

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 509 OF 2013

DIST. : OSAMANABAD

Mohan s/o Baburao Pawar,
Age. 58 years, Occ. Retired as
Junior Clerk from Office of the
Superintending Engineer,
Irrigation Project Circle,
Parli-Vajjnath, Dist. Beed.
R/o Lohata, Tq. Kalam,
Dist. Osmanabad.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Water Resources Department,
Mantralaya, Mumbai.
2. The Chief Engineer (W.R.),
Water Resources Department,
Sinchan Bhavan, Jalna Road,
Aurangabad.
3. The Superintending Engineer,
Vigilance Unit,
Irrigation Department,
Aurangabad.
4. The Superintending Engineer,
Beed Irrigation Project Circle,
Parli-Vajjnath, Dist. Beed.

-- RESPONDENTS

CORAM : **JUSTICE M.T. JOSHI, VICE CHAIRMAN**
AND
ATUL RAJ CHADHA, MEMBER (A)

DATE : **25th April, 2018**

J U D G E M E N T

(Per : Atul Raj Chadha, Member (A))

Heard Shri A.D. Sugdare, learned Advocate for the applicant, Shri I.S. Thorat, learned Presenting Officer for respondent nos. 1 to 3 and Shri G.N. Patil, learned Advocate for respondent no. 4.

2. Applicant challenged the order dtd. 9.5.2013 of Secretary of Water Resources Department for condonation of break in service from 12.7.1977 to 11.12.1979 (342 days).

3. Brief facts of the case :-

- (a) Applicant is Project Affected Person (P.A.P.) and as a nominee of P.A.P. was given temporary appointment by order dtd. 12.7.1977 by the Superintending Engineer, Majalgaon Project Circle, Beed for a period of 12.7.1977 to 8.12.1977, 11.12.1977 to 10.5.1978, 15.5.1978 to 14.10.1978 and as Karkoon from 18.11.1978 to 28.2.1979. The orders were of temporary nature for a limited period (Total gap of 342 days).
- (b) He was given appointment on clear vacancy and copies were sent to the State Selection Board for approval.
- (c) Applicant applied for the post of Junior Clerk pursuant to advertisement published by State Selection Board and got appointed as Jr. Clerk in the office of Superintending Engineer, Upper Penganga Project no.

1 as Jr. Clerk and joined on 12.12.1979 and now he superannuated on 12.12.2012.

- (d) Applicant made a representation to Res. no. 1 on 30.11.2011 through the Deputy Superintending Engineer, Osmanabad Irrigation Circle for condonation of break in service which was forwarded to Superintending Engineer.
- (e) After correspondence inter-se, the Respondent No. 3, Zonal Superintending Engineer, Vigilance Unit, Aurangabad took a decision and reported to respondent No. 4, Superintending Engineer, Beed Irrigation Project Circle, Parli-Vaijanath, Dist. Beed, that the services may not be condoned and regularized vide his letter No. परिमंडळ/आस्था.३/३७१/सेपु dated 27.3.2012 as per Government instructions.
- (f) Superintending Engineer vide his letter dated 27.3.2012 informed the applicant that he is not appointed through proper channel, his services cannot be regularized as he was not selected by Staff Selection Board, therefore, break in services cannot be condoned (Exh. 'A-6').
- (g) Therefore, his case was referred to respondent No. 1 for consideration vide letter dated 23.11.2012 by respondent No. 4.
- (h) The respondent No. 1 vide letter dated 9.5.2013 rejected the same, as his appointment was not made through proper channel.

4. Applicant's claim is as under :-

- (i) As per Govt. instructions dated 21.01.1980 in respect of P.A.P. are exempted for being selected by State Selection Board.
- (ii) The M.C.S. (Pension) Rules, 1981 provides for condonation of break in service.
- (iii) The 21.1.1980 referred to G.R. dated 22.9.1978.
- (iv) The similar issue was raised in M.A.T. in O.A. No. 1218/2000 in case of H.P. Chavan Vs. State of Maharashtra and has been granted relief after filing Contempt Petition (31.7.2002 Exh. 'A-8').

5. The applicant also relied on the judgment of Division Bench in W.P. no. 3690/2005 dated 19.12.2006 and Rule 30 of M.C.S.(Pension) Rules, 1982. On the other hand, Respondents have relied on the judgment of Full Bench in case of **Rajendra Pandurang Pagare Vs. State of Maharashtra & Ors.** reported at **2009 (4) Mh. L. J. 961.**

6. The reliance on the case of **Rajendra Pandurang Pagare** (supra) deals with the future appointments for the reserved category of P.A.P. However, the applicant in the present case was appointed on 3 occasions with the total breaks of 342 days. Prior

to year 2009 the G.R. no. एइअेम-१०८०-३५-१६-अ dtd. 29th January, 1980 (copy at Exh. A. 9 page 34) was in force and the relevant portion of the said G.R. is reproduced herein below :-

“.....प्रकल्पग्रस्तांना शासनाच्या सेवेत पुन्हा प्रवेश मिळाल्यावर त्यांच्या पुर्वीच्या आस्थायी सेवेचा कालावधी त्यांच्या शासन सेवेचा एकूण कालावधी निर्धारित करण्यासाठी ग्राह्य धरण्यात येतो व शासनामधील त्यांची सेवा अखंड असल्याचे मानण्यात येते.”

7. In view of above fact, the present O.A. is allowed and disposed of without any order as to costs and the respondents are directed to condone the break in service of the applicant of 342 days, only for the purpose of pensionary benefits.

(ATUL RAJ CHADHA)
MEMBER (A)

(M.T. JOSHI)
VICE CHAIRMAN

Place : Aurangabad
Date : 25.4.2018