

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 550 OF 2019

DISTRICT : PARBHANI

Kashinath S/o Govindrao Ghumre,)
Age. 60 years, Occ. Retired,)
R/o House no. 159, Rathi Galli,)
Behind SBI Bank, Selu, Tq. Selu,)
Dist. Parbhani.) -- **APPLICANT**

V E R S U S

(1) **The State of Maharashtra,**)
Through the Principal Secretary,)
Accounts & Treasuries,)
Finance Department, Mantralaya,)
Madam Kama Road, Mumbai – 32)

(2) **The Director,**)
Accounts & Treasuries,)
Mumbai Port Trust,)
Thakarsi House, 3rd floor,)
Shurji Vallabhdas Marg,)
Balard Estate, Fort, Mumbai.)

(3) **The Joint Director,**)
Accounts & Treasury Office,)
Lekha Khosh Bhavan, Fajilpura,)
Aurangabad.)

(4) **The District Treasury Officer,**)
Parbhani.) -- **RESPONDENTS**

APPEARANCE :- Shri Kakasaheb B. Jadhav, learned
Advocate for the applicant.
: Shri D.R. Patil, learned Presenting Officer for
the respondents.

CORAM : **Hon'ble Shri Bijay Kumar, Member (A)**

DATE : **23.11.2021.**

ORDER

1. This Original Application No. 550 of 2019 has been filed by the original applicant Shri Kashinath Govnindrao Ghumre, R/o Selu, District-Parbhani on 24.06.2019 invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, thereby challenging the impugned decision communicated by the respondent No. 4 to the applicant bearing outward No. कावी/कोष/आस्था/घुमरे/८२३/२०१९, dated 04.06.2019.

2. **The brief facts of the case are as follows :-**

(a) The applicant was initially appointed for 29 days by order dated 16.06.1989 in the pay scale of Rs. 950-1150-AB-25-1500 on temporary basis on the post of Junior Clerk in District Treasury Office, Parbhani, which is a class-III post. He was appointed from a category of persons who worked during strike by Government employees, which is known as "संपकालीन", by following prescribed process.

(b) The applicant was continued in temporary service till the year 1991, when the applicant, apprehending termination of services, filed a Writ Petition before Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad bearing W.P. No. 1294/1991, which was transferred to the Maharashtra

Administrative Tribunal, Bench at Aurangabad as T.A. No. 20/1992. This Tribunal, in turn, granted interim relief and directed the respondents to take decision on regularization of applicant's services vide its order dated 20.06.2002. However, later on, this Tribunal disposed of the said T.A. No. 20/1992 (W.P. No. 1294/1991) on 03.12.2002 observing that no judicial direction can be passed and the respondents to take appropriate view on the subject of regularization of services of the applicant.

(c) Subsequently, the respondent No. 1 in T.A. No. 20/1992 (W.P. No. 1294/1991) i.e. the Finance Department issued Government Resolution No. संकीर्ण ११००/प्र.क. १९/२०००/कोष (प्र.३), मंत्रालय, मुंबई, dated 11.11.2003 regularizing services of three employees including the applicant (Ref. page No. 25, Annexure A-2 of paper book). Plain reading of the said G.R., the complete background facts are revealed. According to which, the three temporary employees, including the applicant were appointed by District Treasury Officer, Parbhani, subject to availability of candidates recommended by the Subordinate Service Selection Board. At a point, when the three duly selected candidates were about to be made available by Subordinate Service Selection Board, the three temporary employees apprehending

termination of their service, filed W.P. No. 1280/1999 and 1283/1999, which were transferred to this Tribunal. After hearing corresponding Transfer Applications, the Tribunal disposed of the same as pointed out in para (b) above. Thereafter, the three employees met Hon'ble Chief Minister of the State. It is relevant to mention that the State Government, after taking into account prevailing position all over State in similar cases, had already regularized services of 3761 temporary employees. A decision was taken to regularize the services of the three temporary employees from the Parbhani District Treasury on the similar line w.e.f. 08.03.1999.

(d) The applicant and other two employees, whose service as Junior Clerk were regularized vide G.R. dated 11.11.2003, were granted benefits of first time bound promotion w.e.f. 07.03.2011 by granting them pay scale of Rs. 5200-20200, G.P. 2400 i.e. of pay scale of Accounts Clerk. The applicant was granted exemption from passing Departmental Examination w.e.f. 12.04.2004 for that purpose.

(e) The applicant came to know about the Government Resolution issued by the Finance Department bearing No. मप्रन्या-२०१२/प्र.क. ६९/२०१२/सेवा-३, मंत्रालय, मुंबई ४०० ०३२, dated 07.10.2016, by which temporary service rendered by employees of

Maharashtra Public Service Commission and Government employees of Clerical and Steno and other similar cadres of Offices in Greater Mumbai were allowed to be taken into account while granting first time bound promotion. The said G.R. has been annexed as Annexure A-4, page No. 30 of paper book for ready reference. Accordingly, the applicant made representation to the respondent No. 2 on 26.10.2016 requesting for taking into account period of temporary service from 19.06.1989 to 07.03.1999 for counting 12 years continuous service for granting time bound promotion. However, no final decision on the representation made by the applicant was taken till retirement of the applicant on 30.04.2017 by superannuation.

(f) The applicant made fresh representation requesting for considering period of his temporary service for time bound promotion on 10.11.2017. Thereafter, the applicant filed O.A. No. 267/2019 before this Tribunal on 15.04.2019, which was disposed of by order passed on 15.04.2019 (Annexure A-15, page No. 137-138 of paper book), by giving direction to decide the representations dated 26.10.2016, 22.08.2017 and 10.11.2017 expeditiously and in any case within 3 months from the date of said order, as per rules on merit.

(g) Subsequently, the respondent No. 4 in O.A. No. 267/2019 rejected the representations of the applicant vide letter No. कावी/कोष/आस्था/घुमरे/८२३/२०१९, dated 04.06.2019. Thereafter, the applicant has filed the present Original Application No. 550/2019 on 24.06.2019.

3. **Relief prayed for :-**

The applicant has sought relief in terms of para no. X(A), X(B), X(C), X(D) and X(E) of the Original Application, which is reproduced below :-

“X Relief(s) Sought –

(A) *To allow the Original Application.*

(B) *To quash and set aside the impugned order / letter dated 4.6.2019 issued by the respondent no. 4, thereby rejecting the request of the applicant for counting temporary / ad-hoc services rendered by the applicant.*

(C) *To direct the respondents to consider the case of the applicant for grant of Time Bound Promotion / Assured Career Progression Scheme on completion of 12/24 years services taking into consideration his temporary service from the initial date of appointment i.e. w.e.f. 19.6.1989 to till the date of regularization i.e. 8.3.1999 in terms of G.R. dated 7.10.2016 issued by the respondent no. 1 with all consequential benefits.*

(D) *To direct the respondents to count the temporary / ad-hoc service rendered by the applicant as qualifying service as per Rule 30 of M.C.S. (Pension) Rules and revise the pension of the applicant appropriately and grant all consequential benefits forthwith.*

(E) *Any other equitable and suitable relief may kindly be granted in favour of applicant in the interest of justice.”*

4. Grounds for Relief sought –

The applicant has listed following grounds for relief sought which is being reproduced verbatim hereunder :-

(I) *That, the impugned order passed by the respondent no. 4 dtd. 4.6.2019 is bad in law and liable to be quashed and set aside.*

(II) *That, the respondent no. 4 failed to consider the directions given by this Hon’ble Tribunal and without considering the rules and directions, the applications are rejected.*

(III) *That, the respondent no. 4 failed to consider the directions given in group of original applications no. 732/2013 decided by this Hon’ble Tribunal and directions given by the Hon’ble High Court in W.P. No. 9051/2013, dtd. 20.4.22016.*

(IV) *That, the respondent no. 4 failed to consider the directions given by this Hon’ble Tribunal in various original applications and also failed to consider the Rule 30 of M.C.S. (Pension) Rules. As such, the impugned letter / order is liable to be quashed and set aside.*

(V) *That, the impugned letter / order is without application of mind and without reasons and therefore, same is liable to be quashed and set aside.*

(VI) *It ought to be considered that, there is clear cut provision of Rule 30 of M.C.S.(Pension) Rules for counting of temporary ad-hoc services rendered by the employees before regularization.*

(VII) *It ought to be considered that, the State Govt. cannot act discriminatory towards its employees who are working out of the territorial jurisdiction of the Mumbai and therefore, the G.R. dtd. 7.10.2016 is applicable to the case of the applicant.*

(VIII) *It ought to be considered that, there are directions of this Hon'ble Tribunal count the temporary service period for time bound promotions as per G.R. dtd. 7.10.2016 and therefore said directions are binding on the respondents. As such, the impugned order is liable to be quashed and set aside.*

(IX) *It ought to be considered that, the applicant had rendered continuous service till the date of regularization and therefore said period is liable to be counted for time bound promotions as per rules and guidelines of the Govt. resolutions.*

(X) *It ought to be considered that, there are directions issued by this Hon'ble Tribunal to take decision on the applications as per rules on merit and therefore, merits and rules are not considered by the respondents while rejecting the applications submitted by the applicant and therefore, impugned letter is liable to be quashed and set aside.*

(XI) *Otherwise, the impugned letter/ order passed by the respondent no. 4 is bad in law.*

5. **Pleadings :-**

Learned Presenting Officer has filed affidavit in reply on behalf of Respondent nos. 1 to 4 on 04.09.2019. In response, learned Advocate for the applicant has filed rejoinder affidavit on 16.02.2020. Learned Presenting Officer filed sur-rejoinder on 18.03.2020. As both sides argued on 04.08.2021 that pleadings are complete, the matter was kept for final hearing, which took place on 18.10.2021 and 28.10.2021. Learned Advocate for applicant submitted written notes of arguments made on 28.10.2021 whereas, the learned P.O. submitted that affidavit in reply may be treated as written notes of arguments on behalf of respondents.

6. **Case Laws and Relevant Orders Cited by the Contesting**

Parties :-

(a) The Applicant has cited following case laws, orders of Tribunals and Government Resolutions –

- (i) Government of Maharashtra in Finance Department, Resolution No. मप्रन्या-२०१२/प्र.क. ६९/२०१२/सेवा-३, मंत्रालय, मुंबई ४०० ०३२, dated 07.10.2016 (Page No. 30 of paper book).
- (ii) Order of Maharashtra Administrative Tribunal, Mumbai in O.A. No. 732 of 2011 and a group of O.As, dated 08.06.2016 [Coram: Shri R. J. Malik, Member-J] (Page No. 64 of paper book).

- (iii) Order of Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad in O.A. No. 701/2015, dated 22.09.2017 [Coram: Shri J.D. Kulkarni, Vice Chairman (J)] (Page No. 103 of paper book).
- (iv) Order of Maharashtra Administrative Tribunal, Mumbai in O.A. No. 1090 of 2017, dated 19.11.2018 [Coram: Shri A. P. Kurhekar, Member - J] (Page No. 127 of paper book).
- (v) Order of Maharashtra Administrative Tribunal, Mumbai in, Bench at Aurangabad in O.A. No. 663 of 2015, dated 01.12.2016 [Coram: Shri J.D. Kulkarni, Member-J] (Page No. 113 of paper book).
- (vi) Order of Maharashtra Administrative Tribunal, Mumbai in, Bench at Aurangabad in O.A. No. 586 of 2016 [Coram: Shri J.D. Kulkarni, Member-J] (Page No. 119 of paper book).
- (vii) Judgment of Hon'ble High Court of Judicature at Bombay, bench at Aurangabad in **Writ Petition No. 9051 of 2013, The State of Maharashtra and Ors Vs. Smt. Meena A, Kuwalekar and group** of similar petitions **(2016 SCC Online Bom 2497: (2016) 3 AIR Bom R 722)**. (Page No. 38 of paper book).
- (viii) Judgment of Hon'ble High Court of Judicature at Bombay in **Writ Petition No. 7458 of 2010 decided on 19.07.2011, Devidas Bhiku Borkar**

and Anr. Vs. State of Maharashtra and Anr.

(Page No. 99 of paper book)

(b) On the other hand, the respondents have based their reliance on the following-

- (i) Respondents have given details of intermittent breaks in service of the applicant during the period from 21.06.1989 to 31.08.2001, contending that there was no continuous service during period of temporary appointments of the applicant which is essential pre-condition under rule 30 and 33 of MCS (Pension) Rules, 1982
- (ii) Conditions stipulated in G.R. dated 11.11.2003 granting regularization of service to the applicant w.e.f. 08.03.1999 have been referred to by the respondents.
- (iii) Contention of non-applicability of Government of Maharashtra in Finance Department, Resolution No. मप्रन्या-२०१२/प्र.क. ६९/२०१२/सेवा-३, मंत्रालय, मुंबई ४०० ०३२, dated 07.10.2016 in the present matter

7. **Analysis of Facts and Conclusions-**

(A) Following facts stand admitted by the two contesting parties :-

- (i) The applicant was initially appointed on 16.06.1989 for 29 days as a Junior Clerk in pay-scale of

950-1150-EB-25-1500 by District Treasury Officer Parbhani.

(ii) Recruitment process adopted was as per due procedure prescribed by the Finance Department vide Government Resolution No. MIS-1083/11706/CR-287 /13/ADM-14, dated 09.04.1984. The said appointment was for carrying out computerization of the District Treasuries in the State. Selection of the applicant was from Open category from candidates of unemployed persons who had worked during strike period of Government employees' (संपकालीन).

(iii) Appointment of the applicant was subject to availability of candidates recommended by Regional Selection Board. The tenure of the post of the Applicant was extended from time to time giving technical break.

(iv) At a time, the Regional Selection Board was likely to provide duly selected candidates; the applicant filed a Writ Petition No. 1284/1991, which was transferred to this Tribunal as T.A. No. 20/1992. This Tribunal disposed of the matter on 03.12.2002, which has been quoted by the respondents at para no. 5 of the Affidavit

in Reply filed on 03.09.2019 on behalf of Respondent No. 1, to 4 :-

“ We direct that notwithstanding the pending proceedings the Respondent Authorities can and shall regularize the Applicant’s cases as is already proposed.”

(v) However, correct relevant part of the order of this Tribunal, dated 03.12.2002 is as follows (Annexure A-1, page Nos. 23-24 of paper book):-

“3. It appears that the proposal stated to have been submitted is still under consideration of the Government and no final decision as yet has been taken one way or other. It is entirely up to the respondent State to take an appropriate view in the matter and no judicial direction can be given. We accordingly dispose of the petition with an observation that the respondents would be at liberty to take an appropriate decision in the matter.

We may only express that such a decision would be taken by respondent state as expeditiously as possible.

The petition stands disposed of with no orders as to costs.”

This has not been explained by the learned Presenting Officer.

(vi) Thereafter, the applicant along with other 2 similarly placed temporary employees of District Treasury, Parbhani made representation to Hon'ble Chief Minister of the State. The temporary services of the applicant and other two employees were continued as per requirement and finally regularized vide Government Resolution in Finance Department No. संकीर्ण ११.००/प्र.क. १९/२०००/कोषा(प्र.३), मंत्रालय, मुंबई ४०० ०३२, dated 11.11.2003. The regularization of services was ordered w.e.f. 08.03.1999 and it was mentioned in the order that the applicant shall not be entitled for any service benefits for the period of his fortuitous appointment.

(vii) After getting to know about Government of Maharashtra in Finance Department, Resolution No. मप्रन्या-२०१२/प्र.क. ६९/२०१२/सेवा-३, मंत्रालय, मुंबई ४०० ०३२, dated 07.10.2016, the applicant, for the first time, represented to the District Treasury Officer on 26.10.2016 (page 33 of paper-book) for taking into account his services on temporary basis for the purposes of Time-Bound Promotion and Assured Career Promotion Schemes.

(viii) The applicant retired on 30.04.2017 on superannuation. After retirement, the applicant made

another representation on 10.11.2017 (page 37 of paper-book) to regularize technical breaks in his temporary service so as to make him eligible for continuity of service for consequential service benefits.

(ix) As his representations had not been decided, the applicant filed an original application before this Tribunal in the year 2019, Delay in filing the O.A. was condoned by the Tribunal vide its order 20.03.2019 in M.A. No. 442/2018 and the O.A. was registered as O.A. No. 267/2019. The Tribunal disposed of the O.A. No. 267/2019 on 15.04.2019 giving directions to the Respondents to decide representations made by the applicant [Coram: Shri Atul Raj Chadha, Member-A]. Respondent No. 4 examined the representation of applicant dated 07.10.2016 and rejected the same vide communication dated 04.06.2019.

(x) It is thereafter, the present O.A. No. 550 of 2019 has been filed.

B. Analysis of Facts on Record and Oral Submissions-

(a) Argument raised by the learned Presenting officer that the Government Resolution in Finance Department

No. संकीर्ण ११.००/प्र.क.१९/२०००/कोषा(प्र.३), मंत्रालय, मुंबई ४०० ०३२, dated 11.11.2003 has clear mention that the applicant shall not be entitled for any service benefits for the period of his fortuitous appointment has been under challenge multiple times before various judicial forum and it is well established that this argument does not hold water.

(b) Reference is drawn to the Judgment of Hon'ble High Court of Judicature at Bombay, bench at Aurangabad in Writ Petition No. 9051 of 2013, the State of Maharashtra and Ors Vs. Smt. Meena A, Kuwalekar and group of similar petitions **(2016 SCC Online Bom 2497: (2016) 3 AIR Bom R 722)**. It can be termed as the water-shed judgment in this respect which has settled the issue whether or not temporary services of a government employee, rendered prior to regularization of his/her services, should be taken in to account for granting benefits of Time-Bound Promotion Scheme and Modified Assured Career Promotion Scheme. For this purpose following can be said to be the acid tests :-

(i) The post on which temporary appointment has been made is a permanent post and vacancy thereon is sanctioned.

(ii) *There is no back-door entry and a fair, transparent procedure, as prescribed, has been followed for making recruitment.*

(iii) *Regular service includes continuous service for which technical break is to be ignored.*

(iv) *Employee had requisite qualification prescribed in respective recruitment rules.*

(v) *From the date of appointment the employee has been placed in the regular pay scale to the post to which he came to be appointed*

In the present matter, the facts show that the Acid Test criterion is fully met.

(c) Learned Presenting Officer has emphasized on break in service of 1 to 3 days every time before renewal of engagement letter of the applicant. He has cited provisions of rule 33 of the Maharashtra Civil Services (Pension) Rules, 1982. However, technical breaks have not been recognized for the purpose of counting period of qualifying /continuous services in cases the employee's service is subsequently regularized to hold a substantive post. This position has been upheld by the Judgment of Hon'ble High Court of Judicature at Bombay in **Writ Petition No. 7458 of 2010** decided on 19.07.2011, **Devidas Bhiku Borkar and Anr. Vs. State of Maharashtra and Anr.**, too.

(d) Learned presenting officer has contended non-applicability of Government of Maharashtra in Finance Department, Resolution No. मप्रब्या-२०१२/प्र.क. ६९/२०१२/सेवा-३, मंत्रालय, मुंबई ४०० ०३२, dated 07.10.2016 in the present matter. Even though, the said G.R. dated 07.10.2016 relates to recruitment on posts in offices falling under territorial jurisdiction of Greater Mumbai and those which are under ambit of Maharashtra Public Service Commission (MPSC), this Tribunal in O.A.s mentioned at preceding para No.s 6 (a) (v) and 6 (a) (vi) has upheld the applicability of the said G.R. dated 07.10.2016 in cases under jurisdiction of the Tribunal, Bench at Aurangabad even for the post not being under ambit of MPSC. It is possible that the respondents may not have brought the correct position to the notice of the Tribunal. In my considered opinion, the contention of respondents in this regard holds good, however, it is a fact that the respondents have not preferred judicial review of related orders. Further, recording any different view on the same may not lead us to any different conclusion in the light of judgment in Smt. Meena A. Kuwalekar case.

(e) The applicant has not been prompt in making representations and the first representation was made on

16.10.2016, i.e. less than 6 months before retirement, citing provisions of GR dated 07.10.2016 for employees recruited initially on temporary basis by offices falling under territorial jurisdiction of Greater Mumbai and on posts under ambit of MPSC. The applicant has, through the said representation, demanded the first time bound promotion to be granted to him with effect from 16.06.2001 instead of one granted w.e.f. 08.03.2011 and accordingly, the second time-bound promotion 12 years thereafter i.e. 16.06.2013. This shows that the applicant has raised demand in year 2016 for granting him benefits of the first time-bound promotion w.e.f. year 2001 and so on, which constitutes delay on his part.

Conclusions - Mandate that is set out by the Judgment of Hon'ble High Court of Judicature at Bombay in case of Smt. Meena Kuwalekar's case has settled the issue under consideration whether period of temporary service of an employee whose services have been regularized at a subsequent date, should be taken in to account for granting benefits of schemes of Time Bound Promotion and Modified Assured Career Promotion Scheme. In addition, the Judgment of Hon'ble High Court of Judicature at Bombay in Writ Petition No. 7458 of 2010 decided on 19.07.2011, Devidas Bhiku Borkar and Anr. Vs. State of Maharashtra and Anr. has settled the issue of

taking into account continuous temporary services of a temporary / ad-hoc employee holding substantive post at the time of retirement should be taken into account as per provisions of rule 30 of MCS (Pension) Rules, 1982. Based on above analysis of facts on records and oral submissions made, I am of the opinion that there is merit in the Original Application. However, there is unexplained delay in making the first representation dated 26.10.2016, From above facts, it appears that this fact was not put before this Tribunal in the Miscellaneous Application filed for condonation of delay and delay was represented to be there with reference to the subsequent development(s). Considering facts on record and oral submissions made, I, hereby, pass following orders-

ORDER

The Original Application No. 550 of 2019 is allowed in following terms :-

- (I) Temporary services rendered by the applicant from 16.06.1989 till 08.03.1999 be taken into account for granting benefits of the schemes of Time-Bound Promotion and Modified Assured Career Promotion, as the case be, subject to fulfilling other eligibility criterion stipulated under the said schemes. However, no interest shall be payable for reason of the delay being contributory.

- (II) Temporary services rendered by the applicant from 16.06.1989 till 08.03.1999 should also be taken into account as qualifying service as per rule 30 of Maharashtra Civil Services (Pension) Rules, 1982. Any additional amount determined by this exercise to be payable, shall be without interest thereon.
- (III) Above orders be implemented as expeditiously as possibly but preferably within 6 months of receipt of this order.
- (iv) Learned Chief Presenting Officer may suitably convey to the Additional Chief Secretary General Administration/ Finance Department of the State Government to take necessary steps to realign related MCS Rules and Government Resolutions with mandates set out by related case laws which have attained finality.
- (v) No Orders as to Costs.

(BIJAY KUMAR)
MEMBER (A)

Place : Aurangabad

Date : 23.11.2021.