

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.149 OF 2019

DISTRICT : MUMBAI

Sub.:- TBP/ACPS

1. Shri Shivaji S. Suryawanshi.)
Age : 65 Yrs, retired as Block Development)
Officer (Higher Grade), Panchayat Samiti)
Murbad and residing at 28/B/33, Hill Rock)
CHS, Swatantrya Sainik Nagar, Amboli)
Hill, Andheri (W), Mumbai – 400 058.)
2. Shri Ghanshyam M. Jadhav.)
Age : 62 Yrs, retired as Deputy Chief)
Executive Officer (General Administration))
Ratnagiri Zilla Parishad and residing at)
C-105, Indalnagar, Shindoli, Belgaum,)
Karnataka – 591 124.)
3. Shri Sharad R. Wadekar.)
Age : 62 Yrs, retired as Deputy Chief)
Executive Officer (General Administration))
Raigad Zilla Parishad and residing at)
11, Sankalpsiddhi CHS, Subhash Road,)
Kumbharkhanpada, Dombivli (W),)
District : Thane – 421 202.)...Applicants

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Rural Development Department,)
Having its office at Bandhkam)
Bhavan, 25, Marzban Path, Fort,)
Mumbai – 400 001.)
2. The State of Maharashtra.)
Through Additional Chief Secretary,)
Finance Department, Having its office at)
Mantralaya, Mumbai – 400 032.)
3. The State of Maharashtra.)
Through Additional Chief Secretary,)
General Administration Department,)

Having its office at Mantralaya,)
Mumbai – 400 032.)

4. Accountant General (Accounts &)
Entitlement), Maharashtra, having its)
Office at 2nd Floor, Paratishtha Bhavan,)
New Marine Lines, Maharshi Karve Road,)
Mumbai – 400 020.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicants.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 26.04.2023

JUDGMENT

1. The Applicants have challenged the communication dated 06.06.2018 issued by Respondent No.1 thereby rejecting their claim for the benefit of Assured Career Progression Scheme (ACPS), invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicants joined Government service as Block Development Officer (Group-B) in the year 1986-1987. Later, the Government by order dated 22.08.1995 promoted them to the post of BDO (Group-A) under the nomenclature of temporary promotion. Thereafter, in 2000-2001, they were regularly promoted to the post of BDO (Group-A). Later in 2009, they were given Selection Grade in the pay scale of Rs.15600-39100 with Grade Pay 6600. They retired in between 2012-2014.

3. Following Chart would show the details of date of joining, date of temporary promotion, regular promotion, date of retirement, etc.

Sr. No.	Particulars	Petitioner No.1	Petitioner No.2	Petitioner No.3
1	Name	S.S. Suryawanshi	G.M. Jadhav	S.R. Wadekar
2	Date of Birth	16.01.1954	31.08.1956	30.11.1956
3	Date of joining service	12.11.1986	15.05.1987	19.11.1986
4	Date of first Ad-hoc Promotion	22.08.1995	22.08.1995	22.08.1995
5	Regular Promotion	01.01.2000	01.01.2000	01.01.2001
6	Date of Selection Grade	10.08.2009	10.08.2009	10.08.2009
7	Date of Retirement	31.01.2012	31.08.2014	30.11.2014

4. The Applicants then made representations on 08.02.2017, 17.02.2017 and 22.02.2017 claiming the benefit of ACP Scheme from 2007 *inter-alia* contending that from 1995, they worked on promotional post upto 2007 for 12 years, and therefore, were entitled to the benefit of ACP Scheme. However, they were given Selection Grade belatedly on 2009 which caused financial loss to them, since they were deprived of the benefit of ACP Scheme though rendered 12 years' service on the post of BDO (Group-A). The representations, however, rejected by impugned order dated 06.06.2018 on the ground that the G.R. dated 7th October, 2016 issued by the Government for considering temporary service for ACP Scheme benefit is restricted to Group-C employees only and not applicable to Group-A Government servants. The Applicants have challenged the communication dated 06.06.2018 in the present OA.

5. The Respondents resisted the OA by filing Affidavit-in-reply solely on the ground that the promotion given to the Applicants in 1995 to the post of BDO (Group-A) was temporary promotion and they were regularly promoted in 2000-2001 only, and therefore, have not completed 12 years' regular service in the cadre of BDO (Group-A).

6. Shri M.D. Lonkar, learned Advocate for the Applicant sought to assail the impugned communication dated 06.06.2018 *inter-alia* contending that the stand taken by the Respondents that temporary service cannot be counted for the benefit of TBP Scheme/ACP Scheme is

totally unsustainable in view of settled legal position that temporary and ad-hoc service rendered by Government servant also deserves to be counted for the benefit of TBP Scheme/ACP Scheme. He has further pointed out that this issue is no more *res-integra* in view of various decisions rendered by the Tribunal and confirmed by Hon'ble High Court. In this behalf, he referred to the decision of Hon'ble High Court rendered in **Writ Petition No.9051/2013 [State of Maharashtra Vs. Meena A. Kuwalekar] decided on 28.04.2016** with other connected Writ Petitions. Those Writ Petitions were filed by the Government challenging decisions rendered by this Tribunal directing Government to count temporary ad-hoc service rendered by Group-C employees for the benefit of TBP Scheme/ACP Scheme. Hon'ble High Court dismissed the Writ Petitions and upheld the decision rendered by the Tribunal. Shri M.D. Lonkar, learned Advocate for the Applicants, therefore, submits that same principle would apply in the present case and service rendered by the Applicant as temporary promotion from 1995 deserves to be counted for the benefit of ACP Scheme.

7. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned communication *inter-alia* contending that in 1995, Applicants were promoted as temporary promotion as BDO (Group-A) and they got regular promotion in 2000-2001 only. Therefore, the period of temporary promotion from 1995 to 2000-2001 cannot be counted for the benefit of ACP Scheme. He further submits that in deference to decision rendered by Hon'ble High Court in **Meena Kuwalekar's** case (cited supra), the Government had issued G.R. dated 07.10.2016 complying the directions and it is restricted to Group-C employee only. He, therefore, submits that Applicants being Group-A Officers, they are not entitled to the benefit of ACP Scheme.

8. In view of submissions, the issue posed for consideration is whether Applicants temporary promotions service period from 1995 could be considered for the grant of benefit of ACP Scheme.

9. Indeed, by impugned communication dated 06.06.2018, Applicants' claim is rejected solely on the ground that in terms of G.R. dated 07.10.2016, the benefit of ACPS is not applicable to Group 'A' Government servants. However, in Affidavit-in-reply, it is contended that the period from 1995 rendered as a temporary promotion cannot be counted for the benefit of ACPS. According to Respondents, there has to be regular service of 12 years' in a post.

10. Indisputably, Applicants were promoted as BDO (Group 'A') under the nomenclature of temporary promotion by order dated 22.08.1995 and later regular promotion orders were issued in 2000-2001. Later, they were given selection grade since 10.08.2009. In the first place, no reason whatsoever is forthcoming as to why Applicants were given temporary promotion in 1995. There is absolutely no dispute about Applicants' eligibility to the promotional post as well as availability of promotional post. This being so, that time itself, Applicants ought to have promoted as a regular promotion. Therefore, their entire service for the post of BDO (Grade 'A') from the date of temporary promotion ought to have been counted for the benefit of ACPS, since admittedly, Applicants have completed 12 years' on that post in 2007, if counted from 1995. If Respondents' contention that temporary promotion period cannot be counted for ACPS, then it would amount to wash-out their service rendered from 1995 to 2001. The Applicants were discharging all duties and obligations attached to the post of BDO (Grade 'A'), since date of temporary promotion 1995 and it has to be construed as regular service for the benefit of ACPS.

11. The issue of consideration of service rendered as an *ad-hoc* or temporary employee is no more *res-integra* in view of decision of Hon'ble Bombay High Court in **Meena Kuwalekar's** case (cited supra). Hon'ble Bombay High Court held that the services rendered by the employee from the date of initial appointment though on *ad-hoc* or temporary basis is required to be considered while extending the benefit of TBP/ACPS. As

such, same judicial principle would apply in a case where Government servant was promoted under the nomenclature of temporary promotion and has rendered 12 years' service on that post. Otherwise, it would permit the executive to defeat the object of ACPS and to exploit the services of Government servants on the pretext of temporary promotion. Such a method of issuance of temporary promotion orders would defeat the claim of Government servant under ACPS to which he is otherwise entitled and it cannot be countenanced. Suffice to say, the contention raised by the Respondents that Applicants' service period before regularization of promotion cannot be counted for the benefit of ACPS is totally misconceived and fallacious.

12. Now let us see the ground mentioned in impugned order dated 06.06.2018 whereby the claim of Applicants is rejected solely on the ground that in terms of G.R. dated 07.10.2016, the benefit of ACPS are not applicable to Group 'A' Government servants.

13. Insofar as TBP Scheme is concerned, the Government for the first time introduced the scheme of TBP by its G.R. dated 08.06.1995 extending the benefit of twelve years' service to Group 'C' and Group 'D' employees. By the said G.R, policy decision was taken to extend the monetary benefits by giving pay and allowances of promotional post by way of non-functional promotion to a Government servant who rendered 12 years' service on the same post to avoid the frustration of Government servant because of stagnation. Later, Government issued G.R. dated 20.07.2001 to introduce new scheme as ACP Scheme and it is made applicable to Government servants in pay scale of Rs.8000-13500. As such, though initially by G.R. dated 08.06.1995, the benefit was available to Group 'C' and 'D' employees only, later having found that Central Government had implemented scheme known as ACP Scheme and Sukhtankar Committee had recommended for applicability of ACPS beyond Group 'C' and Group 'D' employee, policy decision was taken to implement ACPS in place of TBP Scheme and it is made applicable to

Government servants in pay scale of RS.8000-13500. The said scale of RS.8000-13500 was as per the then existing 5th Pay Commission which came into effect from 01.01.1996. Whereas later, 6th Pay Commission came into force w.e.f. 01.01.2006 and in terms of it, pay scales were enhanced. Notably, as per 6th Pay Commission, new pay scale to the post carrying pay scale of Rs.8000-13500 is made 15600-39100. In other words, in view of revision of pay corresponding pay scale to pay scale of Rs.8000-13500 in 6th Pay Commission was 15600-39100 with grade pay 5400.

14. Indeed, taking note of revised pay scale, the Government had issued G.R. dated 01.04.2010 in reference to G.R. dated 20.07.2001 and revised ACPS is made applicable w.e.f. 01.10.2006 to Government servants carrying pay scale of Rs.15600-39100 with grade pay 5400. Thus, as per this G.R, a Government servant who is in pay scale of Rs.15600-39100 with grade pay 5400 in terms of 6th Pay Commission at the time of issuance of G.R. dated 01.04.2010 would be entitled to ACPS. This being so, Respondents' contention that Applicants are not entitled to the benefit of ACPS is totally erroneous and unacceptable.

15. True, on the basis of decision of Hon'ble High Court in **Meena Kuwalekar's** case, for its implementation, the Government had issued G.R. dated 07.10.2016. While issuing G.R, the Government had taken following decision.

“प्रस्तावना महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील मंत्रालय तसेच बृहन्मुंबईतील राज्य शासनाच्या कार्यालयातील लिपिक वर्गीय, लघुलेखक संवर्गातील तसेच अन्य तत्सम संवर्गातील पदावर तात्पुरत्या स्वरूपात आयोगाच्या शिफारशी शिवाय नियुक्त झालेल्या कर्मचा-यांच्या सेवा सामान्य प्रशासन विभागाच्या समाईक आदेशाद्वारे आदेशाच्या दिनांकापासून नियमित झाल्या असल्या तरी त्यांच्या नियमित सेवेची १२ वर्षांची गणना करताना संबंधितांची तात्पुरती अखंडित सेवा देखील नियमित सेवेस जोडून त्यांच्या १२ वर्षांच्या नियमित सेवेची गणना करावी किंवा कसे ? त्याशिवाय आयोग पुरस्कृत उमेदवार म्हणून उपरोक्त पदावर नियमितरित्या नियुक्त झालेल्या कर्मचा-यांना तात्पुरती पदोन्नती मिळाल्यानंतर झालेली पदोन्नतीच्या पदावरील तात्पुरती अखंडित सेवा देखील १२ वर्षांच्या नियमित सेवेची गणना करताना विचारात घ्यावी किंवा कसे ? याबाबतचा प्रस्ताव काही काळ शासनाच्या विचाराधीन होता. सदर प्रकरणी सर्वकष विचार करून पुढीलप्रमाणे शासन निर्णय निर्गमित करण्यात येत आहे.

शासन निर्णय -

महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील मंत्रालयातील तसेच बृहन्मुंबईतील राज्य शासकीय कार्यालयात लिपिकवर्गीय संवर्ग तसेच अन्य संवर्गात महाराष्ट्र लोकसेवा आयोग अपुरस्कृत उमेदवार म्हणून नियुक्त झालेल्या व सामान्य प्रशासन विभागाच्या विविध शासन आदेशान्वये दिनांक ३१.३.१९९९ पर्यंत सेवा नियमित केलेल्या कर्मचा-यांची, सेवा नियमित झाल्याच्या दिनांकापूर्वीची, तात्पुरती अखंडित सेवा, तसेच महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवार म्हणून

मंत्रालय तसेच बृहन्मुंबईतील राज्य शासकीय कार्यालयात लिपिक संवर्गात अथवा अन्य तत्सम संवर्गात नियुक्त झालेल्या कर्मचा-यांची पदोन्नतीच्या कोट्यातील तात्पुरत्या पदोन्नतीची अखंडित सेवा देखील कालबद्ध पदोन्नती/सेवांतर्गत आश्वासित प्रगती योजना/सुधारित सेवांतर्गत आश्वासित प्रगती योजनेच्या प्रयोजनासाठी १२ वर्षांच्या नियमित सेवेची गणना करताना विचारात घेण्यात यावी. तसेच संबंधित कर्मचा-यांकडून संबंधित योजनेबाबतच्या अन्य अटीची पूर्तता झाल्यानंतर त्यांना अनुज्ञेय योजनेअंतर्गत यथास्थिती कालबद्ध पदोन्नती/सेवांतर्गत आश्वासित प्रगती योजना/सुधारित सेवांतर्गत आश्वासित प्रगती योजनेचा पहिला/दुसरा लाभ मंजूर करण्यात यावा.”

16. Adverting to aforesaid G.R, the learned Presenting Officer sought to contend that it is restricted to cadre of Clerk or equivalent to Clerk only and it is not applicable to Group ‘A’ Government servants. However, he seems to be oblivious of the fact that by G.R. dated 20.07.2001, the scheme of ACPS is made applicable to Government servants upto pay scale 8000-13500 which is corresponding to pay scale 15600-39100 with grade pay 5400 in 6th Pay Commission. As such, the entitlement to the benefit of ACPS has to be examined on the basis of pay scale of a Government servant in terms of G.R. dated 20.07.2001 as well as G.R. dated 01.04.2010. If the case of Government servant fits in this G.R, then he cannot be denied the benefit pointing out the G.R. dated 07.10.2016. In other words, in absence of any such specific mention of overriding effect in G.R. dated 07.10.2016, it cannot prevail over the G.R. dated 20.07.2001 as well as G.R. dated 01.04.2010. The Government seems to have been oblivious of the issuance of G.R. dated 20.07.2001 and 01.04.2010 whereby benefit of ACPS is made applicable to Government servant upto pay scale of Rs.8000-13500 which is corresponding to pay scale of Rs.15600-39100 with grade pay 5400 in 6th Pay Commission.

17. True, later in 2009, the Applicants were given Selection Grade in pay scale of Rs.15600-39100 with grade pay 6600. But that will not work against the Applicants since their entitlement was crystallized in 2007 when they have completed 12 years’ service in the cadre of BDO (Grade ‘A’).

18. It is thus explicit that Applicants are claiming first benefit under ACPS having completed 12 years’ service in 2007 by counting their

temporary promotion service. As such, the harmonious construction of G.Rs dated 20.07.2001 and 01.04.2010 leads to the conclusion that Applicants' case squarely falls in these two G.Rs and were entitled to the benefit of ACPS, but it was wrongly rejected by impugned communication dated 06.06.2018.

19. The totality of aforesaid discussion leads me to sum-up that the impugned communication dated 06.06.2018 denying the benefit of ACPS is totally arbitrary and bad in law. It is liable to be quashed and set aside. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) Impugned communication dated 06.06.2018 is quashed and set aside.
- (C) Respondents are directed to grant the benefit of ACP Scheme to the Applicants by counting their service from 1995 notionally for the benefit of pensionary benefits. They will not be entitled for monetary benefits except for retiral benefits and necessary orders to that effect be issued within six weeks from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 26.04.2023
Dictation taken by :
S.K. Wamanse.

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