

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
AURANGABAD BENCH, AURANGABAD**

**ORIGINAL APPLICATION NOS. 28/2012, 29/2012, 376/2014,  
381/2014, 165/2015, 227/2016, M.A. No. 205/2015 in O.A.  
St. No. 1441/2014, 185/2012, 218/2012, 241/2012,  
253/2012, 301/2012, M.A. NO. 209/2014 in O.A. St.  
508/2012, M.A. NO. 395/2014 in O.A. 378/2014 and M.A. No.  
396/2014 in O.A. No. 377/2014**

**1. ORIGINAL APPLICATION NO. 28/2012**

**DISTRICT : AHMEDNAGAR**

Bhushan s/o Sakharam Navthar,  
Age : 59 years, Occu. Retired Clerk in the  
Office of the Dy. Superintendent of Land  
Record, Newasa,  
R/o Pimpri Sahali, Taluka : Newasa,  
Dist. Ahmednagar.

**....APPLICANT**

**VERSUS**

1. The State of Maharashtra,  
Through the Secretary,  
Planning Department,  
Mantralaya, Mumbai.
2. The District Collector,  
District Ahmednagar.
3. The Deputy Director of Land Records,  
Nashik Region, Nashik.
4. The Deputy Superintendent of Land Records,  
Newasa, Dist. Ahmednagar.

**.....RESPONDENTS**

**W I T H**

**2. ORIGINAL APPLICATION NO. 29/2012**

**DISTRICT : AHMEDNAGAR**

Bhauasaheb s/o Bhikaji Navthar,  
 Age : 59 years, Occu. Retired Clerk in the  
 Office of the Dy. Superintendent of Land  
 Record, Shevgaon,  
 R/o Pimpri Sahali, Taluka : Newasa,  
 Dist. Ahmednagar.

**....APPLICANT**

**VERSUS**

1. The State of Maharashtra,  
 Through the Secretary,  
 Planning Department,  
 Mantralaya, Mumbai.
2. The District Collector,  
 District Ahmednagar.
3. The Deputy Director of Land Records,  
 Nashik Region, Nashik.
4. The Deputy Superintendent of Land Records,  
 Newasa, Dist. Ahmednagar.

**.....RESPONDENTS**

**W I T H**

**3. ORIGINAL APPLICATION NO. 376/2014**

**DISTRICT : AHMEDNAGAR**

Jaindar s/o Aasaram Waghchoure,  
 Age : 53 years, Occu. Service  
 R/o Ranjangaon, Taluka : Newasa,  
 Dist. Ahmednagar.

**....APPLICANT**

**VERSUS**

1. The State of Maharashtra,  
 Through the Secretary,  
 Planning Department,  
 Mantralaya, Mumbai.
2. The Deputy Director of Land Records,  
 Nashik Region, Nashik.
3. The Deputy Superintendent of Land Records,  
 Taluka Shevgaon, Dist. Ahmednagar

**.....RESPONDENTS**

**W I T H****4. ORIGINAL APPLICATION NO. 381/2014****DISTRICT : AHMEDNAGAR**

Sitaram Rambhau Buge,  
 Age : 53 years, Occu. Service,  
 R/o Bugewadi Post Parner, Taluka : Parner,  
 Dist. Ahmednagar.

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

1. The State of Maharashtra,  
 Through the Secretary,  
 Planning Department,  
 Mantralaya, Mumbai.
2. The Deputy Director of Land Records,  
 Nashik Region, Nashik.
3. The Deputy Superintendent of Land Records,  
 Tq. Shrigonda, Dist. Ahmednagar.

**.....RESPONDENTS****W I T H****5. ORIGINAL APPLICATION NO. 165/2015****DISTRICT : AHMEDNAGAR**

Dattu s/o Bhau Karale,  
 Age : 58 years, Occu. Retired,  
 R/o Deolegaon Sidhi, Taluka : Ahmednagar,  
 Dist. Ahmednagar.

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

1. The State of Maharashtra,  
 Through the Secretary,  
 Planning Department,  
 Mantralaya, Mumbai.
2. The Deputy Director of Land Records,  
 Nashik Region, Nashik.
3. The Deputy Superintendent of Land Records,  
 Tq. Pathardi, Dist. Ahmednagar.

**.....RESPONDENTS**

**W I T H****6. ORIGINAL APPLICATION NO. 227/2016****DISTRICT : AHMEDNAGAR**

Arjun s/o Aasaram Chede,  
 Age : 58 years, Occu. Retired Clerk,  
 Office of Deputy Superintendent  
 of Land Records, Newasa.  
 R/o at and post Dedgaon, Taluka : Newasa,  
 Dist. Ahmednagar.

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

1. The State of Maharashtra,  
 Through the Secretary,  
 Planning Department,  
 Mantralaya, Mumbai.
2. The Deputy Director of Land Records,  
 Nashik Region, Nashik.
3. The Deputy Superintendent of Land Records,  
 Tq. Newasa, Dist. Ahmednagar.

**.....RESPONDENTS****W I T H****7. MISC. APPLICATION NO. 205/2015****IN****ORIGINAL APPLICATION ST. NO. 1441/2014****DISTRICT : AHMEDNAGAR**

Jabaji Rangnath Wagh,  
 Age : 58 years, Occu. Service,  
 R/o Ghodegaon, Taluka : Newasa,  
 Dist. Ahmednagar.

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

1. The State of Maharashtra,  
 Through the Secretary,  
 Planning Department,  
 Mantralaya, Mumbai.

2. The Deputy Director of Land Records,  
Nashik Region, Nashik.
3. The Deputy Superintendent of Land Records,  
Tq. Rahuri, Dist. Ahmednagar.

**.....RESPONDENTS**

**W I T H**

**8. ORIGINAL APPLICATION NO. 185/2012**

**DISTRICT : AURANGABAD**

1. Damodhar s/o Mukharu Meshram,  
Age : 57 years, Occu. Service,  
Resident of – Bhausingpura, Aurangabad.
2. Badrinath s/o Gopinath Tribhuwan,  
Age : 56 years, Occupation- Service,  
Resident of- Vaijapur, Opp. Chawadi,  
Yewala Road, Tq. Vaijapur,  
Dist. Aurangabad.

**...APPLICANTS**

**VERSUS**

1. The State of Maharashtra,  
Through the Secretary,  
Planning Department,  
Mantralaya, Mumbai-400032.
2. The Commissioner, Animal Husbandry,  
Maharashtra State, Pune-1.
3. Regional Deputy Commissioner,  
Animal Husbandry Department,  
Aurangabad Region,  
Aurangabad.
4. District Deputy Commissioner,  
Animal Husbandry Department,  
Aurangabad.
5. The Account Officer,  
Pay Fixation/verification unit,  
Aurangabad.

**.....RESPONDENTS**

**W I T H****9. ORIGINAL APPLICATION NO. 218/2012****DISTRICT : AURANGABAD**

Sahebrao s/o Agagi Khambat,  
 Age : 58 years, Occu. Retire,  
 Resident of – At Umarawati Post Aland,  
 Tq. Phulambri, Dist. Aurangabad.

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

1. The State of Maharashtra,  
 Through the Secretary,  
 Planning Department,  
 Mantralaya, Mumbai-400032.
2. The Collector,  
 Aurangabad.
3. Tahasildar Sillod,  
 Tq. Silldo, Dist. Aurangabad.
4. The Senior Account Officer/PIR,  
 Office of the ACCOUNTANT GENERAL,  
 MAHARASHTRA, (Accounts and Entitlement)-II  
 Nagpue- 440001.

**....RESPONDENTS****W I T H****10. ORIGINAL APPLICATION NO. 241/2012****DISTRICT : AHMEDNAGAR**

Vasant s/o Dada Gaikwad,  
 Age : 60 years, Occu. Nil/Retire,  
 R/o – Apegaon Tq. Kopergaon,  
 Dist. Ahmednagar.

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

1. The State of Maharashtra,  
 Through the Secretary,  
 Planning Department,  
 Mantralaya, Mumbai-400032.

2. The Collector,  
Ahmednagar.
3. The District Joint Registrar,  
Ahmednagar.
4. Accountant Pay Fixation Unit,  
Treasury Office, Ahmednagar,  
Dist. Ahmednagar.

.....RESPONDENTS

**W I T H**

**11. ORIGINAL APPLICATION NO. 253/2012**

**DISTRICT : AHMEDNAGAR**

Prakash s/o Sitaram Sawantsarkar,  
Age : 60 years, Occu. Nil/Retire,  
R/o- Signapur, Tq. Kopergaon,  
Dist. Ahmednagar.

**...APPLICANT**

**VERSUS**

1. The State of Maharashtra,  
Through the Secretary,  
Planning Department,  
Mantralaya, Mumbai-400032.
2. The Executive Engineer,  
Public Works Department,  
Sangamner, Dist. Ahmednagar.
3. The Deputy Engineer,  
Work Bank Project,  
Division Ahmednagar.  
Ahmednagar.  
(copy to be served upon the presenting  
officer MAT Bench at Aurangabad)

.....RESPONDENTS

**W I T H**

**12. ORIGINAL APPLICATION NO. 301/2012**

**DISTRICT : AURANGABAD**

Dattatraya s/o Kashinath Pawar,  
Age : 57 years, Occu. Service,  
Resident of – At Kinhal Tq. Gangapur,  
Dist. Aurangabad.

**...APPLICANT**

**VERSUS**

1. The State of Maharashtra,  
Through the Secretary,  
Planning Department,  
Mantralaya, Mumbai-400032.
2. The Dean,  
Government Medical Collage  
And Hospital, Aurangabad.
3. The Account Officer,  
Pay Fixation & Verification Unit,  
Aurangabad.

**.....RESPONDENTS**

**W I T H**

**13. MISC. APPLICATION NO. 209/2014**

**IN**

**ORIGINAL APPLICATION ST. NO. 805/2014**

**DISTRICT : AHMEDNAGAR**

Eaknath Damodhar Landge,  
Age : 60 years, Occu. Retired,  
R/o Pimpalgaon Landga, Tal. Ahmednagar,  
Dist. Ahmednagar.

**...APPLICANT**

**VERSUS**

1. The State of Maharashtra,  
Through the Secretary,  
Planning Department,  
Mantralaya, Mumbai.
2. The Deputy Director of Land Records,  
Nashik Region, Nashik.
3. The Deputy Superintendent of Land Records,  
Tq. Shevgaon, Dist. Ahmednagar.

**.....RESPONDENTS**



**W I T H****14. MISC. APPLICATION NO. 395/2014****IN****ORIGINAL APPLICATION NO. 378/2014****DISTRICT : AHMEDNAGAR**

Chaburao Balwant Sonwane,  
Age : 51 years, Occu. Service,  
R/o Premdan Hadco, House No. 155 Parner,  
Savedi Ahmednagar, Dist. Ahmednagar.

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

1. The State of Maharashtra,  
Through the Secretary,  
Planning Department,  
Mantralaya, Mumbai.
2. The Deputy Director of Land Records,  
Nashik Region, Nashik.
3. The Deputy Superintendent of Land Records,  
Tq. Rahuri, Dist. Ahmednagar.

**.....RESPONDENTS****W I T H****15. MISC. APPLICATION NO. 396/2014****IN****ORIGINAL APPLICATION NO. 377/2014****DISTRICT : AHMEDNAGAR**

Ashok Namdeo Landge,  
Age : 54 years, Occu. Service,  
R/o Pimpalgaon Landga, Tal. Ahmednagar,  
Dist. Ahmednagar.

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

1. The State of Maharashtra,  
Through the Secretary,  
Planning Department,  
Mantralaya, Mumbai.

2. The Deputy Director of Land Records,  
Nashik Region, Nashik.
3. The Deputy Superintendent of Land Records,  
Tq. Rahuri, Dist. Ahmednagar.

**.....RESPONDENTS**

**APPEARANCE** : Shri A.D. Sugdare, learned Advocate for the Applicants in O.A. Nos. 28/12, 29/12, 376/14, 381/14, 165/14, 227/16, M.A. 205/2015 in O.A. St.1441/14, M.A. 209/14 in O.A. St. 805/14, M.A. 395/14 in O.A. 378/14 and M.A. 396/14 in O.A. 377/14.

: Shri S.S. Dambe, learned Advocate for the Applicants in O.A. Nos. 185, 218, 241, 253, 301 All of 2012.

: S/Shri M.S. Mahajan, V.R. Bhumkar, D.R. Patil, N.U. Yadav, M.P. Gude and Smt. Priya R. Bharaswadkar, learned Chief Presenting Officer and Presenting Officers for the Respondents in all these matters.

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

**DATE : 21.10.2016**

**C O M M O N O R D E R**

**(Per : Shri Rajiv Agarwal, Vice-Chairman (A))**

1. Heard Learned Advocate Shri A.D. Sugdare for the Applicants in M.A. No. 209/2014 in O.A. St. No. 805/2014, M.A. No. 395/2014 in O.A. No. 378 of 2014, M.A. No. 396/2014 in O.A. No. 377 of 2014 and S/Shri N.U. Yadav, M.P. Gude and V.R.

Bhumlar learned Presenting Officers for the Respondents on 19.9.2016.

2. Heard Learned Advocate Shri S.S. Dambe for the Applicants in O.A. Nos. 185/2012, 218/2012, 241, 253/2012 and 301/2012 and Mrs. P.R. Bharaswadkar, learned Presenting Officer for the respondents on 20.09.2016.

3. Heard Learned Advocate Shri A.D. Sugdare, for the Applicants in O.A. Nos. 28/2012, 29/2012, 376/2014, 381/2014, 165/2015, 227/2015 with M.A. No. 205/2015 in O.A. St. No. 1441/2014 and Shri M.S. Mahajan, learned Chief Presenting Officer, Shri V.R. Bhumkar, Shri D.R. Patil and Smt. P.R. Bharaswadkar, learned Presenting Officers for the Respondents on 20.09.2016.

4. These Misc. Applications and Original Applications were heard on 19.9.2016 and 20.09.2016 and are being disposed of by a common order as the issues to be decided are more or less identical.

5. Learned Advocate Shri A.D. Sugdare argued that the Applicants were working as Muster Assistant on the Employment Guarantee Scheme works. They had filed ULP before Industrial

Courts and they were granted permanency in Government service by various judgments. These judgments were not challenged before Hon'ble High Court and have therefore, attained finality. The State Government issued G.R. dated 1.12.1995, for absorption of Muster Assistant in the Government and they were given appointment in Group 'C' or Group 'D' posts as per their qualifications. After such absorption, the Applicants retired on reaching the age of superannuation. The State Government in Planning Department issued Circular on 15.04.2009 clarifying that the Muster Assistant absorbed in various Government departments as per G.R. dated 1.12.1995 will not be entitled to claim any benefit of past service before absorption in the Government. Learned counsel for the Applicants argued that some of the Muster Assistants have filed W.P. No. 2946/1997 before Hon'ble High Court and by judgment dated 19.7.2012, Hon'ble High Court held that the petitioners had been granted status of permanency and their past services should be counted for pensionary benefits. SLP against this judgment was dismissed by Hon'ble Supreme Court on 3.3.2014. Learned Counsel for the Applicants argued that the Applicants are similarly situated persons and are entitled to the same benefits as granted to petitioners in W.P. No. 2946/1997.

6. Learned Advocate Shri S.S. Dambe, has challenged condition no. 5.2 of G.R. dated 1.12.1995, condition no. 5 of G.R. dated 21.04.1999 and circular dated 15.04.2009 as ultra vires to the Constitution of India. However, during oral argument, he stated that this reliefs in para 12(c) of the O.As. are not being pressed. He is only seeking non-recovery of excess payment made to the Applicants by fixing their pay retrospectively from 1.1.1996 as per 5<sup>th</sup> Pay Commission. Otherwise, the facts are more or less similar as in the O.As. filed by Learned Advocate Shri A.D. Sugdare.

7. Learned Chief Presenting Officer and other Presenting Officers argued on behalf of the Respondents. For convince, it is mentioned that learned C.P.O. argued for the Respondents. The main thrust of the arguments was that the present Applicants cannot seek benefits under Maharashtra Civil Services Rules, before the dates of their absorptions in Government service by virtue of G.R. dated 1.12.1995. This issue was examined by this Tribunal in O.A. No. 578/2008 by judgment dated 10.06.2010. In para 6 of the judgment, it is mentioned that as per G.R. dated 1.12.1995, the Muster Assistants were entitled to get the pay scale but no other benefits available to Government servants nor were they to be recognized as Government servant, till they were

actually absorbed in Government service in vacant posts. The matter of delay in aforesaid absorption of Muster Assistant was challenged before Hon'ble High Court. By order dated 20.12.2001 in W.P. No. 954/90, Hon'ble High Court directed the State Government to expedite absorption of Muster Assistants. This order was challenged before Hon'ble Supreme Court and by judgment dated 22.8.2003, Hon'ble Supreme Court disposed of the matter by directing the State Government to gradually absorb Muster Assistants. The claim of the Applicants in O.A. No. 578/2008 for retrospective absorption was categorically rejected by this Tribunal on the basis of this judgment of Hon'ble Supreme Court. Learned C.P.O. argued that the matter regarding relief granted to Muster Assistants, who were claiming permanency in view of judgment of Hon'ble High Court in W.P. No. 2946 of 1997 dated 19.7.2012, this Tribunal has clearly held that the judgment of Hon'ble High Court in the aforesaid case will be applicable only to the petitioners in that W.P. and will have no application to those who were not a party to the W.P.

8. We find that the order of Industrial Court, Ahmednagar in ULP complain no. 665/88 and other complaints dated 29.12.1994 categorically mentions that the complaints were governed by the Industrial Employment Standing Order Act,

1946. The complaints were granted benefit of permanency as Muster Assistant. However, this order or Similar order from Industrial Court will not entitle the Applicants to be treated as Government servants and make them eligible to get benefits under Maharashtra Civil Services Rules. The G.Rs. issued by the State Government viz. dated 1.12.1995, 21.04.1999 and Circular dated 15.04.2009 have been held to be valid by Hon'ble Bombay High Court in W.P. No. 619/2006 and other W.Ps. by judgment dated 16.07.2007. In para 12 of the aforesaid judgment, Hon'ble High Court has held as follows:

*“12. The Learned AGP pointed out that the Muster Assistants whose services were regularized from a particular date would get pension from the date of regularization of service. The State Government has taken a clear stand that past period of such Muster Assistant 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.”*

9. All the Applicants were absorbed in Government service in terms of G.Rs. dated 1.12.1995, 21.04.1999 and Circular dated 15.04.2009. They were fully aware that they were

entitled to be treated as Government Servants only from the date of their absorption in Government service. Now after, so many years, they cannot be allowed to turn around and claim benefits as Government Servant by virtue of order of learned Industrial Court, which has only made them permanent under the Industrial Employment Standing Order Act, 1946 and not under Maharashtra Civil Services Rules. The matter was taken before Hon'ble Supreme Court in SLP NO. 15664 of 1991 and G.R. dated 1.12.1995 was approved by Hon'ble Supreme Court by order dated 2.2.1996. This G.R. dated 1.12.1995 has been upheld by Hon'ble Supreme Court in S.L.P. (Civil) No. 15664 of 1991 by order dated 2.12.1996. Clause 5.2 of this G.R. reads as follows:-

“5.2 हजेरी सहाय्यकांना सध्या मिळत असलेल्या वेतनश्रेणी व्यतिरिक्त शासकीय कर्मचा—यांना मिळणारे लाभ अथवा इतर सोयी सवलती अनुज्ञेय राहणार नाही व ते शासकीय कर्मचारी म्हणून ओळखले जाणार नाहीत.”

Once this G.R. dated 1.12.1995 is upheld by Hon'ble Supreme Court, it is not understood as to how the Applicants can claim benefits available to Government servants prior to their absorption as Government servant. This issue was again considered by Hon'ble Supreme Court, when the order of Hon'ble High Court dated 20.12.2001 in W.P. No. 954/1990 was considered in SLP (Civil) No. 5171/2003. Hon'ble Supreme Court



did not approve the order of Hon'ble High Court to absorb all Muster Assistants from 31.3.1997 and only ordered that they be absorbed gradually in accordance with seniority and roster. This Tribunal in judgment dated 10.06.2010 in O.A. No. 578/2008 held:-

*“Otherwise also, it is a settled legal position that service rendered on ad-hoc basis or as casual worker, daily wages cannot be reckoned for the purpose of benefits available to the employees regularly appointed as Government servants.”*

10. In O.A. No. 76/2013, this Tribunal has held that order of Hon'ble High Court in W.P. No. 2946/1997 dated 19.7.2012 is applicable only to the petitioners in that W.P. The present Applicants had not approached Hon'ble High Court and they are not entitled to any benefits, which is not available to Muster Assistants who had not filed ULPs before Industrial Court. If the present O.As. are allowed, this will be highly discriminatory as some Muster Assistants will get benefit of service before absorption in Government service, while others will not. This cannot be allowed, specially as Hon'ble Supreme Court has categorically upheld G.R. dated 1.12.1995, which provides that a Muster Assistant will be treated as Government servant only after his absorption as such.

11. As regards the Applicants represented by Learned Advocate Shri S.S. Dambe, the Applicants were given benefit of 5<sup>th</sup> Pay Commission from 1.1.1996. This is obviously against the provisions of G.R. dated 1.12.1995. The Applicants have challenged the objection raised by Pay Verification Unit Aurangabad dated 18.01.2012 in O.A. No. 185/2012. It appears that no order of actual recovery was passed. This O.A. is not maintainable.

12. In O.A. No. 218/2012, the Applicant is claiming that his previous service before absorption in Government may be counted as half service. This is not permissible as per G.R. dated 1.12.1995. This O.A. is not maintainable.

13. In O.A. No. 241/2012 the Applicant has challenged the objection raised by Pay Verification Unit dated 13.12.2011. However, no order of recovery has been passed. This O.A. is premature as no cause of action has arisen.

14. In O.A. No. 283/2012 also, the order dated 9.3.2012 is challenged wherein it is held that the Applicant is not eligible to get pension as his service is less than 10 years. This order is in

accordance with G.R. dated 1.12.1995 and this O.A. is not maintainable.

15. In O.A. No. 301/2012, the order dated 3.4.2012 ordering recovery of excess payment has been challenged. It is not known whether the recovery has actually been made or not. As the Applicant is not eligible for pension, he was absorbed in Government service on 9.9.2005 and retired on 31.07.2012 (date of birth is 6.7.1954) he is not eligible for pensionary benefits. The question of recovery from his pensionary benefits therefore, does not arise. There is no cause of action as no actual recovery has been made. This O.A. is not maintainable.

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

17. As these O.As. are dismissed, nothing survives in the M.As. which also stand disposed of with no order as to costs.

**J.D KULKARNI  
(MEMBER. J)**

**RAJIV AGARWAL  
(VICE-CHAIRMAN)**