

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1090 OF 2017

DISTRICT : SINDHUDURG

1. Shri Milind Mahadeo Sawant.)
Age : 53 Yrs., R/o. 1483, Oros (BK), Near)
Khalasa Dhaba, Jijamata Chowk, Tal. Kudal,)
District : Sindhudurg.)
 2. Shri Deepak Babu Shinde.)
Age : 54 Yrs., R/o. 2656-A, Hanuman Deep,)
Adarsh nagar, Revalate, Tal. Malwan,)
District : Sindhudurg.)
 3. Shri Mahesh Jivaji Phondekar.)
Age : 49 Yrs., R/o.1036, Tuljabhavani Niwas,)
Polytechnic Road, Near MHADA Colony,)
A/p. Kumbharmath, Tal. Malwan,)
District : Sindhudurg.)
 4. Shri Vasudev Chandrakana Pednekar.)
Age : 48 Yrs., R/o. 2200, Dhuriwada,)
Malwan, Tal. Malwan, District : Sindhudurg.)
- (All Working as Laboratory Assistant,)
Class-III, Government Polytechnic, Malwan,)
Office at Malwan, Kumbharmath,)
District : Sindhudurg.) **...Applicants**

Versus

1. The Joint Director.)
Technical Education, Divisional Office,)
Mumbai and having office at Bandra (E),)
Mumbai.)
2. The Principal.)
Govt. Polytechnic, Malwan, having office at)
Malwan, District : Sindhudurg.)
3. The Director, Maharashtra State Technical)
Education Directorate, Having office at 3,)
Mahapalika Marg, P.B.No.10036,)
Mumbai 400 001.) **...Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicants.

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 19.11.2018

JUDGMENT

1. The facts giving rise to this Original Application are as follows.
2. The Applicants were appointed as Laboratory Assistant on 14.08.1989 in Higher and Technical Education Department of State of Maharashtra and joined the posts in Government Polytechnic College, Malwan, District Sindhudurg on substantive posts (Class III posts). Their selection was done on the basis of recommendation made by the then Deputy Director, Employment Office. However, abruptly, the Respondent No.1 discontinued their services vide order dated 02.06.1990. The Applicants challenged the termination by filing complaint before Labour Court, Kolhapur vide ULP No.113 to 115 of 1990 and 148 to 150 of 1990 alleging that, it amounts to unfair practice. In the complaint, interim relief was granted in their favour on 14.06.1990 and accordingly, they were reinstated in service. The order passed by Labour Court was confirmed by Industrial Court, Kolhapur. As such, they were in continuous service on the posts of Laboratory Assistants.
3. By G.R. dated 01.09.1999 as a one-time measure, the Respondent No.3 (Director, Maharashtra State Higher Technical Education Department) took a policy decision to regularize the services of such temporary appointed Laboratory Assistants in all Government Polytechnic Colleges in the State of Maharashtra. Accordingly, the services of the Applicant came to be regularized w.e.f. 01.09.1999 i.e. the date of G.R. and benefit of Time Bound Promotion was

accorded on 31.08.2011 i.e. the date on which they completed 12 years' service from the commencement of G.R. dated 01.09.1999. However, the Respondents denied to take into consideration their earlier service from 14.08.1989 to 31.08.1999 causing huge financial loss to them. According to Applicants, as they completed 12 years' service though as temporary employee on 14.08.2001, the benefit of Time Bound Promotion ought to have been given to them, considering their earlier period of service as they have already completed 12 years' service on 14.08.2001.

4. The Applicants made representation to Respondent No.1 on 29.12.2009 for taking into consideration their temporary service period of 10 years while granting the benefit of Time Bound Promotion. They made representations and persuade the matter with the Respondents, but in vein. In fact, the Finance Department vide G.R. dated 07.10.2016 has taken policy decision to consider temporary service of the employees for grant of benefit of Time Bound Promotion / Assured Career Progression Scheme (hereinafter referred to as 'ACP Scheme' for the sake of brevity) on completion of 12/24 years' of service. The Applicants, therefore, contend that the Respondents ought to have considered their earlier temporary service i.e. from 14.08.1989 while granting benefit of Time Bound Promotion / ACP Scheme.

5. On these pleadings, the Applicants sought direction to the Respondents to consider their temporary period of service from 14.08.1989 to 31.08.1999 for grant of benefit of Time Bound Promotion / ACP Scheme and all consequential service benefits.

6. The Respondents resisted the application by filing Affidavit-in-reply at Page 92 of the Paper Book *inter-alia* contending that the earlier service period of the Applicants being purely on temporary basis employee cannot be considered for grant of Time Bound Promotion / ACP Scheme. As per G.R. dated 01.09.1999,

the benefit of Time Bound Promotion / ACP Scheme were to be given from the date of their regularization in service, and therefore, the question of considering their earlier service period did not arise. While calculating the period of service, the temporary service period cannot be considered in terms of G.R., and therefore, the claim of the Applicant is not sustainable. They were temporarily appointed till the regular candidate was made available from Regional Selection Board. The Respondents, therefore, prayed to dismiss the application.

7. The Applicants have filed Rejoinder at Page 107 of the Paper Book *inter-alia* reiterating the contentions raised in the O.A. and contended that the point in issue as to whether the temporary services of employees can be considered while granting benefit of Time Bound Promotion / ACP Scheme is no more open to debate in view of various orders passed by this Tribunal and confirmed by Hon'ble Bombay High Court, and therefore, the stand taken by the Respondents is very unfortunate and deserves to be rejected out rightly.

8. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicants and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

9. At this juncture at the very outset, it needs to be stated that this Tribunal by order dated 16.04.2018 raised specific question to the Presenting Officer as to how the Applicants' claim can be opposed in view of consistent judicial pronouncements of this Tribunal confirmed by the Hon'ble Bombay High Court and the Hon'ble Supreme Court and the learned P.O. was directed to take instructions and inform the Tribunal about its position. However, nothing has been communicated though enough time has been granted. When the attention of learned P.O. was drawn to this order, she was not in a position to justify the denial of the claim made by the Applicants in O.As. and simply stated that appropriate orders be passed.

10. Shri A.V. Bandiwadekar, the learned Advocate for the Applicant vehemently urged that the question as to whether the Applicants earlier service period as ad-hoc employees could be considered while granting them benefit of Time Bound Promotion / ACP Scheme is no more open to debate and has attained finality in view of various Judgments passed by this Tribunal as well as by Hon'ble Bombay High Court. But the Government is unnecessarily litigating without any just or reasonable ground and deprived the Applicants of their legitimate benefits. I find merit in the submission.

11. As regards the matter in issue referred to above, there are various pronouncements of this Tribunal and confirmed by the Hon'ble Bombay High Court. In this behalf, reference be made to ***O.A.467/2007 (Pushpalata Sonawane Vs. State of Maharashtra) decided by this Tribunal on 29th August, 2008***. This Tribunal has considered the G.R. dated 20.06.2001 and clearly held that what is needed is only continuous service of 12 years and not necessarily regular service. The Judgment was upheld by Hon'ble Bombay High Court on 22.06.2009. Same view was reiterated by Hon'ble Bombay High Court in ***Maharashtra State Transport Corporation, Yavatmal Vs. Fakira s/o Champatrao Neware and Anr. : 2009 (5) Maharashtra Law Journal Page 50***. The Hon'ble Bombay High Court held that what is required is 12 years continuous service and there was no necessity of confirmation on regular basis in the said post. Again, the issue has raised in ***O.A.No.695/2009 (Dattatray K. Bhalshankar and Ors. Vs. State of Maharashtra) decided by this Tribunal on 21st January, 2010***. Adverting to the Judgments pronounced by this Tribunal in earlier O.As, this Tribunal again held that earlier period of service on ad-hoc basis needs to be considered while granting benefit of Time Bound Promotion / ACP Scheme. This Judgment in O.A.695/2009 was challenged before Hon'ble Bombay High Court in Writ Petition No.2257/2011. While deciding the Writ Petition, the Hon'ble Bombay High Court by order dated 6th February, 2012 confirmed the Judgment of

this Tribunal. This Judgment of Hon'ble Bombay High Court dated 6th February, 2012 was challenged before Hon'ble Supreme Court in Special Leave Appeal which also came to be dismissed on 28.09.2012. In ***O.A.1023/2012 (Suresh Kokitkar Vs. State of Maharashtra) decided on 21.06.2013*** directions were issued to consider the earlier service period from the date of initial appointment on ad-hoc basis while granting benefit of Time Bound Promotion / ACP Scheme.

12. Thus, in view of the decisions of this Tribunal delivered in various O.As confirmed by higher forum, this issue has settled and attained the finality.

13. Furthermore, it will be apposite to refer the recent Judgment of Hon'ble Bombay High Court in ***Writ Petition No.9051/2013 with bunch of Writ Petitions (State of Maharashtra Vs. Smt. Meena A. Kuwalekar) decided on 28.04.2016***. In these Writ Petitions, the orders passed by this Tribunal directing the Government to take into consideration Applicant's services from the date of his initial appointment on ad-hoc basis in Group 'C' was directed to be considered while granting the benefit of Time Bound Promotion / ACP Scheme in terms of G.R. dated 1st December, 1994. The Hon'ble Bombay High Court observed that the State Government had adopted pick and choose approach in the matter and although the MAT has granted relief to several employees, the State Government has chosen to question only some of the orders passed by MAT whereas in remaining matters, the directions were implemented. The Hon'ble Bombay High Court in the said Judgment referred to various Judgments and held that the services of the employees from the date of their initial appointment though on ad-hoc or temporary basis needs to be considered while extending the benefit of Time Bound Promotion / ACP Scheme and dismissed the petitions.

14. Suffice to say, it is no more *disintegra* that the benefit of Time Bound Promotion / ACP Scheme needs to be extended considering the period from the

date of initial appointment of the employee rendered on ad-hoc basis. As such, the contention of the Respondents that the services of the Applicants has to be reckoned with from the date of regularization in service i.e. 01.09.1999 holds no water and their earlier period of service rendered on ad-hoc basis on 14.08.1989 to 31.08.1999 has to be considered while extending the benefit of Time Bound Promotion / ACP Scheme.

15. For the aforesaid reasons, I conclude that the O.A. deserves to be allowed. Hence, I pass the following order.

ORDER

(i) The Original Application is allowed.

(ii) The Respondents are directed to consider the cases of Applicants for grant of Time Bound Promotion / Assured Career Progression Scheme on completion of 12/24 years' service taking into consideration their temporary service w.e.f.14.08.1989 to 31.08.1999 in terms of G.R. dated 07.10.2016 issued by the Finance Department and if they fulfill eligibility, the benefits be extended to them. Their cases accordingly be placed before the Departmental Promotion Committee within three months from today.

(iii) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 19.11.2018

Dictation taken by :

S.K. Wamanse.