

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.944 OF 2016
(Subject:-Regularization)**

DISTRICT: - Jalna

Sunil S/o. Vitthal Jagtap,)
Age:-40 Years, Occu:- Service,)
R/o. Gokul Nagari, Near Rohit Kirana)
Old Jalna Dist. Jalna.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra**)
Through, it's Secretary of)
Water Supply and Sanitary)
Department (15),)
Mantralaya, Mumbai 32.)
- 2. Director,**)
Directorate office of)
Ground Water Survey and)
Development Agency,)
Maharashtra State Pune-411005.)
- 3. Deputy Director of**)
Ground Water Survey and)
Development Agency,)
Vikas Bhavan,)
Adalat Road, Aurangabad.)
- 4. Senor Geologist,**)
Ground Water Survey and)
Development Agency, Jalna.)...**RESPONDENTS**

APPEARANCE : Shri Avishkar Shelke, learned
Advocate holding for Shri A.R. Lukhe,
learned Advocate for the applicant.
: Shri V.R. Bhumkar, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **11.08.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed seeking following reliefs:-

“A] This Application may kindly be allowed with cost.

B] The impugned communication letter dated 2/9/2015 issued by the Resp. No.2 forwarded to the Resp. No.2 which is annexed at Exh. “A-27” of this Application may kindly be quashed and set aside.

BB] The impugned communication letter dated 01/09/2015 communicated by the 2nd Respondent which is annexed at Exh. “25” of this Application may kindly be quashed and set aside.

C] Kindly be issued order or directions against the Respondents and specially to direct the Respondent No.2 to forward correct appointment dated 1/1/1994 proposal of the Applicant for the

regularization in service to the Resp. No.1 for taking decision on regularization services of the Applicant on permanent post of Driver with the Resp. No.4 office.

- D] Kindly be issued order or directions to the Respondent No.1 and Resp. No.1 kindly be directed to regularize and to absorb the Applicant on the permanent post of Driver (C.R.T.) with the Resp. No.4 office and to consider continuous services of the Applicant w.e.f. 1/1/1994 as per **G.R. dated 24/4/2001** and to pay all consequential monetary benefits i.e. arrears of back wages w.e.f. 1/1/1994 with appropriate rate of interest to the petitioner, as well as to pay differences of 5th pay and 6th pay commission to the petitioner for that purpose may pass appropriate order.
- E] Kindly issued appropriate order or directions against the Respondents and to direct the Respondents to pay overtime and T.A. D.A. arrears allowances to the petitioner for that purposes may pass order.

F] Pass such other and further orders as this Hon'ble Tribunal may deem fit in the interest of justice in the favour of petitioner.

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

- (i) The applicant is holding educational qualification of S.S.C. Since January, 1994 till filing of this Original Application, he has been continuously working on the post of Driver with the respondent No.4 office i.e. the Senior Geologist, Ground Water Survey and Development, Agency Jalna. As per condition of G.R. dated 24.04.2001 (Annex. 'A-5'), he has completed more than five years of qualifying services on daily wages on the post of Driver. The respondent No.1 i.e. the State of Maharashtra, through its Secretary of Water Supply and Sanitary Department (15), Mantralaya, Mumbai as per abovesaid G.R. dated 24.04.2001 vide its order dated 1/4/2015 (Annex. 'A-19') regularized 26 daily wages C.R.T. Co-employees of the applicant, depriving the applicant of the said claim, in view of the proposal thereof being submitted by the respondent No.2 i.e. the Director, Directorate office of Ground Water Survey and

Development Agency, Maharashtra State, Pune and the respondent No.3 i.e. the Deputy Director of Ground Water Survey and Development Agency, Vikas Bhavan, Adalat Road, Aurangabad to the respondent No.1 i.e. the State of Maharashtra, through it's Secretary of Water Supply and Sanitary Development, Mantralaya, Mumbai in respect of daily wages.

- (ii) It is further submitted that apart from his educational qualification of S.S.S., the applicant is holding valid driving license of heavy motor vehicle. In view of same, he was working as a Driver with the respondent No.4 on daily wages on Drilling, Boring and Compressor Machine loaded Truck. Before 01.01.1994, in the year 1993, the applicant was working as a Helper and he has received daily wages for that as reflected in relevant copies of register at Annex. 'A-2' collectively. The respondent No.4 authority also issued character and experience certificates dated 16.08.1997, 18.12.2008 and 29.09.2011 in favour of the applicant (Annex. 'A-3' collectively).
- (iii) It is further stated that in the year 1996, the applicant filed complaint (U.L.P.) No.30 of 1996 against the

respondent No.4 before the Learned Industrial Court, Jalna to grant permanent service with monitory benefits, wherein it was specifically stated that the applicant joined the respondent No.4 as a Helper on daily wages at Rs.42 per day in November, 1993. During pendency of the said complaint, the G.R. dated 24.04.2001 (Annex. 'A-5') was issued and implemented by respondent No.1 as per *Kalelkar Settlement* for giving permanent benefits to daily wages C.R.T. employees, who had worked with the respondent No.1 Department as well as Public Works Department, Irrigation Department and Rural Development and Water Conservation Department. The said G.R. provided condition that, those daily wages C.R.T. employees from their date of appointment wherein continuously served with Government and had completed five years services of such service on 31.12.1998. The second condition thereof was to withdraw any litigation pending in the Court/Tribunal filed by such employees. In view of same, the applicant withdrew his complaint pending before the Learned Industrial Court, Jalna and the said

complaint (U.L.P.) No.30/1996 was disposed of as withdrawn vide order dated 28.06.2004 (Annex. 'A-6').

- (iv) It is further submitted that in view of abovesaid G.R. dated 24.04.2001, the respondent No.1 called information of employees working on daily wages from the respondent No.2 and in turn, the respondent No.2 called information from the respondent Nos.3 and 4. The respondent No.4 submitted proposal of the employees in the year 2009 vide it's order dated 18.01.2009 (Annex. 'A-7') along with list. However, the said respondent No.4 submitted that six employees thereof had not completed five years of service as on 31.10.1998 including the applicant. In the said proposal, it was stated that the applicant was serving on daily wages since 23.08.1994 and as such he did not complete five years of service by 31.12.1998. That was wrong. Infact the applicant was working on daily wages since November, 1993 and was working as Driver since 01.01.1994 and as such completed five years of continuous service by 31.12.1998 and as such was entitled for benefits of the said G.R. dated 24.04.2001.

- (v) It is further submitted that the applicant has gathered information about his services. In this regard, the respondent No.4 vide letter dated 29.01.2010 (Annex. 'A-10) had informed that the applicant was working in the office of respondent No.4 on daily wages since 01.01.1994. The applicant also made representation dated 30.08.2013 (Annex. 'A-11') to the respondent No.2 seeking benefit of the G.R. dated 24.04.2001 for regularization of his services contending that as per service record he has fulfilled the condition incorporated in G.R. dated 24.04.2001 (Annex. 'A-5'). He also made representation to the respondent No.1 dated 24.02.2015 (Annex. 'A-15') placing on record the said documents to substantiate his contention. The respondent No.3 by its letter dated 07.03.2015 (Annex. 'A-16') called upon the respondent No.4 to verify the record about the applicant's services as to whether he completed five years of daily wages employees till 31.12.1998 to which the respondent No.4 replied by letter dated 23.02.2015 (Annex. 'A-17'), confirming that the applicant had completed five years of services as daily wager Driver. The respondent No.3 by its letter dated 01.04.2015

(Annex. 'A-18') informed the respondent No.2 about the same. The applicant, thereafter also made representation dated 02.05.2015 (Annex. 'A-21') with the respondent No.2 ventilating his grievances. However, without considering his representation, the respondent No.2 by impugned letter dated 01.09.2015 (Annex. 'A-25') addressed to the respondent No.1 informed that the applicant does not fulfill the condition of continuous services of five years as daily wager by 31.12.1998 as per G.R. dated 24.04.2001 and the respondent No.2 similarly informed to the Chief Presenting Officer the said decision by it's letter dated 02.09.2015 (Annex. 'A-27').

- (vi) According to the applicant, the said decision of holding the applicant ineligible for seeking benefits of G.R. dated 24.04.2001 (Annex. 'A-5') is against the service record of the applicant and the same is liable to be quashed and set aside and the applicant is entitled for seeking specific direction against the respondent No.2 to forward the correct proposal to the respondent No.1 for enabling the respondent No.1 to take appropriate decision on regularization of services of the applicant on

permanent post of Driver with the respondent No.4.
Hence this application.

3. The respondent Nos.1 to 4 resisted the Original Application by filing affidavit-in-reply by one Shri Panchamlal Laxman Salve, working as a Deputy Director, Ground Water Survey and Development Agency, Aurangabad (page Nos.270 to 281 of P.B.).

(i) It is thereby admitted that the applicant was infact on daily wages from the month of January, 1994 as a Labourer and accordingly was given work as per availability and requirement. However, there was break in his service and practical date of commencement of work of applicant as a Driver is since 23.08.1994. In view of same, from 23.08.1994 to 31.12.1998, the length of service of the applicant is about four years, four months and eight days. During this period, the applicant was not on duty on various occasions in the month of July, September, Oct-1995, January-1996, February, October, November, December-1997 and April, May, August, November, December-1998. Therefore, the applicant was not in continuous service and does

not qualify term of five years continuous service on daily wages as per G.R. dated 24.04.2001.

- (ii) It is further submitted that the applicant was in fact on daily wages as a Labourer and was given remuneration of Rs.400/- on 21.01.1994 for labour work done on two bore wells. Only some times, the applicant worked as a Driver as per requirement of work, but that work was not continuous in nature. In the circumstances, the applicant is not entitled for the benefits of regularization of service as per G.R. dated 24.04.2001 as he did not fulfill the condition of completion of five years continuous service till 31.12.1998. In the circumstances, there is no merit in the Original Application and is liable to be dismissed.

4. The applicant filed affidavit-in-rejoinder and denied the adverse contentions raised in the affidavit-in-reply and reiterated his contentions raised in the Original Application.

5. Thereafter, the respondents filed short affidavit as per order passed by this Tribunal on 25.04.2015 giving details as regards the actual days of service rendered by the applicant based on attendance and wages paid to the applicant right

from his first date when he had worked and from the date, paid wages on the basis original documents. In the short affidavit, it is further submitted that even entries shown in Sr.Nos.1,5,6,7& 8 are not correct and entries on page No.37 and page No.66 in the log book seems to be added subsequently.

6. The applicant filed further rejoinder affidavit and denied the adverse contentions raised in the short affidavit.

7. I have heard at length the arguments advanced by Shri Avishkar Shelke, learned Advocate holding for Shri A.R. Lukhe, learned Advocate for the applicant on one hand and Shri V.R. Bhumkar, learned Presenting Officer representing the respondents on other hand.

8. As revealed from the overall reading of the Original Application, the applicant though is challenging the impugned communication/order dated 01.09.2015 (Annex. 'A-25') issued by the respondent No.2 and communication/order dated 02.09.2015 (Annex. 'A-27') issued by the respondent No.2, by reading both the communications together, it is evident that thereby the applicant is held to be ineligible for getting benefit of

regularization of service as per G.R. dated 24.04.2001 (Annex. 'A-5').The said G.R. dated 24.04.2001 is as follows:-

“रोजंदार तसेच कार्यव्ययी
आस्थापनेवरील कर्मचाऱ्यांना न्या.
कालेलकर करारानुसार पुर्वलक्षी
प्रभावाने रूपांतरीत अस्थायी
आस्थापनेवर घेण्याबाबत.

महाराष्ट्र शासन
सार्वजनिक बांधकाम विभाग
शासन निर्णय, रूअआ-१५९६/२२८/सेवा-५
मंत्रालय, मुंबई -४०० ०३२,
दिनांक- २४ एप्रिल, २००१

प्रस्तावना:-

उपरोक्त विषयासंबंधीचा संक्रमांकाचा शासन निर्णय रूअआ-१५९६/२२८/सेवा-५, दि.२४.११.२००० अधिक्रमिक करून शासन पुढीलप्रमाणे सुधारित आदेश निर्गमित करित आहे.

“सार्वजनिक बांधकाम विभाग, पाटबंधारे विभाग तसेच ग्राम विकास व जलसंधारण विभाग यामध्ये सन १९८३ पूर्वी व नंतर रोजंदारी/कार्यव्ययी आस्थापनेवर काम करित असलेल्या आणि ज्यांनी सलग सेवेची पाच वर्षे पूर्ण केलेली आहेत अशा पात्र कर्मचाऱ्यांना न्या. कालेलकर तडजोडीनुसार त्यांच्या सलग सेवेची पाच वर्षे पूर्ण केल्यानंतर रूपांतरीत नियमित अस्थायी आस्थापनेवर घेण्याबाबतचा या तिन्ही विभागातील सुमारे ११,६३२ कर्मचाऱ्यांचा एकत्रित प्रस्ताव शासनाच्या विचाराधीन होता. या प्रस्तावाचा शासनाने संबंधित मान्यताप्राप्त कर्मचारी संघटनांशी चर्चा करून साधकबाधक विचार केला आणि आता पुढीलप्रमाणे निर्णय घेतलेला आहे.

शासन निर्णय:-

१. सार्वजनिक बांधकाम विभाग, पाटबंधारे विभाग तसेच ग्राम विकास व जलसंधारण विभाग यामध्ये राजंदारी/कार्यव्ययी आस्थापनेवर कार्यरत असलेल्या पूढील कर्मचाऱ्यांना न्या. कालेलकर करारानुसार कायमपणाचे फायदे देण्यासाठी त्यांच्या सलग सेवेची ५ वर्षे पूर्ण केल्यानंतर रूपांतरीत नियमित अस्थायी आस्थापनेवर पूढील अटींच्या अधिन राहून घेण्याचा शासनाने निर्णय घेतलेला आहे.

(१) रोजंदारी/कार्यव्ययी आस्थापनेवरील जे कर्मचारी त्यांच्या नियुक्तीच्या दिनांकापासून शासन सेवेत कार्यरत आहेत आणि ज्यांच्या सलग सेवेस उशिरात उशिरा दि.

३१.१२.९८ रोजी ५ वर्षे पूर्ण झालेली आहेत असे करारातील अटींची पूर्तता करणारे पात्र कर्मचारी.

(२) सन १९८३ पुर्वी व नंतर सेवेत लागलेल्या ज्या रोजंदारी/कार्यव्ययी आस्थापनेवरील कर्मचाऱ्यांना त्यांच्या सेवेची आवश्यकता नसल्यामुळे शासकीय सेवेतून कमी करण्यात आले होते, तथापि ज्या कर्मचाऱ्यांनी अशा कपातीविरुद्ध न्यायालयात दावे दाखल केलेले आहेत अशा कर्मचाऱ्यांपैकी,

(अ) ज्यांना न्यायालयाच्या निर्णयानुसार पुनःस्थापित करण्यात आलेले आहे.

(ब) कनिष्ठ न्यायालयाच्या निर्णयप्रमाणे ज्या कर्मचाऱ्यांना शासकीय सेवेत पुनःस्थापित न करता शासनाच्या वतीने वरिष्ठ न्यायालयात रिक्झिजन/अपील दाखल केले आहे, परंतु त्यावर निर्णय अजूनही प्रलंबित आहे.

(क) कनिष्ठ न्यायालयाचा होऊ नये म्हणुन अशा निर्णयाची अंमलबजावणी करण्याच्या इराधाने ज्यांना सेवेत पुनःस्थापित करून संबंधीत कनिष्ठ न्यायालयाच्या निर्णयाविरुद्ध शासनांच्या वतीने वरिष्ठ न्यायालयात रिक्झिजन/अपील दाखल केले आहे व सदर रिक्झिजन/अपील न्यायालयाने अजूनही अंतिमत निकाला काढलेले आहे.

अशा वरील सर्व प्रकरणात त्यांच्या सेवेची पाच वर्षे पुर्ण झाल्यानंतर खालील दोन प्रवर्गात प्रकरणांची विभागणी करून मंत्रालयीन प्रशासकीय विभागाणे प्रस्तावाध्वा छाननीत्रंती रूपांतरणाचे आदेश निर्गमित करावेत.

(१) दि.३१/१२/१९९८ रोजी अथवा तत्पुर्वी ५ वर्षे एकाच पदावर काम करणारे रोजंदारी/कार्यव्ययी आस्थापनेवरील कर्मचारी

(२) काही काळ मुळ (ज्या पदावर प्रथम नियुक्ती झाली त्या) पदावर काम केल्यानंतर उच्च पदावर प्रस्थापित झालेले रोजंदारी/कार्यव्ययी आस्थापनेवरील कर्मचारी ज्यांची एकत्रित सलग सेवा ५ वर्षे पुर्ण होते.

वरील (i) मध्ये नमुद केलेल्या संबंधित कर्मचाऱ्यांनी प्रकरणपरत्वे रोजंदारी आणि/किंवा कार्यव्ययी आस्थापनेवर न्या. कालेलकर करारातील तडजोडीनुसार सलग सेवेची केलेली व्याख्या लक्षात घेऊन पाच वर्षे पुणे केल्याचा दिनांकास त्यांचे रोजंदारी /कार्यव्ययी आस्थापनेवरील सदर पद अथवा तत्सम पद रूपांतरित अस्थायी आस्थापनेवर रूपांतरित करण्यांत येईल.

वरील (ii) मध्ये नमुद केलेल्या कर्मचाऱ्यांबाबत मात्र संबंधित कर्मचाऱ्याने रोजंदारी अथवा कार्यव्ययी आस्थापनेवरील त्याची ५ वर्षे सलग सेवा पुर्ण झाल्याच्या (यात उच्च पदावर रोजंदारी अथवा कार्यव्ययी आस्थापनेवरील सेवेचा समावेश असेल) दिनांकास त्यांनी धारण केलेले त्या आस्थापनेवरील उच्चतम अथवा तत्सम पद रूपांतरित अस्थायी आस्थापनेवर पुढील अटींच्या अधिन राहून रूपांतरित करता येईल.

- (अ) त्याने संबंधित उच्च पदाकरीता आवश्यक असलेली तांत्रिक अर्हता प्राप्त केलेली असेल,
- (ब) संबंधित कर्मचाऱ्याची रोजंदारी/कार्यव्ययी आस्थापनेवरील इतर पात्र कर्मचाऱ्यामध्ये ज्येष्ठतम सेवा असेल,
- (क) त्याने सेवेची ५ वर्षे पूर्ण होण्याच्या दिवशी उच्च पदावर कमीतकमी २४० दिवस सलग सेवा केलेली असेल,
- (ड) ज्या कर्मचाऱ्यांनी अशी उपरोक्त (क) नुसार वरिष्ठ पदावर सेवा पुर्ण केली नसेल त्यांची त्या वरिष्ठ पदावर २४० दिवस सेवा पूर्ण होईपर्यंत त्यांचे मुळ पद रूपांतरित करता येईल.

२) ज्या कर्मचाऱ्यांनी न्यायालयात दावे/रिव्हिजर/अपील/अवमान याचिका दाखल केलेली आहे, अशा सर्व कर्मचाऱ्यांनी वर नमुद केलेले सर्व प्रकारचे दावे अट मागे घेतल्यानंतर त्यांना रूपांतरित अस्थायी आस्थापनेवर घेण्याबाबतची कार्यवाही करण्यात येईल.

३) शासकीदेखील काही प्रकरणी कनिष्ठ न्यायालयाच्या निर्णयाविरूद्ध रिव्हिजन/अपील दाखल केलेले असेल तर असे रिव्हिजन अपील मागे घेण्यात येईल आणि प्रकरणामध्ये समाविष्ट असलेल्या कर्मचाऱ्यांना रूपांतरीत अस्थायी आस्थापनेवर आणण्यात येईल.

शासनाच्या या निर्णयानुसार कर्मचाऱ्यांना रूपांतरीत अस्थायी आस्थापनेवर त्यांना न्या. कालेलकर कराराच्या तरतूदीनुसार आनुज्ञेय ठरणान्या वेतनवाढीतील फरकाचे विनियमूत पुढीलप्रमाणे करण्यात येईल,

- १) संबंधित कर्मचाऱ्यांना दि. १ सप्टेंबर, २००० पासून त्यांचे रूपांतरित नियमित अस्थायी आस्थापनेचे आदेश निर्गमित केल्याच्या दिनांकापर्यंतच्या वेतनवाढीतील फरकाची रक्कम (सर्व प्रकारच्या भत्यासहित) ही प्रत्येक कर्मचाऱ्यांस त्यांचे नावे काढलेल्या धनादेशाद्वारे अदा करण्यात येईल.

- २) रूपांतरित अस्थायी आस्थापनेवर नियमित नियुक्ती झाल्याच्या दिनांकापासून दि.३१/८/२००० पर्यंतच्या वेतनवाढीतील फरकाची रक्कम (सर्व प्रकारच्या भत्यासहित) सन २००१-२००२ या आर्थिक वर्षापासून त्या त्या वर्षाच्या जून महिन्यात संबंधित कर्मचाऱ्यांच्या भविष्य निर्वाह निधीत वार्षिक दहा (१०) समान हप्त्यात जमा करण्यात येईल व प्रत्येक हप्ता त्याच्या भविष्य निर्वाह निधीत जमा झाल्यापासून तीन वर्षांपर्यंत सदर रक्कम त्या कर्मचाऱ्यास खात्यातून काढता येणार नाही.
- ३) दि. १ सप्टेंबर २००० पूर्वी या नंतर जे कर्मचारी शासकीय सेवेतून सेवानिवृत्त झालेले असतील अशा कर्मचाऱ्यांना त्याचप्रमाणे जे कर्मचारी आता निधन पावले असतील अशा कर्मचाऱ्यांच्या वारसाना मात्र त्यांना अनुज्ञेय होणारी थकबाकीची संपूर्ण रक्कम सन २००१-२००२ या आर्थिक वर्षापासून पुढील ३ वर्षांतसमान वार्षिक हप्त्याने रोखील देण्यात येईल.

४. वर नमुद केलेल्या थकबाकीच्या रकमेवर कोणत्याही प्रकारचे व्याज अनुज्ञेय असणार नाही आणि संबंधित कर्मचाऱ्यांकडून अथवा दिवंगत कर्मचाऱ्यांच्या वारसाकडून भविष्यात व्याजाबाबतची मागणी करण्यात येणार नाही अशा प्रकारचे प्रतिज्ञापत्र त्यांनी शासनाला सादर करणे बंधकारक राहिल.

५. संबंधित विभागांनी शासन निर्णयान्वये कर्मचाऱ्यांना चालू आर्थिक वर्षात अदा करावा लागणारा खर्च मंजूर अनुदानातून करावयाचा आहे.

६. अन्य व्यक्तिगत तक्रारीबाबत गुणवत्तेनुसार विचार करून उचित पातळीवर तदनुषंगिक सर्व प्रचलित नियमांच्या आधारे निर्णय घेण्यात यावा.

७. या सर्व समावेशक आदेशाच्या आधारे उपरोक्त तीनही विभागातील कर्मचाऱ्यांचे बाबतीत परिच्छेद १ मधील २(क) मधील (i) व (ii) नुसार त्यांना रूपांतरित नियमित अस्थापनेवर आणण्याबाबतचे व्यक्तीनिहाय स्वतंत्र आदेश त्या त्या मंत्रालयीन प्रशासकीय विभागाने काढ्याची कार्यवाही करावयाची आहे. ज्या प्रकरणात विहित अटीचे पालन होत नसेल अशा प्रकरणी आदेश निर्गमित करण्यापूर्वी प्रस्ताव वित्त विभागास तपासणीकरीता पाठविणे आवश्यक राहिल. मात्र अशा प्रकरणी वित्त विभागाकडे तपासणीसाठी पाठविलेल्या प्रस्तावाचे बाबतीत संबंधित कर्मचाऱ्यांना मूळ पदावर रूपांतरित अस्थायी आस्थापनेवर आणण्याचे आदेश काढावयाचे असल्यास संबंधित प्रशासकीय विभाग वरीलप्रमाणे आदेश निर्गमित करू शकेल.

८. रूपांतरीत अस्थायी आस्थापनेचे आदेश निर्गमित झाल्यानंतर सदर आदेश कर्मचाऱ्यांस मान्स नसल्यास त्यांनी त्याबद्दलचे लेखी प्रतिवेदन त्याला व्यक्तीनिहाय आदेश मिळाल्यापासून तीन महिन्यात करणे आवश्यक आहे. या मुदतीत यासंबंधी कोणतेही प्रतिवेदन प्राप्त न झाल्यास त्याचे काढलेले व्यक्तीनिहाय आदेश अंतिम समजण्यात येतील व त्यानंतर त्याची कोणतही तक्रार विचारात घेतली जाणार नाही.

९. अस्थायी आस्थापनेवर रूपांतरीत झालेली पदे प्रथमतः दि.२८.२.२००२ पर्यंत किंवा संबंधित पदधारक ज्या दिनाकापर्यंत सेवेत असलीत यापैकी जो प्रथम दिनांक असेल त्या दिनाकापर्यंत चालू ठेवण्यात येत आहेत.

१०. रोजंदारी/कार्यव्ययी आस्थापनेवरील कर्मचाऱ्यांना रूपांतरीत अस्थायी आस्थापनेवर घेण्याबाबतच्या केलेली कार्यवाही संबंधित विभागांनी लाक्षणिक मागणीच्या (Token Grants)माध्यमातून विधी मंडळाच्या निदर्शनास आणण्याची व्यवस्था यथावकाश करावयाची आहे.

११. प्रस्तुत आदेश पाटबंधारे विभाग व ग्राम विकास विभागाच्या मान्यतेने तसेच वित्त विभागाच्या अनौपचारिक संदर्भ क्र...८१ दि. १७ एप्रिल २००१ अन्वये मिळालेल्या सहमतीने काढण्यात येत आहेत.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

स्वाक्षरीत/—
(संध्या सु. कुलकर्णी)
डपसचिव, महाराष्ट्र शासन'

The applicant, moreover, is also seeking specific direction to the respondent No.2 to forward correct proposal of the applicant for regularization of services to the respondent No.1 w.e.f. 01.01.1994.

9. In view of above, the whole matter revolves around G.R. dated 24.04.2001 (Annex. 'A-5'), issued by the Public Works Department of the State of Maharashtra. The said G.R. is issued in order to regularize the services of daily wagers with

retrospective effect on Converted Regular Temporary Establishment C.R.T.E. as per *Kalelkar Committee Report*. The said G.R. is applicable to the daily wagers who worked with P.W.D., Irrigation Department and Rural Development and Water Conservation Department before or after 1986 and who had completed five years of service with such department. Cutoff date of completion of such five years service is said to be of 31.12.1998 being worked for five years continuously on one post or who have completed five years, together including qualifying service on lower post and subsequently on higher post. But in that case he should have worked for 240 days on higher post on the verge of completing five years service and the next requirement was to be of withdrawal of any litigation filed by any such daily wagers.

10. It is the case of the applicant that he entered into service initially as Labourer on daily wages with the respondent No.4 in November, 1993 but since January, 1994 onward he worked on the post of Driver on daily wages till December, 1998. To substantiate the said claim, the applicant in the first place placed reliance on letter dated 29.09.2011 (Annex. 'A-10') addressed by the respondent No.4

i.e. the Senior Geologist, Ground Water Survey and Development, Agency Jalna on whose employment he was working to the respondent No.3 i.e. the Deputy Director of Ground Water Survey and Development Agency, Aurangabad. By the said letter, the said respondent No.4 after having perused the record with his office certified that the applicant worked as a Driver for five years on daily wages since 01.01.1994. The applicant further placed reliance on letter dated 23.03.2015 (Annex. 'A-17') addressed by the respondent No.4 to the respondent No.3 again certified from the office record that the applicant has completed five years service on its establishment from 01.01.1994 to 31.12.1998 and again he forwarded the original record for verification to the office of the respondent No.3. The applicant also made various representations seeking benefits of the said G.R. dated 24.04.2001 on the basis of abovesaid two certificates issued by the respondent Nos.3 and respondent Nos.4 and other relevant record. However, the respondent Nos.1 to 3 did not accept the contentions of the applicant even supported by the respondent No.4 and held that, from the record it appears that the applicant entered into service as a Driver on daily wages only from 23.08.1994 and not from

01.01.1994 as claimed by the applicant which is reflected in the proposal dated 18.01.2009 (Annex. 'A-7') submitted by the respondent No.2 i.e. the Director, Directorate office of Ground Water Survey and Development Agency, Pune to the respondent No.1 i.e. the State of Maharashtra mentioned other daily wages.

11. In the affidavit-in-reply (page Nos.270 to 281 of P.B.) together with short affidavit(page Nos.295 to 301), the respondent Nos.1 to 4 have come out with the contention that certain entries in the concerned register of daily wagers were wrongly inserted backdated and therefore, the entries prior to 23.08.1994 cannot be taken into consideration as authentic entries. The said averments made by the respondents in their affidavits are denied by the applicant by filing affidavit-in-rejoinder. Moreover, it is a matter of record that the applicant infact said to have demanded these registers as they were in the custody of the concerned officer of the department. It is not made clear by the respondents as to whether they have made any preliminary enquiry and taken any action against the concerned custodians of such registers, if any interpolation was found in maintaining the entries of the said register. As stated earlier, it can be seen

that at least on two occasions, the respondent No.4 in whose office the applicant worked as a daily wager has certified that upon verification of necessary record, it is evident that the applicant worked as a Driver from 01.01.2001 to 31.12.1998 i.e. of five years.

12. In this regard, the applicant has produced on record the copies of relevant register (Annex. 'A-2'), spreading over from page Nos.31 to 171 of P.B. Perusal of the said entries would show that in very few entries, there is mention that daily wages are being paid without specifically mentioning the word Driver. Perusal of the page No.38 of P.B. would show that there is an entry of name of this applicant as of 31.12.1993. This entry is not disputed by any of the respondents. This entry of 31.12.1993 and entries during the period of 01.01.1994 to 31.12.1998 if are taken into consideration together with letter dated 29.09.2011(Annex. 'A-10') and letter dated 23.03.2015 (Annex. 'A-17') both addressed by the respondent No.4 to the respondent No.3 after verification of record on demand, it is evident that the applicant has worked as a Driver on daily wages during the period from 01.01.1994 to 31.12.1998.

13. Perusal of G.R. dated 24.04.2001 (Annex. 'A-5') would show that stipulation of 240 days work in the last fifth year is applicable only if the daily wager worked on lower post initially and on higher post subsequently. The record would show that the applicant worked as a daily wager as Labourer on 31.12.1993. The respondents have not placed any plausible evidence to show that from 01.01.1994 to 23.08.1994 the applicant was worked as Labourer and not as a Driver and that he worked as a Driver only from 23.08.1994 onwards. It is a matter of record that at very few places, there is mention of the expression 'Majoor' and at many other places, the expression 'Driver' appear. However, the applicant has come out with the case that he worked as a Driver on Drilling, Boring and Compressor Machine loaded Truck of which there is mention in the said register. In that context, one has to read and consider the entries in the concerned registers. There is nothing on record to show that for any valid reason, the respondent Nos.1 to 3 disbelieved certificate issued by the respondent No.4 by way of letter dated 29.09.2011 (Annex. 'A-10') and 23.03.2015 (Annex. 'A-17') issued by the respondent No.4 or that any action was

being suggested against the respondent No.4 for furnishing wrong information.

14. It appears that only by way of justification in the Original Application, the respondent Nos.1 to 3 raised doubt about such services. In view of same, in my considered opinion, impugned letter dated 01.09.2015 (Annex. 'A-25') issued by the respondent No.2 holding the applicant ineligible for extending the benefit of G.R. dated 24.04.2001 (Annex. 'A-5') is not sustainable in the eyes of law. Thereby the respondents have deprived the applicant of his legitimate claim and requisite benefits under the said G.R. dated 24.04.2001, when he has otherwise also fulfilled all other stipulations laid down in the said G.R. like other daily wagers, who were granted the said benefits.

15. So far as another stipulation of withdrawal of litigation by such daily wagers as provided in G.R. dated 24.04.2001 is concerned, from the documents produced on record by the applicant it is evident that in the year 1996, the applicant had filed complaint (U.L.P) No.30 of 1996 against the respondent No.4 before the Learned Industrial Court, Jalna seeking to grant permanency of services with monetary

benefit (Annex. 'A-4'). On 28.06.2004, the applicant filed application (Annex. 'A-6') in the said complaint (U.L.P) No.30/1996 seeking withdrawal of the same and on the same day, learned Industrial Court, Jalna passed following order:-

ORDER

“The complainant is present. He is identified by his Advocate Shri. P. P. Deshpande and Shri. S. N. Naik. The complainant withdraws the complaint voluntarily and unconditionally. The respondent has no objection for unconditional withdrawal. Read and recorded at 11.15 a.m. today.”

16. In view of the same, the applicant said to have fulfilled the condition of withdrawal of litigation also. Otherwise also the respondents have not come out with the ineligibility of the applicant on that count. In the circumstances, I hold that the impugned communication dated 01.09.2015 (Annex. 'A-25) and 02.09.2015 (Annex. 'A-27') both issued by the respondent No.2 are liable to be quashed and set aside and the applicant would be entitled for all the benefits of regularization of services and consequential benefits in accordance with law pursuant to G.R. dated 24.04.2001 (Annex. 'A-5') on the post of Driver with the respondent No.4 at earlier office. Hence, I proceed to pass the following order:-

ORDER

The Original Application is allowed in terms of following prayer clauses:-

- “B] The impugned communication letter dated 2/9/2015 issued by the Resp. No.2 forwarded to the Resp. No.2 which is annexed at Exh. “A-27” of this Application may kindly be quashed and set aside.
- BB] The impugned communication letter dated 01/09/2015 communicated by the 2nd Respondent which is annexed at Exh. “25” of this Application may kindly be quashed and set aside.
- C] Kindly be issued order or directions against the Respondents and specially to direct the Respondent No.2 to forward correct appointment dated 1/1/1994 proposal of the Applicant for the regularization in service to the Resp. No.1 for taking decision on regularization services of the Applicant on permanent post of Driver with the Resp. No.4 office.
- D] Kindly be issued order or directions to the Respondent No.1 and Resp. No.1 kindly be

directed to regularize and to absorb the Applicant on the permanent post of Driver (C.R.T.) with the Resp. No.4 office and to consider continuous services of the Applicant w.e.f. 1/1/1994 as per G.R. dated 24/4/2001 and to pay all consequential monetary benefits i.e. arrears of back wages w.e.f. 1/1/1994 with appropriate rate of interest to the petitioner, as well as to pay differences of 5th pay and 6th pay commission to the petitioner for that purpose may pass appropriate order.

E] Kindly issued appropriate order or directions against the Respondents and to direct the Respondents to pay overtime and T.A. D.A. arrears allowances to the petitioner for that purposes may pass order.

No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date :-11.08.2022
SAS O.A.944/2016