

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON JUDGMENT IN O.A. NOS. 95/2015 AND 902/2012

(1) ORIGINAL APPLICATION NO. 95 OF 2015

DIST. : AURANGABAD

Dr. Kashinath s/o Ganpatrao Choudhary,
Age. years, Occu. Presently working as
Associate Professor in Department of
Ophthalmology in Government Medical College,
Aurangabad, Dist. Aurangabad
R/o Plot no. 10, N-12 F Sector CIDCO,
Aurangabad.

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APPLICANT

VERSUS

(1) The Government of Maharashtra,
Through Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai.

(2) The Director,
Medical Education and Research,
Mumbai.

(3) The Dean,
Government Medical College,
Aurangabad, Dist. Aurangabad.

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RESPONDENTS

(2) ORIGINAL APPLICATION NO. 902 OF 2012

DIST. : AURANGABAD

(1) Dr. Shivaji s/o Balabhau Sukre,
Age. 44 years, Occu. Service,
R/o Nandanvan Colony,
Aurangabad Dist. Aurangabad.

(2) Dr. Dnyanoba s/o Mukundrao Darade,

Age. 40 years, Occu. Service,
R/o Devgiri Valley, Aurangabad,
Dist. Aurangabad.

- (3) Laiq Ahmed Jaffari,
Age. 42 years, Occu. Service,
R/o Ganesh Colony, Aurangabad,
Dist. Aurangabad. -- APPLICANT

VERSUS

- (1) The State of Maharashtra,
Through its Secretary,
Medical Education & Drugs Department,
Mantralaya, Mumbai - 32.
- (2) The State of Maharashtra,
Through its Secretary,
Finance Department, Mantralaya,
Mumbai – 32.
- (3) The Director,
Medical Education & Research,
Mumbai – 400 001.
- (4) The Dean,
Govt. Medical College,
Aurangabad.

(Copies of R-1 to 4 served on
Chief Presenting Officer, MAT,
Bench at Aurangabad)

-- RESPONDENTS

- APPEARANCE : Shri M.R. Kulkarni, learned Advocate for the
applicant in O.A. no. 95/2012.
- : Shri M.R. Kulkarni, learned Advocate holding for
Shri G.K. Kshirsagar, learned Advocate for the
applicants in O.A. no. 902/2012.
- : Smt. Deepali S. Deshpande, learned Presenting
Officer for respondents in O.A. Nos. 95/2012 &
902/2012.

CORAM : HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN
AND
HON'BLE SHRI J. D. KULKARNI, MEMBER (J)

PER : HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN

J U D G M E N T

(Delivered on this 15th day of December, 2016)

1. Heard Learned Advocate Shri M.R. Kulkarni for the Applicant in O.A. no. 95/2015 and holding for Shri G.K. Kshirsagar, learned Advocate for the applicants in O.A. no. 902/2012 and Smt. Deepali S. Deshpande, learned Presenting Officer (P.O.) for the Respondents in both the matters.

2. These O.As. were heard together and are being disposed of by a common order as the issues to be decided are more or less similar.

3. Learned Counsel for the Applicant in O.A. no. 95/2015 argued that the Applicant was appointed on ad-hoc basis as Assistant Professor on 30.9.1991. Subsequently, the Applicant was selected by the Maharashtra Public Service Commission (M.P.S.C.) as Associate Professor on 28.5.2009. On 15.6.2009, the Respondent no. 1 issued order to count the ad-hoc service of the Applicant from 3.10.1992 to 27.3.2009 for leave, increments and pensionary benefits. However, by order dated 23.12.2011, the earlier order dated 15.6.2009 was cancelled. Learned Counsel for the Applicant argued that the Applicant is not a backdoor

entrant. He was initially selected as Lecturer (Assistant Professor) by a Divisional Selection Board. Earlier, the Applicant's name was Kashinath Ganpatrao Waghmare and he changed it to Kashinath Ganpatrao Choudhary by Gazette notification dated 7.6.1990. However, his initial appointment letter dated 30.9.1991 was in the name of K.G. Waghmare. The Applicant has filed O.A. no. 591/2000 before this Tribunal and by order dated 17.4.2001, this Tribunal held him entitled to get annual increments in terms of G.R. dated 1.3.1997. He was also held eligible for leave. By G.R. dated 13.11.1995, the services of the Applicant were continued till a candidate selected by M.P.S.C. was appointed. However, no such candidate was appointed and the Applicant continued as Lecturer in Govt. Medical College, Aurangabad till he was appointed as Associate Professor by G.R. dated 28.5.2009.

4. Learned Counsel for the Applicant stated that the services of the Applicant have been continued from 30.9.1991 without any break and therefore G.R. dated 31.10.2005 which provides that those appointed after 1.11.2005 will be covered by 'Defined Contribution Pension Scheme' is not applicable in his case. The State Govt. by G.R. dated 19.7.2011, decided to extend benefit of Old Pension Scheme to teaching / Agriculture Sevaks, who were appointed on contract basis before 1.11.2005 and whose services were regularized after that date. The Applicant was appointed on a regular pay scale and his claim to be covered by Old Pension Scheme is better. The Applicant has a General

Provident Fund (G.P.F.) account, which is opened for those employees, who are covered by Old Pension Scheme. However, that account has been closed by the Respondent no. 1 by order dated 28.7.2014. Learned Counsel for the Applicant argued that many teachers in Govt. Medical Colleges, whose services were regularized after 1.11.2005, continue to have G.P.F. account including Dr. Karadkhedkar in Govt. Medical College, Nanded. Learned Counsel for the Applicant stated that by judgment dated 10.2.2015, in W.P. No. 8327/2013, Aurangabad Bench of Hon'ble High Court in a Case of Teacher in Govt. Medical College, Aurangabad, who was selected initially through Divisional Selection Board, has held him to be eligible to count her service before regularization as regular service from the date of initial appointment. The Applicant is entitled to similar relief. Learned Counsel for the Applicant stated that the State Govt. had issued G.R. dated 7.10.2016 based on the judgment of Hon'ble High Court dated 28.4.2016 in W.P. no. 9051/2013. This G.R. allows the employees whose services were regularized up to 31.3.1999 to count the service before regularization for the purpose of Time Bound Promotion. Learned Counsel for the Applicant argued that the ad-hoc service of the Applicant from 3.10.1992 may be counted as qualifying service under Rules 30 and 33 of Maharashtra Civil Services (Pension) Rules, 1982 and his G.P.F. account may be continued and he should be held eligible for pensionary benefits as he was appointed before 1.11.2005.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant is seeking continuation of his irregular service, before he was appointed on regular basis on the recommendations of the M.P.S.C. on 28.5.2009. Learned P.O. stated that by selection to the post of Associate Professor on 28.5.2009, the Applicant's service before that date does not become regular. He was continued in service by order dated 30.9.1993, which clearly mentions that he has been continued in service due to order of this Tribunal dated 29.1.1997 in O.A. no. 71/1993. Hon'ble Supreme Court has held in the case of **Secretary, State of Karnataka & Others Vs. Umadevi and Others (2006 AIR SCW 1991)**, that those employees, who have been continued in service by court order are not entitled to get their such service regularized. Learned P.O. stated that the appointing authority for the post of Lecturer is the State Govt. and the Respondent no. 2 has no powers to grant benefit of counting ad-hoc service for pensionary benefits. The order dated 15.6.2009, issued by the Respondent no. 2 was, therefore, cancelled by order dated 23.12.2011. Similar orders in case of Dr. M.B. Lingayal, Assistant Professor, Govt. Medical College, Dhule were also cancelled. In any case, wrong order in a particular case cannot be a ground to perpetuate such wrong action. Learned P.O. argued that G.R. dated 7.10.2016 is applicable to those non-M.P.S.C. candidates, whose services were regularized by Govt. by various orders up to 31.3.1999. It has no application in the present case. The Applicant

was regularly selected by M.P.S.C. in 2009. Similarly, order of Hon'ble Supreme Court in W.P. no. 8327 of 2013 has been issued in different circumstances. The most important difference is that the Petitioner Mrs. Lakhkar was appointed as non-medical teacher and she was continued in service without any interruption. Here the Applicant continued in service due to order of this Tribunal. Learned P.O. argued that earlier this Applicant had filed O.A. no. 591/2000 and this Tribunal had clearly held by judgment dated 17.4.2001 that the Applicant was not entitled to any benefit other than annual increment & leave. In O.A. nos. 568 and 569 of 2013, Principal Bench of this Tribunal by judgment dated 20.9.2015 has held that in the case of Teachers in Medical Colleges, who were appointed earlier on ad-hoc basis and later selected by M.P.S.C. on regular basis, are not entitled to count their past services for pensionary benefits. That will mean that they cannot continue to maintain G.P.F. accounts also. Learned P.O. argued that the present case is clearly covered by the aforesaid judgment of this Tribunal (Principal Bench).

6. We find that the Applicant had earlier approached this Tribunal twice. In O.A. no. 71/1993, by order dated 29.1.1993, this Tribunal directed that the Applicant be allowed to continue in service till a candidate selected regularly by M.P.S.C. was available. This fact is reflected in order dated 30.1.1993, issued by the Respondent no. 3 at Annexure A.3 (page 27 of the Paper Book). The Applicant filed another O.A. no. 591/2000. By judgment dated 17.4.2001, this Tribunal held that

ad-hoc employees were eligible to get benefits of annual increments and leave in terms of G.R. dated 1.3.1997 and no other service benefits were available to them. The Applicant has now filed the present O.A. in which he is, in effect, seeking regularization of his service from the date of his initial appointment on ad-hoc basis.

7. In the case of **Secretary, State of Karnataka & Others Vs. Umadevi and Others** (Supra) Hon'ble Supreme Court has held that :-

“47. When a person enters a temporary employment or gets engagement as a Contractual or Casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission.”

8. In para 43 of the judgment, Hon'ble Supreme Court has observed that :-

“Merely because an employee had continued under cover of an order of the Court, which we had described as “Litigious Employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service”

9. In the present case, the Applicant is seeking benefits, which are denied to other ad-hoc employees, who were regularized in 2009 by virtue of one time amendment to recruitment rules. Such Medical Officers / Teachers were regularized from the date of notification of Rules. It was made very clear that the past service before regularization will not be counted for pensionary benefits. If the claim of the present Applicant is accepted, those whose services were regularized would not be able to count ad-hoc service before regularization for pensionary benefits, while those who were subsequently selected by M.P.S.C. would be able to count past ad-hoc service for pensionary benefits. Such a decision would be totally arbitrary and discriminatory. Just because in a case or two, such benefit has been extended, cannot be a ground to perpetuate such illegalities.

10. In the case of **CHANDIGARH ADMINISTRATION VS. JAGJIT SINCH : {(1995) 1 SCC 745}**, Hon'ble Supreme Court has held that :-

“Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination.”

“ If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ

compelling the respondent authority to repeat the illegality or to pass another unwarranted order.”

The reliance of the Applicant on one or two cases, where this benefit has been extended is of no avail in view of the law laid down by Hon'ble Supreme Court.

11. This issue has been examined by this Tribunal in O.A. nos. 568 & 556 of 2013 by the Principal Bench. The Applicants were Medical Teachers and claiming that past ad-hoc service before regular appointment be continued for pensionary benefits. This Tribunal held that ad-hoc appointment cannot be treated as temporary appointment. For invoking rule 33 of the Maharashtra Civil Services (Pension) Rules, 1982, to count temporary service for pensionary purpose, that temporary appointment has to be after following rules and procedures. Otherwise, the mandate of **UMADEVI's** judgment would be violated and the ad-hoc appointees would get benefits, which are not available to them as their appointment was sans rules. This issue has already been decided by this Tribunal by judgment dated 29.9.2015. The G.R. dated 7.10.2016 does not apply to the Applicant. It is applicable to those whose services were regularized on or before 31.3.1999. The Applicant was appointed on regular basis in 2009 only. Similarly, facts in W.P. no. 8327 of 2013 are quite different and do not appear to have application in the present case.

12. This Tribunal has clearly held by judgment dated 29.9.2015 that the ad-hoc service cannot be counted for pensionary purpose. We cannot take a different view in this O.A. The Applicant was given regular appointment only in 2009 and, therefore, G.R. dated 31.10.2005 is applicable in his case. He, therefore, cannot continue to keep G.P.F. account. The order dated 28.7.2014 of the Respondent no. 1 needs no interference.

13. In O.A. no. 902/2012 also, the Applicants are seeking benefit of Rule 33 of M.C.S. (Pension) Rules, 1982 and have challenged Circular dated 3.11.2008. That Circular is clearly in accordance with the spirit of aforesaid rules that for pensionary benefits only that service which is result of the regular appointment, whether temporary or permanent can be counted. The reliefs sought are almost identical to the reliefs sought in O.A. no. 95/2015. Obviously, no relief can be provided in this O.A. also.

14. Having regard to the aforesaid facts and circumstances of the cases, these O.As. are dismissed with no order as to costs.

MEMBER (J)

VICE CHAIRMAN