

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 472 OF 2019

DISTRICT : MUMBAI

Shri Sahabrao Balaso Kashid,)
R/o: 204, Shivganga CHS,)
Near Kusumeshwar Temple,)
Neral [E], Tal-Karjat, Dist-Raigad.)
Working as Assistant Professor in)
Chemistry, Ismail Yusuf College,)
Jogeshwari [E].)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
Higher Technical Education Dept,)
Mantralaya, Mumbai 400 032.)
2. The Director of Education,)
Directorate of Higher Education,)
M.S, Central Bldg, Pune 411 001.)
3. The Principal,)
Ismail Yusuf College,)
Jogeshwari [W}, Mumbai 400 060.)
4. The State of Maharashtra,)
Through Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032.)

5. The State of Maharashtra,)
 Through Principal Secretary,)
 Finance Department, Mantralaya,)
 Mumbai 400 032.)
6. The Pay and Accounts Officer,)
 Bandra Kurla Complex, Bandra,)
 Mumbai.)
7. Accounts Officer,)
 Pay Verification Unit, Mumbai.)
 Thakersey House, 3rd floor,)
 Ballard Estate, Near Foreign Post)
 Office, Mumbai-1.)...**Respondents**

Shri S.B Kashid, applicant in person.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

DATE : 08.10.2021

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. Heard Shri S.B Kashid, applicant in person and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. The applicant, Assistant Professor of Chemistry, working with the Respondent, Institute of Science, Mumbai, has moved the application, seeking declaration that he is to be paid regular pay scale w.e.f 7.9.2020 as per G.R dated 29.8.2001 and not as per

G.R dated 23.3.2016. He further seeks directions that the Respondents should consider the salary paid as on 23.3.2016 as regular salary and further fix the salary on the said basis. He also seeks directions that Respondents no 1 to 6 be directed to grant the arrears to the applicant as per G.R dated 9.8.2017 entitling him the benefit of Senior Scale, Selection Grade under Career Advancement Scheme within a period of 30 days from the date of the order. He also prayed that his regular pay scale should be finalized from the year 2003 as per G.R dated 29.8.2001 and not as per G.R dated 23.3.2016.

3. Affidavit in reply dated 5.11.2019 has been filed on behalf of Respondents no 1 & 2, by Dr Rohidas B. Kale, Incharge Joint Director, Higher Education Department, Mumbai Region and affidavit in reply dated 18.12.2012 has been filed on behalf of Respondents no 5 & 7, by Anagha Shirish Vaidya, Deputy Director, [Pension/P.V.U], in the office of Accounts and Treasuries, Mumbai, wherein all the allegations made and the contentions raised by the applicant are denied mainly on the ground that the applicant was appointed on a temporary and ad hoc basis and the services of the applicant is regularized as per G.R dated 23.3.2016 and the said G.R is issued pursuant to the decision dated 3.9.2015 of the Hon'ble High Court, Nagpur Bench in Writ Petition Nos. 526/2015 & 850/2015, order of this Tribunal dated 26.6.2015 in O.A 781/2013 and ors and also order of the Hon'ble Bombay High Court, dated 19.10.2013 in W.P 2046/2010.

4. This application was filed by the applicant when he was working in Ismail Yusuf College, Mumbai, as Assistant Professor in Chemistry. It is an admitted fact that the applicant's services are regularized from 23.3.2016 and not from the date of his

appointment, in view of the judgment of the Hon'ble High Court, and this Tribunal.

5. The applicant submits that he has accepted his regularization from the year 2016 as per the G.R dated 23.3.2016, as he was already paid the annual increments and has received the pay scale as per the 5th & 6th Pay Commission. Therefore, now he has no grievance in respect of the date of regularization of pay scale and the payments. However, interregnum, the Pay Verification Unit (in Pay and Accounts Office), i.e. Respondents no 5, 6 & 7 have raised query as to how the applicant was paid the annual increments after 2003 in his service book and returned the service book back with a direction to seek approval from the competent authority and to resolve the issue. So he is opposing the said objection.

6. The applicant has pointed the G.R dated 29.8.2001, which is relied by him in the Original Application on the point of annual increments given to ad hoc / temporary employees.

7. Learned Presenting Officer on instructions has submitted that that the services of the applicant is regularized as per G.R dated 23.3.2016 and the said G.R was issued on the basis of the judgment of this Tribunal dated 26.6.2015 in O.A 781/2013 and ors, wherein the Respondents were directed to regularize the services of the applicants (Teachers) and absorb them from the 31.7.2015 and it was held that the applicants were held entitled to regular salary from 1.8.2015. However, the applicants would not be entitled to claim any monetary benefits for the past service rendered by them inspite of their regularization. The Tribunal directed the Government to take appropriate decision about the scheme of the permanency applicable to the applicants. Learned

P.O further submitted that the present applicant therefore is not entitled to monetary benefits, prior to the G.R dated 23.3.2016, i.e. before the regularization of his services.

8. We have gone through the judgment of the Tribunal and so also we are conversant with the ratio laid down by the Hon'ble High Court dated 19.10.2013, in **Sachin A Dawale & Ors Vs. State of Maharashtra and one another, W.P 2046/2010**, wherein the services of temporary Part Time employees were regularized. The G.R of 2016 is the outcome of the directions given by the Hon'ble High Court, Nagpur Bench dated 3.9.2015 in Writ Petition Nos 526/2015 & 850/2015 and order of this Tribunal dated 26.6.2015 in O.A 781/2013 & ors, referred to above. In the judgments mentioned above, the decision of the Hon'ble Nagpur Bench in Sachin Dawale's case (supra) might not have been placed before the Bench and hence not referred. There is no dispute about the date of regularization of services of the applicant as it is accepted by the applicant. The issue is limited to the extent of recovery of his annual increments, which was paid to him from 2003 till the date of his regularization, i.e. 23.3.2016.

9. We, therefore, made a short query to the Respondent-State by order dated 5.10.2021 as to whether G.R dated 29.8.2001 is cancelled. The Respondents no 1 & 2 have filed short affidavit in reply dated 8.10.2021 and answered the query by stating that the G.R dated 29.8.2001 is not cancelled.

10. Thus, we understand that the said G.R is still in force and the annual increments were paid to the applicant from 2003 till his regularization in the year 2016. The relevant portion of the G.R dated 29.8.2001 is reproduced as follows:-

“शासन निर्णय:- शासकीय महाविद्यालये व विज्ञान संस्थामधील अधिव्याख्याते, शारिरीक शिक्षण निर्देशक व ग्रंथपाल या पदांवर एक वर्षाहून अधिक कालावधीसाठी कार्यरत असलेल्या हंगामी स्वरूपातील तदर्थ कर्मचा-यांना वार्षिक वेतनवाढी लागू करण्यासंबंधीचे यापूर्वी निर्गमित करण्यात आलेले सर्व आदेश / निर्देश या आदेशा-वये अधिक्रमीत करण्यात येत आहेत. व शासकीय कला, वाणिज्य, विज्ञान, विधी व शिक्षणशास्त्र महाविद्यालये व शासकीय विज्ञान संस्थांमध्ये अधिव्याख्याता, शारिरीक शिक्षण निर्देशक व ग्रंथपाल या पदावर मा. न्यायालयाच्या /मा. महाराष्ट्र प्रशासकीय न्यायाधिकरणाच्या आदेशानुसार किंवा - अन्य तांत्रिक कारणास्तव एक वर्षापेक्षा जास्त कालावधीसाठी सेवेत चालू असणा-या तदर्थ स्वरूपातील हंगामी कर्मचा-यांना नियमित अस्थाई कर्मचा-यां प्रमाणे महाराष्ट्र नागरी सेवा (वेतन) नियम १९८१ मधील नियम क्रंमाक: ३६ व ३९ मधील तरतूदीनुसार वार्षिक वेतनवाढ अन्यथा रोखली नसल्यास ती क्रमप्राप्त म्हणून अनुज्ञेय होईल.

२. हे आदेश पूर्वलक्षीप्रभावाने अंमलात येतील.”

Thus the annual increments paid to the applicant are consistent with the said G.R and the policy of the State. Hence the annual increments paid to the applicant are legal and cannot be recovered. Therefore, the objections raised by the Pay Verification Unit on 4.5.2017 ought to have been answered by the State Government itself as it is the policy of the State and the issue could have been settled at their end. However, it was dragged before this Tribunal.

11. Hence, we allow the Original Application partly with following directions:-

- (a) All the Respondents are directed to take note of the G.R dated 23.3.2016 and the order passed by this Tribunal.
- (b) The objections raised by the Pay Verification Unit in respect of recovery of annual increments of the applicant are illegal and is not sustainable, in view of G.R dated 29.8.2001.
- (c) There should not be any recovery for the payments made towards annual increments from 2003 till 2016 from the applicant.

(Medha Gadgil)
Member (A)

(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 08.10.2021
Dictation taken by : A.K. Nair.