

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.726 OF 2020 WITH  
ORIGINAL APPLICATION NO.727 OF 2020 WITH  
ORIGINAL APPLICATION NO.731 OF 2020 WITH  
ORIGINAL APPLICATION NO.117 OF 2021**

**DISTRICT : PUNE  
SUBJECT : CONTINUATION IN  
SERVICE**

**ORIGINAL APPLICATION NO.726 OF 2020**

Shri Rajshekhar Appasaheb Ankalgikar, )  
Age : 53 years, Occ. Govt. service, )  
Working as Talathi in South Solapur, )  
Tahsil Officer, Solapur. )  
Address : At P. Tadawal, Tal. Akkalkot, )  
Dist. Solapur 413 216 ) ... **Applicant**

**WITH**

**ORIGINAL APPLICATION NO.727 OF 2020**

Shri Sidhappa Pandit Patil )  
Age : 56 years, Occ. Govt. service. )  
Working as Talathi Village Bablad, Tal.Akkalkot )  
Address : Laxmi Nagar, Bagehalli Road, )  
Near Zenda Katta, At. P. Tal. Akkalkot, )  
Dist. Solapur 413 216 ) ... **Applicant**

**WITH**

**ORIGINAL APPLICATION NO.731 OF 2020**

Shri Mujawar Nuroddin Kashimso )  
Age : 54 years, Occ. Govt. service, )  
Working as Talathi Village Hilli, )  
Tal. Akkalkot, Solapur )  
Address : Bagwan Lane, At. P. Tal. Akkalkot, )  
Dist. Solapur 413 216 ) ... **Applicant**

**WITH**

**ORIGINAL APPLICATION NO.117 OF 2021**

Shri Harun Bashir Shaikh )  
 Age : 59 years, Occ. Retired Talathi, )  
 Address : P. Mandrup, Tal. Dakshin Solapur )  
 Dist. Solapur. Pune 413 216 )... **Applicant**

**Versus**

1. State of Maharashtra, )  
 Through Secretary, )  
 Planning Department, Mantralaya, )  
 Mumbai 400 032 )
2. The Secretary (Revenue), )  
 Revenue and Forest Department, )  
 Mantralaya, Mumbai 400 032 )
3. The Secretary, Finance Department, )  
 Mantralaya, Mumbai 400 032 )
4. The Divisional Commissioner, )  
 Pune Division, Pune. )
5. The Collector, )  
 Solapur, District Solapur. ) **Respondents**

**Shri Chandrkant T. Chandratre, learned Advocate along with Shri Ganesh Masurkar, learned Advocate for the Applicant.**

**Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER (J)**

**DATE : 11.10.2022.**

**JUDGMENT**

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. In all these O.As the Applicant have made representation to their Departments claiming benefit of the decision rendered by the Hon'ble

High Court in **Writ Petition No.8908/2015 [Kishor D. Gaikwad & Ors. Vs. State of Maharashtra & Ors.] decided with bunch of Campanian Writ Petitions by Judgment dated 12.10.2018** contending that they are similarly situated persons and are entitled to the benefit of decision of Hon'ble High Court. It is turn down on the ground that the Department has not received any such orders from the Government to apply it to them.

3. The Applicants were appointed as Muster Assistant in between 1984-86 and later they were absorbed on the post of Talathi. Before appointment on the post of Talathi they filed complaints before Labour Court alleging unfair practice invoking provisions of M.R.T.U & P.U.L.P Act wherein protection was granted to them. Thus the Applicants are claiming benefits of the decision in **Kishor D. Gaikwad's case (cited supra)** delivered in similar situation being similarly situated person.

4. Following chart shows details about their joining, position before Industrial Court, Date of absorption and Date of Retirement etc.

O.A. No.	Impugned Order	Name of the Applicant	Date of Joining	Date of absorption	Date of Interim/Final Order of Industrial Court and date from which granted entitlement	Date of Retirement
726/2020	08.04.2020 page 9	Rajshekhhar Appasaheb Ankalgikar	17.05.1985 (6.4)	06.10.2003 Talathi (6.6) page 34	25.02.1997 01.10.1988 (6.4) page 10	31.12.2024
727/2020	08.04.2020 page 9	Sidhappa Pandit Patil	21.12.1984 (6.4)	31.03.2001 Talathi (6.6) page 34	25.02.1997 01.10.1988 (6.4) page 10	31.05.2022
731/2020	11.12.2018 Page 46	Mujawar Nuroddin Kashimso	03.02.1986 (6.4)	25.09.2003 Talathi (6.6) page 24	02.07.1992 Interim order status quo 02.07.1992, page 9 and continued in service	31.05.2024
117/2021	11.12.2020 page No.10-11	Harun Bashir Shaikh	01.06.1985 (6.4)	30.09.2003 (6.10 page 38)	16.12.1989 Interim order. Para 6.4, P-12, and continued in service	31.08.2020

5. Thus there is little difference in the factual aspect regarding proceeding and decision of Labour Court. Insofar as O.A. No.726/2020 & 727/2020 is concerned there is common order of Industrial Court dated 25.02.1997. Industrial Court, Solapur by order dated 25.02.1997 allowed ULP No.125/1990 & 126/1990 and declared that the Respondent therein committed unfair labour practices prescribed under Item No.5,6,9 & 10 of Schedule-IV of the M.R.T.U. & P.U.L.P. Act. Industrial Court further directed Respondents to confer the status and privilege of permanency employee w.e.f. 01.10.1988 and pay monetary benefits to them for the post of Muster Assistant. Admittedly, the said order of Industrial Court had attained finality.

6. Insofar as O.A. No.731/2020 is concerned the Applicant had filed ULP No.265/1992 before Industrial Court, Solapur alleging unfair labour practices in which Industrial Court granted status qua to the services of the complainant by order dated 02.07.1992. The said complaint was filed alleging that on 30.06.1992 Respondents therein orally terminated his services. Industrial Court observed that the Applicant has worked for period exceeding 240 days and entitled to the benefits of permanency. Industrial Court, accordingly directed the Respondents to maintain status qua of the services of the Applicant by order dated 02.07.1992 and accordingly he was continued in service.

7. As regard O.A. No.117/2021 the Applicant had filed ULP No.35/1989 alleging that the Respondents therein orally terminated his services w.e.f. 31.12.1988. Industrial Court by order dated 21.12.1998 granted interim relief directing the Respondent to provide employment to him within 30 days from the date of order. It was challenged by the Department by filing Revision (ULP) No.44/1991 before Industrial Court and by order dated 23.12.1999 revision was allowed. The Applicant again approached Hon'ble High Court by filing Writ Petition No.238/2000 which was decided on 26.06.2000. Hon'ble High Court allowed Writ Petition and restored the order of Industrial Court.

8. Shri C.T. Chandratre, learned Advocate for the Applicant placed reliance on the decision of Hon'ble High Court in ***Kishor D. Gaikwad's case (cited supra)*** contending that the Applicants being similarly situated person are entitled to the same benefit of absorption in the post of Muster Assistant. Insofar as O.A. No.726/2020 & 727/2020 is concerned he has pointed out that Industrial Court, Solapur by order dated 25.02.1997 conferred status qua of permanency w.e.f. 01.10.1988 and therefore the Applicant in these two O.As are entitled for monetary benefits of permanency w.e.f. 01.10.1988. Whereas, insofar as O.A. No.731/2020 and 117/2021 are concerned he is claiming the benefit of permanency w.e.f. the order of interim order granted to them by Industrial Court and Labour Court.

9. Per contra, learned P.O. all that submits that the present Applicants cannot be given actual monetary benefits and it be restricted to notional consideration for the purpose of pension for the Applicant in O.A. No.727/2020 and 117/2021 since they are already retired from services. As regard O.A. No.726/2020 and O.A. No.731/2020 she submits that they are still in service, and therefore actual monetary benefits cannot be granted retrospectively.

10. Undisputedly the Applicants were initially appointed as Muster Assistant in between 1984-86. Notably, in terms of G.R. dated 22.02.1993 the Government granted pay scale to the Muster Assistant w.e.f. 01.10.1988. It is on that basis Industrial Court in O.A. No.726/2020 & O.A. No.727/2020 granted status of permanency w.e.f. 01.10.1988. As such, the Applicants are claiming benefits of permanency w.e.f. 01.10.1988 in all these O.As and relying upon the decision rendered by Industrial Court and the decision of Hon'ble High Court in ***Kishor D. Gaikwad's case (cited supra)***.

11. The issue of entitlement of Muster Assistant for grant of pension considering permanency w.e.f. 01.10.1988 or from the date of order of

Industrial Court has been subject matter of various decisions. In this behalf, it would be apposite to referred following decisions.

(i) **Writ Petition No.2946/1997 [Ramchandra K. Mahajan Vs. State of Maharashtra] decided on 19.07.2012.** In that case also, the Petitioner therein was initially appointed as Muster Assistant in Irrigation Department and lodged complaint before Industrial Court alleging commission of unfair labour practices under Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. Learned Member of Industrial Court granted permanency w.e.f.01.10.1988. Hon'ble High Court, therefore, directed to consider the case of Petitioner therein for grant of pensionary benefits treating him as a permanent employee w.e.f. 01.10.1988 till his superannuation.

(ii) Same issued again came up before Hon'ble High Court in **Writ Petition No.2236/1997 [Shalik W. Ranvare & Ors. Vs. State of Maharashtra & Ors.] decided with Writ Petition No.2774/1997 by Judgment dated 24.08.2012.** Hon'ble High Court disposed of these petitions for the reasons already recorded in the matter of **Ramchandra Mahajan's** case (cited supra) giving specific direction that Petitioners be treated as permanent employees w.e.f. 01.10.1988.

(iii) Then again, issue came up before Hon'ble High Court in **Writ Petition No.2117/2012 [Raiban K. Ubhedal Vs. State of Maharashtra] decided with Writ Petition No.2774/1997 by Judgment dated 24.08.2012** wherein Hon'ble High Court again discussed earlier decision referred to above and directed Respondents to consider the representations to be made by the Petitioners for pensionary benefits treating the Petitioner to be permanent employee as per Judgment of Industrial Court in the said matter.

(iv) Later again, same issued came up before Hon'ble High Court in **Writ Petition No.8908/2015 [Kishor D. Gaikwad & Ors. Vs. State of Maharashtra & Ors.] decided with bunch of Campanian Writ**

**Petitions by Judgment dated 12.10.2018.** In this case, again Hon'ble High Court discussed earlier decisions and declared Petitioners to be entitled to absorption in Government service from the date of filing of reference/complaint in Industrial Court. This decision was confirmed by Hon'ble Supreme Court.

(v) Then again, issue was considered by Hon'ble High Court in **Writ Petition No.12043/2016 [Kadu M. Bhawar Vs. State of Maharashtra] decided with bunch of companion Writ Petition by order dated 06.09.2017.** In that case also, Petitioner therein initially filed complaint before Industrial Court for permanency. Here again Hon'ble High Court considered its various earlier decisions (cited supra) and granted pensionary benefits to the Petitioners treating them as permanent employees with effect from the date of filing of complaints in Industrial Court.

12. In view of aforesaid judicial pronouncement it is no-more *res-integra* that even initial appointment was temporary the claim of such employee for pension considering their earlier services cannot be defeated. The Applicants have made representation claiming the benefit of the aforesaid decision but Respondents turned down. The Applicant being similarly situated persons their claim ought to have been considered by the Respondents in the light of various decisions referred to above. In these behalf it would be apposite to refer decision of Hon'ble Supreme Court **2015(1) SCC 341 [State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava]** laid down the principle as under :-

*“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.”*

13. Indeed, the Government of Maharashtra, Law and Judiciary Department had also issued Circular dated 27.09.2017 to follow this principle and directed the Departments to take note of it. However, regret to note Respondents seems to be oblivious to this legal principle and rejected the claim of the Applicant without any justifiable reasons. It is totally indefensible.

14. Learned P.O. in reference to decision of Hon'ble Supreme Court in **Civil Appeal No.6531-6533/2022 (Shaikh Miya s/o Shaikh Chand & Ors. v/s. State of Maharashtra) decided with Civil Appeal No 6534/2022** on 07.09.2022 made feeble attempt that for pensionable service reckoning date would be 31.03.1997 for such Applicants who are absorbed over the period of time post 31.03.1997. I have gone through this Judgment which is arising from **Writ Petition No.5635/2012 (Shaikh Miya s/o Shaikh Chand & Ors. v/s. State of Maharashtra) decided with bunch of Writ Petition by Hon'ble High Court of Bombay, Bench at Aurangabad on 13.08.2015**. These Writ Petitions were filed by the petitioner therein who were appointed as Muster Assistant in employment guarantee scheme in terms of G.R. dated 01.12.1995. All those Muster Assistant who were in service as on 31.05.1993 were to be absorbed in the Government employment as per the seniority and process of absorption would be completed by 31.03.1997. The said scheme was approved by the Apex Court by order dated 02.12.1996 in Special Leave to Appeal (Civil) No.15654 of 1991. However, petitioner could not be absorbed before 31.03.1997. Government therefore by G.R. dated 25.06.2004 directed that all those Muster Assistant who were left out, for them additional post be created and deemed to be absorbed from the date of said resolution. As such, it was the case where petitioner could not be absorbed prior to 31.03.1997, and therefore approached Hon'ble High Court of Bombay, Bench at Aurangabad. Hon'ble High Court of Bombay noticed that in one another matter i.e. Writ Petition No.954 of 1990 directions were given to regularize the service with retrospective effect from 31.03.1997 for all

consequential benefits, but it was stayed by Hon'ble Supreme Court and Special Leave Petition was disposed of with direction that the State Government shall gradually absorbed the Muster Assistant as per their seniority. Thus taking note of the decision of Hon'ble Supreme Court in said Special Leave to Appeal (Civil) No.5171 of 2022 and 7592 of 2022, Hon'ble High Court disposed of Writ Petitions of **(Shaikh Miya s/o Shaikh Chand & other Writ petitions)**. Being aggrieved by it, the petitioner namely Shaikh Miya s/o Shaikh Chand had approached Hon'ble Supreme Court by filing Civil Appeal No.6531-6533/2022 which is decided with connected Civil Appeal No.6534/2022 on 07.09.2022 giving direction that person who has been absorbed over the period of time post 31.03.1997 for pensionable service, the reckoning date would be 31.03.1997.

15. The distinguish feature is that in those matters there was no adjudication or order by Labour Court or Industrial Court. Hon'ble Supreme Court has also taken note of it in view of submission advanced by the Appellant. In that matter learned Counsel for Appellant contended that since, Appellant are absorbed at different time, treating their case *pari materia* they be given benefits from the date of joining. However, Supreme Court having found the Appellant Shaikh Miya s/o Shaikh Chand have not approached the Industrial Court held that they cannot seek parity.

16. Whereas, in present case undisputedly the Applicants have approached Labour Court and Industrial Court in O.A. No.726 of 2020 & 727 of 2020 they were granted permanency w.e.f. 01.10.1988. Whereas in O.A. No.731 of 2020 by way of interim relief order dated 02.07.1992 the Applicant was continued in service. Likewise the Applicant in O.A. No.117/2021 also approached Industrial Court and was granted interim relief of reinstatement from 16.12.1989. Learned P.O. fairly concedes that the Applicants in these O.A. Nos.731/2020 and O.A. No.117/2021

117/2021

were in service continuously from 02.07.1992 and 16.12.1989 respectively.

17. In this view of the matter, the impugned communication rejecting the claim of the Applicant is totally unsustainable and liable to be quashed. The Applicants in O.A. No.726/2020 and O.A. No.727/2020 would be entitled to declaration of deemed to be absorbed in Government service w.e.f. 01.10.1988 which is the date of permanency given to them by Industrial Court. Whereas, the Applicants in O.A. No.731/2020 & 117/2021 are entitled to declaration that they deemed to be absorbed in service from 02.07.1992 and 16.12.1989 respectively which are the date of interim relief granted in their favour on which basis they are continued in service without any interruption. The Applicant in O.A. No.727/2022 & O.A. No.117/2021 are already retired from services. Whereas, the Applicants in O.A. No.726/2022 and O.A. No.731/2022 are still in services. Hence, the order.

### **ORDER**

- A) The Original Applications are allowed.
- B) The Impugned communication dated 08.04.2020 in O.A. No.726/2020 & O.A. No.727/2020 as well as impugned communication dated 11.12.2018 in O.A. No.731/2020 and 11.12.2020 in O.A. No.117/2021 are quashed and set aside.
- C) The Applicants in O.A. No.726/2020 and O.A. No.727/2020 are Deemed to be absorbed in Government services w.e.f. 01.10.1988.
- D) The Applicant in O.A. No.731/2020 is Deemed to be absorbed in Government service w.e.f. 02.07.1992.
- E) Whereas, the Applicant is O.A. No.117/2021 is Deemed to be absorbed in Government service w.e.f. 16.12.1989.
- F) It is clarified that the Applicant would not be entitled to monetary benefits in the form of arrears on the said basis but the said date would be taken into consideration for notionally fixing their Salary / Pension. The Applicants who

have already retired, the exercise of notionally fixing their Pension would be completed within three months from today.

- G) Insofar as the Applicants who are in service are concerned, they would be entitled to Salary after carrying out exercise of notional fixing and revised Salary payable to them w.e.f. 01.12.2022.
- H) No order as to costs.

**Sd/-**  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 11.10.2022.  
Dictation taken by: N.M. Naik.

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