

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 374 OF 2019**

**DISTRICT:- AURANGABAD**

**Dr. Mohammad Sharif Bismilla Khan Pathan,**  
Age-55 years, Occu. Retired Medical Officer  
(Group-A), R/o. Wasim Memorial Hospital,  
Ambedkar Chowk, Sillod, Tq. Sillod,  
Dist. Aurangabad.

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**APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra,**  
Through its Secretary,  
Public Health Department,  
Mantralaya, Mumbai-32.
- 2) The Director of Health Services,**  
Arogya Bhavan, 2<sup>nd</sup> Floor,  
Saint George's Hospital Campus,  
Mumbai.
- 3) The Deputy Director of Health Services,**  
Aurangabad Circle, Aurangabad.
- 4) The Medical Superintendent,**  
Sub District Hospital, Sillod,  
District Aurangabad.
- 5) The District Civil Surgeon,**  
Civil Hospital, Ambad Road,  
Near Collector Office, Jalna,  
Tq. & Dist. Jalna.

.. **RESPONDENTS**

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APPEARANCE : Shri V.B. Wagh, learned counsel for  
the applicant.  
: Smt. M.S. Patni, learned Presenting  
Officer for the respondent authorities.

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**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN  
AND  
: SHRI VINAY KARGAONKAR, MEMBER (A)**

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**DATE : 20.02.2024**  
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**ORDER**

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri V.B. Wagh, learned counsel for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondent authorities.

2. The present applicant had applied for voluntary retirement vide his application dated 05.06.2015. Voluntary retirement was sought by the applicant to take care of his wife who was having serious health problems. It is the contention of the applicant that though respondents were under an obligation to take decision on the request of voluntary retirement so made by the applicant within the period of 90 days, nothing was communicated to the applicant and in the circumstances from 5.9.2015 applicant stopped attending the duties of the post on which he was appointed. Since the request for voluntary retirement remained unattended for quite a long time, the applicant filed the present Original Application in that regard.

3. It is the case of the applicant that from the averments in the affidavit in reply filed by the respondents, he came to know that his request for voluntary retirement has

been rejected. The applicant, therefore, got amended the O.A. to incorporate the said fact of rejecting his application and also made prayer for setting aside the said order.

4. Learned counsel for the applicant submitted that despite having specific provision under Rule 30 of Maharashtra Civil Services (Pension) Rules, 1982 to count the period of services rendered by the Government employee as a temporary or ad hoc employee, the said period is also to be considered while counting qualifying service. Leaned counsel pointed out that the applicant in fact entered into the Government service on 23.6.1993 as a bonded candidate and thereafter was continued till he was regularly selected through the Maharashtra Public Service Commission (for short 'the Commission'). The orders are placed on record by the applicant, which reveal the period of service rendered by the applicant. If the period of service rendered by the applicant prior to his appointment through the Commission is considered, the applicant appears to have worked for more than 20 years and, as such, according to us, there was no reason for the respondents to refuse the request made by the applicant.

5. The respondents have however, not provided any explanation as to why the request received by the applicant was

not decided within the stipulated period, which mandates that if no order is passed on such application within the said period, said application shall be deemed to have been accepted. That is also a weighty ground in favour of the applicant.

6. We deem it appropriate to provide hereinbelow the particulars of the services rendered by the applicant as an *ad-hoc* or temporary appointee and the orders issued in that regard:-

Sr. No.	Date of order	Period
01.	26.06.1993	04 months
02.	28.04.1994	01 year 09.07.1993 to 08.07.1994
03.	08.06.1995	01 year 23.07.1994 to 22.07.1995
04.	27.09.1995	Selected by MPSC

7. Considering the particulars as above there remains no doubt that prior to his regular appointment through the Commission the applicant was in continuous employment of the respondents may be as a temporary employee or *ad-hoc* employee or as a bonded candidate for the period of about 28 months.

8. Rule 30 of M.C.S. (Pension) Rules, 1982, which pertains to commencement of qualifying service, 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 10 years, or voluntary after the completion of 20 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 scale as admissible to permanent Government servant.”

9. Reading of the aforesaid rule, leaves no doubt that the services rendered by a Government employee as a temporary employee before getting permanent appointment on the same post are to be taken into account for counting the qualifying service. If the aforesaid period is counted, the applicant had certainly put in more than 20 years' service on the date on which he applied for the voluntary retirement.

10. In the affidavit in reply submitted on behalf of the respondents the only ground which has been taken is that of not completing the period of 20 years. Apparently, it appears that the respondents have overlooked the provision under Rule

30 of the M.C.S. (Pension) Rules, 1982, which defines the qualifying service. The judgments which are referred by the respondents in their affidavit in reply and more particularly in the case of **Dr. Smt. Chanchal Goyal Vs. State of Rajasthan, Civil Appeal No. 7744/2019** decided on 18.02.2023 would not apply to the facts of the present case. In the present case, from the documents on record it is quite evident that the entry of the applicant in the Government service as an *ad-hoc* appointee cannot be said to be a backdoor entry since he was appointed against the vacant post by following the due procedure and his appointment was time to time continued till his selection by M.P.S.C.

11. After having considered the facts and circumstances as above, we have reached to the conclusion that the decision of the respondents to reject the request of the applicant for voluntary retirement was erroneous. The said decision, therefore, deserves to be quashed and set aside. In the result, the following order is passed : -

### **ORDER**

- (i) Letter dated 10.10.2019 rejecting the request of the applicant for voluntary retirement issued by respondent No.1 is quashed and set aside.

(ii) The respondents are directed to favourably consider the request of the applicant for his voluntary retirement by computing the period of service rendered by him as a temporary employee and pass the necessary orders and release the consequential benefits for which he is entitled as expeditiously as possible and preferably within the period of 03 months from the date of this order.

(iii) The Original Application stands allowed in the aforesaid term. No order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

O.A.NO.374-2019(DB)-2024-HDD-VRS