

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 236 OF 2017

(Subject – Pension and Pensionary Benefits)

DISTRICT : OSMANABAD

Smt. Yamuna Laksyhmanrao Bhosale,)
Age:58years,Occu. :Service,)
As unpaid candidate, Office of the Deputy)
Superintendent of Land Records,)
ShirurAnantpal, Dist. Latur.)..**APPLICANT**

V E R S U S

- 1) **The State of Maharashtra ,**)
Through: Secretary,)
Revenue Department,)
Mantralaya, Mumbai 32.)
- 2) **The Deputy Director of Land**)
Records,)
Aurangabad.)
- 3) **The Settlement Commissioner &**)
Director Land Records,)
Pune.).. **RESPONDENTS**

APPEARANCE : Shri S.D. Dhongde, Advocate for the Applicant.

: Shri M.P. Gude, Presenting Officer for
Respondents.

CORAM : B.P. PATIL, MEMBER (J)

DATE : 21.12.2018.

O R D E R

1. The applicant has challenged the communication dated 20.09.2016 issued by the Deputy Superintendent of Land

Records, Shirur Anantpal, Dist. Latur informing her that she has not rendered pensionable service and therefore, he denied to send her proposal for pension. She has also prayed to direct the respondent No. 2 to treat her services as regular service since 10.03.2005 and grant her consequential benefits like pension and pensionary benefits.

2. The applicant has joined her services with the respondents in the year 1983. She was sponsored by the Employment Exchange, Aurangabad and thereafter, she was recruited after following due process of recruitment. The applicant and similarly situated employees were leading their cause for regularization of their services since the year 1999. The Hon'ble Apex Court has given directions to the State in case of **Yashwant Arjun More &Ors. Vs. State of Maharashtra and Ors.in Civil Appeal No. 4633 of 2007** decided on 11.08.2011 to take action of the services of the appellants in that regard in accordance with the G.R. dated 10.03.2005 and to pass appropriate orders. Accordingly, the applicant and those employees were absorbed in the service. Their services were regularized since 10.03.2005. The respondents have paid all dues including different of wages etc. as per the direction of the Hon'ble High Court and Hon'ble

Supreme Court from 10.03.2005 onwards. The applicant and others granted pay scale of Rs. 5200-20200 with Grade Pay of Rs. 1900/-. Arrears of difference of pay drawn by them as unpaid candidates and as Bhukarmapakfor the period 10.03.2005 to 31.12.2005 and 1.4.2009 to 31.05.2012 had also been paid to them by the order dated 31.07.2012 by the respondent No. 2 and since then the applicant received the benefits of regularization.

3. It is contention of the applicant that she has joined the service long back in the year 1984 and as per the order of the Hon'ble High Court and Hon'ble Supreme Court, her service has to be treated as regular service w.e.f. 10.03.2005. Since from the said date, the applicant has completed more than 10 years continuous service and therefore, she become eligible to get pension in accordance with the Maharashtra Civil Services (Pension) Rules, 1982. It is her contention that in case of **Sandhya Vs. The State of Maharashtra and Ors.in Civil Appeal No. 24083/2013** decided on 01.07.2014, it has observed that in the eye of law, the appellant shall be deemed to be continued in service even on 10.03.2005 i.e. the date when the Government Resolution was issued. In view of the said observation also, the applicant is entitled to get benefits of

regularization. It is contention of the applicant that once she has been regularized in the service w.e.f. 10.03.2005, she is entitled to get pensionary benefits, as she has completed 10 years' service since 10.03.2005. The applicant retired on superannuation on 30.11.2016. As she has completed more than 10 years' service, she is entitled to get pension and pensionary benefits. She applied for pension, but the Deputy Director of Land Records, Shirur Anantpal, Dist. Latur informed her that she has not completed 10 years of service required for granting pension and pensionary benefits and she rendered only 4 years and 5 months service and therefore, she is not entitled to get pension. Therefore, her request to grant pension was rejected by the communication dated 20.09.2016.

4. It is contention of the applicant that the said communication is against the observations and findings recorded by the Hon'ble High Court and G.Rs. issued by the Government from time to time. Therefore, she has challenged the said communication by filing the present Original Application and also prayed to quash and set aside the said communication and prayed to direct the respondents to treat her services as regular

service since 10.03.2005 and to grant consequential benefits including pension and pensionary benefits.

5. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contention of the applicant. They have admitted the fact that the Government has issued G.Rs. from time to time regarding absorption of services of unpaid candidates and their regularization in the service. It is their contention that the applicant has wrongly interpreted the order of the Hon'ble High Court, Hon'ble Supreme Court and G.Rs. It is their contention that as per the terms and conditions of the G.R. dated 10.03.2005, regularization of employees was not sought to be made from 10.03.2005. But the orders had not been inadvertently issued regularizing the employees w.e.f. 10.03.2005 and the respondents have taken necessary steps to correct the said error. It is their contention that if some benefits are given to the employees on account of such wrong orders issued by the authority not having proper knowledge, the respondents are at liberty to take the remedial measures to cure the wrongs committed by the subordinate officials. It is their contention that the service of the applicant has been regularized w.e.f. 30.05.2012 in view of the G.R. dated 10.03.2005. She has been retired w.e.f.

30.11.2016 on attaining the age of superannuation. She has not completed more than 10 years of continuous service and therefore, she is not entitled to get pension as per the provisions of Maharashtra Civil Services (Pension) Rules, 1982. It is their contention that the applicant is not entitled to get benefits of the judgment of the Hon'ble Apex Court in case of **Sandhya Vs. The State of Maharashtra and Ors.**

6. It is their contention that one Mr. Shaikh Ismail Shaikh Ibrahim filed O.A. No. 218/2014 before the Maharashtra Administrative Tribunal, Aurangabad Bench and challenged the gradation list, wherein his date of appointment has been shown as 01.06.2012. The said O.A. No. 218/2012 and Review Application No. 01/2015 were rejected by this Tribunal. Being aggrieved the said order, the applicant has filed W.P. No. 7428/2016 before the High Court of Bombay, Bench at Aurangabad, wherein decision of the Tribunal was upheld by the Hon'ble High Court and W.P. was dismissed. It is their contention that in the said decision, paragraph No. 3 of the G.R. dated 10.03.2005 has been interpreted by the Hon'ble High Court and it has been observed that after absorption of an unpaid employee in Government employment, the period of service of such candidate,

as an unpaid employee, shall not be computed for the purpose of leave and retiral benefits or any other service benefits. It has been further observed by the Hon'ble High Court that the Government decision will be operative from the date of decision. It has been further observed by the Hon'ble High Court that unpaid candidates appointed from 13.02.1987 onwards are not entitled to get benefits of the G.Rs. dated 21.10.1995, 22.10.1996 and 10.03.2005. It is their contention that the claim of the applicant has been legally rejected by the respondents. They have denied that the impugned order is contrary to the decision of the Hon'ble Supreme Court and the G.Rs. issued by the State Government from time to time. On these grounds, they prayed to reject the present Original Application.

7. I have heard Shri S.D. Dhongde, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents. I have perused the documents filed on record by both the parties.

8. Admittedly, the applicant joined the service with the respondents in the year 1983 as unpaid candidate on the basis of recommendation made by the Employment Exchange, Aurangabad. Admittedly in view of the G.Rs. issued by the

Government from time to time i.e. on 21.10.1995, 22.10.1996 and 10.03.2005, the applicant and similarly situated persons were absorbed in the Government service and therefore, their services were regularized w.e.f. 10.03.2005. Admittedly, the applicant retired on 30.11.2016 on attaining the age of superannuation. Admittedly, the applicant and other employees regularized by the order dated 31.07.2012 had received difference of pay drawn by them as unpaid candidate and as Bhukarmapak for the period 10.03.2005 to 31.12.2005 and 01.04.2009 to 31.05.2012. Admittedly, after retirement, the applicant had filed application for getting pension and pensionary benefits, but the Deputy Superintended of Land Records, Shirur Anantpal, Dist. Latur rejected her application and refused to send the proposal for pension and pensionary benefits on the ground that she had not rendered continuous service of 10 years for getting pension and therefore, she is not eligible for getting pension in view of the provisions of Maharashtra Civil Services (Pension) Rules, 1982. According to him, the applicant rendered 4 years and 5 months service and therefore, she was not entitled to get pension and accordingly, he informed the applicant by the communication dated 20.09.2016.

9. Learned Advocate for the applicant has submitted that the applicant was regularized in the service in view of the provisions of G.Rs. dated 21.10.1995, 22.10.1996 and 10.03.2005 by the order dated 31.07.2012. He has submitted that the applicant was serving as unpaid copyist since the year 1983. He has submitted that in view of the provisions of G.R. dated 10.03.2005, the decision would be operative from the date of G.R. According to the G.R., the applicant received monetary benefits due to her from the date of G.R. He has submitted that since the applicant has been absorbed and regularized in the service w.e.f. 10.03.2005, she is entitled to get benefits as she has completed more than 10 years' service on the date of her retirement i.e. on 30.11.2016. He has submitted that the respondents had not considered the said aspect and rejected the applicant's claim for pension by the impugned communication dated 20.09.2016 on the ground that she has rendered only 4 years, 5 months and 239 days' service from the date of her appointment i.e. from 31.07.2012.

10. He has submitted that the applicability of the G.R. dated 10.03.2005 and effective date of giving benefits of the G.R. has been decided by this Tribunal, as well as, Hon'ble High Court

and Hon'ble Apex Court in several decisions. He has submitted that the Hon'ble High Court and the Hon'ble Apex Court has also extended the benefits to the similarly situated persons from the date of G.R. dated 10.03.2005, but the respondents had not considered the said G.R. and provisions therein with proper perspective and wrongly decided that the applicant has rendered only 4 years 5 months and 29 days service and rejected her application for pension. He has submitted that the Principal Seat of this Tribunal at Mumbai in **O.A. No. 1134 of 2016** in case of **Balwant Raghu Nalawade and Ors. Vs. The State of Maharashtra and Ors.** decided on 09.08.2017 specifically held that the applicants in that case would be entitled to get service benefits w.e.f. the date of G.R. including the retirement benefits on the basis of order passed by the Hon'ble High Court in case of **Shri Shivshankar G. Jawanjil and one another Vs. The State of Maharashtra and Others** in **W.P. No. 1944/1998** decided on 19.01.2007. He has further submitted that the Hon'ble Apex Court has also decided the similar issue in case of **Sandhya Vs. State of Maharashtra and Ors.** in **Civil Appeal No. 24083/2013** decided on 01.07.2014. He has also placed reliance on the judgment of Hon'ble Apex Court in case of **Yashwant Arjun More and Ors. Vs. State of Maharashtra and Ors.** in **Civil**

Appeal No. 4633 of 2007 with other Civil Appeals decided on 11.08.2011.

11. Learned Advocate for the applicant has further submitted that the Division Bench of this Tribunal at Mumbai has also considered the said issue in **O.A. No. 1016/2016** in case of **Mr. Sarjerao B. Kshirsagar Vs. The District Collector and Anr.** decided on 25.01.2018 and extended the benefits of the G.R. including the retirement benefits from the date of G.R. dated 10.03.2005 to the applicant in that case. He has submitted that since the Principal Seat of this Tribunal at Mumbai decided the similar issue in case of similarly situated persons and extended retirement benefits to them, the said decision of the Tribunal is appropriately applicable in the instant case and therefore, he prayed to grant relief as claimed by the applicant by quashing the impugned order dated 20.09.2016. Therefore, he prayed to allow the present Original Application.

12. Learned Presenting Officer has submitted that as per the paragraph No. 3 of the G.R. dated 10.03.2005, after absorption of an unpaid employee in Government employment, the period of service of such candidate, as an unpaid employee, shall not be computed for the purposes of leave and retirement.

benefits of any other service benefits. He has submitted that on the basis of said G.R., the applicant's appointment order dated 31.07.2012 has been issued and the applicant stood regularized and accordingly joined new posting. He has submitted that the applicant joined the service 31.07.2012 on the basis of order dated 31.07.2012. She retired on superannuation on 30.11.2016 and she has rendered only 4 years, 5 months and 29 days. She has not rendered 10 years' service to claim pension and therefore, her claim for pension has been rightly rejected by the respondents by the impugned order dated 20.09.2016.

13. He has submitted that the said issue has been already dealt with by this Tribunal in **O.A. No. 218/2014 and Review Application No. 01/2015** in case of **Mr. Shaikh Ismail Shaikh Ibrahim Vs. The State of Maharashtra and Ors. and other** decided on 10.12.2014 and 18.09.2015. The said decision was challenged by the applicants before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad by filing W.P. No. 7428 of 2016 and W.P. No. 7833 of 2016. The said W.P. was dismissed on 06.01.2017, wherein the judgment of the Tribunal has been upheld. He has submitted that in the said decision it has been held that the petitioners in these W.Ps. cannot claim

benefits accruable to regular employees merely because they have been extended benefit of absorption in view of the Government policy and as per G.R. dated 10.03.2005.

14. Learned Presenting Officer has further submitted that the decision of the Principal Seat of this Tribunal at Mumbai in case of **Balwant Raghu Nalawade and Ors. Vs. The State of Maharashtra and Ors.** in **O.A. NO. 1134 of 2016** decided on 09.08.2017 has been challenged by the respondents before the Hon'ble High Court and the same is pending.

15. He has submitted that in view of the decision of the Hon'ble in **W.P. No. 7428/2016 and 7833/2016** in case of **Shaikh Ismail Shaikh Ibrahim Vs. State of Maharashtra and Ors.** issue has been settled and therefore, the applicant cannot claim retiral benefits, since she has not rendered pensionable service and therefore, he supported the impugned order dated 20.09.2016 and prayed to reject the present O.A.

16. On perusal of the record, it reveals that the Revenue and Forest Department of the Government of Maharashtra maintains the land records in respect of urban as well as agricultural lands. The land records include survey numbers of

land, layouts and property cards. The Department also maintains records of transfers of ownership and possession of all immovable properties in Maharashtra. For making available certified copies of the property cards and other documents which are required to be supplied under the Maharashtra Land Revenue (Inspection, Search and Supply of Copies of Land Records) Rules, 1970, the Department employed unpaid candidates. They were not paid salary by the Government but were paid 70% of the amount collected from those, who applied for certified copies. The balance 30% used to be deposited in the Government treasury.

17. The Secretary of Bhumi Abhilekh Bina Vetan Sangthana (Union of Unpaid Candidates belonging to Land Records Department) filed an Original Application No.153 of 1991 before the Maharashtra Administrative Tribunal, Mumbai. They prayed for direction on the respondents for regular absorption of its members i.e. unpaid candidates against the regular vacancies. The Tribunal by its judgment dated 20th December, 1992 allowed the application directing the respondents to absorb unpaid candidates, who had put in more than ten years of service as such, by giving preference and by relaxation of age, if they otherwise fulfill other eligibility criteria. The said judgment was

challenged by the State Government before this Court and the SLP was dismissed on 14th July, 1995. Consequently, the State Government issued G.R. dated 21st October, 1995, for implementation of the directions of the Tribunal in Original Application No.153 of 1991.

18. The other candidates of revenue department thereafter approached the Tribunal at Aurangabad by filing Original Application No.895 of 1995. The said application was also decided in their favour by judgment dated 30th November, 1995. The Tribunal directed the State Government to frame a scheme as envisaged in its earlier judgment dated 20th December, 1992 for absorption of unpaid candidates. In order to comply with the directions issued by the Tribunal, the State Government issued G.R. dated 22nd October, 1996 for absorption of unpaid candidates in the revenue department and fixed 30th November, 1995 as the cutoff date. Consequently, unpaid candidates who had completed 10 years of service as such, became eligible for absorption, subject to the satisfaction of other conditions prescribed in the said GR.

19. In Writ Petition No.2150 of 1998, the Division Bench of the Bombay High Court passed an order on 16th October, 2002

directing the State to pay a minimum salary of Rs.3,200/- per month to the unpaid candidates. Pursuant to the said direction, the benefit of minimum salary of Rs.3,200/- was given by the State Government to all unpaid candidates.

20. Subsequently, a group of writ petitions were also disposed of by a Division Bench of the Bombay High Court in [Shivshankar Gundu Jawanlal and another vs. State of Maharashtra and others](#), 2007 (3) Mh.L.J. 43. In the said case, the petitioners were seeking a common relief for being absorbed as permanent Class III employees of the State Government with retrospective effect in the light of judgment of the Tribunal in Original Application No.153 of 1991 and GRs dated 21st October, 1995, 22nd October, 1996 and 10th March, 2005. A group of writ petitions were disposed of by the Bombay High Court with observation that all the unpaid candidates appointed till 12th February, 1987 cannot be termed as backdoor entrants and declared that they are eligible for the scheme formulated under the GRs dated 21st October, 1995 and 22nd October, 1996. The High Court also held that unpaid candidates appointed from 13th February, 1987 onwards are not entitled for the benefit of any of the GRs dated 21st October, 1995, 22nd October, 1996 and 10th March, 2005.

21. The aforesaid judgment was challenged by those unpaid candidates, who were appointed on and after 13th February, 1987, in view of denial of relief given by the Division Bench of the Bombay High Court. The Civil Appeals preferred by those unpaid candidates were allowed by this Court's order dated 11th August, 2011 directing the respondents to take action for regularization of services of the appellants in accordance with GR dated 10th March, 2005.

22. Meanwhile, the applicant in Civil Appeal No. 24083/2013 before the Hon'ble Supreme Court viz. Sandhya was terminated by order dated 20.04.1998. She challenged the termination order before the M.A.T. Mumbai by filing O.A. No. 293/1998. The Tribunal allowed the application and set aside the order of termination and issued directions to the respondents to take action of regularization of services of the applicants in view of the G.R. dated 10.03.2005 and to pass appropriate orders. Accordingly, the respondents therein took decision and informed the applicants that their services can not be regularized because of non-fulfillment of the condition in the G.R. dated 10.03.2005. Therefore, the applicant has filed Contempt Petition in O.A. No. 293/1998. But the same was rejected on 18.12.2012. The said

order was challenged before the Hon'ble High Court by filing W.P. No. 1047/2013, but it was rejected. Against that order, the applicant approached before the Hon'ble Apex Court by filing Civil Appeal No. 24083/2013, wherein the Hon'ble Apex Court has set aside the order of the Hon'ble High Court. The Hon'ble Apex Court has observed in the said decision that the applicant is entitled for regularization in view of the G.R. dated 10.03.2005 and directed the respondents to regularize her services with retrospective effect.

23. Considering the facts in this case, it is material to note here that the Government has issued G.Rs. dated 21.10.1995, 22.10.1996 and 10.03.2005 to give relief to the unpaid copyist, who were working since long. By the G.R. dated 10.03.2005, the Government absorbed the eligible candidates in the Government service and regularized their services from the date of G.R. The provisions of paragraph Nos. 3 and 4 of the said G.R. are material and therefore, I reproduce the same:-

“ ३) विनावेतन प्रतिलिपिकास शासकीय सेवेत घेतल्यानंतर विनवितन प्रतिलिपिक म्हणून ज्या अवधीसाठी त्यांनी काम केले असेल तो अवधी रजा व निवृत्ती वेतनाचे फायदे किंवा अन्य कोणत्याही सेवा विषयक शासकीय प्रयोजनासाठी विचारात घेतला जाणार नाही.

४) सदरहू शासननिर्णय या शासन निर्णयाच्या दिनांकापासून लागू होईल.”

The said provisions provide that eligible unpaid candidate would be absorbed in the service w.e.f. date of G.R. i.e. from 10.03.2005.

24. The applicant was eligible to be absorbed in the Government service and therefore, her case was considered by the Government and accordingly, she was absorbed by the order dated 31.07.2012. She was paid monetary benefits accordingly from the date of G.R. by the said order dated 31.07.2012

25. In fact, in view of G.R. dated 10.03.2005 she was eligible for absorption in the Government service. But the respondents had not taken prompt action for issuing orders on the basis of G.R. dated 10.03.2005. The respondents took seven years for issuing the order dated 31.07.2012 of absorbing the applicant in the Government service. Therefore, the applicant cannot be blamed for it.

26. Paragraph No. 3 of the G.R. dated 10.03.2005 provides that after absorption of unpaid copyist in the Government employment, the period of service of such candidate as unpaid employee shall not be computed for leave, salary and retirement benefits or any other service benefits. Paragraph No. 4 of the said

G.R. provides that the said decision would be operative from the date of issuance of the G.R. From this it is crystal clear that since the services of the applicant has been regularized from the date of G.R. i.e. from 10.03.2005, the service period of the applicant can be reckoned from the date of G.R. i.e. from 10.03.2005 and therefore, in my view, the applicant is entitled to get service benefits w.e.f. from the date of G.R. dated 10.03.2005 including the retiral benefits and therefore, the impugned order rejecting the applicant's claim is not in accordance with the provisions of G.R. dated 10.03.2005.

27. It is also material to note here that the issue involved in this matter has been dealt with by the Principal Seat of this Tribunal at Mumbai in **O.A. No. 1134 of 2016** in case of **Balwant Raghu Nalawade and Ors. Vs. The State of Maharashtra and Ors.** decided on 09.08.2017 as well as in **O.A. No. 1016/2016** in case of **Mr. Sarjerao B. Kshirsagar Vs. The District Collector and Anr.** decided on 25.01.2018 and it has been held that the benefit of the G.R. dated 10.03.2005 would be extended to the applicants from the date of G.R. and service benefits including retiral benefits shall be extended to them. The present matter is squarely covered by the above said decisions.

The decisions are binding on this Tribunal and therefore, in my view, on that count also the applicant is entitled to get retiral benefits w.e.f. 10.03.2005.

28. I have gone through the decisions referred by the learned P.O. In a decision delivered by the Hon'ble High Court of Bombay Bench at Aurangabad in case of **Shaikh Ismail Shaikh Ibrahim Vs. The State of Maharashtra and Ors. and other in W.P. No. 7428/2016 and 7833/2016** decided on 06.01.2017, the decision of this tribunal in O.A. No. 218/2014 and Review Application No. 01/2015 decided on 10.12.2014 and 18.09.015 respectively had been challenged. In that O.A. and review application, the applicants claimed their seniority from the date of issuance of Government resolution and prayed to compute service period from 10.3.2005. The applicants' prayer was rejected by the Tribunal and the decision of the Tribunal was upheld by the Hon'ble High Court in W.Ps. In that matter, the issue of counting service of the applicant was matter in issue and therefore, the said decisions are not much useful to the respondents in the present case.

29. As discussed above, the issue involved in the present O.A. has already been decided by the Principal seat of this

Tribunal and it has been held that the applicants in those matters are entitled to get retiral benefits from the date of G.R. The present case is squarely covered by the above cited decisions. Therefore, in these circumstances, in my view, the applicant is entitled to get retiral benefits considering the fact that her service has been regularized from the date of G.R. i.e. from 10.03.2005 and therefore, her service can be considered for pensionary benefits i.e. from the date of G.R. dated 10.3.2005. But the respondents had not considered the said aspect while rejecting her claim and therefore, the impugned communication dated 20.09.2016 issued by the Deputy Superintendent of Land Records, Shirur Anantpal, Dist. Latur is not in accordance with the G.R. and legal one and therefore, it requires to be quashed and set aside by allowing the present Original Application.

30. In view of the discussions in foregoing paragraphs, the O.A. is allowed. The impugned communication dated 20.09.2016 issued by the Deputy Superintendent of Land Records, Shirur Anantpal, Dist. Latur is hereby quashed and set aside. The respondents are directed to consider the claim of the applicant for pension and pensionary benefits afresh in view of the observations made in the aforesaid paragraphs and to extend the

retiral benefits to her within a period of four months from the date of this order. There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 21.12.2018.

(B.P. PATIL)

MEMBER (J)

KPB/S.B. O.A. No. 236of 2017 BPP 2018Pension and Pensionary benefits