

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 549 of 2013 (S.B.)

Shri Munna Waman Gahane,
Aged about 60 years, Occ. Retired,
R/o Haiti / Girola Post : Khodshivani,
Tah. Sadak Arjuni, Dist. Gondia.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of EGS, Mantralaya, Mumbai.
- 2) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
- 3) The Commissioner, Nagpur Division, Nagpur.
- 4) The Collector, Gondia.

Respondents.

S/ Shri G.G. Bade, S.K. Thengri, P.P. Khaparde, Advs. for the applicant.
Shri S.A. Sainis, P.O. for respondents.

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

Dated :- 19/09/2022.

JUDGMENT

Heard Shri G.G. Bade, learned counsel for the applicant
and Shri S.A. Sainis, learned P.O. for the respondents.

2. The case of applicant in short is as under

The applicant was appointed as a Mustering Assistant in
the year 1990. He was absorbed in a regular government service as

per the G.Rs. dated 1/12/1995 and 21/4/1999. The applicant came to be retired on 30/09/2011 on attaining age of superannuation.

3. It is submitted that the respondents have not counted his service from the date of his initial appointment as a Mustering Assistant. Therefore, prayed for direction to the respondents to count his service from the date of initial appointment as a Mustering Assistant and pay the pensionary benefits.

4. The O.A. is opposed by the respondents. The respondents have not filed reply.

5. Heard learned counsel for the applicant Shri G.G. Bade. As per his submission, in view of the Judgment of Hon'ble Bombay High Court, Aurangabad in W.P. No. 8468/2015 in the Case of **State of Maharashtra & Ors. Vs. Uttam Narayan Vendait**, the Hon'ble Bombay High Court, Bench at Aurangabad has held that "the services of the Mustering Assistant shall be counted from the date of their initial appointment as a Mustering Assistant for the purpose of pensionary benefits".

6. Now the issue is settled by the Hon'ble Supreme Court in the Civil Appeal Nos. 6531-6533/2022, decided on 7/9/2022. The Hon'ble Supreme Court has held that Hon'ble Bombay High Court, Bench at Aurangabad directed the State of Maharashtra to absorb the

Mustering Assistant. The issue in respect of counting the services for pensionary benefit was for consideration before the Hon'ble Supreme Court. The Hon. Supreme Court has held as under –

“ It is trite to say that the question of payment of pension would arise only if the pensionary service is completed. Thus the question would be as to what is the period of service which will have to be counted for such pensionable service.

In our view, what the Bench considered appropriate to issue notice was really the aspect that since the absorption occurred over a period of time, and that may have deprived some persons to their service as permanent employees, it should be the notional date of absorption of 31/3/1997 which should be taken into account for determining the pensionable service.

In our view, this is also what the Industrial Courts have done where relief has been granted and it has been accepted by the State.

We are thus of the view that the only direction which can be issued is that persons who has been absorbed over a period of time post 31/03/1997, for pensionable service, the reckoning date would be 31/03/1997 and such of the persons who have rendered a pensionable service on that basis would be entitled to that benefits.”

7. The applicant was appointed as a Mustering Assistant in the year 1990. As per the Govt. policy he was absorbed in a regular service in the year 2003. In view of the Judgment of Hon'ble Supreme Court in Civil Appeal Nos. 6531-6533/2022, decided on 7/9/2022, the applicant is entitled for deemed date from 31/03/1997 for the purpose of pensionary benefits. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The respondents are directed to count the service of applicant for the purpose of pensionary benefits from 31/03/1997.
- (iii) The respondents are directed to pay the pensionary benefits by counting his service from 31/03/1997.
- (iv) No order as to costs.

Dated :- 19/09/2022.

(Justice M.G. Giratkar)
Vice Chairman.

*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 Vice Chairman

Judgment signed on : 19/09/2022.

Uploaded on : 20/09/2022.

ok*