

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 382 of 2017 (S.B.)**

Asuraj Rushiji Dhanvijay,  
Aged 59 years, Occ. Service,  
R/o Mokhala (Neri), Tah. Chimur,  
Dist. Chandrapur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary (Revenue) Ministry of Mumbai.
- 2) Collector,  
Chandrapur District ,Tah. & Dist. Chandrapur.
- 3) Tahsildar,  
Tahsil Office, Chimur,  
Tah. Chimur, Dist. Chandrapur.
- 4) Joint Director,  
Treasury & Accounts,  
Pay Verification Unit,  
Civil Lines, Nagpur-440 001.

**Respondents.**

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**Shri I.G. Meshram, Miss R.R. Bagde, Advocates for the applicant.**  
**Shri V.A. Kulkarni, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

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**Date of Reserving for Judgment : 20<sup>th</sup> July,2022.**

**Date of Pronouncement of Judgment : 2<sup>nd</sup> August,2022**

**JUDGMENT**

**(Delivered on this 2<sup>nd</sup> day of August,2022)**

Heard Shri I.G. Meshram, learned counsel for the applicants and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was working as a Mustering Assistant w.e.f. 01/12/1979. His service was terminated by order dated 17/3/1989. The applicant challenged the said termination order before the Labour Court, Chandrapur in Complaint (ULP) No.386/1990. The said complaint was allowed by the Labour Court on 10/5/2001. During the pendency of the said Complaint, the respondents have absorbed the applicant in regular service on the post of Peon as per order dated 11/9/1997. The applicant is in continuous service.

3. It is the contention of applicant that respondent no.3 not fixed the salary of applicant properly. The salary of the applicant was wrongly fixed. The applicant is entitled for higher salary. The applicant has made representation to the respondent no.2 on 20/02/2017, requesting the respondent no.2 to take corrective action and remove the discrepancies committed in the pay fixation of the applicant. Till date nothing has been done by the respondents. Hence, the present O.A. is filed for following reliefs –

*“ (9.1) Call for entire service records of applicant from the office and respondent nos.2 and 3 and after perusal direct the respondent no.3*

*update the service book of the applicant by removing faulty entries done in the service book of the applicant.*

*(9.2) Direct the respondents to consider whole service for the purpose of seniority of applicant and determination and fixation of pay of the applicant in accordance with law.*

*(9.3) Direct the respondent nos.2 and 3 is determine the pay of the applicant and pay the difference of salary with 12% of interest upon the arrears.*

*(9.4) grant any relief which may deem fit and proper in the circumstances in the interest of justice.*

*(10) Desist the respondent nos.1 to 3 from any deduction amount under the head of excessive payment from the salary of the applicant, during the pendency of present application.”*

4. The O.A. is strongly opposed by the respondents. It is submitted that as per Govt. G.R. of 1995, the services of the applicant were regularised. After the appointment of applicant as a regular employee, proper pay fixation was done. Earlier temporary service of the post of Mustering Assistant cannot be taken into consideration for the purpose of fixation of salary. Hence, the O.A. is liable to be dismissed.

5. Heard learned counsel for applicant Shri I.G. Meshram. He has pointed out the common order passed by this Tribunal in O.A. 506/2017 with connected matters, dated 9/2/2022. The ld .counsel

has submitted that the salary of applicant was not properly fixed taking into count of his earlier services as a Mustering Assistant. The learned counsel has pointed out the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No. 8714/2014 with other connected matters.

6. Heard learned P.O. Shri V.A. Kulkarni. He has submitted that the services of Mustering Assistant cannot be taken into count for the purpose of pay fixation. The cited decision in O.A. 506/2017 with connected matters is in respect of taking into consideration of the services of the post of Mustering Assistant for the purpose of pensionary benefits only.

7. The learned counsel for applicant has pointed out the decision in the Writ Petition No. 8714/2014 with connected matters before Hon'ble Bombay High Court, Bench at Aurangabad relying on the decision of **State of Punjab Vs. Rafiq Masih (White Washer) etc. reported in A.S.C.W. 2015 (4) Page 334** wherein held that the recovery cannot be claimed if an employee has retired or is on the verge of retirement.

8. In the present O.A. nothing is pointed out about the recovery. The prayers of applicant in O.A. for direction to the respondents to consider whole service of applicant for the purpose of

seniority and determination and fixation of pay. Therefore, cited decision is not applicable in the present case. The applicant had made representation on 20/02/2017. It appears that the said representation is not decided by respondents. Hence, the following order –

**ORDER**

- (i) The O.A. is partly allowed.
- (ii) The respondents are directed to decide the representation of the applicant dated 20/02/2017 within a period of six months from the date of receipt of this order.
- (iii) No order as to costs.

**Dated** :- 02/08/2022.

dnk.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

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 Vice Chairman.

Judgment signed on : 02/08/2022.

Uploaded on : 02/08/2022.