

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.857 OF 2017**

**DISTRICT: SOLAPUR  
SUBJECT: ABSORPTION**

Shri Bhalchandra Raghunath Shinde, )  
Aged about 57 years )  
Jr. Clerk, Govt. I.T.I. Akluj, )  
Taluka: Malshiras, Dist.: Solapur and )  
R/at B-11, Shri Gajanan Sah Griha, )  
Sanstha, Harikrupa Nagar, Market Yard, )  
Baramati, Dist.: Pune. )... **Applicant**

**Versus**

- 1) Government of Maharashtra, )  
Through Principal Secretary, )  
Planning Department, Mantralaya, Mumbai-32. )
- 2) Government of Maharashtra, )  
Through Principal Secretary, )  
Skill Development and Entrepreneurship )  
Department, Mantralaya, Mumbai-32. )
- 3) Joint Director, )  
Vocational Education and Training, )  
Regional Office, Pune – 5. )... **Respondents**

**Shri Makarand D. Lonkar, learned Advocate for the Applicant.**

**Smt. Archana B. Kologi, learned Presenting Officer for the Respondents.**

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

**DATE : 20.09.2022.**

**JUDGMENT**

1. The Applicant has initially filed this O.A. for declaration that he was entitled for being absorbed as group 'C' employee w.e.f. 27.03.1997 and for consequential service benefits from 27.03.1997. During the

pendency of O.A. the Applicant's representation for absorption in group 'C' w.e.f. from 21.04.1999 has been rejected by order dated 15.11.2017. The Applicant therefore amended O.A. and also challenged this communication.

2. The Applicant contends that he was working as Muster Assistant on daily wages from 1988 to 1997 on the establishment of Respondent No.3. Government by G.R. dated 01.12.1995 took policy decision to absorb these Muster Assistants in Government services subject to eligibility. It is in terms of this G.R. dated 01.12.1995 the Applicant was absorbed on group 'D' post (Peon) by order dated 27.03.1997. Accordingly, he joined services. Later Government by G.R. dated 21.04.1999 clarified earlier G.R. dated 01.12.1995 stating that the Muster Assistant be absorbed in Government services as per their qualification and where Muster Assistant are appointed in group 'D' post those cases be considered for appointment in group 'C' post subject to fulfillment of educational qualification. The Applicant is B.Com. For the first time however, he made representation on 16.01.2002 for absorption in group 'C' post. Later the Applicant came to be appointed in group 'C' post by order dated 24.04.2008. He accordingly joined said post and retired at the end of April 2018.

3. This O.A. is filed before few days of retirement i.e. 12.09.2017 for declaration that he is entitled for absorption in group 'C' post w.e.f. 27.03.1997. Before filing O.A. he made representation on 19.04.2017 (page 56) for service benefits of group 'C' employee w.e.f. 27.03.1997. During the pendency of O.A. it is decided and came to be rejected by order dated 15.11.2017 which is challenged in this O.A. by way of amendment.

4. Shri M.D. Lonkar, learned Advocate for the Applicant in reference to G.R. dated 01.12.1995 particularly G.R. dated 21.04.1999 sought to contend that the Applicant being admittedly graduate he was entitled for

absorption in group 'C' post but he was appointed in group 'D' post by order dated 27.03.1998. He therefore submits that this amounts to deprivation of the Applicant from his legal right of appointment in group 'C' post. He has also pointed out that the Applicant has made various representations in 1999, 2001, 2002, 2004 and it is in pursuance of these representations he was appointed and absorbed in group 'C' post by order dated 24.04.2008. He submits that the Applicant ought to have been appointed on group 'C' post in the very beginning itself, and therefore it be declared he is entitled to be appointed in group 'C' post w.e.f. 27.03.1997 and for consequential benefits.

5. Per contra, learned P.O. contends that there are laches and negligence on the part of the Applicant for claiming service benefits for the post of clerk w.e.f. 27.03.1997 and O.A. is not maintainable. She further submits that the absorption on the post of group 'C' was subjected to availability of vacant post and there was revision in staffing pattern. According to her the Applicant was given post of group 'C' as per the availability of vacancy by order dated 24.04.2008.

6. In view of submission, now issue pose for consideration is whether the Applicant is entitled for declaration for entitlement of absorption in group 'C' post w.e.f. 27.03.1997 with consequential benefits as group 'C' post.

7. The facts as discussed above about initial absorption in group 'D' from 27.03.1997 and latter in group 'C' from 24.04.2008 are not in dispute.

8. True, it appears that after the Applicant was appointed in group 'D' post he made certain representations and pursuance to it he was appointed in group 'C' by order dated 24.04.2008. Material to note that the Applicant accepted the appointment in group 'C' post by order dated 24.04.2008 without demur and continued to work till his retirement in

April 2008. At the fag end of his service only he made representation on 19.04.2017 making reference of is earlier representation (prior of 2008). By belated representation dated 19.04.2017 he claimed deemed date of absorption in group 'C' from 27.03.1997. After his absorption in group 'D' post by order dated 27.03.1997 he did not avail any legal remedy raising grievance of appointment in group 'C' post. Be that as it may, fact remains that the Applicant had accepted in group 'C' post by order dated 24.04.2008. He thereafter did not avail any legal remedy claiming deemed date of absorption for the post of Clerk w.e.f. 27.03.1997. As such, the Applicant acquiesce the post and at the fag end of service only he filed the O.A. claiming monetary benefits for the post of group 'C' w.e.f. 27.03.1997. Such belated claim for past service benefit can hardly be countenanced.

9. The applicant admittedly did not work in group 'C' post prior to his appointment in group 'C' post by order dated 24.04.2008. He worked on the post of group 'D' therefore at this stage after retirement he cannot be allowed to claim service benefits for the post of group 'C' for the period prior to 24.04.2008 since admittedly he did not work on that post. Suffice to say, the claim of the Applicant for service benefits for the post of group 'C' w.e.f. 27.03.1997 is stale claim and he cannot be said entitled for the service benefits of the post on which he did not work and acquiesced.

10. That apart, in terms of Government policy itself Muster Assistant were to be absorbed in group 'C' and 'D' post subject to availability of vacancy. Respondents in Affidavit-in-Reply contends that there was no such vacancy since there was revision of staffing pattern and as per vacancy the Applicant was appointed in group 'C' by order dated 24.04.2018 when the post had become vacant. To counter this Applicant has not produced any record to substantiate that there was vacancy and despite the availability of vacancy he was not appointed in group 'C' post.

11. The totality of the aforesaid discussion leads me to sum up that the claim of the Applicant for service benefits for the post of group 'C' employee w.e.f. 27.03.1997 is not maintainable and O.A. is liable to be dismissed.

**ORDER**

The Original Application is dismissed with no order as to costs.

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

Place: Mumbai  
Date: 20.09.2022  
Dictation taken by: N.M. Naik.

Uploaded on: \_\_\_\_\_