

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**CONTEMPT PETITION NO. 35 OF 2019
IN
ORIGINAL APPLICATION NO. 59 OF 2017
AND
ORIGINAL APPLICATION NO. 273 OF 2017**

DISTRICT : NANDED

- 1) Vishwanath Babarao Baswante,
Age 53 Years, Occu. Service,
R/o At Past Phulwad, Ta Kandhar,
Dist. Nanded,
- 2) Jaywant Laxmanrao Shendge,
Age 54 Years, Occu. Service,
R/o At Pimpalkuntha,
Post Yeoti, Tq. Mukhed, Dist. Nanded.
- 3) Maruti s/o Rajaram Gumalwad (Malgulwad),
Age 53 years, Occu. Service,
R/o Hibbat, Tq. Mukhed, Dist. Nanded.
- 4) Shankar s/o Rekha Pawar,
Age 59 years, Occu. Service,
R/o At. Post. Barad, Tq. Mukhed,
District Nanded.
- 5) Vaijnath s/o Daulatrao Deshukh,
Age 58 Years, Occu. Service,
R/o Kabnoor, Tq. Mukhed,
District Nanded.
- 6) Digambar s/o Hausaji Bherje,
Age 54 Years, Occu. Service,
R/o Vyankatesh Nagar, Umri,
Tq. Umri, District Nanded
- 7) Satish s/o Gangadharrao Potjale,
Age 52 years, Occu. Service,
R/o At Post Osmannagar, Tq. Kandhar,
District Nanded.

.. **COTEMPT PETITIONERS**

V E R S U S

1. Shri Manojkumar Sounik,
The Secretary,
Finance Department,
Mantralaya, Mumbai.
- 2) Shri Nanndkumar Warma,
The Secretary,
Planning Department,
Mantralaya, Mumbai.
- 3) Shri Nanndkumar Warma,
The Secretary,
Employment Guarantee Scheme Deptt.,
Mantralaya, Mumbai.
- 4) Shri Sunil Kendrekar,
The Divisional Commissioner,
Aurangabad Division, Aurangabad.
- 5) Shri Arun Dongre,
The Collector, Nanded, District Nanded. ...**RESPONDENTS**

APPEARANCE : Shri V.P. Golewar, Advocate for the
Petitioners.

: Shri V.R. Bhumkar, P.O. for the Respondents.

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

Reserved on : **13.01.2023**

Pronounced on : **15.02.2023**

O R D E R

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

1. This Contempt Petition No. 35 of 2019 in Original
Application 59 of 2017 with Original Application No. 273 of 2017

has been filed by total 7 contempt petitioners on 11.08.2019 on the grounds of alleged inaction on the part of respondents to implement the judgments and orders passed by this Tribunal in O.A. No. 59 of 2017 and 273 of 2017.

2. Contempt Petitioner Nos. 1 to 6 were Original Applicants in O.A. No. 59 of 2017 and had been granted leave of this Tribunal to sue jointly vide order dated 27.01.2017 in M.A. No. 1/2017 filed by the applicants on 23.12.2017. Contempt petitioner No. 7 had filed the Original Application No. 273/2017 on 03.05.2017. All the contempt petitioners had been working as Muster Assistants with respondent No. 5 i.e. the Collector, Nanded.

3. This Tribunal passed a common order in O.A. Nos. 59, 127 and 273 of 2017, [Coram: Hon'ble Shri B. P. Patil, Member (J)], operating part of which is in para 10 of the common order, the same is reproduced for ready reference as follows :-

“10. In view of the aforesaid discussions, the present Original Applications are allowed and the respondents are directed to extend the benefits of the scheme floated by G.R. dated 01.12.1995 and subsequently ratified by G.R. dated 21.04.1999 and 25.06.2004 to the applicants, if they are otherwise eligible and to take necessary steps in that regard. The respondents are further directed to extend the monetary benefits to the applicants also if they are eligible.

There shall be no order as to costs.

Member (J)”

4. Prayer of the Contempt Petitioners:- Contempt Petitioners in the present Contempt Petition have prayed in terms of para 8 entitled as 'PRAYER'm which is reproduced ad verbatim as follows :-

8. PRAYER:

- A.** *The Contempt Petition may please be allowed with cost.*
- B.** *The respondents may please be punished and fined in accordance with law for their willful, deliberate and intentional act of contempt of this Tribunal as committed by them by not implementing the judgment and order of this Hon'ble Tribunal dated 24.11.2017 passed in O.A. No. 59 of 2017 and O.A. No. 273 of 2017.*
- C.** *Any other appropriate order may kindly be passed in view of the above facts and circumstances of the matter."*

5. (a) The contempt petitioners have elaborated in para 6.10 of the present Contempt Petition what they mean by 'alleged willful disobedience / non-compliance of the order passed by this Tribunal' which has been quoted ad verbatim as follows:

"6.10. The applicants most respectfully submit that the respondent authorities knowing fully well that this Hon'ble Tribunal has been pleased to issue directions to them to extend the benefits of Government Resolutions dated 01.12.1995, 21.04.1999 and 25.06.2004, however they

*have not given any order of absorption and monetary benefits as given to the applicants in Original Application No. 462 of 2004 and Original Application No. 11 of 2007 decided on 24.08.2015 and 28.08.2015 respectively by this Tribunal at Nagpur, therefore, the applicants have issued Contempt Notice dated 15.05.2019 to the respondents in their official capacity and Contempt Notice dated 14.06.2019 in their personal capacity through advocate and both the notices have been received by the respondents through postal department, however, the respondents have not implemented the order nor any response has been given or no any positive action has been taken by the respondent to implement the judgment and order passed by this Hon'ble Tribunal dated 24.11.2017 in favor of applicants as such the respondents have deliberately, intentionally and willfully not implementing the judgment and order passed by this Hon'ble Tribunal which act of the respondents is willfull disobedience of order of this Hon'ble Tribunal which amount to contempt of this Hon'ble Tribunal. Therefore, the respondents are liable to be dealt with stern action and severe punishment. The copies of contempt notices issued by the advocate for the applicants to the respondents dated 15.05.19 and 14.06.2019 are annexed herewith and marked as **Annexure "H" Collectively**.*

(b) In other words, the contempt petitioner means to claim permanency benefits in the cadre of their respective absorptions w.e.f. their first engagement as Muster Clerks on EGS works.

(c) Though the contempt petitioners have not incorporated the issue of grant of pension to respondent No. 4 in the O.A. No. 59/ 2017, during the final arguments, they have made allegation that the Petitioner No. 4 has not been granted pensionary benefits by the respondents.

6. Provisions of the three Government Resolutions Compliance of which is mandated by this Tribunal in O.A. No. 59 and 273 of 2017, for Ready Reference:-

English translation of the Operating Parts of the three G.Rs. compliance of whose provisions has been mandated by this Tribunal by order dated 24.11.2017 passed in O.A. Nos. 59 and 273 both of 2017 have been quoted below:-

Planning Dept. G.R. No. हसका-१३९४/प्र.१८५/रोहयो-३, Dated 01.12.1995	
Sr. No.	Government Decisions
1	Muster Assistants to be a dying cadre those working as Muster Assistant on 31.05.1993 to be regularize and those not meeting this criteria to be terminated as per provisions of GR dated 20.05.1993
2	Muster Assistant working as on cutoff date of 31.05.1993 to be absorbed on posts having pay scale equivalent to 750-12-870-E.B.-14-940,
3	Muster Assistant must have eligibility for the post of absorption
4	Absorption has to be as per seniority as Muster Assistant

5	Condition of upper age limit and recommendation from employment exchange is relaxed
6	Muster Assistant can be absorbed in any district, those not joining allotted district to be removed as per provisions of G.R. 20.05.1993

Planning Dept. G.R. No. हसका/१३९७/प्र.१३६/रोहयो-३, Dated 21.04.1999	
Sr. No.	Government Decisions
1	Muster Assistants on work as on 31.05.1993, who have been allowed by GR dated 31.05.1993 to be absorbed in Grade-D posts having pay scale equivalent to 750-12-870-E.B.-14-940 as per eligibility may be granted additional benefits as follows:-
1 (a)	Muster Assistants who are eligible for absorption in Grade D posts as per GR dated 31.05.1993 and having requisite educational qualifications for absorption in Grade C (Non-Gazetted) posts should be absorbed in Grade C posts with lowest pay scale in that category.
1 (b)	This benefit shall also be available to those Muster Assistants who were on work on 31.05.1993 and have already been absorbed in Grade D posts as per G.R. dated 31.05.1993.
2	Muster Assistants working during period from 26.05.1993 to 30.05.1993 too, to be absorbed as per following T & C
2 (a)	Seniority list for such Muster Assistants to be prepared separately and while absorbing them in posts having pay scale equivalent to Rs. 740-940 they shall be placed in lower seniority to those benefitted by G.R. dated 31.05.1993
2 (b)	Muster Assistants who are eligible for absorption in Grade D posts as per this G.R. dated 01.12.1995 and having requisite educational qualifications for absorption in

	Grade C (Non-Gazetted) posts should be absorbed in Grade C posts with lowest pay scale in that category.
3	Eligibility for House Rent Allowance and other allowance
3(a)	For regularized Muster Assistants House Rent Allowance (HRA) and other allowances for the period from date of regularization till 01.04.1999 will be payable at then applicable rates as on 01.01.1996.
3 (b)	HRA and other allowances for period from date of 01.04.1999 onwards, shall be payable at rates as applicable to their place of working as applicable to the posts with pay scale equivalent to 750-940.
3 (c)	Annual increments shall be payable to Mustering Assistants upon their absorption in Grade C or Grade D posts.
4	Pay Fixation after absorption in Govt./ ZP
4 (a)	While passing orders for absorption of Muster Assistant in Govt./ ZP in pay scale equivalent to RS. 750-940, the pay drawn by them before absorption shall be protected.
5	Eligibility for benefits of 5th Pay Commission
5 (a)	As the Muster Assistants are not Government / local body employees, Maharashtra Civil Services Rules are not applicable to them.
5 (b)	Muster Assistants absorbed in Government / Z.P. services shall not be entitled for benefits of 5 th May Commission Recommendations.

Planning Dept. G.R. No. हसका-१३०/प्र.१०७/रोहयो-३, Dated 25.06.2004	
Sr. No.	Government Decisions
1	Applicable for such 751 Muster Assistants who were on work during period from 26.05.1993 to 31.05.1993 and whose names appeared in seniority lists of Muster Assistants.
1(a)	For absorbing them, 751 supernumerary posts were to be created. Out of 751 supernumerary posts 22 posts in

	Grade D with pay-scale of 2550-55-2660-60-3200 were created and 729 posts in Grade C with pay-scale of 3050-75-3950-80-4590 were created and their Division wise and district wise distribution was done in a manner that Mustering Assistants get absorbed in the EGS agencies in which the Muster Assistance were working. .
1(b)	These entire Muster Assistants are being absorbed in state govt. services w.e.f. 25.06.2004. Therefore, Maharashtra Civil Services Rules will be applicable to them and they will be entitled for all benefits of government service.
1(c)	The posts of these Muster Assistants will be abolished on their superannuation.

7. Analysis of Scope and Implications of Order passed by this Tribunal on 24.11.2017 in O.A. No. 59 of 2017 and 273 of 2017:-

(a) The Tribunal has observed in para 9 of the order as follows :-

“9. In view of the aforesaid position, in my opinion, it is just and proper to give the directions to the respondents to consider the cases of the applicants herein for extending the benefit under the scheme floated by the Government Resolution dated 01.12.1995 and subsequently ratified in terms of G.R.s dated 21.04.1999 & 25.06.2004 in the line of the directions given by this Tribunal in O.A. No. 462/2004 (of Nagpur bench) decided on 14th August, 2015 and, therefore, the present Original Applications deserve to be allowed.” (emphasis supplied)

(b) Implication of the above can be appreciated by referring to the Order dated 14.08.2015 passed by this

Tribunal, Bench at Nagpur on in O.A. No. 462/2004 which is as follows:-

- i. *It is declared that the applicant Nos. 1 and 2, 5 and 6 to 18 and 20 & 21 shall be held to be in service as on 31.05.1993 and consequently they are entitled for the benefit of the scheme floated vide G.R. dated 21.04.1999.*
- ii. *The respondent shall take necessary steps in that regards. If any monetary benefit became payable to the applicants same shall be paid to them immediately.*
- iii. *There shall be no order as to Costs.*

(c) On the other hand, the operating part of the Order passed by this Tribunal which is in para 10 of the said order reads differently and as follows-

“In view of the aforesaid discussions, the present Original Applications are allowed and the respondents are directed to extend the benefits of the scheme floated by G.R. dated 01.12.1995 and subsequently ratified by G.R. dated 21.04.1999 and 25.06.2004 to the applicants, if they are otherwise eligible and to take necessary steps in that regard. The respondents are further directed to extend the monetary benefits to the applicants also if they are eligible.”

8. Pleadings and Arguments :-

(A) There is apparent similarity between facts in the O.A. No. 462/2004 and O.A. No. 59 and 273 of 2017 in as much as the applicants in all three of them were not working as Muster Clerk during 26.05.1993 and 31.05.1993 and have

been treated notionally on the work as Muster Assistant upon their termination was set aside by the Labour Courts. *But this similarity is there in citations made by the respondents also in which the Tribunal and Hon'ble High Courts have taken different views which is discussed in following paras of this order.*

(B) The respondents had filed affidavit in reply which was taken on record and a copy thereof supplied to the other side. It was followed by filing of rejoinder affidavit by the applicant and sur-rejoinder affidavit on behalf of applicants. Thereafter the two contesting sides had argued w.r.t. to provisions of Government Resolutions, Orders passed by Labour courts and this Tribunal and citations of judgments delivered by Hon'ble High Court and Hon'ble Apex Court gist of which is as follows-

(C) Citations by Contempt Petitioners :- Contempt petitioners have relied upon following orders / judgments to establish that the decision of respondents of not giving benefits of permanency in the cadres in which the applicants had been absorbed from the date of first engagement as Muster-clerks:- Order passed by MAT,

Bench at Nagpur (Single Bench) [Coram: Hon'ble Justice M. G. Giratkar, Member (J)] in O.A. No. 545 of 2020 and batch, dated 17.12.2021, in which reference has been drawn to Order passed by MAT Bench at Aurangabad in O.A. No. 199 of 2014, by which the respondent authorities were directed that the services of the applicants on the post of Muster Assistants shall be treated as on continuous service for the purpose of pensionary benefits. Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad had, in W.P. No. 8468 of 2015 dismissed appeal filed against MAT order and SLP was not entertained by Hon'ble Apex Court.

(D) Citation by Respondents :-

(i) On the other hand the respondents have relied on fact that the scheme of absorption of Muster Assistants has been approved by Hon'ble Apex Court in ***Special Leave to Appeal (Civil) No. 15654/1991, State of Maharashtra and Anr. Vs. Shri Subhas Narayan Ahirrao.***

(ii) Hon'ble High Court had ordered by judgment dated 20.12.2001 to absorb all the Muster Assistants w.e.f. the first date of engagement as such i.e. 31.03.1997. However, Hon'ble Apex Court did not uphold the Hon'ble High Court's order and ordered in

SLP (C) No. 5171/2003 that the Muster Assistants be absorbed in phase manner as and when vacancy arises. Respondents rely on this order passed by the Hon'ble Apex Court.

(iii) The respondents also rely on judgment of Hon'ble High Court of Judicature, Bench at Aurangabad in W.P. No. 619 of 2006 and a batch dated 16.07.2007 by which it had been ordered in terms of para 11 and 12 of the said judgment as follows :-

“11. The Apex Court in its order passed on 2nd December 1996 had approved the scheme reflected in the Government Resolution dated 1st December 1995. Therefore, prima facie we find that in view of the scheme which was approved by the Apex Court the petitioners would not be entitled to seek continuation of the period of their service during which they worked as Muster Assistants for computation of pension.” (Emphasis supplied)

“12. The learned AGP points out that the Muster Assistants date would get pension from the date of regularization of service. The State Government has taken a clear stand that past period of such Muster Assistants prior to the date of regularization would not be counted for the purpose of calculation of pension. We find that the stand adopted by the State was in tune with the scheme framed by the State Government. Therefore, rule 33 of the Pension Rules would not be applicable to the facts of this case and the scheme framed by the State Government.” (Emphasis supplied)

(iv) The respondents have also relied on common order in O.A. No. 710 of 2009 and batch, dated 14.02.2017 passed by MAT Bench at Nagpur and

another Common Order passed by MAT Bench at Aurangabad in O.A. No. 28/2012 and batch, dated 21.10.2016 by which regular service in the posts of absorption of Muster Assistants have been taken from actual date of such absorption and not from the date of engagement as Muster Assistants.

(v) Though the contempt petitioners have not incorporated the issue of grant of pension to respondent no. 4 in the O.A. No. 59/ 2017, during the final arguments, they have made allegation that the Petitioner No. 4 has not been granted pensionary benefits by the respondents. This allegation is not explicitly stated in the Original Application No. 59/20017. However, this issue has been addressed to by Hon'ble High Court of Judicature, Bench at Aurangabad in W.P. No. 619 of 2006 and a batch, by judgment dated 16.07.2007, as mentioned in preceding para No. 8 (D) (iii) of this order.

9. Conclusion: In O.A. Nos. 59 of 2017 and 273 of 2017 respondents had been directed by this Tribunal to extend the benefits of the scheme floated by G.R. dated 01.12.1995 and subsequently ratified by G.R. dated 21.04.1999 and 25.06.2004 to the applicants, if they are otherwise eligible and to take necessary steps in that regard. The respondents have further been directed to extend the monetary benefits to the applicants also if they are eligible. It is admittedly that the respondents have

been treated to be notionally on work of Muster Assistants during 26.05.1993 to 30.05.1993 and therefore, benefits of G.R. dated 21.04.1997 have been extended to them. In that sense the respondents have complied with the orders of this Tribunal so far as the aforementioned Government Resolutions are concerned operating parts of which have been depicted in tabular form in para 6 of this order. It is obvious that the Contempt petitioners have filed this contempt petition for reason of not getting effect of continuity of their services on the post they have been absorbed from the dates of their first engagement as Muster Assistant, about which case laws relied upon by the petitioners are different from the ones relied upon by respondents. Thus, the contempt petitioners have not been able to establish as to how the action taken by the respondents amount to willful disobedience of the order passed by this Tribunal. From detailed analysis of facts and oral submissions made, we infer that the respondents have followed provisions of Government Resolution dated 01.12.1995 which has been approved by Hon'ble Apex Court in Special Leave to Appeal (C) No. 15654 of 1991, dated 02.12.1996. Decisions taken by the respondents are completely in tune with the provisions of G.R. dated 01.12.1995 and 21.04.1999 and therefore, the Contempt Petition No. 35 of 2019 in O.A. No. 59 of

2017 with O.A. No. 273 of 2017 is misconceived and devoid of merit. Hence, the following order :-

ORDER

- (A) Contempt Petition No. 35 of 2019 in O.A. No. 59 of 2017 with 273 of 2017 is dismissed for being misconceived and devoid of merit.
- (B) No order as to Costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. C.P. 35/2019 in O.A. 59/2017 and O.A. 273/2017 C.P.