

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 900/2017 (S.B.)**

Anil S/o Mahadevrao Dongre,
Aged 58 years, Retired Driver, R/o Plot No.34,
Lumbini Nagar, In front of Ranu School, Mankapur,
Nagpur-440 030.

Applicant.

Versus

- 1) State of Maharashtra
through its Secretary,
Public Works Department,
Mantralaya, Mumbai -32.
- 2) The Accountant General, Mah.II,
(Sr. Accounts Officer PR-1)
Civil Lines, Nagpur-440 001.
- 3) The Executive Engineer,
P.W.D. (Electrical Division), Nagpur.

Respondents.

S/Shri Bharat Kulkarni, S. Pande, Advs. for the applicant.

Shri V.A. Kulkarni, P.O. for respondent Nos.2&3.

Shri D.M. Kakani, learned Special Counsel for respondent no.1.

WITH**ORIGINAL APPLICATION No. 901/2017 (S.B.)**

Bharat S/o Bapurao Dhakulkar,
Aged 59 years, Retired Driver, R/o Plot No.77,
Ratan Nagar, Mankapur, Koradi Road,
Nagpur-440 030.

Applicant.

Versus

- 1) State of Maharashtra
through its Secretary,
Public Works Department,
Mantralaya, Mumbai -32.

- 2) The Accountant General, Mah.II,
(Sr. Accounts Officer PR-1)
Civil Lines, Nagpur-440 001.
- 3) The Executive Engineer,
P.W.D. (Electrical Division), Nagpur.

Respondents.

S/Shri Bharat Kulkarni, S. Pande, Advs. for the applicant.

Shri V.A. Kulkarni, P.O. for respondent Nos.2&3.

Shri D.M. Kakani, learned Special Counsel for respondent no.1.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 4th June, 2019.

Date of Pronouncement of Judgment : 19th July, 2019.

COMMON JUDGMENT

(Delivered on this 19th day of July,2019)

Heard Shri Bharat Kulkarni, learned counsel for the applicants and Shri V.A. Kulkarni, learned P.O. for respondent nos. 2&3. None for respondent no.1.

2. In both the matters the applicants are challenging the objections raised by the Accountant General while examining pension cases of both the applicants. The Accountant General raised objection that while computing the length of service for granting relief of time bound promotion, the period during which the applicants served on

Work Charge Establishment should not have been considered and it was considered in violation of the Government Circulars and G.R., therefore, the pension was not properly fixed.

3. It is submission of both the applicants that this action of the Accountant General is in violation of law laid down by the Hon'ble Bombay High Court in Writ Petition No. 3796/2016, decided on 26/04/2017 and maintained by the Hon'ble Apex Court. It is further submitted that the similar situation was examined in O.A.No.660/2017 in case of **Dhanraj Mahadeo Gotekar Vs. State of Maharashtra**, decided on 4/7/2018. It is submitted that in case of Dhanraj Mahadeo Gotekar, Maharashtra Administrative Tribunal held that as per Rule 30 of the Maharashtra Civil Services (Pension) Rules,1982 the temporary service of the applicant should have been considered and as it is not done, therefore, the impugned objection raised by the Accountant General was contrary to law.

4. These matters came up for hearing before the Bench on 23/01/2019 and then learned Member who heard the matters passed the order and directed the respondent no.1, Chief Secretary, Government of Maharashtra to file affidavit explaining how Judgments in Writ Petition No.3796/2016 and O.A.No. 660/2017 were not applicable to the present case.

5. In pursuance of this direction the Chief Secretary, Government of Maharashtra filed affidavit. It is contention of the respondents that both the applicants were appointed on Work Charge Establishment, the applicant Shri Dongre was appointed as Driver on Work Charge Establishment w.e.f. 2/12/1985 and the applicant Shri Dhakulkar was appointed on Work Charge Establishment on 1/6/1984. It is further submitted that as both the applicants completed five years service on Work Charge Establishment, therefore, by virtue of the Kalelkar Award their services were regularized and they were brought on Converted Regular Temporary Establishment. The applicant Dongre was brought on CRTE on 9/12/1990 and the applicant Dhakulkar was brought on CRTE w.e.f. 1/6/1989. It is contended by the respondents the services of the applicants are governed by the provisions of Kalelkar Award and therefore as per the provisions of Kalelkar Award the 50% service on the Work Charge Establishment could be considered while considering the length of service for granting the reliefs of time bound promotion. It is submitted that the Executive Engineer under whom the applicants served without examining this legal position, considered the total length of service of the applicants on Work Charge Establishment and consequently there was illegality while giving time bound promotions to the applicants. It is submitted that before raising the objections, query was made by the

Accountant General with the Government of Maharashtra and detailed information was given by the Government to the Accountant General that the total service of five years of Work Charge Establishment could not be considered for calculating the length of service for granting time bound promotion.

6. The second submission of the respondents is that the Judgment delivered in Writ Petition No.3796/2017 and Judgment in O.A.660/2017 are not applicable to the present circumstances, because, in both the matters the Writ Petitioners and the applicants were engaged in Employment Guarantee Scheme to which the provisions of Kalekar Award were not applicable. In addition, the respondents have placed reliance on the Judgment in O.A.617/2014 in case of **Maharashtra State Civil Engineering Assistant Employees Association Vs. State of Maharashtra & Ors.**, decided on 2/12/2015 and Judgment in O.A. 317/2014 in case of **Maharashtra Rajya Sthapatya Abhiyantriki Sahayyak Sangh Vs. State of Maharashtra & Ors.**, decided on 11/8/2017.

7. It is submitted that the applicants have placed reliance on letter dated 18/6/1998 written by the Deputy Secretary of the Government of Maharashtra and on this basis the applicants are claiming relief that their entire service on Work Charge Establishment be considered for granting the relief of time bound promotion. It is

submitted that in both the O.A. Nos. 617/2014 and 317/2014 this situation was examined. In both these matters the applicants were appointed in service on Work Charge Establishment and thereafter as per the Kalelkar Award, they were brought on CRTE and their services were regularized. In para-12 on page 92 in O.A.317/2014 it is observed that “after examining various Government letters including letters dated 18/3/1998 and 18/6/1998 it transpired that though the aforesaid letters were said to have been issued in consultation with the Finance Department, no records are available to substantiate the claim”.

8. It was also observed that there was no official record available showing that the Finance Department had given approval to this letter, therefore, was creating serious doubts about the authenticity of these two letters. In the same paragraph it is observed that once this fact is establish, the G.R. dated 8/6/1995 Para 2 (b) and Para 2 (c) will make it clear that “a person will be eligible to be given Time Bound Promotion 12 years after he was appointed as Civil Engineering Assistant. The question of counting service in lower cadres to get the pay scale of Junior Engineer will not arise.”

9. The learned counsel for the applicants has placed reliance on Judgment in O.A. 61/2010 in case of **Sadashiv Paikan Nagpure Vs. State of Maharashtra & Ors.** I have already discussed that in that

matter the applicant was engaged in service under the Employment Guarantee Scheme and provisions of Kalelkar Award were not applicable to that applicant.

10. The learned counsel for the applicant has placed reliance on the Judgment in case of **Habib Khan Vs. State of Uttarakhand, 2018 Vol.1, SLR 724.** It is submitted that in this case the Hon'ble Apex Court has laid down that the period of service rendered on work charge basis by an employee should be counted for the purposes of computation of qualifying service for grant of pension. It must be noted that the Hon'ble Apex Court in that case examined the Service Rules applicable to State of Uttarakhand. In present application I have to consider the provisions and rules applicable to the State of Maharashtra. Similarly in case of **Punjab State Electricity Board Vs. Narata Singh & Ano.,2010, vol.4, SCC,317,** the facts were that the Hon'ble Apex Court was dealing with a case in which the Service Rules applicable in State of Punjab were considered and the employer was the Punjab State Electricity Board. In case of **State of Rajsthan Vs. Kunji Raman, AIR, 1997, SCC,693,** It is observed that a Work Charge Establishment defers from the regular establishment which is permanent in nature. Setting up and continuance of a Work Charge Establishment is dependent upon the Government Undertaking, Project or a Scheme or a Work and availability of fund for executing it.

So far as employees engaged on Work Charge Establishment are concerned, not only their recruitments and service conditions, but the nature of the work and duties to be performed by them are not the same as those of the employees on the regular establishment. A regular establishment and a Work Charge Establishment are separate two types of Establishment and the person employed on those Establishment, thus formed two separate and distinct classes. In Writ Petition No.10471/2014 **Shri Vikas Ansar Shaikh & Ors. Vs. State of Maharashtra & Ors.**, decided on 13/11/2017, the Hon'ble Bombay High Court has again examined the status of the Muster Assistant and their rights. Ultimately the Hon'ble High Court held that the Mustering Assistant working under the Employment Guarantee Scheme, were not Government employees and consequently, they were not governed by the service rules applicable to the Government servants under the State of Maharashtra, consequently the Hon'ble Division Bench dismissed the Writ Petition and declined to grant any benefit to said Petitioners.

11. In the present case it seems that the services of the applicants were governed by the provisions of Kalelkar Award. Initially the applicants were appointed on Work Charge Establishment and thereafter they were brought on CRTE establishment. In the Kalelkar Award, it is specifically mentioned on page no. 14/67 as follows –

^%35½ fuorRh orukl ekst.; kr ; skjh jkst nkjh I dk %jkst nkjh dkexkj kusdsy; k v [kM I dsi Sth ½
½v/ktZ I dk½ I dk fuorRh orukgZ I dk Eg.ku fg'kckr ?ks; kr ; rs ¼'kk-fu-i-k- o uh- fo- d b, I MCY; w
1468@95764&b&5] fnukd 16@11@1968½**-

12. Similarly on page no.42/68 of the Kalelkar Award, it is specifically mentioned as follows :-

^%29½ fuorRh orukl kBh ekst yh tk.kjh I dk %dk; D; ; h vLFkki uojhy I dpk fuorRh orukpsOk; ns
feG.; kl kBh fg'kckr ?; ko; kpk Hkkx % dk; D; ; h vLFkki uojhy depk& kph fuorRh orukgZ
vLFkki uoj (Pensionable Estt.) ue.kd >KY; kurj fuorRh orugh I dpk fg'kck djrkuk
dk; D; ; h vLFkki uoj dj.; kr vky; k I dp; k Hkkxki Sth ½ ½v/ktZ I dk gh fuorRh orukgZ I dk Eg.ku
fg'kckr ?ks; kr ; koh ¼'kk-B-i-k- o oh- fo- d b, I MCY; w 1468@95764&b&5] fnukd
16@11@1968½**-

13. After reading these paragraphs and stand taken by the Government, it is not possible to accept that the applicants are entitled to claim that their entire service on Work Charge Establishment should have been taken into account while computing their length service for granting time bound promotion. In view of this discussion, I do not see any error committed by the Accountant General in raising the objections. In the result, the following order –

ORDER

Both the O.As. stands dismissed. No order as to costs.

Dated :- 19/07/2019.

(A.D. Karanjkar)
Member (J).

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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 Member (J).

Judgment signed on : 19/07/2019.

and pronounced on

Uploaded on : 19/07/2019.