10.2012, but the respondents had not granted benefits to the applicant on the basis of the G.R. dated 31.01.1996. He has submitted that the applicant is eligible to be regularized on the basis of the G.R. dated 31.01.1996. Therefore, he approached this Tribunal. Therefore, he has prayed to allow the present Original Application.

8. Learned Advocate for the applicant has further submitted that the applicant and other similarly situated persons have filed complaint through Maharashtra Serva Shramik Sanghatna, a registered union before the Industrial Court at Aurangabad claiming benefits of permanency. Their complaint was allowed. Against the said decision, the Government filed W.P. No. 3208/1997 and C.A. No. 3878 of 2000 before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad. The said W.P. came to be disposed of on 19.01.2017, with the following directions:-

“6. Considering the above and in the light of the order of this Court dated 4.12.1997, this petition is disposed off. In the event, any of the employees concerned with

these proceedings are yet to be considered under the Government Resolution dated 31.1.1996 and are not ineligible, the petitioners shall proceed to scrutinize each of such cases and pass necessary orders granting regularization to the eligible candidates strictly in accordance with the Government Resolution dated 31.01.1996, within a period of four months from today.”

He has submitted that in spite of the directions given by the Hon'ble High Court, the respondents had not taken any decision and therefore, the applicant is entitled to get benefit of the G.R. dated 31.01.1996. On these grounds, he has prayed to allow the present Original Application.

9. Learned Presenting Officer has denied that the applicant worked as daily wager with the respondents from the year 1985. In the year 1989, he worked on daily wages for some period and worked some period under EGS scheme. He rendered service of 181 days on daily wages during the period from 01.11.1989 to 31.10.1990. He had not served for 240 days on daily wages in that year. Therefore, he was not eligible to get benefits of scheme under G.R. dated 31.01.1996. Therefore, his name was not recommended for extending the benefits by the respondents. She has attracted my attention towards the letter dated 25.10.2004 sent by the Deputy Conservator of Forests,

Aurangabad Region, Aurangabad address to the Chief Conservator of Forests, Aurangabad Region, Aurangabad. She has submitted that the services of the applicant was terminated in the year 2004 before passing the order by this Tribunal in O.A. No. 675/2003, but the said fact was not brought to the notice of this Tribunal while passing the order dated 28.02.2005 in the said O.A. She has submitted that in O.A. No. 675/2003, the directions were given to the respondent No. 2 i.e. the Secretary to consider the case of the applicant independently. Not only this, but the Hon'ble High Court has also granted similar relief to the applicant and directed the respondents to consider case of the each employee strictly in accordance with the G.R. dated 31.01.1996. She has submitted that the said matter is pending before the competent authority i.e. the Secretary and the Secretary had not yet taken decision. She has submitted that already directions have been issued and the matter is under consideration and therefore, the same issue cannot be considered by this Tribunal and therefore, she has prayed to dismiss the present Original Application.

10. On perusal of the record, it reveals that the applicant approached this Tribunal seeking similar relief by filing O.A. No. 675/2003. The Division Bench of this Tribunal allowed the said

O.A. on 28.02.2005 and directed the respondent No. 2 i.e. the Secretary to take decision on the proposal of the department on the basis of G.R. dated 31.01.1996. Not only this, but the applicant has filed complaint before the Industrial Court through Marathwad Sarva Shramik Sanghatana claiming similar relief. The said complaint was allowed. Against the said decision, the Government approached before the Hon'ble High Court by filing W.P. No. 3208/1997 and C.A. No. 3878 of 2000. The said W.P. came to be disposed of by the Hon'ble High Court and the Hon'ble High Court directed the present respondents, who are petitioners in the said W.P. to consider the cases of the employees claiming benefits of the G.R. dated 31.01.1996 and to scrutinize each of such cases and pass necessary orders granting regularization to the eligible candidates strictly in accordance with the G.R. dated 31.01.1996 within a period of four months from the date of order. On going through the said decisions, it is crystal clear that the issue regarding eligibility for getting benefit under the G.R. dated 31.01.1996 was involved in both the matters. The Hon'ble High Court, as well as, this Tribunal directed to consider the case of the applicant on the basis of the G.R. dated 31.01.1996. The case of applicant is under consideration and no decision has been taken by the

respondents on the proposal to grant the benefits to the applicant in view of the G.R. dated 31.01.1996. The applicant has sought the similar relief in the present matter. The issue involved in this matter has already been dealt with and decided by this Tribunal and the Hon'ble High Court. Therefore, in my view, the present matter is hit by the principle of *res judicata* and therefore, the present O.A. is not maintainable. No relief as claimed by the applicant is granted to applicant in the present O.A., since the case of the applicant is under consideration with the respondents and the respondents have not yet decided it. In view of the above, in my view, the present Original Application deserves to be dismissed.

11. In view of the discussions in the foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD.

DATE : 07.08.2019.

(B.P. PATIL)

ACTING CHAIRMAN

KPB S.B. O.A. No. 202 of 2017 BPP 2019 Pay scale as per G.R./Regularization