

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NOS 581, 582, 583, 584,
585, 586, 587, 588, 589, 590, 591, 592, 593, 594,
595, 596, 598, 627, 628, 629 & 631 OF 2012

DISTRICT : MUMBAI

1) ORIGINAL APPLICATION NO. 581 OF 2012

- (x) 1. Smt Jayanand^a Sanjay Hire)
2. Smt Prabha Shirish Naik)
3. Smt Dipti Dilip Jadhav,)
all working as Clerks in the Water)
Resources Department,)
C/o: Shri B.A. Bandiwadekar,)
Advocate,)
office at 9, "Ramkripa",)
Dilip Gupte Marg, Mahim (w),)
Mumbai 400 016.)...Applicants

correction carried out as per order dated 18/3/13

18/3/13
Registrar

Maharashtra Administrative Tribunal
Mumbai.

Versus

- The State of Maharashtra)
through the Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai 400 032)...Respondent

h

2) ORIGINAL APPLICATION NO. 582 OF 2012

1. Smt Swati D. Tiwramkar)
2. Smt Hemalata Suhas Save)
- both are working as Clerks,)
- in the Public Health Department,)
- C/o: Shri B.A. Bandiwadekar,)
- Advocate,)
- office at 9, "Ramkripa",)
- Dilip Gupte Marg, Mahim (w),)
- Mumbai 400 016.)...**Applicants**

Versus

- The State of Maharashtra)
- through the Principal Secretary,)
- Public Health Department,)
- Mantralaya, Mumbai 400 032)...**Respondent**

3) ORIGINAL APPLICATION NO. 583 OF 2012

1. Shri Tukaram Kashinath Kedare)
2. Smt Hem-lata U. Digaskar)
3. Smt Meena Yogendra Hajari)
4. Smt Priyanka P. Kubal)
- all are working as Clerks,)
- in the Public Works Department,)
- C/o: Shri B.A. Bandiwadekar,)
- Advocate,)
- office at 9, "Ramkripa",)
- Dilip Gupte Marg, Mahim (w),)
- Mumbai 400 016.)...**Applicants**



Versus

The State of Maharashtra)
 through the Principal Secretary,)
 Public Works Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

4) ORIGINAL APPLICATION NO. 584 OF 2012

1. Smt Vidhya Vilas Temkar)
 working as Typist ,)
 in the Women's & Child Welfare)
 Department,)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...**Applicants**

Versus

The State of Maharashtra)
 through the Principal Secretary,)
 Women's & Child Welfare Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

5) ORIGINAL APPLICATION NO. 585 OF 2012

1. Kamalakant Gajanan Sinkar,)
 2. Smt Puspallata Pradip Mule,)
 both working as Clerks,)

in the Planning Department)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...**Applicants**

Versus

The State of Maharashtra)
 through the Principal Secretary,)
 Planning Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

6) ORIGINAL APPLICATION NO. 586 OF 2012

1. Shri Sunil Laxman Parab)
 2. Smt Reshma Ramesh Salunkhe)
 3. Smt Varshali Mohan Rele,)
 4. Shri Vasant R. Sawant,)
 5. Shri Ramchandra K. Parab)
 Retd from Housing Department,)
 all of them working as Clerks)
 in the Urban Development)
 Department,)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...**Applicants**

Registrar

Versus

Maharashtra Administrative Tribunal
 Mumbai.

The State of Maharashtra)
 through the Principal Secretary,)

18/3/13
 15/3/13.

Urban Development Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

7) ORIGINAL APPLICATION NO. 587 OF 2012

1. Shri Prakash Motiram Keny)
 2. Prashantkumar Yeshwant Mayekar)
 3. Shri Deepak Dyandeo Mane,)
 4. Shri Vinayak Mahadev Kolekar,)
 5. Smt Lalita Ravindran Pillai)
 6. Shri Rajendra Sahadev Rane,)
 7. Shri Dattatray K. Jadhav,)
 8. Dattatraya Govindrao Deshmukh)
 9. Shri Vijaykumar P. Pednekar)
)
 all of them working as Clerks)
 in the Home Department,)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...**Applicants**

Versus

The State of Maharashtra)
 through the Principal Secretary,)
 Home Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

8) ORIGINAL APPLICATION NO. 588 OF 2012

1. Smt Rekha Namdeo Gajarmal)
 2. Shri Vasant Jeevana Mangale)

Rh

3. Smt Sudha Laxman Bhatkar,)
 4. Smt Anita Atmaram Parab)
 5. Smt Ranjana Pravin Malvankar)
 6. Shri Ananda Bapu Lokhande)
 7. Ms Sunita Eknath Parkar,)
all of them working as Clerks)
in the General Administration)
Department,)
C/o: Shri B.A. Bandiwadekar,)
Advocate,)
office at 9, "Ramkripa",)
Dilip Gupte Marg, Mahim (w),)
Mumbai 400 016.)
-)...Applicants**

Versus

- The State of Maharashtra)
through the Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032)
-)...Respondent**

9) ORIGINAL APPLICATION NO. 589 OF 2012

1. Smt Namrata Uday Vaidya,)
 2. Smt Poornima Pratap Parab)
 3. Smt Surekha Pradeep Kesarkar,)
 4. Shri Arjun Vasant Rane)
 5. Shri R.N. Mulla)
all of them working as Clerks)
in the Rural Development)
Department,)
C/o: Shri B.A. Bandiwadekar,)
Advocate,)
office at 9, "Ramkripa",)
Dilip Gupte Marg, Mahim (w),)
Mumbai 400 016.)
-)...Applicants**

PK

Versus

The State of Maharashtra)
 through the Principal Secretary,)
 Rural Development Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

10) ORIGINAL APPLICATION NO. 590 OF 2012

1. Smt Pranita Prakash Sarang)
 2. Smt Neha Sunil Deolekar)
 3. Smt Smita S. Bagkar)
 4. Shri Vishwas B. Mane)
 all of them working as Clerks)
 in the Revenue & Forest)
 Department,)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...**Applicants**

Versus

The State of Maharashtra)
 through the Principal Secretary,)
 Revenue & Forest Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

11) ORIGINAL APPLICATION NO. 591 OF 2012

1. Shri Mahadev R. Shinde)

Ph

2. Smt Florin Valrin Lopes)
 Both of them working as Clerks)
 in the Agriculture Department)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...**Applicants**

Versus

- The State of Maharashtra)
 through the Principal Secretary,)
 Agriculture Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

12) ORIGINAL APPLICATION NO. 592 OF 2012

1. Shri Vijay Tukaram Paste)
 2. Smt Bharati Dilip Sakhare)
 Both of them working as Clerks)
 Typist in the School Education)
 & Sports Department,)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...**Applicants**

Versus

- The State of Maharashtra)
 through the Principal Secretary,)
 School Education & Sports Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

13) ORIGINAL APPLICATION NO. 593 OF 2012

1. Smt Anjali A. Bhatkar)
2. Shri Arun Ramchandra Raul)
- Both of them working as Clerks)
- Typist in the Food & Civil Supply)
- Department,)
- C/o: Shri B.A. Bandiwadekar,)
- Advocate,)
- office at 9, "Ramkripa",)
- Dilip Gupte Marg, Mahim (w),)
- Mumbai 400 016.)...**Applicants**

Versus

- The State of Maharashtra)
- through the Principal Secretary,)
- Food & Civil Supply Department,)
- Mantralaya, Mumbai 400 032)...**Respondent**

14) ORIGINAL APPLICATION NO. 594 OF 2012

1. Smt Bhagyashree B. Malap)
2. Smt Neelakashi P. Khavnekar)
- Both of them working as Clerks)
- in the Water Supply Department)
- C/o: Shri B.A. Bandiwadekar,)
- Advocate,)
- office at 9, "Ramkripa",)
- Dilip Gupte Marg, Mahim (w),)
- Mumbai 400 016.)...**Applicants**

Versus

The State of Maharashtra)
 through the Principal Secretary,)
 Water Supply Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

15) ORIGINAL APPLICATION NO. 595 OF 2012

1. Smt Meena A. Kuwalekar)
 working as Clerk)
 in the Finance Department)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...**Applicants**

Versus

The State of Maharashtra)
 through the Principal Secretary,)
 Finance Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

16) ORIGINAL APPLICATION NO. 596 OF 2012

1. Smt Sneha Sanjay Chaughule)
 working as Clerk)
 in the Tribal Department)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...**Applicants**

Versus

The State of Maharashtra)
 through the Principal Secretary,)
 Tribal Development Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

17) ORIGINAL APPLICATION NO. 598 OF 2012

1. Smt Sneha Sunil Shivanekar)
 working as Clerk in the)
 Co-operation and Textiles Dept.)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...**Applicants**

Versus

The State of Maharashtra)
 through the Principal Secretary,)
 Co-operation and Textiles Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

18) ORIGINAL APPLICATION NO. 627 OF 2012

1. Shri Vasant R. Sawant)
 2. Shri Ramchandra K. Parab)
 Retd from Housing Department)
 working as Clerks in the Urban)
 Development Department,)

PK

⊗ Correction carried out
 as per order dated
 15/3/2013


 Registrar 18/3/13

C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...**Applicants**

Versus

The State of Maharashtra)
 through the Principal Secretary,)
 Housing Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

19) ORIGINAL APPLICATION NO. 628 OF 2012

1. Shri Phoolchandra S. Chaurasia)
 working as Clerks in the Medical)
 Education & Drugs Department,)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...**Applicants**

Versus

The State of Maharashtra)
 through the Principal Secretary,)
 Medical Education & Drugs Department,)
 Mantralaya, Mumbai 400 032)...**Respondent**

20) ORIGINAL APPLICATION NO. 629 OF 2012

1. Shri Sunil S. Pagare,)
 2. Smt Asha Balkrishna Sankpal)

3. Smt Shubhada S. Raorane)
4. Shri Chandrakant B. Virkar)
5. Smt Meena M. Dandekar)
6. Ku. Sarojini N. Pandit)
7. Smt Kusum D. Bawane.)
8. Miss Vidya L. Bodke.)
9. Smt Pranoti P. Chudji)
10. Smt Madhuri B. Sawant)
11. Smt DARshana D. Patole)
12. Smt Vidya K. Rajapkar)
13. Shri Shirish Sadanand Joshi)
14. Smt Rohini V. Racharla)
15. Smt Pallavi P. Sarfare)
16. Smt Snehal P. Naik)
17. Smt Surekha J. Shetty)
18. Shri Anil D. Dharamdas)
19. Kalpana R. Tote)
20. Smt Suvarna A. Bhargav)
21. Smt Kalpita G. Gamre)
22. Smt Jayshree R. Anande)
23. Smt Priti B. Padwal)
24. Smt Vrushali R. Pawar)
 working as ClerkTypist Steno)
 in the office of Labour Commissioner)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)...Applicants

Versus

- The Commissioner of Labour)
 (M.S), Mumbai, having office at)
 E-Block, Plot No. C/20,)
 Bandra Kurla Complex, Bandra (E))
 Mumbai 400 032)...Respondent

PL

* The name of the applicant at serial no 21
 in O.A. 624/2012 is corrected vide order
 dated 25.02.2013

25/2/13
 Registrar

21) ORIGINAL APPLICATION NO. 631 OF 2012

1. Shri Kashinath M. Sawant)
2. Smt Vrushali H. Khanvilkar)
3. Shri Satyavan A.Desai)
4. Shri Ramesh J. Gawde)
5. Shri Chandrakant A. Mejari)
6. Smt Vijaya T. Tawate)
7. Sou Vrushali V. Sarmalkar)
8. Sou Kalpana J. Pawaskar)
9. Sou Asavari Y. Patkar)
10. Sou. Seema S.Dalvi)
11. Sou Mangala V. Jadhav)
12. Kum. Jayashree H. Choudhary)
13. Shri Chandrakant A. Vaidya)
14. Shri Prakash [Ashok] N. Aher)
15. Shri Deepak K. Parab)
16. Sou. Anjali Suresh Kadam)
 working as Clerks in the office of)
 Commissioner of Sales Tax,)
 Mazgaon, Mumbai 400 010)
 C/o: Shri B.A. Bandiwadekar,)
 Advocate,)
 office at 9, "Ramkripa",)
 Dilip Gupte Marg, Mahim (w),)
 Mumbai 400 016.)
- 17(a) Smt Shital Shivram Jadhav)
- 17(b) Shri Dipesh S. Jadhav)
- 17(c) Shri Kalpesh S. Jadhav)
 All are R/o: 4/109, Panchganga,)
 N.M Joshi Marg, Mumbai 400 013.)...**Applicants**

Versus

The Commissioner of Sales Tax,)
 Maharashtra State, Mumbai,)
 having office at Vikrikar Bhawan,)
 Mazgaon, Mumbai 400 010.)...**Respondent**

Shri A.V. Bandiwadekar with Shri B.A. Bandiwadekar learned advocate for Applicants.

Shri D.B. Khaire, Learned Chief Presenting Officer with Shri N.K. Rajpurohit, Shri M.B. Kadam & Shri A.J. Chougule, learned Presenting Officers for Respondent.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 20.02.2013

ORDER

1. Heard Shri A.V. Bandiwadekar with Shri B.A. Bandiwadekar learned advocates for Applicants, Shri D.B. Khaire, Learned Chief Presenting Officer with Shri N.K. Rajpurohit, Shri M.B. Kadam & Shri A.J. Chougule

2. These bunch of Original Applications have been heard together as the issues to be decided are identical. As the issue involved in all the above Original Applications is with regard to grant of benefits of Assured Career Progression Scheme, they are being disposed of by this common order.

3. The Applicants in all Original Applications are Group 'C' employees, who joined different departments in Mantralaya or the offices of the Heads of Department at Mumbai, as Clerk, Typist or Clerk-typist. The Applicants are initially appointed on purely temporary basis. All

RB

these posts are within the purview of the Maharashtra Public Service Commission (M.P.S.C). Government Resolution dated 1.12.1994 explains the circumstances under which the State Government issued orders that the employees recruited without reference to MPSC after 17.6.1983 but up to 10.1.1990 were deemed to be recruited as per rules (नियमाधीन). As per para 6 of this Government Resolution, the seniority of such Government employees was to be counted from the date of the G.R, i.e. 1.1.1994. The Applicants are claiming the benefit of time bound promotion in terms of G.R dated 8.6.1995, counting their services before regularization. This G.R in para 2 provides that Group 'C' & 'D' employees will be eligible for next pay scale as is given on promotion after 12 years of regular service. This scheme was modified by G.R dated 20.7.2001 as Assured Career Progression Scheme (ACP). Para 2(2) in the said G.R provides that the benefit of A.C.P will be given after 12 years of regular service. This Tribunal in O.A No 695 of 2009 decided that the benefit of time bound promotion provided by G.R dated 8.6.1995 will be available to Government employees whose services were deemed to be as per rules in terms of G.R dated 1.12.1994. The order of this Tribunal was confirmed by the Hon. Bombay High Court in W.P No. 2257 of 2011. The Applicants then represented to the Government that many of their similarly situated colleagues in other Departments of Mantralaya and various Directorates have been given the

ph

benefit of time bound promotion counting their services before regularization and they should also be given the same. This was in pursuance of decision of this Tribunal which was confirmed by the Bombay High Court in W.P No. 2257 of 2011 on 6.2.2012. The State Government challenged the order of Bombay High Court in the Hon. Supreme Court by filing a Special Leave Petition, which was dismissed by order dated 28.9.2012.

4. The Learned Counsel for the Applicants has argued at length about the issues involved and has cited judgments of this Tribunal, Bombay High Court and Hon. Supreme Court. He has heavily relied upon the judgment of this Tribunal in O.A 695/2009 dated 21.1.2010. The Applicants in the said Original Application were working as Assistant Chemical Analyzers since 1986. The Tribunal relied on its earlier judgment in O.A No. 467 of 2007 where it was held that the employees who have completed 12 years of continuous service in Government were entitled to be considered for Assured Career Progression Scheme in terms of G.R dated 20.7.2001. The judgment of the Tribunal was challenged by the State before the Hon. High Court by Writ Petition No. 4455 of 2009. By order dated 22.7.2009, the High Court held that there was no case for interference under Writ jurisdiction under Art. 226 of the Constitution. This Tribunal has followed the ratio of the judgment of the Hon. Supreme Court in Union of India Vs. M.

24

Mathivanan (2006) 6 SCC page 57 in O.A No. 25 & 26/2007. In O.A No. 467 of 2007 this Tribunal has held that what is needed is only continuous service of 12 years and not necessarily regular service. The same view was taken by High Court in **Writ Petition No. 4455 of 2009 and case reported in 2009(5) Mh.L.J, Page 50 in MHARASHTRA STATE ROAD TRANSPORT CORPORATION, YEVATMAL Vs. FAKIRA S/o CHAMPATRAO NEWARE & ANR.** This Tribunal thus passed order in O. A No. 695/2009 that the case of Applicants in that Original Application may be placed before the D.P.C for grant of benefit of ACP scheme as per G.R dated 20.7.2001 if they are otherwise eligible. This (and other) judgments of this Tribunal were challenged in Writ Petition No. 2257 of 2011 before Bombay High Court. The Writ Petitions were dismissed. The Special Leave Petition filed by the State Government in the Hon. Supreme Court also came to be dismissed by order dated 28.9.2012. The Hon. Supreme Court passed the following order:-

“Delay condoned.

In the facts and circumstances of these cases, we are not inclined to interfere with the impugned orders. The Special Leave Petitions are dismissed.

However, the question of law raised in the Special Leave Petitions are kept open.”

5. The Learned Counsel for the Applicants has therefore argued that the Respondent have not succeeded before the Hon. Supreme Court and the Applicants are entitled to be considered for ACP scheme after completion of 12 years of continuous service. He stated that this Tribunal has to follow its own orders and High Court orders. He cited the judgment of the Bombay High Court that the High Court's view as to what Supreme Court decisions means are binding on all Courts in the State. He cited the decision of the Hon. High Court in **AMRUTA BABAJI MOZAR Vs. KONDABAI BABAJI MOZAR & ANR 1994 Mh.L.J Page 1663**, wherein the Hon. Bombay High Court has held that :

“Where the High Court has considered a decision of the Supreme Court and has put its own gloss thereon, that gloss is binding on all the Courts in the State....”

6. The Learned Chief Presenting Officer for the Respondents in all Original Applications primarily relied on the affidavit in reply filed in O.A No. 595 of 2012. In this Original Application, Finance Department of the State Government is the Respondent. In other Original Applications, the affidavit in reply filed in O.A No. 595 of 2012 has been adopted. Affidavit in reply was filed on 4.9.2012. Additional affidavit in reply has been filed on 11.10.2012 after the judgment of the Supreme Court



dated 28.9.2012. It was contended that the Hon. Supreme Court has kept the questions of law raised in the Special Leave Petitions open. The following questions of law have been raised by the Respondents :-

- (I) Whether the expression "Continuous Service" would have the same meaning as "Regular Service" to entitle an employee the benefit of ACPS?
- (II) Whether the regular service, which is a prerequisite for being entitled of the benefit of ACPS is the service which is rendered by an employee on a regular post?
- (III) Whether the service which is rendered on a temporary post could be counted for calculating the period of service of an employee for the benefit of ACPS?
- (IV) Whether the condition of regular service (in a regular post) is mandatory or directory for being entitled for the benefits of ACPS?
- (V) Whether in view of the judgment of this Hon'ble Court in the case of Bhakra Beas Management Board Vs. Krishna Mukar Vij and Another, reported in (2010) 8 Supreme Court Cases 701, the conditions laid down in the ACPS are mandatory and the benefit granted contrary to the same are legally not tenable?



- (VI) Whether the view taken by the Learned Tribunal in the Original Application No. 373 of 2010 and identical matters was against the policy of the State Government?
- (VII) Whether Mathivanan judgment is applicable to the facts of the present Petition.

7. It was argued on behalf of the Respondents that the benefits of ACPs was granted by this Tribunal by relying on the judgment given by Hon. Bombay High Court in the matter of **Dr. PUSHPALATA SONAWALE Vs. STATE OF MAHARASHTRA (O.A No. 467 of 2007, Writ Petition No. 4455 of 2009)**. In the present case the contention of the Applicant that their case is similar to the matter of M. Mathivanan (decided by Hon. Supreme Court in UNION OF INDIA Vs. M. MATHIVANAN (2006) 6 SCC 57) is not correct. The Hon. Supreme Court confirmed the lower courts order to count the service of the Government employees in ad hoc appointments on temporary basis based on para. 1 of Time Bound Promotion Scheme of Tamil Nadu which is totally different from the scheme in operation in Maharashtra. In Tamil Nadu scheme 'regular' service was not a requirement unlike the Maharashtra Scheme. In Maharashtra both for time bound promotion scheme (G.R dated 8.6.1995) and ACP Scheme (G.R dated 20.7.2001) the 'regular' service is the foremost requirement. The Learned Chief Presenting Officer argued that the judgment in M. Mathivanan's case

20

should not be applied to the present Applicants. The Learned Chief Presenting Officer cited the decision of the Hon. Supreme Court in Civil Appeal No. **890 of 2009 [PUNJAB STATE ELECTRCITY BOARD & ORS Vs. JAGJIWAN RAM & ORS (2009) 3 SSCC 661]**, where it was held that regular service was required for grant of time bound promotion and temporary, ad hoc, or work charged service cannot be counted. The Learned Chief Presenting Officer also cited Full Bench Judgment of this Tribunal in O.A 240/2009, where it was held that ad hoc employees cannot claim benefit of service rendered before absorption on regular basis, for pay, pension, leave and grant of promotion (seniority). In **STATE OF HARYANA Vs. HARYANA VETERINARY & AHRS ASSOCIATION AND ANOTHER (2000) 8 SCC 4**, the Hon. Supreme Court has held that service rendered on the basis of ad hoc appointment without interruption followed by regular appointment is not includible for purpose of promotion etc. In the case reported in **2006 AIR SCW 1991, SECRETARY, STATE OF KARNATAKA & ORS Vs. UMADEVI & ORS**, it was held that unless the appointment is in terms of relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. In the cases reported in **(2002) 10 SCC 674, STATE OF PUNJAB & ORS Vs. ISHAR SINGH & ORS** and **(2003) 11 SCC 732, STATE OF PUNJAB & ORS Vs. GURDEEP KUMAR UPPAL & ORS**, the Hon. Supreme Court has taken the

same view that ad hoc service cannot be considered for reckoning the period of service required for promotion. Learned Chief Presenting Officer has filed a copy of judgment of this Tribunal in O.A No. 113/2009, where the time bound promotion was given only after regularization of service. Learned Chief Presenting Officer, vehemently argued that regardless of the earlier judgments of this Tribunal, the present Original Applications have to be considered afresh in the light of the judgment of the Hon. Supreme Court dated 28.9.2012 where questions of law have been kept open.

8. The Respondents have raised seven questions of law which, according to them have to be determined by this Tribunal. The Learned Counsel for the Applicants vehemently argued that the Tribunal cannot take a view different from the view take by it in numerous cases before when factual and legal position is similar. He stated that the law of judicial precedent will not permit that. He further argued that this Tribunal cannot take a view which is different from the view taken by Hon. Bombay High Court in those cases where the factual and legal position was similar. He cited the judgment of the Bombay High Court reported in **AMRUT BABAJI MOZAR Vs. KONDABAI BABAJI MOZAR & ANR 1994 Mh.L.J Page 1663**, where it was held that :

rh

“Where the High Court has considered a decision of the Supreme Court and has put its own gloss thereon, that gloss is binding on all the Courts in the State concerned, until outweighed by a later decision of the Supreme Court or a Larger Bench of the High Court---It would be an act of gravest impropriety for a subordinate Court to proceed on its own reading of the Supreme Court decision and thereafter hold or even suggest that the High Court decision is contrary thereto”.

The Learned Chief Presenting Officer argued that as laid down by Hon. High Court in Dr Pushpalata Sonawale Vs. State of Maharashtra (W.P 4455/2009) this Tribunal has granted benefit of ACP Scheme in case of Kum. Nanda Chavan & Others (O.As No. 373, 374 & 376/2010). However, the contention of the Applicants that their matter is similar to M. Mathivanan is not correct. This argument of the Learned Chief Presenting Officer cannot be accepted. This Tribunal in many similar cases has relied upon judgment of the Hon. Supreme Court in Union of India Vs. M. Mathivanan. The orders passed by this Tribunal have been upheld by the Bombay High Court. It can be inferred that Hon. Bombay High Court has not found that M. Mathivanan case is irrelevant. It is, therefore, not open for this Tribunal to now hold that ratio of M. Mathivanan's case is not applicable in the present Original Applications. Similarly, the questions of

LA

law raised in the additional affidavit in reply dated 10.10.2012 (in O.A No. 595/2012) have all been decided by this Tribunal in various Original Applications. As rightly pointed by the Learned Counsel for the Applicants, any different view will amount to reviewing its own decision by this Tribunal which is not acceptable.

9. The Learned Counsel for the Applicants further argued that the judgments cited by the Learned Chief Presenting Officer are not applicable in the present bunch of Original Applications. Facts and circumstances are totally different. The Full Bench judgment of this Tribunal in O.A No. 240 of 2009 was in totally different circumstances. Time bound promotion was not the issue before the Tribunal in that case. The Applicants in that case had undertaken not to claim seniority on regularization of their services. Similarly in Umadevi's case 2006 AIR SCW 1991, time bound promotion was not the issue before the Hon. Supreme Court. In the case reported in (2000) 8 SCC 4, Learned Counsel for the Applicant invited attention to last paragraph 19. It is mentioned that "... in those cases the employees were initially appointed on work charge basis and later on their services stood regularized and one of the contentions of the respondents is that the period rendered on work charge basis count for seniority, increment and pension. In this view of the matter, those cases are delinked and would be listed afresh for

fn

hearing". These delinked cases were decided in Civil Appeal Nos 5740-5741/1997. Copy of judgment of Hon. Supreme Court is placed in record and Hon. Supreme Court has held that "we therefore see no justification in not counting their period for the purpose of giving additional increment on completion of 8 and 18 years of service as well as 10 and 20 years of service for getting higher scale as per Government circular, which obviously are intended to avoid stagnation in a particular grade". The ACP scheme in present case is also to avoid stagnation and this judgment of Hon. Supreme court is relevant to the present case according to Learned Counsel for the Applicant. I see a lot of merit in this argument.

10. The Learned Counsel for the Applicants has filed copies of Pension Payment Order of Smt S.D. Tviramkar and S/Shri V.B. Mane, N.N. Mulla, V.R. Sawant, who retired from various department of Mantralaya and whose services before regularization have been considered for the purpose of pension. Learned Chief Presenting Officer stated that these Pension Payment Orders are illegal. He did not clarify as to how this illegality is allowed by the State. The Learned Counsel for the Applicants has successfully shown that the State Government have themselves in many cases extended benefit of service before regularization for the purpose of pension and other service matters. The Learned Counsel

for the Applicant has stated that O.As No. 363, 597 and 642/2012 were decided by this Tribunal by a common order dated 8.10.2012. These O.As also were regarding grant of benefits of Assured Career Progression Scheme. The issue was identical to the issue raised in the present Original Applications. This Tribunal has taken cognizance of order of the Hon. Supreme Court dated 28.9.2012. Para 7 of the order dated 8.10.2012 is reproduced below:-

“7. The issue of grant of benefits of Assured Career Progression Scheme was already considered by this Hon’ble Tribunal in various Original Applications and those orders have been upheld by the Hon’ble High Court as well as by the Hon’ble Supreme Court. Apart from the above, the Respondents themselves have in fact in compliance of this Tribunal’s orders have placed the case of the applicants for grant of benefits of Assured Career Progression Scheme, and the concerned D.P.C has already recommended the case of the applicants for grant of benefits of Assured Career Progression Scheme”.

11. In view of this latest order of this Tribunal, no contrary view can be taken in the present case. In fact all the issues of law raised by the Respondents have already been considered by this Tribunal in various

Original Applications. Under these circumstances, the following order is passed.

The Respondents are directed to place the cases of the applicants for grant of benefit of Assured Career Progression Scheme as per G.R dated 20.7.2001, if they are otherwise eligible within a period of three months from the date of this order.

All the above Original Applications stand disposed of accordingly, however, with no order as to costs.

Place : Mumbai
Date : 20.02.2013
Typed by : A.K. Nair.

Sd/-
(Rajiv Agarwal)
Vice-Chairman