

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**COMMON ORDER IN O.A. NOS. 553/2013, 639/2012,
640/2012, 676/2012, 681/2012, 682/2012, 803/2012,
860/2012, 864/2012, 897/2012, 905/2012, 906/2012,
907/2012, 908/2012, 909/2012, 910/2012, 243/2013,
259/2013, 260/2013, 325/2013, 611/2013 AND 626/2014**

1. ORIGINAL APPLICATION NO. 553 OF 2013

DISTRICT : AURANGABAD

Rashid Shaik Noor Patel,

Age : 59, Occu. : Nil,

R/o : At post Dhaamangaon, Tq. Phulambri,

Dist. -Aurangabad.

.. **APPLICANT**

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai - 400032.
2. The State of Maharashtra,
Through its Secretary,
E.G.S. Department, Mantralaya,
Mumbai-400032.
3. The Executive Engineer,
Minor Irrigation Local Sector Div. No.-1,
Aurangabad.
4. The Senior Accounts Officer,
P I R office of the ACCOUNTANT GENERAL,
MAHARASHTRA, (Accounts and entitlement)-II,
Pension wing, Nagpur -440001.

.. **RESPONDENTS**

W I T H

2. ORIGINAL APPLICATION NO. 639 OF 2012

DISTRICT : HINGOLI

Laxman S/o Jalabhaji Shinde,

Age: 60 Years, occupation- Retire,

Resident of -Anandnagar, Hingoli,

Dist.- Hingoli.

.. **APPLICANT**

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Collector, Hingoli.
- 3) The District Treasury Officer,
Hingoli, Dist. Hingoli.
- 4) The Senior Accounts officer / P I R,
Office of the Accountant General,
Maharashtra, (Accountant and Entitlements)-II,
Nagpur-440 001.

.. **RESPONDENTS****WITH****3. ORIGINAL APPLICATION NO. 640 OF 2012****DISTRICT : AURANGABAD**

Sahebkhani S/o Sandekhan Pathan,
Age: 59 Years, occupation- Retire,
Resident of -At Kunjkheda,
Tq. Kannad, Dist.- Aurangabad.

.. **APPLICANT****VERSUS**

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) Deputy Superintendent of Land Records,
Shirur Anantpal, Latur.
- 3) The Senior Account sofficer / P I R,
Office of the Accountant General,
Maharashtra, (Accountant and Entitlements)-II,
Nagpur-440 001.

.. **RESPONDENTS****WITH**

4. ORIGINAL APPLICATION NO. 676 OF 2012**DISTRICT : AURANGABAD**

Sopan S/o Daulat Kunde,
Age: 58 Years, occupation- Retired,
Resident of -At Kharaj, post Chikatgaon,
Tq. Vaijapur, Dist.- Aurangabad.

.. APPLICANT**V E R S U S**

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Dean,
Government Medical College and Hospital,
Aurangabad.
- 3) The Account Officer,
Pay Fixation and Verification Unit,
Aurangabad
- 4) The Senior Accountant,
The Accountant Generals office,
Pension wing, Nagpur.

.. RESPONDENTS**W I T H****5. ORIGINAL APPLICATION NO. 681 OF 2012****DISTRICT : AURANGABAD**

Dwarkadas S/o Shripat Manal,
Age: 58 Years, occupation- Retired,
Resident of -At post Wahegaon,
Tq. Gangapur, Dist.- Aurangabad.

.. APPLICANT**V E R S U S**

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032

- 2) The Senior Treasury Officer,
Treasury Office, Aurangabad.
- 3) The Account Officer,
Pay Fixation and Verification Unit,
Aurangabad
- 4) The Senior Accountant,
The Accountant Generals office,
Pension wing, Nagpur.

.. **RESPONDENTS**

W I T H

6. ORIGINAL APPLICATION NO. 682 OF 2012

DISTRICT : AURANGABAD

Ramdas S/o Changadeo Dadak,
Age: 58 Years, occupation-Retired,
Resident of – Opp. S.T. Depo, Vaijapur,
Tq. Vaijapur, Dist.- Aurangabad.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Dean,
Government Dental College and Hospital,
Aurangabad.
- 3) The Account Officer,
Pay Fixation and Verification Unit,
Aurangabad
- 4) The Senior Accountant,
The Accountant Generals Office,
Pension Wing, Nagpur.

.. **RESPONDENTS**

W I T H

7. ORIGINAL APPLICATION NO. 803 OF 2012

DISTRICT : AURANGABAD

Madhav S/o Bhivsan Jadhav,
Age: 66 Years, occupation- Retire,
Resident of -At Mahalgaon,
Tq. Vaijapur, Dist.- Aurangabad.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Secretary E.G.S.,
Mantralaya, Mumbai-32.
- 3) The Deputy Chief Auditor (Senior),
Local Fund Accounts, Aurangabad
- 4) The Senior Accounts officer / P I R,
Office of the Accountant General,
Maharashtra, (Accountant and Entitlements)-II,
Nagpur-440 001.

.. **RESPONDENTS**

W I T H

8. ORIGINAL APPLICATION NO. 860 OF 2012

DISTRICT : AURANGABAD

Dattatrya S/o Bhujangrao Dangat,
Age: 58 Years, occupation- Retired,
Resident of -At Rewalgaon, Post Usmanpur,
Tq. Partur, Dist.- Jalna.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Secretary, E.G.S.,
Mantralaya, Mumbai.
- 3) The Collector, Jalna.

- 4) The Tahasildar,
Mantha, Tq. Mantha, Dist. Jalna.
- 5) The Senior Accounts officer / P I R,
Office of the Accountant General,
Maharashtra, (Accountant and Entitlements)-II,
Nagpur-440 001.

.. **RESPONDENTS**

W I T H

9. ORIGINAL APPLICATION NO. 864 OF 2012

DISTRICT : AURANGABAD

1. Anil S/o Dattatraya Palkar,
Age: 56 Years, occupation- Service,
Resident of -At Post- Vaijapur,
Tq. Vaijapur, Dist.- Aurangabad.
2. Rahim Khan Akbar Khan Pathan,
Age: 56 Years, occupation- Service,
Resident of -Jahangir Colony, Harshul,
Aurangabad.

.. **APPLICANTS**

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Secretary,
E.G.S. Department,
Mantralaya, Mumbai-400032.
- 3) The Dean,
Government Medical College and Hospital,
Aurangabad.
- 4) The Account Officer,
Pay Fixation & Verification Unit,
Aurangabad

.. **RESPONDENTS**

W I T H

10. ORIGINAL APPLICATION NO. 897 OF 2012**DISTRICT : AURANGABAD**

Vittal S/o Namdeo Jungale,
Age: 57 Years, occupation- Service,
Resident of -At Khanegaon, Post- Babra,
Tq. Phulambri, Dist.- Aurangabad.

.. APPLICANT**V E R S U S**

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Secretary,
E.G.S. Department,
Mantralaya, Mumbai-400032.
- 3) The Dean,
Government Medical College and Hospital,
Aurangabad.
- 4) The Account Officer,
Pay Fixation & Verification Unit,
Aurangabad

.. RESPONDENTS**W I T H****11. ORIGINAL APPLICATION NO. 905 OF 2012****DISTRICT : AURANGABAD**

Kisan S/o Vishwanathrao Sathe,
Age: 60 Years, occupation- Nil/Retired,
Resident of -At Shivarai Road, Vaijapur,
Tq. Vaijapur, Dist.- Aurangabad.

.. APPLICANT**V E R S U S**

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Secretary,

E.G.S. Department,
Mantralaya, Mumbai-400032.

- 3) The Collector, Aurangabad.
- 4) The Tahasildar,
Tq. Vaijapur, Dist. Aurangabad.
- 5) The Accounts Officer,
Account and Pay Fixation Unit,
Aurangabad
- 6) The Senior Accounts officer / P I R,
Office of the Accountant General,
Maharashtra, (Accountant and Entitlements)-II,
Nagpur-440 001.

.. **RESPONDENTS**

W I T H

12. ORIGINAL APPLICATION NO. 906 OF 2012

DISTRICT : AURANGABAD

Hansraj S/o Nagorao Kale,
Age: 58 Years, occupation- Retired,
Resident of -At Jategaon (Tembhi),
Tq. Vaijapur, Dist.- Aurangabad.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Secretary, E.G.S.,
Mantralaya, Mumbai.
- 3) The Collector, Aurangabad.
- 4) The Tahasildar,
Vaijapur, Dist. Aurangabad.

- 5) The Accounts Officer,
Account and Pay Fixation Unit,
Aurangabad
- 6) The Senior Accounts officer/ P I R,
Office of the Accountant General,
Maharashtra, (Accountant and Entitlements)-II,
Nagpur-440 001.

.. **RESPONDENTS**

W I T H

13. ORIGINAL APPLICATION NO. 907 OF 2012

DISTRICT : AURANGABAD

Tulshiram S/o Ganpatrao Mhaske,
Age: 64 Years, occupation- Nil/Retired,
Resident of -At Narhari Ranjangaon, Post- Warkhed,
Tq. Gangapur, Dist.- Aurangabad.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Secretary,
E.G.S. Department,
Mantralaya, Mumbai-400032.
- 3) The Taluka Inspector, /
Land Records, Gangapur, Aurangabad.
- 4) The Account Officer,
Pay Fixation & Verification Unit,
Aurangabad
- 5) The Senior Accounts officer/ P I R,
Office of the Accountant General,
Maharashtra, (Accountant and Entitlements)-II,
Civil Line, Nagpur-440 001.

.. **RESPONDENTS**

W I T H**14. ORIGINAL APPLICATION NO. 908 OF 2012****DISTRICT : AURANGABAD**

Shivaji S/o Surbhan Harde,
 Age: 60 Years, occupation- Nil/Retired,
 Resident of -At Jawali Post- Vita, Tq. Kannad,
 Dist.- Aurangabad.

.. APPLICANT**V E R S U S**

- 1) The State of Maharashtra,
 Through its Secretary,
 Planning Department,
 Mantralaya, Mumbai-400032
- 2) The Secretary,
 E.G.S. Department,
 Mantralaya, Mumbai-400032.
- 3) The Collector, Aurangabad.
- 4) The Tahasildar,
 Tq. Kannad, Dist. Aurangabad.
- 5) The Account Officer,
 Account and Pay Fixation Unit,
 Aurangabad
- 6) The Senior Accounts officer/ P I R,
 Office of the Accountant General,
 Maharashtra, (Accountant and Entitlements)-II,
 Civil Line, Nagpur-440 001.

.. RESPONDENTS**W I T H****15. ORIGINAL APPLICATION NO. 909 OF 2012****DISTRICT : AURANGABAD**

Vasant S/o Ramrao Tupe,
 Age: 58 Years, occupation- Nil/Retired,
 Resident of -At Post- Garaj,
 Tq. Vaijapur, Dist.- Aurangabad.

.. APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Secretary, E.G.S.,
Mantralaya, Mumbai.
- 3) The Collector, Aurangabad.
- 4) The Tahasildar,
Vaijapur, Dist. Aurangabad.
- 5) The Account Officer,
Account and Pay Fixation Unit,
Aurangabad
- 6) The Senior Accounts officer/ P I R,
Office of the Accountant General,
Maharashtra, (Accountant and Entitlements)-II,
Civil Line, Nagpur-440 001. .. **RESPONDENTS**

W I T H**16. ORIGINAL APPLICATION NO. 910 OF 2012****DISTRICT : HINGOLI**

Zambar S/o Gangaram Tribhuwan,
Age: 62 Years, occupation- Nil/Retired,
Resident of -At Surla, Post Bhanggaon,
Tq. Vaijapur, Dist.- Aurangabad.

.. **APPLICANT****V E R S U S**

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Secretary,
E.G.S. Department,
Mantralaya, Mumbai-400032
- 3) The Executive Engineer,
Public Works Department,
Aurangabad.

- 4) The Account Officer,
Pay fixation and Verification Unit,
Aurangabad
- 5) The Senior Accounts officer/ P I R,
Office of the Accountant General,
Maharashtra, (Accountant and Entitlements)-II,
Civil Line,Nagpur-440 001.

.. **RESPONDENTS****W I T H****17. ORIGINAL APPLICATION NO. 243 OF 2013****DISTRICT : AURANGABAD**

Ramnath S/o Yadav Giram,
Age: 58 Years, occupation- Nil/Retired,
Resident of -At Shirodi, Post Ambilhol,
Tq. Gangapur, Dist.- Aurangabad.

.. **APPLICANT****V E R S U S**

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The Secretary,
E.G.S. Department,
Mantralaya, Mumbai-400032
- 3) The Superintendent,
Land Record, Aurangabad.
- 4) The Account Officer,
Pay fixation and Verification Unit,
Aurangabad
- 5) The Senior Accounts officer / P I R,
Office of the Accountant General,
Maharashtra, (Accountant and Entitlements)-II,
Civil Line,Nagpur-440 001.

.. **RESPONDENTS****W I T H**

18. ORIGINAL APPLICATION NO. 259 OF 2013**DISTRICT : BEED**

1. Bhausahab S/o Dashrath Nawale,
Age: 59 Years, occupation- Retired,
Resident of – At post Khakalwadi (Sheri Bk.),
Tq. Asti, Dist.-Beed.
2. Sashrath S/o Kesu Sangar,
Age: 59 Years, occupation- Retired,
Resident of – Asti, Tq. Asti, Dist.-Beed.
3. Beg Mohmad Ismail,
Age: 60 Years, occupation- Retired,
Resident of – At Walunj, post Pargaon,
Tq. Asti, Dist.-Beed.
4. Narayan S/o Bhonba Gite,
Age: 59 Years, occupation- Retired,
Resident of – At Pangulgavan, Post Bhalwani,
Tq. Asti, Dist.-Beed.

.. APPLICANTS**V E R S U S**

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The State of Maharashtra,
Through its Secretary,
E.G.S. Department,
Mantralaya, Mumbai-400032
- 3) The District Collector, Beed
- 4) Tahasildar Asti,
Tq. Asti, Dist. Beed.
- 5) The Senior Account officer,
Office of the Accountant General,
Accountant and Entitlements-I,
Pension Wing Old Building,
Civil Line, Nagpur-440 001.

.. RESPONDENTS

W I T H**19. ORIGINAL APPLICATION NO. 260 OF 2013****DISTRICT : BEED**

1. Raghunath S/o Baburao Aware,
Age : 57 Years, Occupation-service,
Resident of Murshadpur, Asti,
Tq.-Asti, Dist. Beed
2. Sharad S/o Bhagawanrao Shinde,
Age: 48 Years, Occupation-Service,
Resident of Murshadpur, Asti,
Tq.- Asti, Dist.- Beed.
3. Bhagawan S/o Sarjerao Pawar,
Age: 54 Years, occupation- Service,
Resident of - Sangaon (patan),
Tq.- Asti, Dist.- Beed.
4. Popat S/o Narayan Gore,
Age: 47 Years, occupation- Service,
Resident of Shri (Bk.),
Tq.- Asti, Dist.- Beed.
5. Ashok S/o Ramrao Sirsath,
Age: 53 Years, occupation- Service,
Resident of Ganesh Nagar, Asti, Dist.- Beed.
6. Bhagirath S/o Chandrabhan Dhark,
Age: 46 Years, occupation- Service,
Resident of – Vinayak Nagar Asti, Tq.- Asti, Dist.- Beed
7. Shivaji S/o Shrirang Warangale,
Age: 46 Years, occupation- Service,
Resident of Wargale Galli, Asti, Tq.- Asti, Dist.- Beed.
8. Jaganath S/o Dagadu Shinde,
Age: 57 Years, occupation- Service,
Resident of at Dongargaon, Tq.- Asti, Dist.- Beed.
9. Shamrao Pandurang Dhonde,
Age 54 Years, Occu. Service,
R/o- Mali Galli, At post Asthi, Tq. Asthi, Dist -Beed.

10. Smt. Tarabai D/o Bajirao Pathade,
Age 50 Years, Occu. Service,
R/o- At post Murshadpur Tq. Asthi, Dist-Beed.
11. Anil S/o Bhaskarrao Joshi,
Age 51 Years, Occu. Service,
R/o- At Rui Dharur, Post. Anjandoha,
Tq.- Dharur, Dist -Beed.
12. Deepak Dedidasrao Salunk,
Age 50 Years, Occu. Service,
R/o- At Post- Asardohai, Tq.- Dharur, Dist -Beed.

.. **APPLICANTS**

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The State of Maharashtra,
Through its Secretary,
E.G.S. Department,
Mantralaya, Mumbai-400032
- 3) The District Collector, Beed
- 4) The Accounts and Pay Fixation Unit,
Aurangabad region Aurangabad.

.. **RESPONDENTS**

W I T H

20. ORIGINAL APPLICATION NO. 325 OF 2012

DISTRICT : AURANGABAD

Ramrao Uttamroa Ghule,
Resident of – At post Ashti,
Near Hanuman Mandir, Ashti,
Tq. Asti, Dist.-Beed.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032

- 2) The State of Maharashtra,
Through its Secretary,
E.G.S. Department,
Mantralaya, Mumbai-400032
- 3) The District Collector,
Jalgaon.
- 4) The Tahasildar, Dharangaon,
Tq. Dharangaon, Dist. Beed.
- 5) The Accountant General,
101, Maharashi Karve Road,
Prathisthan Bhavan,
Mumbai 400 020.

.. **RESPONDENTS**

W I T H

21. ORIGINAL APPLICATION NO. 611 OF 2013

DISTRICT : AURANGABAD

Laxman s/o Vittal Kadam,
Age : 59, Occu. : Nil,
R/o : At post Rahegaon, Tq. Vaijapur,
Dist. -Aurangabad.

.. **APPLICANT**

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai - 400032.
2. The State of Maharashtra,
Through its Secretary,
E.G.S. Department, Mantralaya,
Mumbai-400032.
3. The Senior Treasury Officer,
Treasury Office, Aurangabad.
4. The Senior Accounts Officer,
P I R office of the ACCOUNTANT GENERAL,
MAHARASHTRA, (Accounts and entitlement)-II,
Pension wing Nagpur -440001. .. **RESPONDENTS**

W I T H**22. ORIGINAL APPLICATION NO. 626 OF 2014****DISTRICT : BEED**

Sudam S/o Narhari More,
Age: 59 Years, occupation- Retired,
Resident of -Morewadi,
Tq. Abajogai, Dist.-Beed.

.. APPLICANT**V E R S U S**

- 1) The State of Maharashtra,
Through its Secretary,
Planning Department,
Mantralaya, Mumbai-400032
- 2) The State of Maharashtra,
Through its Secretary,
E.G.S. Department,
Mantralaya, Mumbai-400032
- 3) The Collector, Beed
- 4) Tahasildar Ambagogai,
Tq. Ambagogai, Dist. Beed.
- 5) The Chief Accountant,
Pay fixation unit, Aurangabad Division,
Aurangabad
- 6) The Senior Account officer,
Office of the Accountant General,
Accountant and Entitlements-I,
Pension Wing Old Building,
Civil Line, Nagpur-440 001.

.. RESPONDENTS

APPEARANCE : Shri S.S. Dambe, Advocate for the applicants
in all these cases.

: Shri S.K. Shirse, P.O. for respondent
Authorities.

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

Reserved on : **28.04.2023**

Pronounced on : **09.06.2023**

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

1. These Original Applications have been filed by respective applicants invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by order dated, 12.04.2013 passed by respondent No. 5 thereby, refusing to grant the pension to the applicants by not treating their services since their first appointment till superannuation as permanent services for service benefits and pensioner benefits.

2. Details of date of engaging the applicant on scheme of Employment Guarantee Scheme is depicted in tabular form in TABLE-I below :-

TABLE-I

S. No.	O.A. No. and (date of filing the O.A.)*	Name of Applicant	Post on which engaged (Date of first appointment on EGS works)*	Post on which absorbed and (Date of absorption order) post	Date of superannuation	Remarks
1	553/2013	Rashid Shaikh Noor Patel	26.12.1983	31.05.2005	28.02.2013	

2	639/201 2	Laxman Jalabhaj i Shinde	26.02.197 8	10.10.2001	31.08.2010	
3	640/201 2	Sahebkh han Sandek han Pathan	17.11.198 3	25.06.2004	31.01.2012	
4	676/201 2	Sopan Daulat Kunde	13.01.198 1	22.08.2005	31.08.2011	
5	681/201 2	Dwarka das Shripat Manal	13.01.198 1	25.06.2004/ 03.08.2005	30.11.2011	
6	682/201 2	Ramdas Changa deo Badak	20.08.198 1	05.10.2005	30.09.2011	
7	803/201 2	Madhav Bhivsan Jadhav	23.10.198 1	07.02.2004	31.03.2006	
8	860/201 2	Dattatry a Bhujang rao Dangat	10.03.198 7	12.12.2010	31.12.2011	
9	864/201 2	Anil Dattatra ya Palkar and 1 Anr.	21.02.198 1 1.02.1981	19.7.2005	31.01.2015	
10	897/201 2	Vittal Namdeo Jungale	18.06.198 1	22.09.2005	31.07.2013	
11	905/201 2	Kisan Vishwan athrao Sathe	28.9.1981	09.08.2006	30.04.2010	
12	906/201 2	Hansraj Nagorao Kale	28.01.198 3	09.08.2006	31.07.2012	
13	907/201 2	Tulashir am Ganpatr ao Mhaske	27.07.198 3	30.07.2004	31.07.2012	
14	908/201 2	Shivaji Surbha n Harde	30.04.198 3	09.08.206	30.04.2010	

15	909/2012	Vasant Ramrao Tupe	1983	9.8.2006	30.04.2012	
16	910/2012	Zambar Gangaram Tribhuvan	01.11.1981	22.09.2003	31.12.2009	
17	243/2013	Ramnath Yadav Giram	08.09.1983	23.08.2004	31.01.2013	
18	259/2013	Bhauseb Dashtarh Nawale and 3 Ors.	21.11.1986 1.1.1983 1.1.1983 1.1.1983	9.9.2003 9.9.2003 2.12.2004 22.09.2003	31.07.2012 30.06.2012 30.11.2010 31.12.2012	
19	260/2013	Raghnath Baburao Aware & 11 Ors.	20.6.1982 3.4.1986 20.6.1982 3.4.1986 1.1.1983 3.4.1986 29.4.1986 27.11.1986 3.4.1981 2.6.1988 17.8.1984 17.8.1984	20.6.2004 19.8.2004 20.6.2004 23.9.2004 19.1.2003 9.9.2003 13.11.2009 9.9.2003 9.9.2003 24.12.2007 20.3.2011 20.03.2010	31.05.2014	
20	325/2013	Ramrao Uttamrao Ghule	19.08.1986	31.01.2004	30.06.2012	
21	611/2013	Laxman Vittal Kadam	3.11.1983	22.9.2005	31.08.2011	
22	626/2014	Sudam Narhari More	24.4.1984	18.12.2007	28.02.2014	

3. All the applicants have similar cause of action, there are similar facts in their respective cases and all of them are seeking similar reliefs, therefore, as proposed by learned Advocate for the applicants and consented by the learned Presenting Officer, all the O.As. have been heard together vide Oral Order dated

19.06.2018 of this Tribunal and a common order is being passed. However, for convenience, O.A. No. 553/2013 is taken as lead case.

4. Facts of the Lead Case :-

(a) The applicant was first engaged as a mustering assistant under Scheme of Employment Guarantee (in short, EGS) in the year 1983 in Minor Irrigation Local Sector at Sub-Division Soyagaon, District-Aurangabad on fixed pay basis.

(b) In the year 1992, the applicant and other similarly situated Mustering Assistants were granted pay-scale of Class IV employee under MCS (Revised Pay) Rules, 1988 i.e., Rs. 750-940, w.e.f. 01.10.1988, and arrears were paid from 01.10.1988.

(c) State Government decided by Government Resolution issued by Planning Department, dated 01.12.1995 and 21.04.1999 to absorb all the mustering assistants in service of State Government on permanent establishment in different departments who were working on 31.05.1993, as per seniority list and accommodate them on or before 31.03.1997. However, the mustering assistants so

absorbed as per the provisions of aforesaid G.Rs. were not covered by MCS Rules and therefore, were not entitled for pensionary benefits. Vide G.R. dated 24.01.1999, the Mustering Assistants absorbed on class-IV posts were permitted to be absorbed against vacancies in class-III (non gazetted post) if they so opted and possessed requisite qualification on date of absorption in class-IV posts. But they were not treated under MSC Rules.

(d) Those mustering assistants who could not be absorbed by year 2004, they were granted a pay scale of Class III and Class IV as per their qualification while working on the post of mustering assistant vide GR dated 25.04.2004.

(e) Relevant Government Resolutions and Key-Points are tabulated in TABLE-II.

TABLE-II

S. No.	G.R. No. and Date	Benefits Granted to Mustering Assistants
1	Planning Dept. GR No. हसका-११९२/प्र. १२०/रोहयो-३, मंत्रालय, मुंबई-३२, dated- 22.02.1993 (page	Per month lump-sum wage of Rs. 500/- was introduced by GR 25.04.1989, wef 01.04.1989. It was modified to pay-scale of Rs. 750-12-870-EB 14-940, w.e.f. 01.10.1988 vide

	47, Exhibit-C of P.B.)	GR dated 22.02.1993. <u>Mustering Assistants were not to be covered under MCS Rules.</u>
2	Planning Dept. GR No. हसका-१३९४/प्र. १८५/रोहयो-३, मंत्रालय, मुंबई- ३२, dated 01.12.1995 (page 49, Exhibit-D of P.B.)	<p>Though, Hon'ble Apex Court ruled that services of Mustering Assistants may be discontinued due to non-availability of work, as per their seniority and principle of - <u>last come-first to go and engage senior before any junior to him</u>; the State Government issued GR dated 01.12.1995 by which those on work as Mustering Assistants as on 31.05.1993 were to be absorbed in regular Government / Zilla Parishad establishments on Class IV posts.</p> <p>After absorption, the Mustering Assistants shall not be entitled to any other service benefits as govt. servants and shall not be recognized as covered by MCS Rules.</p> <p>However, mustering Assistants will be dying cadre.</p>
3	Planning Dept. GR No. हसका-१३९७/प्र. १३६/रोहयो-३, मंत्रालय, मुंबई-३२, dated 21.04.1999 (page 57 of P.B.)	<p>The Mustering Assistants who were on such job during period from 26.05.1993 to 31.05.1993 to be given similar benefits but will be at lower seniority compared to those who were absorbed on ground of being at work as on 31.05.1993.</p> <p>All the Mustering</p>

		<p>Assistants who have been absorbed or are going to be absorbed as per the GR dated 15.04.1999 may be given appointments on Class III (Non Gazetted) posts, if they so opt, if they possessed on date of their absorption minimum educational qualifications prescribed for the Class-III posts.</p> <p>Absorbed Mustering Assistants shall not be covered by MCS Rules and therefore, shall not be entitled for 5th Pay Commission Scales, However, annual increments and HRA will continue to be admissible.</p> <p>However, mustering Assistants will continue to be dying cadre.</p>
4	<p>Planning Dept. GR No. हसका-१३०१/प्र. १०७/रोहयो-३, मंत्रालय, मुंबई-३२, dated 25.06.2004 (page 63 of P.B.)</p>	<p>All left-over 751 Mustering Assistants, who were on work as such during 26.05.1993 to 31.05.1993, to be treated as absorbed in Government services for which supernumerary posts were created,</p> <p>All Mustering Assistants absorbed against supernumerary posts to be covered by MCS Rules and shall be entitled for all benefits as admissible to Government servants. However, mustering Assistants will be dying cadre.</p>
5	<p>Planning Dept. Circular No. रोहयो</p>	<p>Mustering Assistants are to be absorbed as per GR dated 01.12.1995 and therefore, their</p>

२००८/प्र. १०२/रोहयो- ३, मंत्रालय, मुंबई-३२, dated 15.04.2009 (page No. 66 Exhibit -H of P.B.)	services prior to 01.12.1995, are not be taken as Qualifying Services for Pension.
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5. **Relief Prayed For:** The applicant in the lead O.A. No. 553/2013 has prayed for in terms of para 12 of the present O.A. which is reproduced verbatim for ready reference :-

“12. HENCE IT IS PRAYED THAT:

- A. *The application may kindly be allowed,*
- B. *By passing appropriate order direct the respondent no. 5 to grant the pension by considering services of applicant from 01.10.1988 are permanent and qualifying services for granting the pension;*
- C. *By issuing a appropriate directions order dated 12.04.2013 passed by respondent No. 5 refusing to granting the pension may quash and set aside and may direct to reconsider the proposal of applicant, by considering the services from 01.10.1988 to date of superannuation and previous continuous services of applicant rendered on pay scale from 01.10.1988 are consider as permanent services for service benefits and pensioner benefits;*
- D. *The Respondent-1 may direct to hold and declare the condition No. 5.2 of Government Resolution dated 01.12.1995, condition no. 5 of Government resolution dated 21.04.1999 and circular dated 15.04.2009 be declared ultra vires to MCS Pension Rules and constitution of India;*
- E. *To hold and declare that, the applicant is entitle for the all the benefits of service as like Government employee and accordingly grant the service and pensionary benefits from 01.10.1998 as per MCS Riles as pay*

scale was granted and services are continued from 01.10.1998;

- F. Respondent may kindly be directed to pay the arrears of 5th pay by making revised pay fixation of the applicant from 1996;*
- G. Pending hearing and final disposal of this Original Application the respondent may kindly direct to send the fresh proposal of pension by including ½ of services from 01.10.1988 or 31.03.1997 and direct the respondent No. 4 to pay the provisional pension to the applicant till finalize the pension proposal;*
- H. Pending hearing and final disposal of this original application the respondents may kindly be directed to stay the implementation & execution of condition 5.2, 5 of Government Resolution of planning department dated 31.12.1995, 21.04.1999 respectively and circular dated 15.04.2012 to the extent of present applicant;*
- I. Any other just and equitable relief to which this Honorable court deems fit and proper in the particular facts and circumstances of the case may kindly be granted;*
Interim relief sought in terms of prayer clause G and H may kindly be granted.”

6. Chronology of filing Affidavits in Reply on behalf of Respondents and Additional Affidavit by the Applicant :-

(a) Affidavit in reply on behalf of respondent No. 1 and 2 was filed on 27.01.2014

(b) Affidavit in reply on behalf of respondent No. 1 to 3 was filed on 17.02.2014 which was taken on record and copy thereof served on the other side.

(c) Affidavit in reply on behalf of respondent No. 4 was filed on 18.03.2014 which was taken on record and copy thereof served on other sides.

(d) It is on 11.04.2018 that the learned Advocate for the applicant submitted that same issue is pending before Hon'ble Supreme Court of India in S.L.P. No. 6039 of 2016 and hearing in the matter is in process. The learned Advocate for the applicant further informed on 18.06.2018 that the preset O.A. may be heard together with O.A. Nos. 639, 640, 676, 681, 682, 684, 897, 803, 905, 906, 908 and 909, all of 2012 as similar issue has arisen in the present O.A.

(e) Additional affidavit was filed by the applicant on 19.04.2023 in O.A. No. 626/2014 to place the judgment and order of Hon'ble Supreme Court in Civil Appeal No. 6531-6533/2022 (Arising out of SLP (C) Nos. 6039-6041/2016) with Civil Appeal No. 6534/2022 (arising out of SLP (C) No. 6042/2016, dated 07.09.2022).

(f) The matters were finally heard on 28.04.2023, written notes of arguments submitted by learned Advocate for applicant taken on record and thereafter, the matters were reserved for order.

7. Analysis of Facts on Record:

I. First of all, we analyse the rules, judgments and orders cited by the applicant in support of his claim for relief prayed for.

a) The applicant has relied on rule 57, Note-1 of MCS (Pension) Rules, 1982 and has argued that it was failure on part of the respondents that the applicant could not be absorbed from the date of his engagement as Mustering Assistant till issuance of GR dated 21.06.2004, in that sense, condition No. 5.2 of GR dated 01.12.1995, Condition No. 5 of GR dated 21.04.1999 and Circular dated 15.05.2009 be declared ultra vires to the Rule 57, Note-1 of MCS (Pension) Rules, 1982. At first the rule 57 Note-1 is being quoted for ready reference as follows-

“Note 1- In case of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by convention of their posts, one half their previous continuous service shall be allowed to count for pension.”

As in the present matter there is no conversion of posts of mustering assistants from non pensionable service, paid from contingencies to pensionable post of mustering assistants, in our considered opinion, the prayer of the applicants making them entitled to benefits under rule 57, Note 1 of the MCS (Pension) Rules, 1982 is devoid of merit.”

b) The applicant has also cited following seven judgments of Hon'ble High Court of Judicature at Bombay, to assert that his past services as Mustering Assistant under scheme of Employment Guarantee Scheme has to be taken into account for calculation of qualifying services for pensionary benefits. The applicant has also relied on one Judgments /order passed by Hon'ble Supreme

Court; all the three cited judgments/ order cited by the applicant to support his arguments are as follows :-

- i. Judgment of Division Bench of Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No. 2946/1997 (Ramchandra Kondib Mahajan & Ors Vs. The State of Maharashtra and Ors, dated 19.07.2012 (copy not enclosed with this O.A.).*
- ii. Judgment of Division Bench of Hon'ble Bombay High Court (Principal Bench) in Writ Petition No. 2236/1997 (Shalik Wamanrao Ranvare Vs. The State of Maharashtra and 2 others with W.P. No. 2274/2017 (Uttam Vishnu Kashid Vs. The State of Maharashtra & Ors.), dated-24.08.2012*
- iii. Judgment delivered by Division bench of Hon'ble Bombay High Court (Aurangabad Bench) in W.P. No. 2589/2012 and batch dated 13.08.2015*
- iv. Judgment delivered by Division bench of Hon'ble Bombay High Court (Aurangabad Bench) in W.P. No. 8359/2013 and batch dated 13.08.2015*
- v. Judgment delivered by Division bench of Hon'ble Bombay High Court (Aurangabad Bench) in W.P. No. 11183/2015 and batch dated 07.04.2016*
- vi. Judgment delivered by Division bench of Hon'ble Bombay High Court (Aurangabad Bench) in W.P. No. 12043/2016 and batch dated 06.09.2017*

vii. Order passed on 07.09.2022 by Hon'ble Supreme Court in Civil Appeal No. 6531-6533/2022 (Arising out of SLP (C) Nos. 6039-6041/2016 (Shaikh Miya s/o Shaikh Chand and Ors Vs. State of Maharashtra with Civil Appeal No. 6534/2022 (Arising out of SLP (C) No. 6042/2016.

c) On perusal of the two judgments by Hon'ble Bombay High Court, Bench at Aurangabad cited in preceding para, it is evident that the judgment passed in W.P. No. 2236/1997 with W.P. No. 2774/1997 is based on judgment and order dated 19.07.2012 passed by Hon'ble High Court in W.P. No. 2946/1997 copy of which has not been submitted by the Applicant. Therefore, we quote the prayer clause and the operating part of the judgment in W.P. No. 2236/1997 with W.P. No. 2774/1997 as below: -

“10. For the reasons which this Court has recorded in the said Judgment and Order, we dispose of the Petitions by passing the following order.

1. In view of the Judgment and Order dated 08.04.1997 passed by the learned Industrial Court, Solapur, for the purpose of considering the grant of pensionary benefits, the Petitioners shall be treated as Permanent Employees with effect from 1st October, 1988

till the respective dates of superannuation.

{Emphasis supplied}

2. *In case of the Petitioners who were already superannuated, it will be open for them to make a representation to the concerned Authorities for grant of pensionary benefits.*
3. *If such representation is made, same shall be decided as expeditiously as possible and preferably within a period of four months from the date on which the representations are made.*
4. *We make it clear that, apart from issuing directions regarding the date of permanent employment of the respective Petitioners, we have not examined the case of Petitioners as regards the eligibility of pensionary benefits.*
5. *Rule is made partly absolute on both terms with no order as to costs.”*

d) In the W.P. No. 2589/2012, the petitioner are the mustering assistants who could not be absorbed prior to 31.03.1997 Vide the present Writ Petitions, the petitioners seek pensionary benefits and also challenge the clauses of the Government Resolution dated 01.12.1995, 21.04.1999 and circular dated 15.04.2009 i.e. clauses whereby it is stated that, till the time, the petitioners have worked as mustering assistants they would not be treated as Government Servants and the services rendered as mustering assistants would not be

considered for pensionary benefits. This case appears to be similar to the case of petitioners in the present O.A.s. Operating Part of Judgment in W.P. No. 2589/2012 and batch is quoted below for ready reference :-

“8. We have considered the submissions canvassed by the learned counsel for respective parties and have also gone through various Government Resolutions, circulars and the orders passed from time to time.

9. It is not a matter of debate that, the petitioners were working as mustering assistants and their names appear in the seniority list as on 31.05.1993. These petitioners are covered by the scheme as framed by the Government vide Resolution dated 01st December, 1995. It is also matter of record that, the said scheme framed by the Government vide Government Resolution dated 01st December, 1995 is approved by the Apex Court in Special Leave to Appeal (Civil) No. 15654 of 1991. Clause 5.2 of the said scheme lays down that the mustering assistants would not be entitled for the benefits of the Government service, nor would be deemed to be Government employees. The said scheme also further lays down vide clause 4.7 that the process of absorption shall be completed by 31.03.1997. The Apex Court on December 02, 1996 passed the following order in Special Leave to Appeal (Civil) No. 15654 of 1991.

"Special Leave Granted.

The impugned order of the High Court dated 22nd March 1991 is set aside and we direct that the question of absorption into regular services shall be governed by the scheme prepared by the State government contained in the Government Resolution dated 01st December, 1995. We approved the scheme and direct that all the employees who fall within the parameters of the scheme should be similarly treated as that the possibility of individuals coming for redress under the scheme may not arise as that would only create avoidable litigation.

The appeal will stand disposed of accordingly with no order as to costs."

10. On 25.06.2004. the Government issued order saying that, there are still mustering assistants who have not been absorbed and additional posts would be created and all would be deemed to have been absorbed from the date of the said resolution i. e. from 25.06.2004. Some of the mustering assistants, who could not be absorbed earlier filed Writ Petition No. 619 of 2006 with Writ Petition No. 1029 of 2006 seeking pensionary benefits. The Division Bench of this Court vide judgment and order dated 16.07.2007 held as under :

"10) We have considered the submissions advanced by the learned counsel appearing for the respective parties. Perused the material placed on record, the Scheme and the Government Resolution by which the Muster Assistants were absorbed in regular service. The clear intention while absorbing the Muster Assistants in regular service is reflected from clauses 3.1 to 5.2 of the Government Resolution dated 1st December 1995. Such persons working as Muster Assistants were not to be considered as State employees as per the scheme. In view of the Government Resolution dated 21st April 1999 the State Government adopted a stand that the service conditions applicable to the Government employees would not be applicable to the Muster Assistants who are absorbed in regular service.

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.

12) The learned AGP points out that the Muster Assistants whose services were regularized from a particular date would get pension from the date of regularisation 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.

13) In the light of the above position no interference is called for in these petitions."

11. The Division Bench of this Court in Writ Petition No. 954 of 1990 passed an interim order dated 20.12.2001 directing the State to issue orders of absorption to the mustering assistants with retrospective effect from 31.03.1997 and the said orders of absorption shall be issued within four weeks. The State assailed the said order before the Apex Court. The Apex Court vide order dated 22.04.2002 in Special Leave to Appeal (Civil) No. 7592 of 2002 stayed the said order of this Court dated 20.12.2001. The Apex Court passed the following order.

" Issue notice on the special leave petition as well as on prayer for interim relief. Meanwhile, the operation of the order under challenge shall remain stayed. However, it is clarified that the petitioner shall take steps to gradually absorb the Mustering Assistants in accordance with seniority."

12. Thereafter this Court vide final order dated 06.02.2002 disposed of the said writ petitions and directed to issue orders of regularization to remaining mustering assistants within a period of two weeks. The State assailed the same before the Apex Court. The Apex Court passed following order in Special Leave to Appeal (Civil) No. 5171 of 2002 and 7592 of 2002.

"We have heard learned senior counsel for the petitioners. Despite service, none appears for the respondent. We, therefore, dispose of these special leave petitions in terms of the interim order dated 15.03.2002 by directing that the petitioners would take steps to gradually

absorb the Mustering Assistants in accordance with seniority and the roster"

13. *It would be seen that, the order of this Court directing to give retrospective effect was stayed by the Apex Court and eventually the matter was disposed of by the Apex Court by directing that the petitioners i. e. the State would take steps to gradually absorb the mustering assistants in accordance with seniority and roster. As such, the order of this Court directing the absorption with retrospective effect i. e. from 31.03.1997 and to give all consequential benefits from the said date was stayed by the Apex Court and the Apex Court disposed of the special leave petitions in terms of interim orders passed by the Apex Court. In view of the said order of the Apex Court, it would not be open for this Court to again dwell on the said aspect and direct considering the service of petitioners prior to the absorption as a Government service for the purpose of pensionary benefits. Even the Division Bench of this Court subsequently in Writ Petition No. 619 of 2006 and Writ Petition No. 1029 of 2006 has held that, the service prior to regularization cannot be considered as Government service and the service prior to the regularization cannot be counted for the purpose of pension. The judgment dated 19.07.2012 of the Division Bench of this Court at Principal seat at Bombay in Writ Petition No. 2946 of 1007 would not be relevant as in the said case the Industrial Court in the year 1996 had directed the State to give regularization to the services of the said employee.*

14. *In the light of the above, it will not be possible for this Court to accept the contention of the petitioners, more particularly in view of the order of the Apex Court referred supra, whereby the directions given by this Court in Writ Petition No. 954 of 1990 directing regularization with retrospective effect from 31.03.1997 and for all consequential benefits were stayed by the Apex Court and the special leave petition was disposed of in terms of interim orders and further it was observed by the Apex Court that the State shall gradually absorb the mustering assistants as per their seniority.*

15. *This Court is bound by the said orders. In the light of the above, the contentions raised by*

petitioners cannot be considered and no relief can be granted to petitioners. The writ petitions as such stand disposed of. No costs.

16. It is submitted that, some of the petitioners qualifying service of pension is nine years and more and the respondent/State be directed to consider condoning one years service for grant of pension under Rule 54 of the Maharashtra Civil Services (Pension) Rules.

17. The petitioners may make representations to that effect with the respondent No. 1/State, which representations would be considered by the respondent No. 1/State sympathetically, considering the fact that, it was the State who was not in a position to absorb the petitioners well within time.

18. It is also made clear that, if such representations are made by petitioners for considering past service for pensionary benefits, to the State, this order would not come in the way for consideration of said representations.”

- e) W.P. No. 8359/2013 and a batch of Writ Petitions in which the Judgment was delivered by the Division Bench of Aurangabad Bench of Hon'ble Bombay High Court on 13.08.2015 covers the cases of petitioners who had filed Complaint ULP No. 529/1988, Complaint ULP No. 521/1988, Complaint ULP No. 36/1989 and Complaint ULP No. 299/1989 alleging unfair labour practice and directing grant of status and privileges of permanency and other consequential benefits from the date of complaint. The same was allowed by the Industrial Court directing the respondents/State to grant status and privileges of permanency and other consequential benefits. As the respondents had not granted pensionary benefits

as directed by Industrial Court, writ Petitions were filed which have been decided by Hon'ble Aurangabad Bench of Bombay High Court citing precedent of judgments which have been discussed in preceding para (7) (b) (i) and (7) (b) (ii) of this order and passed following order (Page No. 17 of compilation 'D') :-

“ 1. In view of the Judgment and Order dated 08th April, 1997 passed by the learned Industrial Court, Solapur, for the purpose of considering the grant of pensionary benefits, the Petitioners shall be treated as Permanent Employees with effect from 01st October, 1988 till the respective dates of superannuation.

2. In case of the Petitioners who were already superannuated, it will be open for them to make a representation to the concerned Authorities for grant of pensionary benefits.

3. If such representation is made, same shall be decided as expeditiously as possible and preferably within a period of four months from the date on which the representations are made.

4. We make it clear that, apart from issuing directions regarding the date of permanent employment of the respective Petitioners, we have not examined the case of the Petitioners as regards the eligibility of pensionary benefits.

5. Rule is made partly absolute on both terms with no order as to costs.”

f) Matter in W.P. No. 11183/2015 and batch decided by Hon'ble Bombay High Court (Aurangabad Bench) is similar to the W.P. No. 8359/2013 and therefore, the Hon'ble High Court delivered Judgment 07.04.2016 operating part of which is exactly same as the Operating Part of Judgment in 8359/2013 as quoted below for ready reference :-

“1] Heard.

2] *Rule. Rule made returnable forthwith, and heard with the consent of the parties.*

3] *The petitioners were employed as Muster Assistants in Irrigation Department of the State of Maharashtra. The petitioners filed separate complaints before the Industrial Court, Ahmednagar, alleging the commission of unfair labour practices covered by the Items 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the 'Said Act of 1971'). The Industrial Court allowed the complaints filed by the petitioners and by the Judgment and Order dated 29.12.1994 directed the respondents to confer status and privileges of permanency and other consequential benefits from the date of complaint.*

4] *The learned counsel appearing for the petitioners submit that, one of the Mustering Assistants filed Writ Petition No.2946/1997 (Shri Ramchandra Kondiba Mahajan Vs. The State of Maharashtra & others) before the Bombay High Court at it's Principal Seat at Bombay. The Division Bench gave directions in the said Writ Petition to consider the past services for grant of 11183.2015+.odt pension in view of the Judgment and Order passed by the Industrial Court. The same relief is being claimed by these petitioners in the present Writ Petitions. The learned counsel submit that, the Special Leave Petition filed, challenging the aforesaid Judgment passed in Writ Petition No.2946/1997 (Shri Ramchandra Kondiba Mahajan Vs. The State of Maharashtra & others) is also dismissed.*

5] *The learned Additional Government Pleader states that, the past service cannot be considered of the petitioners in view of the scheme framed by the Government and approved by the Apex Court vide Government Resolution dated 01.12.1995 and the subsequent Government Resolution of the year 1999. The learned Addl. G. P. further submits that, it is only after the mustering assistants are absorbed in Government service, they can be considered as Government employees and benefits of Government service can be accorded to them. As these petitioners after absorption did not complete the period of*

qualifying service, they are not entitled for pensionary benefits.”

g) Hon'ble Bombay High Court has delivered judgment in W.P. No. 12043/2016 and batch in respect of those mustering assistants who had approached industrial Court alleging unfair labour practice by respondents and sought pensionary benefits taking into account their services as mustering assistants, by relying on the judgment passed by Hon'ble High Court in W.P. No. 2946/1997, 2236/1997 and 2246/1997 except that, in the present W.P. the petitioners had prayed for permanency benefits from the date of filing Complaint (ULP) with the Industrial Court which was allowed and judgment was delivered on 06.09.2017 operating part of which is as quoted below :-

“7. The Special Leave Petition filed against the said judgment and order is also dismissed. In the light of that, we adopt the same course as adopted by this Court in the above said writ petitions and pass the following order.

I) In view of the Judgment and Order passed by the learned Industrial Court for the purpose of considering the grant of pensionary benefits, the Petitioners shall be treated as Permanent Employees with effect from the date of their complaints i. e. from the date of filing of their respective ULP's till the respective dates of superannuation.

II) In case of the Petitioners who were already superannuated, it will be open for them to make a representation to the concerned Authorities for grant of pensionary benefits.

III) If such representation is made, same shall be decided as expeditiously as possible and preferably within a period of four months from the date on which the representations are made.

IV) We make it clear that, apart from issuing directions regarding the date of permanent employment of the respective Petitioners, we have not examined the case of the Petitioners as regards the eligibility of pensionary benefits.

V) Rule is made partly absolute on above terms with no order as to costs.

VI) Writ petitions accordingly partly allowed.”

h) Order passed on 07.09.2022 by Hon'ble Supreme Court in Civil Appeal No. 6531-6533/2022 (Arising out of SLP (C) Nos. 6039-6041/2016 (Shaikh Miya s/o Shaikh Chand and Ors. Vs. State of Maharashtra with Civil Appeal No. 6534/2022 (Arising out of SLP (C) No. 6042/2016, is a larger bench decision and therefore, will be discussed after all other citations made by the two sides in the present matter have been duly considered and ration determined.

II. Respondents' Counter Arguments- The respondents have relied upon an order of Hon'ble Supreme Court, a judgments of Hon'ble High Court of Judicature at Bombay, bench at Aurangabad and one order passed by the Tribunal which are discussed as follows-

(a) The respondents have submitted that the fact that Hon'ble Supreme Court had decided in Civil Appeal No. 15339 of 1996 arising out of Special Leave to Appeal (C) No. 15654 of 1991 (State of Maharashtra and Anr. Vs. Shri Suhas Narayan Ahirrao) on 02.12.1996 has effect of quenching all the issues raised by the applicant with respect to the GR

dated 01.12.1995; to quote the judgment of Hon'ble Supreme Court as follows:

"Special Leave Granted.

The impugned order of the High Court dated 22.03.1991 is set aside and we direct that the question of absorption into the regular service shall be governed by the scheme prepared by the State government contained in the Government Resolution dated 01.12.1995. We have approved the scheme and we direct that all the employees who fall within the parameters of the scheme should be similarly treated so that the possibility of individual coming for redress under the scheme may not arise as that would only create avoidable litigation.

The appeal will stand disposed of accordingly with no order as to costs."

b) The respondents have also relied on a judgment of Aurangabad Bench of Hon'ble Bombay High Court in Writ Petition Nos 619/2006 (Shivhar s/o Namdeo Kshirsagar & Anr Vs. The State of Maharashtra & Ors) with W.P. No. 1029/2006 (Bhaskar s/o Trimbakrao Puranpole Vs. The State of Maharashtra), in which the petitioners were working as Mustering Assistants and had filed the writ petitions seeking a declaration that they were eligible and entitled for pension and pensionary benefits in view of the provisions of rule 33 of MCS (Pension) Rules 1982 from the respective dates of their retirement. The applicants in the writ petitions were eligible for absorption in Class IV services as they were working as Mustering Assistants on 31.05.1993. The learned counsel appearing for the petitioners had challenged

Clause 5.1 and 5.2 of the Government Resolution dated 01.12.1995 and claimed that in view of provisions of Rule 33 of the Pension Rules the past service rendered by the Mustering Assistants prior to their absorption ought to have been counted for the purpose of grant of pension. For ready reference, Rule 33 of MCS (Pension) Rules, 1982 is quoted below :-

"33. Service tendered under Government followed without interruption by confirmation counts in full as service qualifying for pension.

A Government servant who holds a permanent post substantively or holds a lien or a suspended lien or a certificate of permanency on the date of his retirement, the entire temporary or officiating service rendered under Government followed without interruption by confirmation in the same or another post, shall count in full as service qualifying for pension except the service rendered against one of the posts mentioned in rule 57.

Note – The benefit of above rule should also be extended to Government servants who have rendered service in temporary posts in the former Civil supplies department including those re-employed after the break, provided they agree to refund the terminal gratuity, if any, received by them on their retrenchment from the former civil Supplies Department (In order to avoid hardship, the gratuity may be refunded in monthly installments not exceeding twenty). Competent authorities are authorized to condone where necessary, breaks not exceeding 3 years. In cases where break exists, the terminal gratuity referred to above should be refunded within three months from the date of order of the competent authority condoning the break and the right to count the service under above rule does not accrue until the gratuity is wholly refunded. The condonation should be postponed until the Ex-Civil Supplies Department personnel actually pass the examination, if any, required for confirmation and are actually confirmed. The benefit of condonation of break should be allowed only in those cases in which

break have occurred on account of discharge from service for want of post and not on any other ground, e.g. voluntary resignation etc. and in computing the period of break, the terminal leave availed of by the persons concerned, should also be taken into account. The leave salary is not, however, refundable."

c) Operating part of the judgment of Hon'ble High Court in W.P. No. 619/2006 with W.P. No. 1029 /2006 from para 10 to 14 of the judgment is quoted below for ready reference :-

"10) We have considered the submissions advanced by the learned counsel appearing for the respective parties. Perused the material placed on record, the Scheme and the Government Resolution by which the Muster Assistants were absorbed in regular service. The clear intention while absorbing the Muster Assistants in regular service is reflected from clauses 3.1 to 5.2 of the Government Resolution dated 1st December 1995. Such persons working as Muster Assistants were not to be considered as State employees as per the scheme. In view of the Government Resolution dated 21st April 1999 the State Government adopted a stand that the service conditions applicable to the Government employees would not be applicable to the Muster Assistants who are absorbed in regular service.

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.

12) The learned AGP points out that the Muster Assistants whose services were regularized from a particular date would get pension from the date of regularisation 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.

13) *In the light of the above position no interference is called for in these petitions.*

14) *The writ petitions stand rejected.*

d) On the basis of analysis of ratio in the judgment of Hon'ble Bombay High Court, Bench at Aurangabad, in our considered opinion, the Hon'ble High Court has taken a view and laid down the ratio that the stand taken by the State Government that the past period of Mustering Assistants, prior to the date of absorption in regular establishment, would not be counted for the purpose of calculation of pension.

e) The respondents have also cited order passed by Aurangabad Bench of this Tribunal in O.A. No. 578/2008 in which this Tribunal has held that it is settled legal position that services rendered Ad hoc basis or as a casual worker or a daily wager cannot be reckoned for the purpose of the benefits available to the employees appointed on regular establishment as a Government servant. Operating part of the Order of this Tribunal in O.A. No. 578/2008 along with relevant part of judgment of Hon'ble Bombay High Court in W.P. No. 954/1990, dated 21.12.2001 and Judgment of Hon'ble Supreme Court in SLP (civil) No.

5171/02 dated 22.08.2003, is quoted below for ready reference-

“7. The matter was taken before Hon/ High Court by some of the Mustering Assistants in the form of W.P. No. 954/90 and Hon/ High Court was pleased to accept the request that, absorption should be from retrospective effect i.e. 31.3.1997. We quote para 5 from the judgment in W.P. No. 954/90 dt. 20.12.2001.

“We, therefore, direct the State Government through its Chief Secretary and the Principal Secretary in the Department of planning to take steps to issue orders for absorption of remaining 3130 Mustering Assistants strictly as per the scheme dated 1.12.1995 and such orders of absorption shall be issued within four weeks from today. We also make it clear that these absorption orders will take effect retrospectively from 31.3.1997.”

This order of Hon High Court was challenged before Hon. Supreme Court and Hon. The Apex Court on 15.3.2002 was pleased to grant interim relief as under :-

“Meanwhile the operation of the order under challenge shall remain stayed. However, it is clarified that the petitioner shall take steps to gradually absorb the Muster Assistants in accordance with seniority.”

It appears that, this order was confirmed while finally disposing of SLP (Civil) No. 5171/02 on 22.8.2003. The final order reads thus :-

“We therefore, dispose of these special leave petitions in terms of the interim order datd 15.3.2002 by directing that the petitioners would take steps to gradually absorb the Mustering Assistants in accordance with seniority and the roaster.”

Consequently, the view of Hon. High Court of giving retrospective effect to the absorption (w.e.f. 31.3.97) was not approved by Hon. The Supreme Court. The relief sought by applicant in fact seeks such retrospective effect to his

absorption, which was not approved by Hon. the Supreme Court.

8. *Although Advocate Shri Sugdare vehemently urged that, the decision of Hon' Supreme Court was rendered when G.R. dt. 25.6.04 was not in the field, we have already indicated that in the G.R. dt. 25.6.04 there is nothing to indicate that, Govt. intended to give retrospective effect to absorption of the Mustering Assistants.*

Otherwise also it is settled legal position that, service rendered on ad hoc basis or as casual worker daily wagers can not be reckoned for the purpose of benefits available to the employees regularly appointed as Govt. servants.

9. *For the reasons discussed hereinabove the O.A. fails and the same is dismissed."*

III. Appropriate ratio in multiple citations relied upon by the contesting sides in the present matter: -

- a) It is observed from analysis in preceding para, that the judgment of Division Bench of Hon'ble Bombay High Court (Principal Bench) (Civil Appellate Jurisdiction) in W.P. No. 2236 of 1997 with W.P. No. 2274 of 1997, delivered on 24.08.2012 and a batch of Writ Petitions discussed in details in preceding paras are in divergence with the Judgment of Division Bench of Hon'ble Bombay High Court in W.P. No. 619 of 2006 with W.P. No. 1029 of 2006 as delivered on 16.07.2007. However, the judgment of Division Bench

of Hon'ble Bombay High Court (Principal Bench) (Civil Appellate Jurisdiction) in W.P. No. 2236 of 1997 with W.P. No. 2274 of 1997, delivered on 24.08.2012 is based on Judgment passed by Hon'ble Industrial Court whereas, the Judgment of Division Bench of Hon'ble Bombay High Court in W.P. No. 619 of 2006 with W.P. No. 1029 of 2006 as delivered on 16.07.2007 is based on order passed on 02.12.1996 by Hon'ble Supreme Court in Civil Appeal No. 15339 of 1996 out of Special Leave to Appeal (C) No. 15654 of 1991 (State of Maharashtra and Anr. Vs. Shri Suhas Narayan Ahirrao) by which the scheme prepared by the State Government contained in the Government Resolution dated 01.12.1995 was approved. Therefore, the claim made by the applicants for counting qualifying period for grant of pensionary benefits from the date of their appointment as Mustering Assistant till their superannuation after their absorption in Government services is, in our considered opinion, is hit by the ratio in Judgment dated 16.07.2007 delivered by Hon'ble Bombay High Court (Aurangabad Bench) in

W.P. No. 619/2006 with 1029/2006 and therefore, is devoid of merit.

- b) The issue has now been settled by Judgment delivered on 07.09.2022 by a larger Bench of Hon'ble Supreme Court in Civil Appeal No. 6531-6533/2022 (Arising out of SLP (C) Nos. 6039-6041/2016 with Civil Appeal No. 6534/2022 (Arising out of SLP (C) No. 6042/2016. Operating part of the Judgment delivered by Hon'ble Supreme Court may be as quoted below-

“We are thus of view that the only direction which can be issued is that persons who has been absorbed over a period of time post 31.03.1997, for pensionable service, the reckoning date would be 31.03.1997 and such of the persons who have rendered a pensionable service on that basis would be entitled to that benefits.

The appeals stand disposed of accordingly in the aforesaid terms leaving the parties to bear their own costs.”

- c) To sum up, in our considered opinion, all the mustering assistants who have been absorbed as per Government scheme declared by GR dated 01.12.1995 and approved by Hon'ble Apex Court, they are entitled to a notional date of 31.03.1997 as date of joining Government service for the purpose of calculation of qualifying service for the purpose of

granting pension. Those mustering assistants, who have been absorbed before 31.03.1997 shall be governed by as per scheme declared by GR dated 01.12.1997.

- d) The mustering assistants who had approached Industrial Court and the Judgment of Industrial Courts have attained finality then cases under this category are entitled to benefits as per judgment of Industrial Court.
- e) So far as, the prayer of the applicants for taking past services as mustering assistants for granting other service benefits is concerned, a distinction has to be drawn that the mustering assistants had, in the first place, not been engaged on ad hoc / temporary basis against sanctioned, vacant posts in Class IV or Class III (Non Gazetted) services in Government / Zilla Parishads. Hon'ble Apex Court had its vide order dated 29.10.1993 permitted to maintain seniority list of mustering assistants and engage them whenever work is available, according to their seniority and discontinue their services as per junior mustering assistant should go first before a senior is discontinued. It is State Government's welfare approach that the respondents declared a scheme of absorption of mustering assistants against vacant posts in Class- III (non Gazetted) and Class-IV posts. Therefore, in our considered opinion, the applicants have not been able to cite any convincing reason for

treating their case on line with ad hoc appointee medical doctors/ college teachers etc. The last but not the least, Hon'ble Supreme Court has approved the scheme of absorption of mustering assistants announced by GR dated 01.12.1995 and the same is final as on date. Hence, the applicants are entitled to other service benefits as per the scheme framed by GR dated 01.12.1995.

f) Thus, in our considered opinion, the Original Applications deserve to be allowed partially. As the applicants have not made representation before competent authority for grant of pensionary benefits that may be admissible to them, based on merit of each individual case, under the judgment of a larger Bench of Hon'ble Supreme Court delivered on 07.09.2022 in Civil Appeal No. 6531-6533/2022 (Arising out of SLP (C) Nos. 6039-6041/2016 with Civil Appeal No. 6534/2022 (Arising out of SLP (C) No. 6042/2016, the applicants and all other similarly situated mustering assistants who may not be before this Tribunal, shall make representation before the competent authority.

g) Accordingly, the following order is passed :-

ORDER

The Original Applications are partly allowed in following terms:

I. Prayer Clause (B) is rejected for being devoid of merit.

- II. Prayer Clause (C) is rejected.
- III. Prayer Clause (E) is rejected.
- IV. Prayer Clause (F) is rejected.
- V. Prayer Clause (G) is rejected.
- VI. In respect of Prayer Clause (D) and (H), the applicants are directed to make individual applications to the competent authority for grant of pensionary benefits under the judgment of a larger Bench of Hon'ble Supreme Court delivered on 07.09.2022 in Civil Appeal No. 6531-6533/2022 (Arising out of SLP (C) Nos. 6039-6041/2016 with Civil Appeal No. 6534/2022 (Arising out of SLP (C) No. 6042/2016. The respondents should consider the individual applications received as expeditiously as possible, preferably within 4 months from receipt of the applications.
- VII. No order as to costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. OA No. 553/2013 and 21 Ors. permanent service or pensionary benefits.