

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 620 of 2012 (DB)

Naneshwar S/o Bapurao Lohande,
Aged about 58 years, Occ. Retired,
R/o Shinde Nagar, Yavatmal,
Tahsil and District Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Mantralaya, Mumbai.
- 2) The Collector,
Washim, District Washim.
- 3) The Tahsildar,
Washim, District Washim.
- 4) The Chief Accountant and Finance Officer,
Collector Office, Washim.
- 5) The Senior Accountant Officer,
Accountant General Maharashtra Account-II,
Civil Lines, Nagpur.

Respondents.

S/Shri S.P. Kshirsagar, S.G. Ramteke, Advocates for applicant.
Shri A.M. Ghogre, learned P.O. for respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman.
And
Hon'ble M.A. Lovekar, Member (J).

Date of Reserving for Judgment : 22nd December, 2022.

Date of Pronouncement of Judgment : 10th January, 2023.

JUDGMENT

Per : Member (J).

(Delivered on this 10th day of January, 2023)

Heard Shri S.P. Kshirsagar, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. Case of the applicant is as follows –

The applicant was appointed as Muster Assistant on temporary basis on 03/06/1981. As per order of Labour Court he was given continuity in service and he also received annual increments. In the year 1995-96 post of Muster Assistant was abolished by the State Government. However, by G.R. dated 21/04/1999, Muster Assistants were to be absorbed in regular cadre / in Government service. Vide order dated 23/09/2003 (Annex-A-3) the applicant was appointed on the post of Talathi in the office of Sub Divisional Officer, Mangrulpir. On 20/01/2012 when he was on the verge of retirement the applicant made a representation (Annex-A-5) that pension be fixed by taking into account services rendered by him as Muster Assistant before his regular absorption. This representation was rejected by the impugned order dated 22/02/2012 (Annex-A-1). It was stated in the impugned order that the applicant was not entitled to get pensionary benefits as duration of regular service rendered by him was less than 10 years. The applicant had, in the meantime, retired on superannuation on 31/01/2012. Hence, this O.A. seeking direction to respondents to consider pre-absorption / pre-regularisation services for the purpose of fixing pension, and to fix pension accordingly.

3. Stand of respondent nos.2 and 5 is that the applicant was not entitled to get pensionary benefits since he had served for less than 10 years in regular cadre which did not fulfil the criteria of 10 years stipulated in Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982.

4. The issue involved in this case is what would be the starting point of computing pensionable service for employees who had initially worked as Muster Assistant and were thereafter absorbed in regular service. In “**State of Maharashtra and Others Vs. Uttam S/o Nanarayan Vendait** (Judgment dated 16/12/2015 delivered by the Hon’ble Bombay High court in Writ Petition No.8468/2015)” it was held that the starting point for the aforesaid purpose shall be the date on which services as Mustering Assistant had started. However, in “**Vikar Ansar Shaikh Vs. State of Maharashtra, 2017 SCC Online Bom 9066 : (2018) 1 AIR Bom R 513 : 2018 Lab IC 495**” it was held that the starting point would be the date of absorption in regular service. This issue has been now settled by the Hon’ble Supreme Court in the case of “**Shaikh Miya S/o Shaikh Chand Etc. Vs. State of Maharashtra**” in Civil Appeal No.6531-6533/2022 (Arising out of SLP (C) Nos.6039-6041/2016), dated 07/09/2022 delivered in a batch of Civil Appeals, by holding as under –

“ We are thus of the view that the only direction which can be issued is that persons who have 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. Hence, the order –

ORDER

(i) The O.A. is allowed in the following terms -

(ii) The respondents are directed to count service of the applicant as regular service from 31/03/1997, calculate all consequential benefits payable thereby, and pay the same to the applicant within two months from today.

(iii) No order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated :- 10/01/2023.

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 V.C. and Hon'ble Member (J).

Judgment signed on : 10/01/2023.