

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.19 OF 2015

1. Shri Suryakant Anant Kapase,)
Since deceased through his legal heirs)
(A) Smt. Shobha S. Kapase, wife,)
Address for Service of notice :)
994/995, "B" Ward, Ravivar Peth,)
Jain Galli, Padmavati Apartment,)
Kolhapur - 416 002)

2. Shri Laxman Bhimrao Chougule,)
Clerk in Revenue Department at)
Collector's office, Nagala Park,)
District : Kolhapur.)
Address for Service of notice :)
991, A-Ward, Kolhapur.)

3. Shri Liyakant Ayub Khan,)
Clerk in Revenue Department at)
Tahsil Office, Gadhinglaj,)
Dist. Kolhapur.)
Address for Service of notice :)
Devarale Building,)
Near Nana Nani Park, Opp. Water Tank,)
Gadhinglaj, Kolhapur.)

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4. Shri Laxman Ganu Patil,)
Clerk in Revenue Department at)
Tahsil Office, Gadhinglaj,)
Dist. Kolhapur)
Address for Service of notice :)
At & Post : Narewadi,)
Taluka Gadhinglaj, District Kolhapur)
5. Shri Hindurao Yashwant Patil,)
Clerk in Revenue Department,)
In the office of SDO, Ichalkaranji,)
District Kolhapur.)
Address for Service of notice :)
At Post Nigave Dumala, Taluka Karveer,)
District Kolhapur)
6. Shri Chandrakant Wamanrao Deshmukh)
Awal Karkoon in Revenue Department,)
At Collector's office, Supply Branch,)
Nagala Park, Kolhapur)
Address for Service of notice :)
1262/B, Mangalwar Peth, Khari Corner,)
Kolhapur)

7. Shri Hindurao Tukaram Chougule,)
 Clerk in Revenue Department at)
 Tahsil Office, Tal. Radhanagari,)
 Kolhapur.)
Address for Service of notice :)
 At Post : Shirgaon, Tal. : Radhanagari,)
 District : Kolhapur)
8. Shri Yashwant Raghunath Patil,)
 Clerk in Revenue Department,)
 At Collector's office, Supply Branch,)
 Nagala Park, Kolhapur)
Address for Service of notice :)
 At : Padili Khurd, Tal. : Karveer,)
 District : Kolhapur)
9. Shri Pandit Ishwara Shinde,)
 Clerk in Revenue Department at)
 District Resettlement Office,)
 Central Building, Kasaba Bawada,)
 Kolhapur)
Address for Service of notice :)
 At Darewadi, Post Porla, Tal : Panhala,)
 District : Kolhapur)



10. Shri Maruti Ramchandra Ardalkar,)
 Clerk in Revenue Department at)
 Collector's Office, Nagala Park,)
 Kolhapur)
Address for Service of notice :)
 R.S. No.19, Plot No.17, Dinde Nagar,)
 Panad, R.K. Nagar, Kolhapur)
11. Shri Bhikaji Rau Kamble,)
 Peon in Revenue Department at)
 Tahsildar Office, Shahuwadi, Kolhapur)
Address for Service of notice :)
 At Sasegaon, Post Shahuwadi, Kolhapur)
12. Shri Ramchandra Ravaji Patil,)
 Clerk in Revenue Department at)
 SLAO No.6, Juna Rajwada, Kolhapur)
Address for Service of notice :)
 At Post : Nigawe Dumala, Karveer,)
 District : Kolhapur)
13. Shri Suresh Ramchandra Khot,)
 Clerk in Revenue Department)
Address for Service of notice :)
 At Post : Jaysingpur, Shahunagar,)
 Tal. Shirol, District : Kolhapur) **...Applicants**

Versus

1. The District Collector,)
Kolhapur)
2. The State of Maharashtra,)
Through Additional Chief Secretary,)
(Revenue), Revenue & Forest)
Department, Mantralaya,)
Mumbai 400 032)
3. The Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032)

..Respondents

Ms. Lata Patne, learned Counsel for the Applicants.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 18.02.2016.



J U D G M E N T

1. Heard Ms. Lata Patne, learned Counsel for the Applicants and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This O.A. has been filed by the Applicants challenging communications / orders dated 14.03.2014 and 24.03.2014 issued by the Respondent Nos.2 & 1 respectively.

3. Learned Counsel for the Applicants argued that the Applicants were appointed as Clerks on the establishment of the Respondent No.1 as strike recruits as they had worked during the strike of Government servants in the year 1977-78. The State Government took a policy decision to absorb such temporary strike recruits in the Governments service. On 16.10.1984, the Applicants were given appointment as strike recruits. By Government Resolution (G.R.) dated 05.02.1990, the services of employees, who were in service on 18.06.1983 were regularized, even if they were not recruited on the recommendations of the selection boards, *inter alia*, if they were appointed from the list of strike recruits for 1977-78, maintained by Collectors. Learned Counsel for the Applicants argued that though the Applicants were strike recruits of 1977-78, they were given appointment after 18.06.1983. As a result, those candidates, who were appointed prior to 18.06.1983 were regularized, while the same benefit was not

extended to the Applicants. Learned Counsel for the Applicant argued that the G.R. dated 05.02.1990 has caused invidious and hostile discrimination to the Applicants. The Respondents have refused to condone breaks in their service of the Applicants. Learned Counsel for the Applicants argued that one Shri J.G. Mali was given the benefit of G.R. dated 05.02.1990 and break in his service were condoned. The same benefit is being denied to the Applicants, which is discriminatory. Learned Counsel for the Applicants argued that the Applicants are eligible to be granted condonation of breaks in service for pensionary purpose under Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicants have challenged order of the State Government (i.e. Respondent No.2) dated 14.03.2014 rejecting the request of the Applicants for condonation of breaks in service under Rule 48 (1) of M.C.S. (Pension) Rules, 1982. Accordingly, the Respondent No.1 by letter dated 24.03.2014 has communicated to the Applicants that their request for condonation of breaks in service has been rejected. Learned P.O. argued that the Applicants have not furnished any details of the period of breaks in service, which were sought to be condoned. They have also not claimed that they are, in fact, eligible to get breaks in service condoned as per Rule 48(1) of the M.C.S. (Pension) Rules, 1982 ^{nor} ~~as~~ explained as to how Rule 48(1) *ibid* when applied will entitle them for

condonation of breaks in service. In none of the judgments cited by the Applicants, this Tribunal gave simple directions to the Respondents to condone breaks in service of the Applicants. In all cases, only direction was to consider the cases of the Applicants in the light of provisions of M.C.S. (Pension), Rules, 1982. Cases of all the Applicants have been examined in consultation with the Finance and General Administration Departments of the State Government and the Applicants' cases have not been found to be eligible for condonation of breaks in service as per Rule 48(1) of Pension Rules. Learned P.O. argued that there is no challenge to the impugned order on merits. Some vague allegations are made that in one case, breaks were condoned, so in the case of all the Applicants, break in service may be condoned. Learned P.O. argued that Hon'ble Supreme Court has held in the case of **Chandigarh Administration Vs. Jagjit Singh 1995 AIR SC 705**, that the mere fact that the respondent authority has passed a particular order in the case of another period similarly situated can never be the ground for issuing a writ in favour of the Petitioner on the plea of discrimination. Learned P.O. argued that the present O.A. is devoid of merit and deserved to be dismissed.

5. I find that the Applicants have basically challenged the order of the Respondent No.2 dated 14.03.2014. The subject of this order is as follows :-



विषय :- मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई येथील मुळ अर्ज
क्र.५६६/२००७ मधील अवमान याचिका क्र.११९/२०१३ श्री.
एस. ए. कापसे व इतर विरुद्ध महाराष्ट्र शासन व इतर.

From this order, it is obvious that the Respondent No.1 has not found the request of the Applicants for condonation of breaks in service to be feasible under Rule 48(1) of the Maharashtra Civil Services (Pension) Rules, 1982. Order dated 02.05.2014 of this Tribunal in C.A.No.119 of 2013 in O.A.No.566 of 2007 reads :-

“In view thereof, the order of this Tribunal has been fully complied with. Nothing survives in the Contempt Application and stands disposed of accordingly.”

In O.A.No.566 of 2007 this Tribunal by order dated 14.07.2009 has passed the following order :-

“8. Accordingly, this Original Application is partly allowed and the Respondents are directed to consider the cases of the Applicants for condoning the breaks under Rule 48(1) of the Pension Rules for the purpose of pension only. There will be no order as to costs”.

In paragraph 7 of this order, it is mentioned that by order dated 13.02.2007, the Government has condoned breaks under Rule 48(1) of the Pension Rules in case of S/Shri Kalki, Shevale, Kiledar and Shinde. However, it is not

stated that order condoning breaks in service of these employees were issued in violation of Rule 48(1) of the Pension Rules. The period of breaks for these four persons was for 1988-89. However, the breaks could be condoned under the Rules in those cases. There is nothing on record, in so far as the Applicants are concerned, to show that the breaks in their service can be condoned under Rule 48(1). Merely seeking condonation in breaks in service is not sufficient. If the breaks in service of these four persons could be condoned under Rule 48(1), and the cases of the Applicants are not covered by this rule, there is no question of discrimination. No doubt this judgment of the Tribunal dated 14.07.2000 is upheld by Hon'ble Bombay High Court by judgment dated 11.11.2011 in Writ Petition No.8916 of 2011. Special Leave Petition No.3866 of 2013 against the order of Hon'ble High court was also dismissed by Hon'ble Supreme Court by order dated 18.02.2013. However, that order simply directed the Respondents to consider the cases of the Applicants in the light of Rule 48(1) of the Pension Rules. If their cases are not covered by this rule, there is no violation of that order of this Tribunal. Applicants have filed Writ Petition No.7871 of 2013 for implementation of order of this Tribunal dated 14.07.2009 in O.A.No.566 of 2007. The Writ Petition was disposed of to seek appropriate remedy before the Tribunal.

6. It seems that one Shri Jaykumar G. Mali, Clerk, in
Collectorate, Kolhapur had filed O.A.No.109 of 2003. The



order of this Tribunal in the aforesaid O.A. is not on record. Copy of order dated 11.06.2004 is Misc. Application No.187 of 2004 in a group of Original Applications including O.A.No.109 of 2003 is on record. It reads :-

“The Misc. Application is accordingly allowed. The correction in the Judgment be made accordingly. The Respondent Nos.2 & 3 do submit the cases of the Applicants to the Government within two months from the date of this order. The Respondent No.1 shall take appropriate decision within two months from the date of receipt of their proposal by it.”

Subsequently, the break in service of the Applicant in O.A.No.109 of 2013 were condoned by the Respondent No.1 by order dated 22.09.2006 in view of the order of this Tribunal dated 08.09.2006 in C.A.No.34 of 2006. In this order it is stated that :

“ज्याअर्थी, या आदेशासोबत जोडलेल्या पत्रकातील शिपाई कर्मचारी श्री. जे.जी. माळी, शिपाई यांनी रकाना नं.४ मध्ये दर्शविलेला सेवाखंड नियमित करून द्यावा म्हणून दाखल केलेल्या अनुक्रमे मुळे अर्ज क्र. १०९/२००३ मध्ये मा.महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई यांनी वर संदर्भ क्र.३ मध्ये नमुद केले आदेशाने मुळ अर्जदार हे वर क्र.२ मध्ये नमुद केले शासन निर्णयातील अटी व शर्ती पूर्ण करीत असलेमुळे त्यांचे सेवाखंड

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जोडून देण्यासंदर्भात निर्णय घेणेस प्रतिवादी क्र.३ जिल्हाधिकारी कोल्हापूर हे सक्षम असल्याने, त्यांनी निर्णय घेण्याबाबत निदेश दिले आहेत

This clearly shows that Shri Mali was found eligible for condonation of breaks in service by this Tribunal. The same cannot be said about any of the present Applicants.

7. All the judgments passed by this Tribunal, Hon'ble Bombay High Court and Hon'ble Supreme Court have been discussed and I am unable to find any direction that the Applicants are eligible for condonation of breaks in their services. This Tribunal has given directions only to consider the cases of the Applicants under Rule 48(1) of the Pension Rules for condonation of breaks in service. The Respondents have held that the cases of the Applicants are not covered by the aforesaid Rule. In the present O.A., the Applicants have not challenged the order of the Respondents on merits. The Applicants are claiming discrimination. It is seen that the case of Shri Mali, he was held eligible by this Tribunal. Other four persons were held eligible for condonation of breaks in service by the State Government as per Rule 48(1) of the Pension Rules. The question of discrimination, therefore, does not arise, when the Applicants are not found eligible for condonation of breaks in service under the Pension Rules.

8. The Applicants are challenging the orders dated 14.03.2014 and 24.03.2014 issued by the Respondent Nos.2

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and 1 respectively as these are against order of this Tribunal dated 14.07.2009 in O.A.No.566 of 2007. This issue has been examined at considerable length in the body of this judgment. The Applicants have not been able to show that the impugned orders are against the order of this Tribunal dated 14.07.2009. On the contrary, this Tribunal in C.A.No.119 of 2013 in O.A.No.566 of 2007 by order dated 02.05.2014 has held that orders of this Tribunal has been fully complied with.

9. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

Sd/-
(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 18.02.2016
Typed by : PRK