

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1134 OF 2016**

**DISTRICT : KOLHAPUR**

1. Balwant Raghu Nalawade, )  
Residing at post. Vandur, )  
Tal. Kagal, District Kolhapur. )
2. Shri Anaji Vasant Rao Raorane, )  
Residing at Plot No.8, )  
Vijaya Devane Colony, )  
Radanagari Road, Kolhapur 416 002. )
3. Shri Jahangir Gulab Jamadar )  
Residing at post. Tisangi, )  
Tal. Gagan Bavada, Dist. Kolhapur. )
4. Smt. Preenita Udayrao Desai )  
Residing at Flat No.301, )  
Prabhakar Residency, Salokhe Nagar, )  
Near Telephone Office, )  
Devkar Panand, Kolhapur 416 012 )
5. Shri Girish Sadashiv Ingle, )



- Residing at Plot No.15, )  
Survey Colony Saneguruji Vasahat, )  
Radhanagari Road, Kolhapur. )
6. Shri Parshuram Ramu Shinde, )  
Residing at Post Tung, Tal. Miraj, )  
District Sangli. )
7. Rajendra Narayan Patwardhan, )  
Residing at post Kumathe, )  
Tal.: Tasgaon, District Sangli. )
8. Vishwanath N. Kumthekar, )  
Residing at Near Adalat Wada, )  
At post : Metha, Tal. Metha, )  
District : Satara. )
9. Madhukar Shankar Gaikwad, )  
Residing at Flat No.50, )  
Aroh Nisarg Colony, )  
Vaji Nagar, Ahmednagar, )  
District Ahmednagar. )
10. Shri Anil Digambar Kharpe, )  
Residing at Ayodhya Nagar, )  
Pipe Line Road, Savedi, Ahmednagar. )
11. Shri Vasant Prabhakar Nisal, )  
Residing at Kulshri Bunglow, )



Raghuvir Colony, Upnagar, Nashik. )  
 12. Chandrakant H. Sawant. )  
 Residing at post Savedi Gaon, )  
 Ganesh Chawk, Tal. Dist. )  
 Ahmednagar. )...**Applicants**

**Versus**

1. The State of Maharashtra. )  
 Through the Secretary, )  
 Revenue & Forest Department, )  
 Mantralaya, Mumbai - 400 032. )  
 2. Settlement Commissioner of Land )  
 Record, Pune, New Administrative )  
 Building, Near Sadhu Vaswani )  
 Chowk, Pune. )  
 3. Deputy Director of Land Record. )  
 Pune, New Administrative Building, )  
 Near Sadhu Vaswani Chowk, Pune. )  
 4. Deputy Director of Land Record, )  
 Nashik Region, Nashik. )...**Respondents**

**Mr. S.S. Dere, Advocate for Applicants.**

**Mr. D.B. Khaire, Special Counsel with Ms. S.T. Suryawanshi, Presenting Officer for Respondents.**

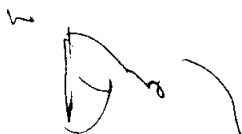
**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 09.08.2017**



## JUDGMENT

1. The twelve erstwhile Unpaid Copying Clerks having joined as such in the year 1986 and regularized on 1.6.1996 but having been denied the consequential service benefits hereby seek the relief of the benefits of Time Bound Promotion and pensionary and retiral benefits. They have not pressed for the relief of pay, increments may be because the same has been given to them already for which a reference could be made to Para 12.4 (Page 133 of the Paper Book (PB) of Affidavit-in-reply).
2. I have perused the record and proceedings and heard Mr. S.S. Dere, the learned Advocate for the Applicants and Mr. D.B. Khaire, the learned Special Counsel with Ms. S.T. Suryawanshi, the learned Presenting Officer PO for the Respondents. The 1<sup>st</sup> Respondent is the State of Maharashtra in Revenue and Forest Department, the 2<sup>nd</sup> Respondent is the Settlement Commissioner, Land Record, Pune, the 3<sup>rd</sup> Respondent is the Deputy Director of Land Record, Pune and the 4<sup>th</sup> Respondent is the Deputy Director of Land Record, Nashik.
3. It is an indisputable factual position that the Applicants took up the job of what came to be known as



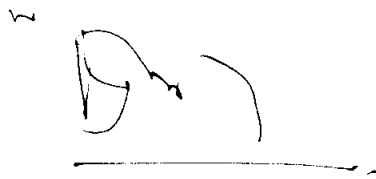
'Unpaid Copying Clerks' way back in the year 1986. It is, therefore, very clear that they came to be employed as such before 12.2.1987 and this date has some significance as would become clear as the discussion progresses. The exact position of the Unpaid Copying Clerks can best be reproduced from a Judgment of the Hon'ble Supreme Court in **Civil Appeal No.4633/2007 (Yashwant A. More and others Vs. State of Maharashtra and other Civil Appeals, dated 11<sup>th</sup> August, 2011)**. The following Paragraph is apposite for guidance in that behalf.

"The Revenue and Forest Department of the Government of Maharashtra maintains the land records in respect of urban as well as agricultural lands. The land records include survey numbers of land, layouts and property cards. The Department also maintains records of transfers of ownership and possession of all immovable properties in Maharashtra. For making available certified copies of the property cards and other documents which are required to be supplied under the Maharashtra Land Revenue (Inspection, Search and Supply of Copies of Land Records) Rules, 1970, the Department employed unpaid candidates. They



were not paid salary by the Government but were paid 70% of the amount collected from those, who applied for certified copies. The balance of 30% used to be deposited in the Government treasury.”

4. In fact, as I shall be presently pointing out this entire controversy has to be resolved in terms of an order of a Division Bench of the Hon'ble Bombay High Court and two Judgments in Appeal carried therefrom to the Hon'ble Supreme Court. The State Government did issue the G.Rs dated 22<sup>nd</sup> October, 1996, a copy of which is at Exh. 'R-7' (Page 181 of the PB) and another GR of 21.10.1995. However, as I shall be presently pointing out, although both the sides have laid considerable stress on the various provisions of the said GRs ultimately, the dispute resolution herein will have to be made in terms of the above referred Judgments of the Hon'ble Constitutional Courts. That is because the GRs were ex-facie issued in deference to the Judgments of the Hon'ble Constitutional Courts and to give effect thereto, but on the practical side of it, they have added and subtracted some parts therein which is not proper in my view and even otherwise, if they claim that they were issuing the GRs to give effect to the said Judgments, then there can be no hitch in referring to



A handwritten signature, possibly 'B. M.', is written in black ink. Below the signature is a horizontal line.

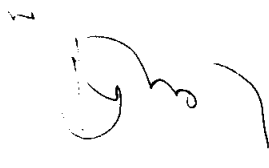
the said Judgments themselves. It may not be necessary for me to go into the minutest of the details, but I may only point out one very significant aspect of the matter. In the Judgment of the Hon'ble High Court, the details whereof shall be presently mentioned, the directions in Clause (d) were that the unpaid candidates would be entitled for the consequential benefits. The GRs, however, on the face of it and so also, the impugned order seek to deny this benefit to the Applicants.

5. In the above background, I may now read the impugned order which is at Exh. 'A' (Page 12 of the PB, dated 31.7.2012). It is in Marathi. It refers to the Judgments of the Hon'ble High Court and the Hon'ble Supreme Court to which a reference shall be presently made as already mentioned above. It then mentions that, by the GR of 21.10.1995, the Unpaid Clerks had already been absorbed in the Government service and they were being given the benefits from 1.6.1996. Now, at this stage itself, it may be mentioned that the Applicants through their learned Advocate Mr. Dere conveyed to me that they had no issue with regard to this date and the further discussion may proceed on that basis. The difficulty is still a while away for which I shall now proceed further to read the impugned order.



6. It is mentioned therein that the crucial date from which the benefits would be given would be in accordance with the GR of 21.6.1996. It is then stated that the Unpaid Clerks would not be entitled to the benefits of Leave Encashment and retirement benefits. They were not to be counted while considering their cases. While preparing the difference of salary and allowances, the amount of Provident Fund would not be deducted but if he was prepared to make a contribution, then he could do so w.e.f.01.06.1996 and such an undertaking should be taken from him. It is further provided therein that the difference payable as a result of the recommendations of 6<sup>th</sup> Pay Commission in the matter of Provident Fund in as much as the Provident Fund accounts of the Unpaid Clerks were not opened, it would not be possible for the amount to be deposited therein, and therefore, that amount need not be included in the payable emoluments to them. Once the account was opened, the said amount be deposited therein. The 4<sup>th</sup> Clause was with regard to some recovery in the event therein mentioned. The 5<sup>th</sup> Clause was with regard to the Income Tax which could be deducted, if necessary.

7. As already mentioned, Mr. Dere had no objection in treating 1.6.1996 as a cut-off date because that was the





date by which each one of the Applicants completed ten years of service as Unpaid Clerks. As far as the payments of their share in the Provident Fund, Mr. Dere submitted and it is not disputed at all that the Applicants have complied with that condition.

8. In the OA, it is pleaded *inter-alia* that, in the year 1991, various OAs came to be filed before this Tribunal for regularization of the services of unpaid candidates. By a Judgment of 20.10.1992, certain guidelines were laid down. One such OA was **OA 153/1991 (Madan V. Desai Vs. Settlement Commissioner, Pune and 2 others, dated 20.10.1992)**. This Judgment was challenged before the Hon'ble Supreme Court unsuccessfully and as will become clear as the discussion progresses that the Judgments of the Hon'ble High Court and the Hon'ble Supreme Court have referred to this Judgment of this Tribunal. The benefits thereunder were admissible only to unpaid candidates who had been working prior to 1986, and therefore, those who were aggrieved thereby filed various Writ Petitions before the Hon'ble High Court for relief. Those were **Writ Petition Nos.1944/1998 (Shri Shivshankar G. Jawanjali and one another Vs. The State of Maharashtra and other Writ Petitions, dated 19.01.2007)**. Two Appeals were carried to the Hon'ble



Supreme Court thereagainst which as I mentioned above shall be presently discussed.

9. The impugned order in so far as it has aggrieved the Applicants relates to the denial of the consequential benefits, etc. to the Applicants. The relief sought is that the Respondents should release all the consequential service benefits to the Applicant w.e.f.01.06.1996 including retiral benefits and Time Bound Promotion. That admittedly the Respondents seek to deny.

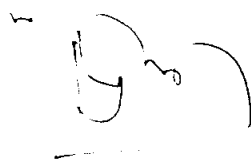
10. In the above background, I may now turn to the Judgment of the Hon'ble High Court in **Shivshankar Jawanjal's** matter (supra). A batch of Writ Petitions came to be filed by the Petitioners who were so similarly placed as the present Applicants. The prayer therein was to be absorbed as permanent/confirmed employees of the State Government in Class-III posts with retrospective effect on the basis of the Judgments of this Tribunal in **Madan Desai's** case (supra). The details of the scheme were then mentioned including the manner in which the Government framed Maharashtra Land Revenue (Inspection) Search and Supply of Copies of Land Record Rules, 1970 regarding the fees of the copies. Then **Madan Desai** (supra) was discussed and the guidelines therein were



reproduced by the Hon'ble High Court. It was then observed that the said order of this Tribunal was belatedly challenged before the Hon'ble Supreme Court but unsuccessfully and the result was adoption of the steps by the State. The Hon'ble High Court found that the result of the said order of this Tribunal was that, those who were appointed as unpaid candidates on or upto 20.10.1983 were required to be absorbed against available regular vacancies while those who joined after that date were allowed to take three chances by complying with the Regional Selection Board for regular employment. Thereafter, some of the unpaid candidates from Revenue Department filed proceedings before the Aurangbad Bench of this Tribunal. Their Lordships then observed that the State Government issued the GR of 22<sup>nd</sup> October, 1996 for absorption of unpaid candidates in the Revenue Department which GR has figured in the above discussion. But in spite of all these developments, the Unpaid Clerks were either sought to be discontinued or were in fact, discontinued. Some details were then set out as to what transpired thereafter. Their Lordships then observed that, in the OAs filed by some of the Unpaid Clerks when the State Government filed the Affidavits-in-reply, the opposition was solely on the ground that they did not fulfill the requirement of qualifying service of ten years in

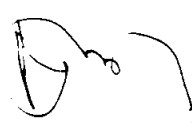


accordance with the GR of 21.10.1995 and 22.10.1996 in the background, a GR came to be issued on 10.3.2005. Their Lordships then referred to the fact that, by an Affidavit filed on behalf of the Superintendent of Land Records, the cut-off date was treated to be 20.10.1992 which was the date on which **Madan Desai** came to be rendered. Their Lordships, however, found no justification for such a course of action, when in fact, the GR was issued on 22<sup>nd</sup> October, 1996, and therefore, they were eligible for being absorbed from that date. Certain other Judgments of the Hon'ble High Court were then noticed. By the time this Judgment was rendered by the Hon'ble High Court, the Judgment in the matter of **The State of Karnataka and others Vs. Umadevi and others, AIR 2006 SC 1806** had already been rendered by the Hon'ble Supreme Court. Their Lordships of the Hon'ble High Court, therefore, found that there could be no dispute with the proposition that those who entered the Government service by backdoor entries, could not claim regularization of service as and by way of vested right, but it was categorically held that the Petitioners of Their Lordships were not the backdoor entrants. A useful reference could in that behalf be made to Para 12 of the Judgment of the Hon'ble High Court in **Jawanjal's** matter. That aspect of the matter was further elucidated in the subsequent



Paragraphs. The case of some of the candidates who came to be appointed in the similar capacity after 9.2.1988 were then considered. It was categorically held relying upon the fact that, though there was no subordinate Service Selection Board, the Government had laid down a procedure for recruitment to Class-III post, as would become clear from the GR of 9.2.1988 and it was clear that the recruitments from June, 1983 till 8.2.1988 were as per the prescribed procedure. This discussion must have made it clear that, the appointments upto 1983 were already held to be good and by these observations of Their Lordships, that period was extended as just mentioned. It was then found that, on 13.2.1987, the State Government issued a Circular banning the recruitment/appointments of Unpaid Clerks and in that behalf, the preamble of the GR of 22.10.1996 was reproduced. Significantly, the Hon'ble High Court was pleased to hold in this background that those that came to be appointed after 13.2.1987 would not be qualified as such and in fact, would be deemed to be backdoor entrants. In Para 18, the following observations came to be made which are highly significant and I shall reproduce the same.

**"18.** From all this material on record we have no hesitation to hold that the Unpaid Candidates who were appointed till 12/2/1987 were not the



A handwritten signature in black ink, appearing to be 'D. M.', is written above a horizontal line.

backdoor entrants and certainly those who are appointed from 13/2/1987 onwards or after the establishment of the Regional Subordinate Selection Boards as per the G.R. dated 9/2/1980 are the backdoor entrants. In our view the petitioners who were appointed as Unpaid Candidates initially on or before 12/2/1987 will have to be given the benefit of the scheme for regularisation as implemented by the State Government vide its GRs dated 21/10/1995 and 22/10/1996. As noted by the Tribunal in its Judgment in O.A.No.153 of 1991 the State Government had issued the first G.R. on 17/10/1978 for regularisation of the Unpaid candidates. We may for ready reference reproduce the following observations set out in para 9 of the MAT's judgment in O.A.No.153 of 1991.

“It has been admitted in the affidavit filed on behalf Respondents that Government had regularised services of some of the unpaid candidates by order dated 17/10/1978 issued by the Revenue and Forests Department to regularise services of the unpaid candidates working in Land Records (M.S.), Pune.”

These appointments were without reference to the Regional Subordinate Service Selection Boards

  
\_\_\_\_\_

already in existence and, therefore, the appointments made till 12/2/1987 as Unpaid Candidates in the Revenue and Forest Department of the State Government, are required to be regularised as per the G.R. dated 22/10/1996 or on the lines of the said policy, as they cannot be termed as backdoor entrants.”

11. Thereafter, Their Lordships discussed certain other aspects of the matter which I am not directly concerned with in this particular OA. The final order was passed in Para 21 which also deserves to be quoted.

**“21.** In the premises, we allow these petitions partly and hold that :-

(a) All those Unpaid Candidates appointed till 12/2/1987 cannot be terms as backdoor entrants and they are eligible for the scheme formulated under the G.Rs dated 21/10/1995 and 22/10/1996.

(b) The Unpaid Candidates who have been appointed from 13/2/1987 onwards are not entitled for the benefit of any of the G.Rs viz. the G.Rs. dated 21/10/1995, 22/10/1996 and 10/3/2005.



(c) The 150 posts directed to be kept vacant in Class III by the order of this Court dated 18<sup>th</sup> December, 2003 passed in Writ Petition No.2151 of 1998, shall be filled in by the concerned Departments, amongst those Unpaid Candidates who fall in Category (a) above and are presently in the employment in any of these Departments.

(d) We also hold that the regularised Unpaid Candidates will be entitled for consequential benefits on par with similarly placed but already absorbed Unpaid Workers by the State Government consequent to the Resolutions dated 21/10/1995 and 22/10/1996.”

12. Before I proceed further, it is most pertinent to note that, vide Clause (d), it was clearly held by the Hon'ble High Court that the regularized unpaid candidates could be entitled for all consequential benefits, “on par with similarly placed, but already absorbed unpaid workers in accordance with the GRs of 21.10.1995 and 22.10.1996. At this stage itself, it may be noted quite clearly that, this direction of the Hon'ble High Court has not been interfered with at all by the Hon'ble Supreme Court in appeals, and therefore, this all important direction has now become

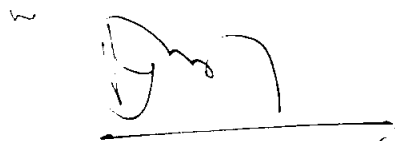
~  




final. I agree with Mr. Dere, the learned Advocate for the Applicants that the entitlement of the Applicants is not in dispute at all for otherwise, even in the year 2012, they would not have issued the impugned order but the difficulty arises when they seek to give the benefits from 2012 and not from 1996. I shall complete the discussion in this behalf presently.

13. **Jawanjal's** matter was carried by the State in Appeal to the Hon'ble Supreme Court by way of Civil Appeal No.3090/2007 and other Appeals which came to be decided by the Hon'ble Supreme Court on 12.7.2011. The Hon'ble Supreme Court reproduced a few Paragraphs from the Judgment of the Hon'ble High Court and also agreed that the case of the Respondents therein who were a'la the present Applicants could not be called backdoor entrants in the context of **Umadevi's** case. It was then held by the Hon'ble Supreme Court as follows :

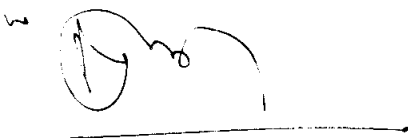
“Since it is not in dispute that the private respondents had been employed prior to 12.02.1987 after due selection and had continued in employment for over 10 years as on the date of filing of the writ petitions, their cases were clearly covered by the GRs issued by the State Government and it is not possible to find any fault in the direction given



by the High Court for their appointment against the vacant Class-III posts.”


14. Another set of Appeals from **Jawanjal's** case was carried to the Hon'ble Supreme Court by those Unpaid Clerks who came to be appointed after 12.2.1987 and the Hon'ble Bombay High Court was pleased to hold that, they would be hit by the Rule of **Umadevi** (backdoor entrants). That was a set of Appeals led by **Civil Appeal No.4633/2007 (Yashwant A. More and others Vs. State of Maharashtra and others and other Civil Appeals dated 11<sup>th</sup> August, 2011)**. The Hon'ble Supreme Court allowed the Appeals and **Jawanjal's** order in so far as the appellants were concerned was set aside and directions were given to regularize the services of those appellants in the light of the GR dated 10.3.2005 and passed appropriate orders. It is quite clear, therefore that, all the Unpaid Workers who were before the Hon'ble High Court in **Jawanjal's** matter, ultimately got the relief of regularization.

15. The above discussion must, therefore, have made it very clear and this bears repetition that the Clause (d) of the final order of the Hon'ble Bombay High Court in **Jawanjal's** matter has not at all been disturbed by the Hon'ble Supreme Court, and therefore, that particular



Clause will have to be given effect to its entirety, and therefore, as I indicated above, though both the sides at the Bar made extensive references to the various GRs and tried to canvass their respective cases, it bears repetition that no GR can deviate from the mandate of the Hon'ble Constitutional Courts and that is more so because they claimed that they thereby wanted to effectuate the said directions. I am very clearly of the opinion that this controversy is capable of being resolved with the guidance of the Judgment of the Hon'ble Bombay High Court and the Hon'ble Supreme Court. Consequentially, therefore, the Applicants would be entitled to the service benefits with effect from 01.06.1996 including retiral benefits and the benefits of Time Bound Promotion exactly in the same way as per Clause (d) of the order of the Hon'ble Bombay High Court in **Jawanjal's** matter. The final order herein will be in the same line.

16. It is held and declared that the Applicants would be entitled for consequential benefits on par with similarly placed and already absorbed unpaid workers by the State Government in accordance with the GRs of 21.10.1995 and 22.10.1996. The Applicants would be entitled to all the consequential benefits which their counter parts earlier were entitled to including the retiral benefits and the



\_\_\_\_\_

benefits of Time Bound Promotion. It is recorded that the pay, increments have already been given to them. The Respondents are directed to comply herewith within a period of four months from today. The Original Application is allowed in these terms with no order as to costs.

~

Sd/-

**(R.B. Malik)**  
**Member-J**  
**09.08.2017**

09-08-17

Mumbai

Date : 09.08.2017

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2017\8 August, 2017\O.A.1134.16.w.8.2017.Retirement Benefits.doc