

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 86/2021**

Vasant Rambhau Bahere,  
Aged about 67 years, Occ-Retired,  
R/o Durga Chowk, Darwa,  
Distt. Yavatmal

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Department of Rural Development,  
Mantralaya, Mumbai-400 032.
- 2) The Divisional Commissioner,  
Amravati Division, Amravati.
- 3) The Collector,  
Yavatmal.
- 4) The Chief Executive Officer,  
Zilla Parishad, Washim.
- 5) The Sub-Divisional Engineer,  
Public Works Sub Division, Darwa,  
Distt. Yavatmal.

**Respondents**

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Shri G.G. Bade, Ld. counsel for the applicants.

Shri S.A. Sainis, Ld. P.O. for the respondents 1 to 4.

None for respondent No.5.

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**Coram:- Hon'ble Shri M.A. Lovekar, Member (J).**

**Dated: - 24<sup>th</sup> January 2022.**

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Heard Shri G.G. Bade, learned counsel for the applicants and Shri S.A. Sainis, Ld. P.O. for respondents 1 to 4. None appeared for respondent No.5.

2. In this application, substantive prayer of the applicant is as follows:-

Direct the respondent department to consider the case of the applicant for treating the applicant as permanent employee w.e.f. 1.10.1988 in view of judgment passed by the Hon'ble High Court and Circulars dated 28.2.2017 and 1.8.2017 and order dated 4.6.2020 and thereby release the pensionary benefits arising therefrom within stipulated period.

3. **Case of the applicant—**

(i) The applicant was appointed as Muster Assistant by order dated 22.11.1983 (Annexure A-1).

(ii) Vide order dated 24.9.2003 (Annexure A-2), the applicant was absorbed as Arogya Sevak in the department of respondent No.3.

(iii) By G.R. dated 22.2.1993 (Annexure A-3), benefits of regular pay scale of Rs. 750-12-870-EB-14-940 were extended to the Mustering Assistants w.e.f. 1.10.1988.

(iv) The applicant was given benefit of G.R. dated 22.2.1993 and placed in regular pay scale of Rs. 750-940 w.e.f. 1.10.1988. He was granted annual increment in the said pay scale.

(v) The applicant was in service of respondent department since the year 1983. Thereafter, he worked continuously till his absorption in Class-III category.

(vi) The applicant retired on superannuation on 30.6.2010. Thus, he has completed more than 20 years of qualifying service as per the Maharashtra Civil Services (Pension) Rules, 1982. Consequently, he is entitled to get retiral benefits of pension.

(vii) By G.R. dated 21.4.1999 (Annexure A-4), it was decided to protect basic pay of Mustering Assistants absorbed in Government service. As per 5<sup>th</sup> Pay Commission report, pay scale of Rs. 750-940 was revised to Rs. 4000-6000 w.e.f. 1.1.1996. As per this G.R., pay fixation of the applicant was to be made on the basis of pay drawn by him as Mustering Assistant at the time of absorption in permanent Government service.

(viii) In common judgment dated 24.8.2012 (Annexure A-5) whereby Writ Petition Nos. 2236/1997 and 2274/1997 were disposed of, the petitioners were directed to be treated as permanent Government employees w.e.f. 1.10.1988 so as to consider their eligibility for pensionary benefits.

(ix) While disposing of a batch of writ petitions by judgment dated 6.9.2017 (Annexure A-6), the Bombay High Court again issued the directions to treat the petitioners as permanent employees w.e.f. 1.10.1988.

(x) By Circular of dated 28.2.2017 (Annexure A-7), the Government of Maharashtra issued certain directions quoting therein following observations made by this Tribunal and the Hon'ble Supreme Court:-

“2. The Hon'ble Tribunal, in para 8 of aforesaid judgment has observed as under:-

*(a) If a principle of general applicability is capable of being culled out from a particular pronouncement of this Tribunal, then similarly placed employees, though not before the Tribunal should be given the benefit thereof without actually moving this Tribunal for relief. If on the other hand, the relief is person specific, then of course, this direction will not apply.”*

Therefore, the Hon'ble Tribunal has directed the undersigned to inform all the concerned departments regarding applicability of general judicial principle as explained in Para 8 of the aforesaid judgment.

3. The Hon'ble Supreme Court in the case of **State of Uttar Pradesh and others Vs. Arvind**

**Kumar Srivastava** reported in 2005 (1) SCC 347 has laid down similar principle, thus:

*“Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”*

(xi) By Circular dated 1.8.2017 (Annexure A-8), the Under Secretary, Govt. of Maharashtra impressed upon the concerned to follow Circular (Annexure A-7).

(xii) The Zilla Parishad, Wardha, by relying on Annexures A-7 and A-8, has extended benefits to 13 Mustering Assistants by order dated 28.5.2014 / 4.6.2020 (Annexure A-10) by treating them as permanent employees w.e.f. 1.10.1988.

4. In a batch of nine O.As, decided by common judgment dated 17.12.2021, this Tribunal has ordered that case of the applicants shall be considered for all the pensionary benefits as may

be admissible under the rules by treating them as permanent employees with effect from their entry in service as Mustering Assistants till the date of their superannuation.

5. The applicant stands on a footing identical to those petitioners / employees / applicants mentioned above. Hence, the substantive prayer made by him deserves to be allowed. Hence, the order.

### **ORDER**

The O.A. is allowed in the following terms:-

- (i) The applicant shall be treated as permanent Government employee with effect from his entry in the service as Mustering Assistants till the date of his superannuation.
- (ii) The respondent department shall accordingly consider his case for all pensionary benefits as may be admissible under the Rules.
- (iii) No order as to costs.

(M.A.Lovekar)  
Member(J)

