

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 71 OF 2016

DIST. : NANDED

Namdeo s/o Bhagaji Suryawanshi,
Age 62 years, Occu. Retired,
R/o Hadsani, Tq. Hadgaon,
Dist. Nanded.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai . 32.

(copy to be served on Chief Presenting
Officer, M.A.T., Aurangabad)

2. The Regional Chief Conservator of
Forest, Aurangabad.
3. The Dy. Conservator of Forest,
Nanded Forest Division,
Nanded.
4. The Accountant General-II,
Nagpur.

-- RESPONDENTS

APPEARANCE : Shri K.B. Jadhav, learned Advocate for the
applicant.
: Smt. Sanjivani Deshmukh Ghate, learned
Presenting Officer for respondent nos. 1 & 4.
: Shri Vivek Bhavthankar, learned special
Counsel for respondent nos. 2 & 3.

**CORAM : HON'BLE SHRI J. D. KULKARNI,
MEMBER (J)**

J U D G M E N T**{Delivered on 24th day of November, 2016}**

1. The applicant Shri Namdeo Bhagaji Suryawanshi was appointed as a Ropwan Kotwal / Ropwan Chowkidar by the res. no. 3 on 1.4.1984 on daily wages basis. On 16.10.2012, the State of Maharashtra has issued one G.R. whereby the services of daily wagers, who have completed regular 5 yearsq service with the respondents between 1.11.1994 to 30.6.2004, were regularized. Vide the order dated 31.10.2012, the services of the applicant also came to be regularized. On 31.10.2012, the res. no. 3 issued a letter to the subordinate officer and called for information of the employees, whose services are regularized as per G.R. dated 16.10.2012. The applicant came to be retired on superannuation i. e. on completion of age of 60 years on 30.6.2014. The applicant was entitled for regular pension, since his services were regularized, however, the applicant has not been granted the regular pension and the pensionary benefits and, therefore, he has filed this O.A. By filing this O.A., the applicant prayed for issuance of directions to the respondents to pay him the regular pension and pensionary benefits and also to pay the interest on the said benefits.

2. The res. nos. 2 & 3 have resisted the claim of the applicant. It is admitted that the applicant was working as a Labourer and as per the G.R. dated 16.10.2012, he was found fit for regularization of his services.

Accordingly applicant's services were regularized and he was appointed as a Van Majur in the pay scale of Rs. 4440-7440 with Grade Pay of Rs. 1300/-. The applicant accepted the order of regularization and gave undertaking that he will not claim any benefits regarding his previous service rendered on daily wages. In the communication dated 31.10.2012, it was specifically mentioned that the employees, who have been regularized as per the G.R. dated 16.10.2012 would be entitled to new pension scheme viz. Defined Contributory Pension Scheme. The applicant retired on superannuation within 2 years after he was regularized and, therefore, he is not entitled to any General Provident Scheme and only Defined Contributory Pension Scheme will be applicable to the applicant as per the G.R. dated 16.10.2012. It is also contended that the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 are not applicable to the case of the applicant.

3. The res. no. 4 i. e. the Accountant General . II, Nagpur has filed affidavit in reply and submitted that it cannot act unless it receives a due proposal for grant of pension.

4. The applicant files rejoinder affidavit and submitted that his service tenure is very long, but he was not regularized as per the guidelines of the G.Rs. dated 31.1.1996, 16.3.1998 and 29.1.2000 and his claim was wrongly denied by the respondents. It is further stated that, as per the

ratio laid down by Hon'ble High Court in the case of **DEVIDAS HIKU BORKAR AND OTHERS VS. STATE OF MAHARASHTRA AND ANOTHER {2011 (6) Mh. L.J. 331}, VIJAYA SATYAVIJAY HIRASKAR VS. THE STATE OF MAHARASHTRA & OTHERS {W.P. NO. 3493/2015 Judgment dtd. 13.8.2015}** and **KALYANI SANGAPPA SADASHIVAPPA VS. STATE OF MAHARASHTRA AND ORS. {2012 CJ (Bom)} 1424**, it was necessary for the respondents to consider the temporary service rendered by the applicant as a qualifying service for grant of pension.

5. Heard Shri K.B. Jadhav, learned Advocate for the applicant, Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for respondent nos. 1 & 4 and Shri Vivek Bhavthankar, learned special Counsel for respondent nos. 2 & 3. I have perused the application, affidavit, affidavit in replies filed by the respective respondents, rejoinder affidavit filed by the applicant and various documents placed on record.

6. The only material point to be considered in this case is whether the applicant is entitled for regular pension and pensionary benefits as claimed by him ?

7. So far as the claim of the applicant in the rejoinder affidavit that as per the ration laid down by Hon'ble High Court in various cases as

referred hereinabove, the service rendered by the applicant prior to his regularization should have been treated as qualifying service for grant of regular pension is concerned, it is to be noted that this point is raised by the applicant for the first time in the rejoinder affidavit. For the first time in the rejoinder affidavit, the applicant is claiming that his regularization should have been done in view the guidelines issued in the G.Rs. dated 31.1.1996, 16.3.1998 and 29.1.2000. Such plea cannot be raised for the first time in the rejoinder affidavit without suitably amending the O.A. The applicant is, however, at liberty to file representation before the competent authority to that effect taking all these pleas so that the the said authority may give thoughtful consideration to the whatever pleas as taken by the applicant in the said representation.

8. So far as the claim of the applicant in the O.A. is concerned, it seems that it is the case of the applicant that, since his case falls in the ambit of G.R. dated 16.10.2012 his services were regularized by the respondents. Admittedly, the applicant's services were regularized as per the guidelines issued in the G.R. dated 16.10.2012. The copy of the said G.R. is at paper book page 9. As per the said G.R., it was decided to regularize the services of the daily wagers, who fulfill certain conditions and those conditions are as under :-

“ 9) वन विभागातील दि. 9.99.9998 ते दि. 30.6.2008 पर्यंत सलग पध्दतीने किंवा तुटक तुटक रित्या प्रतिवर्षी किमान 280 दिवस याप्रमाणे

किमान पाच वर्ष काम केलेल्या ५०८९ रोजंदारी कामगारांपैकी दि. १.६.२०१२ ला कामावर असण्यास पात्र ठरणा-या कामगारांना मंत्रीमंडळाच्या निर्णया प्रमाणे खालील अटी व शर्तीच्या अधिन राहून कायम करण्यात यावे.

- i. त्यांना पूर्वीचे वेतन व तद्अनुषंगीक लाभ देय होणार नाही.
- ii. त्यांना दि. १.०६.२०१२ रोजी प्रचलित सेवानिवृत्ती वेतन व महाराष्ट्र नागरी सेवेच्या तरतुदी लागू राहतील.
- iii. उपरोक्त ५०८९ रोजंदारी कामगारांना वरीष्ठता व पात्रतेचे निकष लावून कायम करण्यात यावे.
- iii. उपरोक्त ५०८९ रोजंदारी कामगारांना कायम करण्यांत यावे तथापी कुठलाही आर्थिक लाभ देण्यापूर्वी कायम करावयाचे सदर ५०८९ कामगारांची नावनिहाय व विभागनिहाय अंतिम यादी शासनास सादर करण्यात यावी.”

In para 7 of the said G.R. dated 16.10.2012, it has been mentioned as under :-

“७) सदर वनमजुरांना प्रचलीत महाराष्ट्र नागरी सेवा नियम लागू राहतील.”

The para 9 of the said G.R. states as under :-

“९) निर्माण करण्यात येणारी पदे संबंधित मजूर सेवेत असेपर्यंत चालू राहतील व कोणत्याही कारणाने मजूर सेवेतून कमी झाल्यास ते आपोआप रद्द होईल. त्यांच्या रिक्त पदावर दुस-या मजुराची नेमणूक करण्यात येऊ नये.”

9. The reading of the G.R. dated 16.10.2012 shows that, it was an effort on the part of the Govt. to regularize the services of the daily wagers on certain conditions. Since, the said G.R. is issued on 16.10.2012, the Defined Contributory Pension Scheme, which was published on 31.10.2005, was applicable to the applicants and the provisions of M.C.S. (Pension) Rules, 1981 are not applicable to them. It seems that the appointment order was issued to the applicant as Van Majur in Group . D as per Annex. A. 2 and in the said order it has been specifically mentioned that the applicant was appointed as a Van Majur in Group . D cadre as per the provisions of the G.R. dated 16.10.2012. It was also specifically mentioned that the applicant's post will be supernumerary and that the provisions of Maharashtra Civil Services Rules will be applicable to the applicant. The applicant has accepted the said appointment order and accordingly worked on the said post for 2 years only. He got retirement on superannuation vide order dated 30.11.2013 w.e.f. 30.6.2014. Had it been the fact that the applicant was aggrieved by the regularization order on the ground that he should have been absorbed as per the provisions of various G.Rs. dated 31.1.1996, 16.3.1998 and 29.1.2000, the applicant should not have been accepted the regularization order or should have challenge his absorption or regular appointment. The applicant, however, did not do so and, therefore, for the first time, he cannot state that, he shall be considered

for regular pension considering his earlier service. In view thereof, I do not find any merits in the O.A. and hence, I pass following order :-

ORDER

The O.A. no. 71 of 2016 stands dismissed. There shall be no order as to costs.

MEMBER (J)

ARJ-OA NO.71-2016JDK (PENSION)