

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 138 of 2020 (SB)

Prakash S/o Sahdeorao Gajbhjiye,
Aged 58 years, Occu. Retired,
R/o Gandhi Ward, Ramtek,
Tah. Ramtek, District Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2) Collector, District Nagpur.
- 3) The District Supply Officer,
Foods and Civil Supply, Civil Lines,
Nagpur.
- 4) The State of Maharashtra,
through its Secretary, Department of Planning,
Mantralaya, Mumbai-400 032.
- 5) The Deputy Collector,
Employment Guarantee Scheme, Nagpur
Civil Lines, Nagpur.

Respondents.

**S/Shri G.G. Mishra, A.D. Girdekar, Advocates for the applicant.
Shri M.I. Khan, P.O. for the respondents.**

**Coram :- Hon'ble Shri M.A. Lovekar,
Member (J).**

Date of Reserving for Judgment : 4th March, 2022.

Date of Pronouncement of Judgment : 16th March, 2022.

JUDGMENT

(Delivered on this 16th day of March, 2022)

Heard Shri A.D. Girdekar, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. Case of the applicant is as follows –

The applicant joined the respondent department as Muster Assistant on 19/5/1988. His services were terminated by order dated 20/8/1992. He challenged it by filing ULP No.760/1994. Labour Court set aside order of his termination and directed reinstatement with full backwages. For grant of benefits flowing from G.Rs. dated 1/12/1995 and 21/4/1999, the applicant and others filed O.A.Nos. 462/2004 and 11/2007. By separate orders dated 14/8/2015 and 20/8/2015 (Annexure-A-1 collectively) they were held entitled to benefits of these G.Rs. By order dated 30/5/2016 (Annexure-A-2), the applicant and 11 others were absorbed on the establishment of respondent no.3 and posted as Junior Clerk. By order dated 27/12/2016 (Annexure-A-3) pay of the applicant was fixed by treating him as a Government servant w.e.f. 31/5/1993. This was done on the basis of orders dated 14/8/2015 and 22/8/2015 mentioned above. The applicant was due to retire on superannuation on 31/1/2020. On 17/1/2020, he submitted application (Annexure-A-4) before

respondent no.2 to process his case so that pensionary benefits could be extended to him. He was informed by respondent no.2 by letter (Annexure-A-5) that guidance was sought from respondent no.1 as to whether pensionary benefits could be extended to him. One Bhimate was one of the applicants along with the applicant in O.A.No. 11/2007. The pensionary benefits have been granted to him. Therefore, delaying and denying such benefits to the applicant is unjust and arbitrary. Hence, this application seeking relief of directing the respondents to forward pension case of the applicant and release the pension with all consequential benefits.

3. Reply of respondent no.2 is at page nos.45 to 48. It is his contention that since the appointment of the applicant was by way of absorption in Government service, the date of absorption should be taken to be the date of appointment / entry in Government service and in the absence of any order or direction from the Government, question of granting deemed date for the purpose of computing pensionable service would not arise.

4. Respondent no.2 has relied on order dated 30/5/2016 (Annexure-A-2). By this order, the applicant and 6 others were absorbed in Government servant. The order reads as under –

*^ e1G vtIdeld 462@2004] 11@2007 o 636 vlf.k 637@2015 ef/ky fu.kz kud kj
gtjh I gk; dlak 'kkl dh; I or I keloou ?ks; kps vuqlakus I mflkz i=kr uem gtjh*

*I gk; dklph ukos tsBrk ; knhrw deh d#u ijoBk vLFkki uojhy fyihd Vady[kd
 I dxkthhy fjDr vl yš; k i nkoj 'kkl dh; I or I kekou ?ks; kdjhrk i Lrkohr dj.; kr
 vkysys gkrš] R; kuđ kj [kkyhy ueñ menokjauh 'kkl dh; I or I kekou ?ks; kl kBh
 nLrk, ot I knj dys I knj dšyš; k nLrk, ot kps i MrkG.kh d#u I nj menokjkl [kkyhy
 fu; e o vVhuđ kj fyihd Vady[kd @ xkñke fdij] xV&d ¼fyihd I dx½ oruJskh
 5200&20200] xM oru &1900 ; k oruJskhe/; s i qkš% rkrigR; k Lo#i kph R; kps
 ukokl ekj n'kfoY; k i æk.ksl ek; kst ukusi nLFkki uk ns; kr ; r vkgs ***

5. Respondent no.2 has placed on record copy of letter dated 12/10/2017 written by respondent no.2 to the Commissioner (EGS). It is at page nos.51/52. In this letter, respondent no.2 opined as under –

*^ I nj fo"K; h i qsuem dj.; kr ; rsdh] ek- egkjk"V"U; k; kf/kdj.k ukxiij cp ukxiij ; kps
 fnukad 14@8@2015 psvkns kkr mDr gtjh I gk; dkaik 'kkl u I or xV d o xVM i nkojhy
 I ek; kst uus fu; qriph fnukad ns; kr vkysyh ul w QDr I njgw deþk&; kauk fnukad
 31@5@1993 jksth gtjh I gk; d i nkoj dk; jr vl Y; kps xghr /kj.; kr vkysys vkgs o
 'kkl u fu.kž; fnukad 1@12@1995 o 21@4@1999 vlló; s'kkl u I or I ek; kst u dj.; kps
 vkns khr dšysys vkgs Eg.ktp I ek; kst ukP; k fnukadki ; r I nj deþk&; kauk gtjh I gk; d
 ; k i nkojhy oru o HkRrsns jkg.kkj vkgs o I ek; kst ukP; k rkj [ki kl w I nj deþk&; kauk
 egkjk"V" ukxjh I ok fu; e ykxqgkou rs'kkl dh; deþkjh Eg.kw vkG[kys tk.kkj vl s
 vfhki r vkgs***

6. The correspondence at page nos. 55 to 63 shows that respondent no.2 had sought guidance from various authorities about the date from which the applicant (and similarly placed persons) could be treated to be in Government service, i.e., from the date of entry in service as Muster Assistant or from the date of absorption in Government service.

7. The applicant has relied on the judgment passed by this Tribunal in a batch of nine O.As. on 17/12/2021, the Judgment passed on 9/2/2022 in another batch of four applications and one more Judgment passed on 24/1/2022 in O.A.No. 86/2021. In all these matters, relief of deemed date from the date of entry in service as Muster Assistant was granted for the purpose of computing pensionable service.

8. On the other hand, the respondents have relied on the Judgments dated 27/9/2018 and 8/10/2018 passed by this Tribunal in O.A.Nos. 215/2011 and 44/2010, respectively. In O.A.No. 215/2011 it was observed –

“6. O.As 178,216 & 217 of 2011. 6. It is also seen that validity of G.R. dated 1.12.1995 was upheld by the Hon’ble Supreme Court in S.L.P. (Civil) No. 15664 of 1991 by judgment dated 2.12.1996. Clause 5.2 of this G.R. dated 1.12.1995 states that:

5.2- ^gtjh I gk; dkuk I /; k feGr vl yŷ; k oruJskhr ns; kr ‘kkI dh; deĵk&; kyk feG.kkjs ykHk vFkok brj I kŷ h I oyrh vuKŷ jkg.kkj ukgh o rs ‘kkI dh; deĵkjh Eg.kuu vkG[kystk.kkj ukghr-”

This G.R. has been upheld by the Hon’ble Supreme Court. There is no question of considering past service as Mustering Assistant for pensionery purpose.

7. This issue was again considered by the Hon’ble Supreme Court when the judgment of the Hon’ble High Court dated 20.12.2001 in W.P. No. 954 of 1990 was considered in S.L.P. (Civil) No. 5171 of

2003. The Hon'ble Supreme Court did not approve the order of the Hon'ble High Court to absorb all Muster Assistants w.e.f. 31.3.1997 and ordered that they be absorbed gradually on the available vacancies in accordance with seniority and roster.

8. This Tribunal (Aurangabad Bench) by judgment, dated 10.6.2010 in O.A. No. 578/2008 has held that the Muster Assistants were not recognised as Govt. servants till their absorption in the Govt. Accordingly their past service before absorption in Govt. service cannot be counted for pensionary benefits.

9. The judgment dated 21.10.2016 in the group of O.As No. 28 of 2012 etc. delivered by the Aurangabad Bench of this Tribunal after considering all earlier judgments of this Tribunal, judgments of the Hon'ble High Court and the Hon'ble Supreme Court. There is no reason for us to take any different view here."

9. In O.A.No. 44/2010, it was observed –

"5. The Id. P.O. has placed on record, the Judgment delivered by this Tribunal at Nagpur Bench in O.A. Nos. 710, 711, 714, 715, 716 of 2009 and 167, 168, 169 of 2010 and 33, 34, 35, 36, 37, 38, 56, 58 & 60 of 2015 dated 14/02/2017. In the said Judgment it has been observed in para no. 8 -

This Tribunal (Aurangabad Bench) by Judgment, dated 10/06/2010 in O.A.578/2008 has held that the Muster Assistants were not recognized as Govt. servant till their absorption in the Government. Accordingly, their past service before absorption in Government service cannot be counted for pensionary benefits."

10. The applicant has further relied on the Judgment dated 16/12/2015 passed by the Division Bench of Bombay High Court (Aurangabad Bench) in Writ Petition No.8468/2015.

By this Judgment, the Judgment of Aurangabad Bench of M.A.T was affirmed by relying on the earlier Judgment of Bombay High Court in case of **Ramchandra Kondiba Mahajan vs. State of Maharashtra & Ors.** Para-15 of the Judgment is as under –

“15) For the reasons stated above, we do not find that the learned Tribunal has committed any error in directing the State, to count the period of service of the respondent employee with effect from his entry in the service as Muster Assistant till the date of his superannuation on 31.05.2013 from the post of Forest Guard, for the purpose of extending benefit of pension to him. The writ petition is, thus, devoid of any substance and is liable to be rejected. Hence, following order:

ORDER

. Writ petition is rejected.

. No order as to cost.”

11. The respondents, on the other hand have relied on “ **Vikar Ansar Shaikh & Ors. Vs. State of Maharashtra (2018) 1 AIR Bom R 513 (DB)**. This Judgment is dated 13/1/2017. In this case, the Petitioners were aggrieved by a Circular issued by the Planning Department of the State of Maharashtra, thereby certifying that the service rendered by the Muster Assistant was not entitled to be counted as pensionable service for conferring the pensionary benefits. In this case, it is held -

“9. We have perused the entire gamut of the matter and the undisputed facts involved. It is not in dispute that the State Government resolved to absorb the Muster Assistants into Government service and formulated a scheme for absorption of such Muster Assistants who were in service on 31st May, 1993 by issuing Government resolution on 1st December,

1995. By the said Government Resolution the State Government framed a Scheme for absorption of such Muster Assistants and also constituted Divisional Level Committees for effectively implementing the decision of the State Government. Perusal of the said Government Resolution reveals that it contained clause 5.2 which reads as follows:-

'The Muster Assistants will not be entitled for any benefits or facilities applicable to a Government servant except the pay scale which they are presently drawing and they will not be recognized as Government employees.'

Further the Government Resolution dated 21st April, 1999 in clause no.5 provides as follows:-

'The Muster Assistants working under the EGS Scheme are not Government Employees and therefore the Maharashtra Service Rules as well as the Rules applicable to the State Government employees are not applicable to them. Therefore, the benefits of 5th Pay Commission will not be made applicable to them.'

11. Perusal of the Government resolutions which contain the scheme of absorption of Muster Assistants into Government service clearly stipulates the absorption of Muster Assistants on the posts equivalent in the pay scale of Rs.750-940 in the State Government or Zilla Parishad and on absorption they were held entitled for house rent allowance and other allowances with effect from 1st April, 1999. The absorption of the Muster Assistants was however subject to the rider that Muster Assistants working under the EGS, are not Government servants and Maharashtra Civil Services Rules are not applicable to them.

12. The claim of the petitioners is to count the service rendered by them as Muster Assistants and attaching the said service to the service rendered by them as Government servant on absorption and calculate the pensionary benefits by taking into consideration the entire length of service as qualifying service. We find said argument to be misconceived for more than one reason. The Government Resolution which provides for absorption of Muster Assistants dated 1st December, 1995 and further Government Resolution dated 21st April, 1999 clearly spelt out that the Muster Assistants are not Government servants. The Maharashtra Civil Services (Conduct) Rules defines 'Government servant' to mean;

Rule 2 (b) : 'Government servant' means any person appointed to any civil service or post in connection with the affairs of the State of Maharashtra and includes a Government servant whose services are placed at the disposal of a company, corporation, organisation, local authority or any other Government, notwithstanding that his salary is drawn from sources other than from the consolidated Fund of the State ;

13. The service conditions of Government servant are governed by the Rules framed in exercise of powers conferred by proviso to Article 309 of the Constitution of India and for the purposes of conferring the pensionary benefits, the Maharashtra Civil Services Pension Rules 1982 were made applicable. Rule 2 of the said Rules of 1982 provides for extent of

application of the said Rules, we gainfully reproduce the said Rule 2 as below:

2. Extent of application :

Except where it is otherwise expressed or implied, these rules apply to all members of services and holders of posts whose conditions of service the Government of Maharashtra are competent to prescribe. They shall also apply to ;

(a) any person for whose appointment and conditions of employment special provision is made by or under any law for the time being in force.

(b) any person in respect of whose service, pay and allowances and pension or any of them special provision has been made by an agreement made with him, in respect of any matter not covered by the provisions of such law or agreement, and

(c) Government servants paid from Local Funds administered by Government, except rules relating to the foreign service.'

Rule 9 of the said Rules of 1982 defines certain terms and the definition of the term 'pensionable pay' and 'pensionable service' requires a reference here. Rule 9 (38) defines 'pensionable pay'. 'Pensionable Pay' means the average pay earned by a Government servant during the last one month's service. Rule 2 (39) defines 'pensionable service' 'Pensionable Service' means service which qualifies the Government servant performing it to receive a pension from the Consolidated Fund.

15. Perusal of the provisions contained in Chapter V of the said Rules of 1982 which provides for 'qualifying service' and contains detail provision for commencement of qualifying service and for counting of various parts of Government service for pensionary benefits makes it aptly clear that the said rules are applicable to a 'Government servant' who substantially holds a permanent post as a Government servant. The term 'Government Service' has a definite connotation and meaning and the petitioners / Muster Assistants cannot claim to be 'Government servants' in view of the fact that they were not appointed to any civil service or post in connection with the affairs of the State of Maharashtra. At the time of their absorption into the Government service, it was made clear that the posts held by them as Muster Assistants was not a Government post and the service rendered by the petitioners are therefore not Government service which would not make the said service to be counted as the Government service. The Maharashtra Civil Services (Pension) Rules therefore cannot be made applicable to the petitioners and they cannot derive benefit of the said Rules when they were not Government servants and from the day the Muster Assistants became Government servant the pension rules are made applicable to them."

16. In arriving at the aforesaid conclusion, we are fortified by judgment delivered by this Court, Bench at Aurangabad in Writ Petition No. 619 of 2006 in case of Shivhar & Anr Vs. State of Maharashtra (Coram: Naresh H. Patil and R.M.Borde, JJ) on 16th July, 2007 wherein similar issue arose and the petitioners before the Court who were working as Muster

Assistants sought a declaration that they are eligible and entitled for pensionary benefits in view of provisions of Rule 33 of MCSR (Pension) Rules, 1982 from the respective dates of their retirement. After exhaustively dealing with Rule 33 of Pension Rules, the Division Bench held that in view of the Government Resolution dated 21st April, 1999; wherein the stand was taken to the effect that service conditions applicable to Government employees would not be applicable to the Muster Assistants who are absorbed in regular service, the Court did not find any flaw in the policy adopted by the State Government and had dismissed the petition.

12. It was argued by learned counsel Shri A.D. Girdekar for the applicant that Judgment passed in Writ Petition No.8468/2015 was challenged in SLP No.23504/2016 and said SLP was dismissed by passing the following order –

“ Heard learned counsel appearing on behalf of the Petitioners. Delay condoned. We do not find any reason to entertain this petition. This Special Leave Petition is, accordingly, dismissed.”

It is his contention that affirmation of Judgment of the High Court passed in Writ Petition No.8468/2015 by the Supreme Court would have highest precedential value. The aforequoted order passed in SLP shows that it was dismissed in limine. Considering this factual aspect, aforesaid contention made on behalf of the applicant cannot be accepted. In support of this conclusion, reliance may be placed on “ **V. Senthur & Ano. Vs. M. Vijaykumar**” wherein it is held-

“It will be relevant to refer to the following observations of this Court in the case of Kunhayammed and Others v. State of Kerala and Another :- A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it

does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto.”

13. In the case of **Vikar Ansar Shaikh & Ors. Vs. State of Maharashtra** (supra), in Para-16 (which is quoted above) there is reference to Judgment dated 16/7/2007 passed by Division Bench of Bombay High Court in “**Shivhar & Anr Vs. State of Maharashtra**” in which identical view is taken. Thus, there are in all three Judgments of different Division Benches of the Bombay High Court. The earliest amongst these Judgments was delivered on 16/7/2007 in the case of “**Shivhar & Anr Vs. State of Maharashtra** (supra). Thereafter Judgment in Writ Petition No.8468/2015 was passed on 16/12/2015. In **Vikar Ansar Shaikh & Ors. Vs. State of Maharashtra** (supra), view taken in **Shivhar** (supra) was reiterated. I respectfully rely on the view taken in “**Shivhar Vs. State of Maharashtra and Vikar Shaikh Vs. State of Maharashtra**” (Supra).

14. Reliance on the ratio laid down in "**Shivhar Vs. State of Maharashtra and Vikar Shaikh Vs. State of Maharashtra**" (Supra) will lead to dismissal of this application. Hence, the order—

ORDER

- (i) The application is dismissed.
- (ii) No order as to costs.

Dated :- 16/03/2022.

(M.A. Lovekar)
Member (J).

dnk.*

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 16/03/2022.

Uploaded on : 16/03/2022.