

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 748 OF 2017  
(Subject – Pension)**

**DISTRICT : AHMEDNAGAR**

**Parasram s/o Nathaji Sonawane,** )  
Age : 66 years, Occu. : Retired, )  
R/o : New Nanded Colony, Near Army Compound,) )  
Plot No. 08, Room No. 03, Vyankatesh Niwas,) )  
Dist. Ahmednagar. ) .... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Principal Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai-32. )
2. **The State of Maharashtra,** )  
Through its Principal Secretary, )  
Rural Development Department, )  
Mantralaya, Mumbai-32. )
3. **The Executive Engineer,** )  
Zilla Parishad, Minor Irrigation, )  
Sub-Division, Harsul, Dist. Nashik. )
4. **The Deputy Director,** )  
Health Service, Nashik Circle, Dist. Nashik.)
5. **Medical Superintendent,** )  
Rural Hospital, Akole, Dist. Ahmednagar.)
6. **Senior Accounts Officer,** )  
Indian Audit & Accounts Department, )  
Pratishthan Bhavan (Old CGO Building,) )  
101, Maharshi Karve Marg, Mumbai-400 020.)

**... RESPONDENTS**

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**APPEARANCE** : Shri M.A. Manjramkar, Counsel for the  
Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for  
respondent authorities.

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**CORAM : Hon'ble Justice Shri P.R. Bora, Vice Chairman**

**Reserved on : 29.08.2023.**

**Pronounced on : 21.11.2023**  
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**ORDER**

1. Heard Shri A.M. Manjramkar, learned counsel for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for respondent authorities.

2. The applicant was appointed as Mustering Assistant with Zilla Parishad, Minor Irrigation, Nashik Division, Nashik on 01.04.1983. On 28.09.2003, he was given appointment on the post of Laboratory Assistant, Class-III in the pay scale of Rs. 3200-4900. As contended in the order dated 28.09.2003, the said appointment was temporary appointment and the applicant was liable to be removed or discharged without giving any notice. On 08.10.2003, he was given posting at Rural Hospital, Kotul, Tq. Akole, Dist. Ahmednagar on the post of Laboratory Assistant. Vide order dated 01.07.2010 passed by the Deputy Director of Health Services, Nashik Region, services of the applicant were regularized w.e.f. 08.10.2003. Since the Rural Hospital at Kotul, Tq. Akole, Dist. Ahmednagar come under tribal area, the

applicant was given one step higher pay scale in view of the G.R. dated 06.08.2002. On 30.08.2010, the applicant got retired on attaining the age of superannuation while working as Laboratory Assistant at Rural Hospital, Kotul, Dist. Ahmednagar.

3. It is the case of the applicant that he was entitled for grant of pension since he has worked for more than 10 years with the Government. As contended in the Original Application, the applicant made several representations with the authorities concerned for updating his service book and to send his papers to the Accountant General office for grant of pension. It is the grievance of the applicant that he did not receive any positive response from the offices concerned and he was thus deprived from his right to get the pension for years together. As is revealing from the pleadings in the O.A., the applicant preferred complaint before the Hon'ble Lokayukta for redressal of his grievance. It is the contention of the applicant that in the said proceeding before the Lokayukta, an undertaking was given by the respondents to the effect that necessary benefits such as annual increments and benefits of 6<sup>th</sup> Pay Commission will be provided to the applicant within a period of 1 month of the disposal of the case before the Hon'ble Lokayukta. However, since the undertaking so given was not complied with, the

applicant again approached the Hon'ble Lokayukta on 20.08.2010 for non-compliance of the undertaking given by the respondents before the Hon'ble Lokayukta. On 30.08.2010, the applicant got retired on attaining the age of superannuation.

4. On 20.04.2011, the Medical Superintendent (Class-I), Rural Hospital, Akole, Dist. Ahmednagar forwarded the pension case of the applicant to the office of Accountant General. The Accountant General office Mumbai did not process the pension case of the applicant for want of followings :-

- “1. JOINT PHOTOGRAPHS OF THE PENSIONER SHOULD BE ATTESTED ACROSS BY THE DEPARTMENT AS THE PENSIONER DESIRES TO DRAW PENSION OUTSIDE THE JURISDICTION OF THIS OFFICE.
2. COMMUTATION APPLICATION IS RETURNED AS THE FRACTION TO BE COMMUTED IS NOT NOTED ON COMMUTATION APPLICATION.”

The pension papers were returned to the office of Medical Superintendent, Akole for necessary compliance. In the meanwhile, the applicant was constantly following up the matter with the concerned authorities. Vide its letter dated 31.08.2017, the Accountant General office sought clarification from the Medical Superintendent (Class-I), Rural Hospital, Akole, Dist. Ahmednagar in regard to the admissibility of the pension to the

applicant. The Medical Superintendent was directed to furnish the compliance to enable the Accountant General office about admissibility of the applicant for pension, which supporting G.Rs. However, since thereafter no effective progress was seen, the applicant approached this Tribunal by filing the present Original Application. It is the contention of the applicant that the period of service, during which the applicant had worked as Mustering Assistant, is liable to be considered while computing the period of service of the applicant. The following prayers are made by the applicant in the present Original Application :-

- A. To direct the respondents to process and release the pension of the applicant in pursuance of communication dated 28.07.2017 made by respondent No. 4.*
- B. To direct the respondents to grant provisional pension to the applicant in accordance with Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982, pending the hearing and final disposal of the case;*
- C. Deleted as per order of Tribunal dated 10.10.2017.*
- D. To direct the respondent No. 1-5 to send complete proposal of pension and respondent No. 6 to decide the same within period of three months; pending hearing and final disposal of this application.*
- E. And any other relief, which this Tribunal may deem fit may kindly be granted in favour of the applicant.*
- F. To quash the letter dated 07.09.2017 issued by the A.G. Mumbai to the Medical Superintendent, Rural Hospital, Kotul, (ANNEXURE A-16)."*

5. The respondent Nos. 1, 4 & 5 have filed their joint affidavit in reply on 01.03.2018. The respondents have contended that the applicant was never absorbed on the post of Mustering Assistant and therefore, the service rendered by the applicant on the post of Mustering Assistant cannot be considered as qualifying period of his service for grant of pension. In para No. 15 of the affidavit in reply, the respondents have, however, admitted that the applicant has put in 20 years' service in Zilla Parishad, Minor Irrigation, Dist. Nashik. However, it is the further contention of the respondents that period of his regular service is very short. It is further contended that the services of the applicant were regularized by the State Government on the condition that the services rendered by him as Mustering Assistant will not be considered for any purpose as the period of service. According to the respondents, as per the Rules, since the applicant has not completed the period of qualifying service, cannot be held entitled for grant of pension. The respondents have therefore, prayed for dismissal of present Original Application.

6. The respondent No. 3 has filed his separate affidavit in reply. It is the contention of respondent No. 3 that the applicant was given appointment whenever the work was

available on cumulative wage; however, the applicant never worked continuously. The respondent No. 3 has denied that the applicant has put in 20 years' of Zilla Parishad Service. It is also contended that the service rendered by the applicant on the post of Mustering Assistant cannot be counted for pension. It is further contended that the services of the applicant were regularized by the State Government on the condition that the Mustering Assistants are not eligible for counting of earlier service on the post of Mustering Assistant for qualifying service and this condition was accepted by the applicant while joining the service as Laboratory Assistant. As such, according to respondent No. 3, the applicant is not entitled for counting of his past service rendered on the post of Mustering Assistant. The respondent No. 3 has therefore, prayed for dismissal of the Original Application.

7. All these respondents have denied the contention of the applicant that the applicant worked as Mustering Assistant with Zilla Parishad, Minor Irrigation, Nashik Division, Nashik from 01.04.1993 till the date he got appointed as Laboratory Assistant in the District Rural Hospital, Kotul, Dist. Ahmednagar on 28.09.2003.

8. Learned Chief Presenting Officer appearing for the respondents in his argument reiterated the contentions raised in the affidavits in reply filed on behalf of respondents. Learned C.P.O. further submitted that the request of the applicant for making him applicable for retiring pension cannot be accepted for the reason that he has not completed the period of qualifying service. Learned C.P.O. submitted that the period from 28.09.2003 to the date of his retirement i.e. 30.08.2010 falls short for making the applicant entitled for grant of pension. Learned C.P.O. submitted that the applicant has failed in bringing on record any cogent evidence to show that prior to 2003 he had continuously worked as Mustering Assistant, so as to count his said service in view of the judgment of the Hon'ble Apex Court in the case of **Shaikh Miya s/o Shaikh Chand ETC. ETC. Vs. State of Maharashtra.**

9. Shri M.A. Manjramkar, learned counsel appearing for the applicant submitted that evidence, which the applicant has placed on record, sufficiently demonstrates that the applicant started working as Mustering Assistant w.e.f. 01.04.1983 and thereafter worked continuously as Mustering Assistant till he was given an appointment as Laboratory Assistant on 28.09.2003. Learned counsel submitted that the applicant has produced on



record the possible best evidence, which was in his possession and it is sufficient to arrive at conclusion that from 1993 till 2003 and thereafter from 2003 to 2010 the applicant has continuously worked and thus satisfies the criteria of qualifying service for making him entitled for grant of pension.

10. Learned counsel submitted that in the recent judgment in the case of **Shaikh Miya s/o Shaikh Chand ETC. ETC. Vs. State of Maharashtra**, the Hon'ble Apex Court settled the issue of rights of Muster Assistants for receiving pension. Learned counsel submitted that 'entitlement of Muster Assistants to get pension was' the principle issue before the Hon'ble Apex Court in the aforesaid matter. More particularly which period of service would be counted as qualifying period for making the service pensionable of the Muster Assistants was the question for determination of the Hon'ble Apex Court. The Hon'ble Apex Court has directed that the persons who have been absorbed over a period of time post 31<sup>st</sup> of March, 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.

11. In the instant matter, the fact that in the year 2003, the applicant was appointed as Laboratory Assistant and

appointment on the said post was regularized from the said date has not been disputed by the respondents. Dispute is in respect of period prior to 2003. According to the applicant, he was in continuous service from 1983 till 2003, the respondents have denied the said contention and according to them, for a very small period the applicant had worked as Muster Assistant and that too with a long gap.

12. I have duly considered the submissions made on behalf of the applicant, as well as, respondents. I have carefully gone through the documents which are placed on record by the parties. The applicant has placed on record a copy of service book. The controversy is in respect of services rendered by the applicant as Mustering Assistant prior to his appointment on the post of Laboratory Assistant and whether that qualifies the period for making him eligible for pension. The applicant has placed on record very first order, by which he was given appointment on the post of Mustering Assistant. The said order is of the dated 01.04.1983. The applicant has also placed on record certain other orders, whereby his services as Mustering Assistant were continued. However, all such orders are not placed on record from 1993 till 2003. For that, however, it would be unjust to attribute blame on part of the applicant, since it was

beyond his capacity. In fact, the record must be available with the respondents and as such, in all fairness it were the respondents who could have produced the said information on record instead of merely denying the contention raised by the applicant.

13. The applicant has filed rejoinder affidavit to the affidavit in reply filed on behalf of respondent Nos. 1, 4 & 5. Along with said rejoinder affidavit, the applicant has filed one document which is marked as Annexure RJ-1. The said document demonstrates that the services of the applicant as Mustering Assistant were with break during the period between 28.12.1987 to 06.02.1993. However from 1993 onwards it seems that the applicant did continuously work as Mustering Assistant. The document evinces the increments granted to the applicant. As is revealing from the said document on 07.02.1993, the applicant was appointed in the pay scale of Rs. 750-12-870-EB-14-940. The document further demonstrates that the basic pay of the applicant on 07.02.1993 was 750/-. On 07.02.1994 it was increased to Rs. 762/- i.e. the applicant was granted annual increment of Rs. 12/- and thereafter, the applicant is shown to have received the increments for consecutive 10 years and on 01.02.2003 his basic pay had reached to Rs. 870/-. It need not

be stated that the increments are paid for the performance of the Government employee of preceding year. Grant of increment in favour of an employee proves that the Government employee has worked for entire preceding year. The said entry appears to be of the service record of the applicant and is under the signature of the Deputy Engineer, Zilla Parishad (Minor Irrigation), Sub Division Harsul. The respondents have not denied or disputed the said document. The applicant has, thus, brought on record sufficient evidence on the basis of which, the conclusion can be recorded that from 07.02.1993 onwards till the date of his absorption on the post of Laboratory Assistant, the applicant has continuously worked as Mustering Assistant. It is not in dispute that the applicant came to be absorbed in the Government service in the year 2003. As has been observed by the Hon'ble Apex Court in the case of **Shaikh Miya s/o Shaikh Chand ETC. ETC. Vs. State of Maharashtra** (cited supra), "the Muster Assistants who have been absorbed over a period of time post 31<sup>st</sup> of March, 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."

14. It appears to me that the law laid in the case of **Shaikh Miya s/o Shaikh Chand ETC. ETC. Vs. State of Maharashtra** (cited supra) would squarely apply in the instant matter. As has been noted by me hereinabove, the applicant has brought on record sufficient evidence showing that from 07.02.1993 onwards, the applicant has continuously worked as Muster Assistant till the date of his absorption in the Government service i.e. 28.09.2003. The respondents have denied the benefit of pension and pensionary benefits to the applicant by reckoning his period of service from the date of his absorption in the Government service i.e. 28.09.2003, which does not fulfill the criteria of qualifying service. In the case of **Shaikh Miya s/o Shaikh Chand ETC. ETC. Vs. State of Maharashtra** (cited supra), the Hon'ble Apex Court has specifically observed that since the absorption occurred over a period of time, that has deprived some persons from getting benefits of permanent employees. The Hon'ble Apex Court has therefore, ruled that in such cases, notional date of absorption shall be taken as 31.03.1997 for determining the period of pensionable service. In the instant matter, though the applicant was absorbed in the Government Services in the year 2003, as has been ruled by the Hon'ble Apex Court, 31.03.1997 should be deemed to be his

notional date of absorption and as such for the purpose of pension and pensionary benefits, his period of service shall be reckoned from 31.03.1997. The total period of service rendered by the applicant in the Government thus has to be reckoned from 31.03.1997 to 30.08.2010, which comes to more than 13 years. The applicant thus satisfies the criteria of qualifying service and has to be therefore, held entitled for grant of pension, as well as, applicable pensionary benefits.

15. For the reasons discussed hereinabove, the following order is passed :-

**ORDER**

- (i) The respondents shall count the period of service in respect of the applicant from 31.03.1997 till the date of his retirement i.e. 30.08.2010 for the purpose of pension and accordingly determine the amount of pension payable to him and in turn pay the arrears of pension till date within a period of 6 months from the date of this order and shall continue to pay to the applicant the requisite amount of pension regularly.
- (ii) The Original Application stands allowed in the above terms without any order as to costs.

**PLACE : Aurangabad.**  
**DATE : 21.11.2023**

**(Justice P.R. Bora)**  
**Vice Chairman**