

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 550 of 2013 (S.B.)

Shri Shamu S/o Mahadeo Kapgate,
Aged about 59 years, Occ. Retired,
R/o Post : Umarzari, Tah. Sakoli,
District Bhandara.

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, Bhandara.

Respondents.

S/Shri G.G. Bade, P.P. Khaparde, Advocates for the applicant.

Shri S.A. Sainis, P.O. for respondents.

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

Dated :- 26/09/2022.

JUDGMENT

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

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

The applicant was appointed as a Mustering Assistant on
30/06/1979. As per the Government Policy, the applicant was
absorbed in a regular service on the post of Forest Guard as per the

order dated 18/09/2003. The applicant is retired. The applicant is not getting pension, because, his earlier service from the date of his initial appointment as a Mustering Assistant is not taken into account. Therefore, prayed to count his service from the date of his initial appointment as a Mustering Assistant.

3. Heard learned P.O. for the respondents Shri S.A. Sainis. The O.A. is opposed by the respondents. It is submitted that the G.Rs. dated 01/12/1995 and 21/04/1999 are self explanatory. As per these G.Rs., the previous service of the post of Mustering Assistant shall not be counted.

4. Now the issue is settled by the Hon'ble Bombay High Court as well as Hon'ble Supreme Court. In the case of the **State of Maharashtra & Others Vs. Uttam Narayan Vendait**, the Hon'ble Bombay High Court Bench at Aurangabad in Writ Petition No. 8468/2015 has held that the services of the Mustering Assistants shall be counted from the date of their initial appointment as a Mustering Assistant. The said Judgment of Hon'ble Bombay High Court was challenged in the SLP before the Hon'ble Supreme Court and the SLP was dismissed. Now the same question was before the Hon'ble Supreme Court in Civil Appeal No.6531-6533 of 2022 in the case of **Shaikh Miya S/o Shaikh Chand Etc. Vs. State of Maharashtra**. The

Hon'ble Supreme Court in Civil Appeal No.6531-6533 of 2022, decided on 7/9/2022 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.”

5. As per the decision of Hon'ble Supreme Court, the services of Mustering Assistant shall be counted as a regular service from 31/03/1997. Hence, the following order –

ORDER

1) The O.A. is allowed.

2) The respondents are directed to count the service of the applicant as a regular service from 31/03/1997 for the purpose of pensionary benefits.

3) No order as to costs.

Dated :- 26/09/2022.

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 : 26/09/2022

Uploaded on : 28/09/2022

ok*