

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.189/2011.

Dilip Marotrao Badwaik,
Aged about 44 years,
Occ-Service,
R/o D-15, Govt. Colony, Ravi Nagar Square,
Nagpur

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
State Excise Department,
Mantralaya, Mumbai-32.
2. The Commissioner of State Excise,
2nd floor, Old Customs House,
Fort, Mumbai-23.
3. The Divisional Deputy Commissioner,
State Excise, Nagpur Division, Nagpur.

Respondents.

Shri L.K. Khamborkar, the Ld. Advocate for the applicant.
Shri A.M. Ghogre, Ld. P.O. for the respondents.

**Coram:- B. Majumdar, Vice-Chairman and
Justice M.N. Gilani, Member (J).**

Dated:- 16th July, 2014.

Order

Per: Member (J)

The controversy involved in this O.A. is: regarding date of appointment of the applicant and the consequential seniority as per rules.

2. On 25.2.1991, the applicant joined the service of the respondent No.3 as Constable-cum-Driver on daily wage basis. In the year 1993, he came to be terminated from the service. Aggrieved by this order of termination/removal, he approached the Industrial Court. He did not succeed before the Industrial Court and, therefore, Writ Petition No. 2001/96 was filed before the High Court. On 15.4.1999, the High Court declared that he is entitled for permanency

benefits of the service w.e.f. 16.4.1996. Aggrieved by that, he preferred Letters Patent Appeal No. 74/1999. The same came to be dismissed on 6.1.2011. In the light of the judgment of the High Court, the respondent No.3 issued an appointment order (Annexure A-1) dated 29.7.1999. Besides narrating the history of appointment of the applicant, it is categorically stated that the appointment with the benefit of permanency is being given w.e.f. 16.4.1996. The applicant has grudge over this. According to him, it was not necessary to issue such fresh appointment order, since he was already appointed on 25.2.1991 and thus entitled for pensionary and other service benefits by counting his service with effect from that date i.e. from 25.2.1991.

3. The respondents submitted reply. There is no dispute over the factual matrix.

4. We have heard Shri L.K. Khamborkar, the learned counsel appearing for the applicant at length and Shri A.M. Ghogre, the learned P.O. for the respondents.

5. We are of the considered view that the issue raised in this O.A. has been already concluded by the decision rendered by the High Court in W.P.No.2001/96. For better appreciation, it is necessary to reproduce the prayer clause incorporated in the petition submitted before the High Court. It is as follows:

“The order dated 12th July 1996 passed by the learned Member of the Industrial Court, Nagpur in Misc. (ULPN) Application No. 33/96 be quashed granting all the permanency benefits to the petitioner together with the back wages from the date he became entitled to the benefits.

Alternatively, the order dated 16.4.1996 passed by the learned Member of the Industrial Court, Nagpur in (ULPN) No.698/93 be quashed granting

all the permanency benefits to the petitioner from the date he first completed continuous service of 240 days together with the back wages”.

6. Now let us see what relief the applicant was granted by the High Court. In para 2 of the order, the High Court observed that the applicant was appointed on daily wage basis and he continued even till today, of course, with necessary technical breaks. In para 7, it was observed thus:

“However, taking into consideration the period that has elapsed, it was stated before me that permanency benefit may be granted w.e.f. 16.6.1996 on which date the Industrial Court dismissed the complaint”.

In the last concluding para, the High Court stated thus:

“I am, therefore, satisfied that the orders passed by the Industrial Court in the complaint and in the review petition deserve to be quashed and the petitioner deserves to be granted permanency benefit which I am granting w.e.f. 16.4.1996. Petitioner is entitled to all the benefits of permanency with effect from the said date as per the prescribed scales of pay”.

7. The aforesaid findings, if read, in the light of the prayer clause, it appears that the writ petition was partly allowed. The relief to grant permanency, back wages from the earlier date, was turned down. It has been expressly granted w.e.f. 16.4.1996 and this has been abided by the respondent No.3 by issuing necessary order (Annexure A-1).

8. In that view of the matter, we find no substance in this O.A. The learned counsel for the applicant relied upon the decision in case of **Kiran Singh V/s Chaman Paswan in Appeal No.14/1953 (unreported decision) decided on 14.4.1954.** Para 6 of the judgment is relied upon. We fail to understand as to how this is germane to the controversy raised in the present case. Perhaps, it has been cited to counter the statement in the order (Annexure

A-1) to the effect that the officer who had initially appointed the applicant on 22.2.1991, did not have jurisdiction to do so. This issue is insignificant for the reason that the appointment was purely on casual basis. Apart from this, this issue stands concluded with the decision of the High Court. Rest of the prayers in the application, being based on the date of joining or the date since when the applicant is entitled for benefit of permanency, same having been concluded against the applicant, cannot be granted.

The O.A. is dismissed with no order as to costs.

(Justice M.N.Gilani)
Member (J)

(B.Majumdar)
Vice-Chairman

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