

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 245 OF 2015

DISTRICT : AHMEDNAGAR

Jagannath s/o Hanumanta Mhaske,
Age: 54 years, Occu.: Service,
R/o A/p Pravarasangam, Tq. Newasa,
District Ahmednagar.

.. APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai-400 032.
2. The Collector,
Ahmednagar District,
Ahmednagar.
3. The Sub-Divisional Officer,
Karjat Sub-Division,
Karjat, Dist. -Ahmednagar.
4. The Deputy Collector,
(Rehabilitation), Ahmednagar.

...RESPONDENTS

APPEARANCE : Ms. Anagha Pandit, Advocate holding
for Shri S.B. Talekar, for the Applicant.

: Shri M.S. Mahajan, Chief Presenting Office for
Respondent authorities.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **28.02.2023**

Pronounced on : **05.04.2023**

ORDER
(Per : Shri Bijay Kumar, Member (A))

1. This Original Application has been filed by one Shri Jagannath s/o Hanumanta Mhaske, r/o Tahasil- Newasa, District- Ahmednagar on 24.05.2015 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, thereby, seeking relief of grant of service benefits admissible under government in General Administration Department's Resolution bearing No. SRV/1078/RAP/XII, Mantralaya, Mumbai, dated 22,09.1978 and also as a consequence of the judgment of the Hon'ble Labour Court as confirmed till Hon'ble Supreme Court of India.

2. Facts of the matter as submitted by the applicant are as follows :-

(a) The applicant is son of a project affected person (in short, *PAP*), namely Shri Hanumanta Bandu Mhaske, whose about one hectare land was acquired for the Jayakwadi Irrigation Project.

(b) The applicant was initially appointed as a Mustering Assistant on *work-charge establishment* by an order of the Administrator, Command Area Development Authority,

Kukadi- Mula Project, Ahmednagar, dated 15.06.1980.

Relevant part of the appointment order reads as follows :-

“Shri Jagannath Hanumanta Mhaske, a project affected person, is hereby, appointed, until further orders, as a Mustering Assistant on W/C establishment on consolidated pay of Rs. 200/- (Two hundred only) and posted to Mula Irrigation Division, Ahmednagar for further posting to Mula Irrigation Sub-Division Newasa.”

(c) Service of the applicant (along with others), who was on work-charge establishment, was terminated by order issued by Executive Engineer, Mula Modernization Division, Ahmednagar dated 21.02.1985, on the ground of services of the applicant not required.

(d) Applicant, being aggrieved by the aforementioned termination order, filed Complaint (ULP) No. 25 of 1985. Hon'ble Labour Court made following observations in para 6 and 7 of a common order dated 23.04.1987 :-

“6) As I have said these workmen have been removed from service without following the procedure laid down in Sec. 25 F of the I.D. Act. Hence their termination is illegal and the orders of termination passed by the Executive Engineer are liable to be set aside.

7) There is no evidence except in case of Shinde that these workmen were employed elsewhere in the idle period and they are, therefore, entitled for back wages.”

(e) The Labour Court passed orders allowing the complaint and setting aside termination order dated 21.02.1985 issued by the Executive Engineer, Mula Modernisation Division, Ahmednagar. Final order passed by the Labour Court is quoted below for ready reference :-

“ORDER

The termination orders passed by the Executive Engineer on 21.02.1985 in respect of all these workmen are hereby set aside. The Executive Engineer is hereby directed to reinstate them as Muster Assistants and give the benefit of continuity of service and back wages to them from the date from the date of termination till the date of reinstatement.

So far as the workman S.A. Shinde is concerned the back wages shall be paid to him for the period for which he was idle.

The order shall be carried into effect within one month from today.

No order as to costs.”

(f) The Executive Engineer, Mula Modernisation Division preferred revision before Member, Industrial Court which was dismissed vide order dated 19.07.1988. Thereafter, the Executive Engineer, Mula Modernisation Division filed Writ Petition No. 559/1989 before Hon'ble High Court, Bench at Aurangabad challenging the order of the Industrial Court. However, Hon'ble High Court dismissed the Writ Petition vide order dated 05.03.1990.

(g) Challenging the Order of Hon'ble High Court, State of Maharashtra preferred SLP bearing SLP (C) No. 2337/ 1992 which too, was dismissed with observation that impugned order had already been complied by government of Maharashtra.

(h) Thereafter, in compliance with judgment of the Labour Court which was upheld by Hon'ble High Court in W.P. Nos. 557, 558, 559 560/89, dated 05.03.1990, the applicant was reinstated as mustering assistant on work charge establishment on lump-sum payment of Rs. 500/- per month on Maharashtra Water Use Project, Sub-Division No. 8, Newasa vide order dated 01.06.1990 issued by Executive Engineer, Maharashtra Water Usage Project Division-2, Ahmednagar. It was done under intimation to a number of authorities including the Additional Collector, Ahmednagar (Employment Guarantee Scheme, (in short, 'EGS') requesting him to release grants for payment to the applicant as Mustering Assistant on EGS. Copy of the order was also endorsed to Sub Divisional Officer concerned for taking on record the work place of the Mustering Assistants.

(i) As the applicant was working as Mustering Assistant under EGS since 01.06.1900 on re-instatement as per Court-Orders he was absorbed on the post of Talathi in Shrigonda Tahsil, district-Ahmednagar by an order issued by Sub Divisional Officer, Karjat bearing No. कावि-३/७४४/२००४, dated 24.08.2004. This was done in pursuance of orders from Collector, Ahmednagar bearing No. मह/कार्या. ५३/६२२/२००४, dated 07.08.2004.

(j) The applicant submitted a representation dated 22.08.2014 addressed to the Collector Ahmednagar seeking continuity of service, back wages, seniority and other consequential benefits as project affected person appointed in Govt. services from the date of his appointment as mustering assistant in June 1980 as per provisions of GR issued by GAD and bearing No. SRV/1078/RAP/XII, Mantralaya, Mumbai, dated 22.09.1978. A copy of said representation was forwarded by Deputy Collector (Rehabilitation) Ahmednagar to the Collector Ahmednagar vide his letter dated 30.07.2014, for necessary action.

3. Prayer Clause: Applicant has sought relief in terms of prayer clause in para 17 of the O.A. which is reproduced verbatim as follows :-

“17) PRAYERS :

In view of the above circumstances, the applicant most respectfully prays under section 19 of the Administrative Tribunal Act 1985;

- (A) *To direct continuity the of Respondents to grant continuity of service, back wages, promotion, seniority and other service benefits of the applicant in consonance with Government Resolution dated 22.09.1978 issued by the General Administration Department, Mantralaya Mumbai and also as a consequence of the judgment of the Hon'ble Labour Court as confirmed till the Hon'ble Supreme Court of India;*
- (B) *To direct the Respondents to decide the proposal dated 30.07.2014 seeking continuity of service, back wages, promotion, seniority and other service benefits of the applicant in consonance with Government Resolution dated 22.09.1978 issued by the General Administration Department, Mantralaya Mumbai and consequence of the judgment of the Hon'ble Labour Court as confirmed till the Hon'ble Supreme Court of India, pending hearing and final disposal of this application;*
- (C) *To grant any other relief to which the applicant is found entitled to in the peculiar facts and circumstances of the present case.”*

4. Pleadings and Final Hearing:

- (a) Affidavit in reply was filed on behalf of respondent Nos. 1 to 4 on 16.11.2015, which was taken on record and a copy thereof served on the other side with liberty to file affidavit in rejoinder to the affidavit in reply. The applicant did not file any rejoinder therefore, the matter remained pending due to non-availability of Division Bench and the

same was fixed for final hearing on 26.09.2018 vide Oral Order dated 29.08.2018. The matter was finally heard on 14.01.2019 and 15.01.2019. Learned Advocate for the applicant submitted written notes of arguments on 15.01.2019 which was taken on record.

(b) As the applicant is seeking relief under provisions of clause (2) of the G.R. dated 22.09.1978 (*supra*), it is necessary that he meets the eligibility criteria stipulated in para 1(1) of the said G.R., extract of which is being quoted for ready reference as follows :-

“1. In respect of those project affected persons whose houses are submerged under the project, or who loss 75% of their land for the project, the upper age for entry in to Government services should be relaxed by 3 years.

2) The period spent by a project affected persons who fulfils the conditions laid down in para 1(1) in temporary services under Government should be computed for calculating the upper age limit and the same should be further relaxed by the quantum of this period. When the project affected persons get re-employment in another job, the time spent by him on temporary job with Government earlier should be continued for his subsequent services and the entire services should be treated as on without break”

(c) In the instant case of the applicant's certificate of Project Affected Person does not show whether 75% of land belonging to father of applicant had been acquired for the

aforesaid project, therefore, the applicant was given opportunity to file additional documents such as certified copy of “Khat-Utara” (extract of Land-Holding of Khatedar) of applicant, to elaborate this issue. Instead, learned Advocate for the applicant has submitted a short affidavit along with copy of Government Resolution issued by Planning Department, bearing No. हसका-१३९४/प्र-१८५/रोहयो-३, मंत्रालय, मुंबई-३२, dated 01.12.1995.

(d) Applicant has alleged inaction on part of respondents on the representation made by him to the collector Ahmednagar on 22.08.2014. However, this contention of the applicant has been countered by respondent No. 2 by stating that the representation made by applicant No. 2 had been decided and decision was communicated to the applicant vide letter dated 16.10.2015, copy of which is annexed as Exhibit R-1 with affidavit in reply. It is therefore, the respondents have contended that delay in filing the original application has not been explained giving cogent reasons and thus, the same is time-barred. Even condonation of delay has not been applied for by the applicant.

(e) The respondents have argued that the appointment of the applicant as Talathi was made as per scheme of government to absorb mustering assistants in government services on class III and class IV posts launched by Government Resolution issued by Planning Department, bearing No. हसका-१३९४/प्र-१८५/रोहयो-३, मंत्रालय, मुंबई-३२, dated 01.12.1995. Therefore, there is no merit in claims of the applicant for taking in to account his services as mustering assistant as prayed for.

(f) After change in constitution of the Division Bench, the matter was re-heard by reconstituted Division Bench on 28.02.2023 and thereafter, reserved for orders.

5. Analysis of Facts- From the pleadings made by the two contesting sides, following inferences follow :-

(a) First of all, as elaborated in preceding para, the applicant has not been able to substantiate his claim that he fulfills pre-conditions stipulated in para 1(1) and 1(2) of the G.R. issued by GAD and bearing No. SRV/1078/ RAP/ XII, Mantralaya, Mumbai, dated 22.09.1978.

(b) It is also noticed that the applicant was engaged on work charge establishment as mustering assistant under scheme of EGS. Government in Planning Department had issued G.R. bearing No. क्र. -हसक I-११९२/प्र. २६३/रोहयो-३, dated 26.05.1993 about the manner in which mustering assistants may be retrenched in case no work is available for them. Operation of the said G.R. was stayed by interim order passed by this Tribunal. However, this Tribunal passed final order on 15.09.1993, which was upheld by Hon'ble Supreme Court. According to this, the mustering assistants were to be engaged as and when work was available following the rule that while engaging and disengaging them the seniority will be duly taken in to account; in other words, senior to be engaged first and disengaged last as stipulated under Labour Laws.

(c) Despite the above legal position that emerged, the Government in Planning Department considered the aspect of welfare of mustering assistants and launched a scheme by G.R. No. हसका-१३९४/प्र-१८७/रोहयो-३, मंत्रालय, मुंबई-३२, dated 01.12.1995. The applicant was absorbed on the post of Talathi by Sub Divisional Officer, Karjat as per orders of

respondent No. 2 under this scheme. Accordingly, the mustering assistants become entitled to get benefits under Maharashtra Civil Service Rules from the date they stand absorbed in a suitable Class III or Class IV posts.

6. Conclusions : From above analysis of facts on record and oral submissions made, in our considered opinion, the applicant has failed in substantiating his claims citing provisions of statute /Rules/Government Resolutions or any such similar instruments of delegated legislation or, by citing any Judgment or Court Orders. Therefore, it is being concluded that the present Original Application is misconceived and devoid of merit. Hence, the following order :-

ORDER

(A) Original Application No. 245 of 2015 is dismissed being misconceived and devoid of merit.

(B) No order as to costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 245/2015 Promotion