

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 77 of 2017 (S.B.)**

Gautam S/o Chokhaji Patil,  
Aged about 54 years, R/o Salori,  
Tahsil Warora, Dist. Chandrapur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Department of Planning,  
Mantralaya, Mumbai-32.
- 2) The Collector, Gadchiroli.

**Respondents.**

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**S/ Shri N.R. Saboo, Mrs. K.N. Saboo, Advocates for the applicant.**  
**Shri A.M. Khadatkhar, P.O. for respondents.**

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

**Dated :- 15/09/2022.**

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**JUDGMENT**

Heard Shri N.R. Saboo, learned counsel for the applicant  
and Shri A.M. Khadatkhar, learned P.O. for the respondents.

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

The applicant is working as a Mustering Assistant since  
1985. The Government of Maharashtra issued a G.R. dated 1/12/1995  
and subsequent G.R. dated 21/4/1999 by which the policy decision  
was taken to absorb the Mustering Assistant in a regular cadre.

3. The applicant was terminated from the service and  
therefore he approached to the Labour Court by filing Complaint ULP

No.230/1992. The said complaint was allowed by the Labour Court on 04/06/1998 and directed the respondents to reinstate the applicant with continuity in service w.e.f. 24/07/1992 on his original post and also pay the back wages till the date of joining of his service. The said order was not challenged by the respondents. The applicant was reinstated on the post of Mustering Assistant, but benefit of G.Rs. of 1995 and 1999 were not given to the applicant, therefore, he approached to this Tribunal by filing the O.A.No. 602/2003 (P-13). This Tribunal passed the order directing the respondents to consider the claim of applicant nos.1,2 and 4 for absorption of Group-C (Class-III) post on the basis of their seniority as on 31/05/1993 strictly in accordance with the G.Rs. dated 1/12/1995 and 21/4/1999.

4. The applicant is still continued as a Mustering Assistant and therefore he has filed the present O.A. with following reliefs –

(i) To direct the respondents to forthwith issue orders of absorption of the applicants in the Government service as per proposal dated 05/12/2007 with further direction to grant deemed date to the applicants from the date when junior Mustering Assistant to the applicant of the year 1985 were absorbed in the Government service.

(ii) By appropriate order be pleased to direct the respondents to grant all consequential relief including difference of salary claim after pay fixation, increments and other benefits of time bound promotion pay scale, etc.

5. The respondent no.2 filed reply. In Para-5 it is submitted as under –

*“ (5) Accordingly the proposals of the applicants for absorption in Class III post have been submitted to the Government by the Collector, Chandrapur vide its letter dated 5/12/2007. The Commissioner, Nagpur Division, also submitted necessary proposals in this matter to the Government on 8/9/2008 itself. The orders thereon are only awaited and as soon as the Government gives nod to their regularisation the same benefits would be given to the applicants.”*

6. Heard learned counsel for applicant Shri N.R. Saboo. He has pointed out the Judgment of this Tribunal in O.A. 316/2016 with connected matter and submitted that similarly situated employees were directed to be absorbed in a regular establishment as per the G.Rs. dated 1/12/1995 and 21/4/1999, but till date the respondents have not complied the order.

7. Heard learned P.O. Shri A.M. Khadatkar. He has submitted that the process of absorption is pending and it will take time to absorb the applicant.

8. The applicant is continued as a temporary employee on the post of Mustering Assistant. Now the posts of Mustering Assistant are mostly abolished.

9. This Tribunal has specifically directed in O.A.602/2003 to consider the claim of the applicants on Class-III post as per the Govt. scheme as per G.Rs. dated 1/12/1995 and 21/4/1999. The Para-5 of the reply as above shows that the process of absorption is still going on.

10. It is pertinent to note that the respondents have not denied the claim of the applicant. On the other hand, in para-5 it is specifically admitted that the claim of the applicant is pending and the respondents are processing further for absorption of the applicant. This Tribunal has passed the order in O.A. 602/2003. This order was passed on 23/01/2006. Since last 16 years, the respondents are not complying the order. Nothing is pointed out by the side of respondents to show that the order dated 23/01/2006 is challenged before the Hon'ble High Court. It appears that the respondents have not intentionally complied the order of this Tribunal. Moreover, the Government itself has taken a policy decision as per the G.Rs. of 1995 and 1999 to absorb the Mustering Assistant on regular cadre as per their qualification. The applicant is having qualification of Class-III post and therefore it was expected from the respondents to absorb the applicant on Class-III post.

11. In prayer clause (i) of the O.A. it is prayed as under –

(i) To direct the respondents to forthwith issue orders of absorption of the applicants in the Government service as per proposal dated 05/12/2007 with further direction to grant deemed date to the applicants from the date when junior Mustering Assistant to the applicant of the year 1985 were absorbed in the Government service.

12. As per the Judgement of Hon'ble Bombay High Court, Bench at Aurangabad in the Writ Petition No.8468/2015 in case of **State of Maharashtra & Ors. Vs. Uttam Narayan Vendait** was challenged upto the Hon'ble Supreme Court. The Hon'ble Bombay High Court, Bench at Aurangabad has held that "*the Mustering Assistants are entitled to count their services for pensionery benefits from the date of their initial appointment as a Mustering Assistant*". The said Judgment of Hon'ble Bombay High Court in Writ Petition No.8468/2015 was challenged before the Hon'ble Supreme Court in SLP and the said SLP was also dismissed.

13. 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 pensionery 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.”*

14. The issue was before the Hon'ble Supreme Court as to whether which date is to be granted for the purpose of pensionery benefits. The Hon'ble Supreme Court has held that for the purpose of pensionery benefits the period for counting as a regular service shall be from 31/3/1997.

15. In this O.A., the respondents were directed to absorb the applicant on Class-III post as per the G.R. of 1995 and 1999, but the said order was not complied till date. Para-5 of the reply of respondent no.2 shows that the proposal is pending before the State

Government. Therefore, there is no dispute that the applicant is entitled for absorption on Class-III post as per proposal dated 05/12/2007 submitted by the Collector, Chandrapur in view of the Govt. G.Rs. of 1995 and 1999, the applicant is entitled for absorption on the Class-III / Class-IV post whichever is available. Hence, the following order-

**ORDER**

- (i) The O.A. is allowed.
- (ii) The respondents are directed to issue order of absorption of the applicant on Class-III / Class-IV post whichever is available and give deemed date to count regular service from 31/3/1997.
- (iii) The respondents are directed to comply this order within a period of one month from the date of receipt of this order.
- (iv) No order as to costs.

**Dated** :- 15/09/2022.

**(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 : 15/09/2022.

Uploaded on : 19/09/2022.