

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO 1265 OF 2013

DISTRICT : RATNAGIRI

Shri Rajendra S/o Moreshwar Kashelkar)
Occ : Service as Orthotic-cum-Prosthetic)
Technician, working in the office of the)
Civil Surgeon, Ratnagiri,)
Dist-Ratnagiri 415 639.)...Applicant

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400 032.)
2. The Director of Health Services,)
St. Georges Hospital Compound,)
Near C.S.T Station, Mumbai.)
3. The Joint Director of Health Services)
[Malaria], Pune.)

4. The Deputy Director of Health
Services, Mumbai Circle, Thane.
Dist-Thane.
5. The Civil Surgeon,
District Civil Hospital, Ratnagiri,
Dist-Ratnagiri.)...**Respondents**

Shri V.P Potbhare, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 03.02.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

... Heard Shri V.P Potbhare, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents

... This Original Application has been filed by the Applicant, who was appointed as Orthotic-cum-Prosthetic Technician (O.P.T) by order dated 18.2.1994 on ad hoc basis for a period of 29 days. He was given

further ad hoc appointments of short duration, till he was appointed on regular basis by order dated 30.4.1997. The Applicant is seeking condonation of technical breaks in service prior to his regular appointment and to count that service for getting service benefits.

3. Learned Counsel for the Applicant argued that the Applicant was initially appointed as O.P.T on ad hoc basis for a period of 29 days by order dated 18.2.1994. He joined service on 26.2.1994. He was continued in service by giving short technical breaks till was regularly appointed by order dated 30.4.1997 and joined on regular basis w.e.f 1.5.1997. The Applicant submitted a large number of representations to the Respondents that his service from 26.2.1994 to 30.4.1997 may be regularized and technical breaks may be condoned. However, no reply has been received. The representation of the Applicant was forwarded by the Respondent no. 4 on 8.4.2013 to the Respondent no. 3, who has raised certain queries. The Respondents have, however, not decided the representation. Learned Counsel for the Applicant contended that in the circumstances, the Applicant was required to file the present Original Application. Learned Counsel for the Applicant stated that the Applicant has rendered almost continuous service before his service was regularized and therefore, past service, may be counted as regular service by

condoning technical breaks. Learned Counsel for the Applicant cited the judgments of this Tribunal dated 4.3.2013 in O.A no 1284 of 2009 and other O.As, where in similar circumstances, condonation of technical breaks was granted ~~to~~, ^{to} inter alia Associate Professors in Government Medical Colleges. Learned Counsel for the Applicant also relied on the judgment of the Hon. Bombay High Court in W.P no 2046/2010.

Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant has joined Government service on 1.5.1997. Before that the Applicant was working on ad hoc basis from 26.2.1994 to 30.4.1997. However, the Applicant was given ad hoc appointments for short periods with breaks in between various spells. The ad hoc appointments were not on the basis of selection by the Regional Selection Board. In fact the Applicant was a back door entrant. From the appointment letters placed on record by the Applicant himself, it is clear that he was not selected by following due procedure and many later appointments were due to orders of the Labour Court. Learned Presenting Officer argued that the judgment of the Nagpur Bench of Hon. Bombay High Court in W.P 2046/2010 was for teachers who were selected in a proper selection procedure (though not as per recruitment rules). The judgment cannot be applied to the facts of the present case.

5. Learned Presenting Officer contended that the Applicant has not cited any rule or G.R which will entitle him to regularize his past service before he was given regular appointment w.e.f 1.5.1997. Only in the rejoinder, he has referred to Rule 30 and 48 of the Maharashtra Civil Services (Pension) Rules, 1982. However, those rules are not applicable in the present case. The Applicant has relied on the judgment of this Tribunal dated 4.3.2013 in a group of O.As no 1284 of 2009 etc. There also, the past service before regular appointment through MPSC were not ordered to be counted for all service benefits. Only for the purpose of annual increments and earned leave, the past service was ordered to be counted after condoning technical breaks. Learned Presenting Officer argued that there is no merit in this Original Application and it may be dismissed.


6. We find that the Applicant is seeking benefit of service for the period from 26.2.1994 to 30.4.1997 after condonation of breaks. The Applicant has placed appointment orders for this period on record. First order is dated 18.2.1994, which has been issued for 29 days. From this order, it does not appear that the Applicant was selected through Regional Selection Board. The Applicant has also not claimed that his appointment was made after following proper procedure till he was selected by the Konkan Regional Subordinate Services Selection


Board. A copy of the selection letter by the Board dated 4.1.1997 is at Exhibit 'C' (p. 33 of the Paper Book). The Applicant was appointed on regular basis by order dated 30.4.1997 and joined on 1.5.1997. All earlier appointments were without following proper procedure and he was obviously a back door entrant. Such services, cannot be counted for grant of service benefits. Judgment of Hon'ble High Court in W.P no 2046/2010 is not applicable in the present case, as the petitioners in that Writ Petition were selected through a selection process in which all eligible candidates could have participated. Hon'ble High Court held that they were not back door entrants. However, for the period from 26.2.1994 to 30.4.1997, the Applicant was undoubtedly a back door entrant.

In the affidavit in rejoinder dated 8.8.2014, the Applicant claims that after his regular selection, his past service can be counted in terms of Rule 30 and 48 of the Maharashtra Civil Services (Pension) Rules, 1982. Rule 48 is regarding condonation of interruption in service, while Rule 30 is regarding commencement of qualifying service. The qualifying service under this rule means service on appointment on regular basis. The Applicant was appointed on regular basis w.e.f 1.5.1997. The ad hoc service prior to that cannot be counted as commencement of qualifying service. Even under Rule 33, only temporary service after proper selection

procedure, can be counted. In short, the Applicant cannot be held eligible to count his service before regularization for pensionary purpose. It is true that this Tribunal in O.A no 1284 of 2009 and other O.As have granted condonation of technical breaks, annual increments and earned leave for the period of service before regular appointment. The Applicant is, therefore, eligible for these benefits and nothing more.

8. Having regard to the aforesaid facts and circumstances of the case, the Respondents are directed to consider the case of the Applicant for condoning technical breaks and grant benefit of annual increments and earned leave for the period from 26.2.1994 to 30.4.1997. This Original Application is allowed in above terms with no order as to costs.


(R.B. Malik)
Member (J)

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(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 03.02.2016
Dictation taken by : A.K. Nair.