IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.263 OF 2019

DISTRICT : SANGLI

Shri Dhondiram Vithoba Kodag.)
Age : Adult, Occu.: Retired and residing at)
At & Post Avandi, Tal.: Jath,)
District : Sanglil.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Office of Principal)
Accountant General (Accounts &)
Entitlements)-I, Maharashtra,)
2nd Floor, Pratistha Bhavan,)
New Marine Lines, 101,)
Maharshi Karve Road,)
Mumbai – 400 020.)

2. The Divisional Forest Officer.)
Sangli, Forest Colony, Hanuman)
Nagar, MIDC front of Octriasi)
Kupwad, District : Sangli.) **...Respondents**

Mr. Makarand Kale a/w S.A. Kashid, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 30.09.2021

JUDGMENT

1. The Applicant has challenged the communication dated 21.11.2018 issued by Respondent No.2 thereby denying the pension to him on the ground that he has not completed minimum qualified service

of 10 years invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was appointed as Daily Wager w.e.f.01.06.1988 on the establishment of Respondent No.2 and was in continuous service. In the meantime, the Government of Maharashtra, Revenue & Forest Department has taken policy decision by issuance of G.R. dated 31.01.1996 to regularize the daily wagers who have completed five years' continuous service on 01.01.1994 and their services came to be regularized w.e.f.01.11.1994. In pursuance of the said decision, the Government had created 8038 supernumerary posts to accommodate those daily wagers who have completed five years' continuous service on 01.11.1994. Accordingly, the Applicant's service was also regularized by order dated 22.02.1996 (Page No.22 of Paper Book) and the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity) were made applicable to him. The Applicant thus continued in service and retired on 31.07.2003 on attaining the age of superannuation for Government service. He was paid terminal gratuity, GPF, retirement gratuity and leave encashment. However, pension has been denied on the ground that he has not completed minimum 10 years qualified service for grant of pension in terms of Rule 30 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity). The Applicant's service was counted w.e.f.01.01.1994 and he was found completed qualified service of 8 years and 4 months only.

3. The Applicant, initially, approached the Hon'ble High Court by filing Writ Petition No.11484/2017 for pension but he was allowed to withdraw the petition with liberty to approach the Tribunal to redress his service grievance by order dated 22nd June, 2018. Thereafter, the Applicant has filed O.A.No.615/2018 before this Tribunal along with application for condonation of delay (M.A.No.367/2018). Delay was

condoned. However, O.A.No.615/2018 was disposed of by order dated 21.08.2018 giving direction to Respondents to consider his request on merit. It is on this background, the Respondent No.2 by communication dated 21.11.2018 denied the claim of pension on the ground that the Applicant has completed 8 years, 4 months' service only, which is less than 10 years minimum requirement as qualified service for grant of pension, which is challenged by the Applicant by filing O.A.

4. The Respondent No.2 resisted the O.A. *inter-alia* contending that it is barred by limitation and secondly, the Applicant having not completed minimum tenure of service, he is not entitled to pension. According to Respondents, the Applicant's pensionable service comes to 8 years and 4 months since the date of regularization and his earlier service period cannot be counted as a qualified service for grant of pension.

5. Shri Makarand Kale, learned Advocate for the Applicant sought to assail the impugned communication *inter-alia* contending that Applicant's service as Daily Wager from 01.06.1988 was required to be considered for grant of pension but the same is excluded without any legal and valid reason. He submits that if service is counted from 01.06.1988, then Applicant's service comes to more than 10 years, and therefore, denial of pension is unsustainable in law. He has pointed out that in terms of Rule 30 of 'Pension Rules of 1982', even a temporary Government servant is entitled to pension and his service is required to be counted from the date of his first appointment. In this behalf, he referred the decision rendered by this Tribunal in **O.A.No.762/2017 (Subhash S. Shete Vs. The State of Maharashtra) decided with connected matters by order dated 08.11.2019** in which service of Applicants, who were appointed as Seasonal Godown Keepers, were ordered to be counted from their initial date of appointment and not from the date of regularization. He has further pointed out that the decision rendered by this Tribunal is based upon the decision rendered by Hon'ble High Court in **Writ Petition No.3690/2005 (Anant Tamboli Vs.**

Collector, Ratnagiri & Ors.) decided on 09.12.2006 and **Writ Petition No.7458/2010 (Devidas Borkar & Ors. Vs. State of Maharashtra) decided on 19.06.2011**. In addition to it, he has further pointed out that even as per Note 1 below Rule 57 of 'Pension Rules of 1982', the Applicant's one-half of his previous continuous service is required to be counted for pension.

6. Per contra, the learned Presenting Officer sought to support the impugned communication *inter-alia* contending that the Applicant was regularized w.e.f.01.01.1994, and therefore, his previous service cannot be counted for pension purpose. According to her, the previous service was on daily wages, and therefore, it has been rightly excluded while considering qualified service of the Applicant upto 31.07.2003 to which date, he has not completed 10 years for required service.

7. In so far as the issue of limitation is concerned, as stated above, the Applicant has initially approached the Hon'ble High Court by filing Writ Petition No.11484/2017 for retiral benefits but liberty was granted to withdraw the Petition to approach the Tribunal by order dated 22.06.2018. Thereafter, the Applicant has filed O.A.No.615/2018 along with application for condonation of delay, which was allowed by order dated 27.07.2018. Later, O.A.No.615/2018 was disposed of by order dated 21.08.2018 directing Respondents to consider his claim on its merit and pass suitable appropriate order. It is thereafter only, the Respondent No.2 has issued the impugned order dated 21.11.2018 holding the Applicant ineligible for pension on the ground that he has not completed minimum 10 years qualified service from the date of regularization. Admittedly, the order passed by the Tribunal condoning the delay has attained the finality. It is after the direction given by the Tribunal in O.A.No.516/2018 only, the impugned communication was issued denying the pension and O.A. is filed within one year from communication dated 22.11.2018. Suffice to say, the O.A. is within limitation.

8. The crux of the matter is whether Applicant's previous service from 01.06.1988 would have been considered for pension purpose and he is entitled to pension. Indisputably, the Applicant was initially appointed w.e.f.01.06.1988 on daily wages on the establishment of Respondent No.2 and in view of policy decision taken by the Government by G.R. dated 01.11.1996, the Applicant was regularized w.e.f.01.01.1994. By G.R. dated 31.01.1996, the Government had taken policy decision to regularize the services of those daily wages employees who have completed continuous 5 years' service on 01.11.1994, and accordingly, 8038 supernumerary posts were created. Consequently, the appointment order came to be issued on 22.02.1996 and MCS Rules were made applicable. True, if Applicant's service is counted from 01.11.1994 as regularized by G.R. dated 01.11.1996, the Applicant's service was less than 10 years in view of his retirement on 31.07.2003. However, material to note that admittedly, the Applicant was in continuous service though as daily wager from 01.06.1988, which was completely excluded from consideration.

9. In impugned communication, it is stated that in terms of Rule 30 of 'Pension Rules of 1982', the minimum 10 years' qualified service is required and Applicant's service comes only 8 years and 4 months from 01.11.1994 to 31.07.2003. The impugned order further reveals that for 154 days, the Applicant was unauthorized absence and it was treated as Extra-ordinary Leave and that period was also excluded from qualified service. Indeed, if the absence period is treated as Extra-ordinary Leave, it is required to be counted for pension purpose unless there is order of break in service. There is no such order of break in service.

10. At this juncture, it would be apposite to reproduce Rule 30 of 'Pension Rules of 1982', which is as under :-

> "**30. *Commencement of qualifying service*.-** *Subject to the provisions of these Rules qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity: Provided*

that at the time of retirement he shall hold substantively a permanent post in Government service or hold a suspended lien or certificate of permanency."

11. Apart, Rule 57 of 'Pension Rules of 1982' is also required to be considered, which is as under :-

"***57.*** *Non-pensionable service.- As exceptions to Rule 30, the following are not in pensionable service :-*

(a) Government servants who are paid for work done for Government but whose whole-time is not retained for the public service,

(b) Government servants who are not in receipt of pay but are remunerated by honoraria,

(c) Government servants who are paid from contingencies,

(d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable,

(e) Holders of all tenure posts in the Medical Department, whether private practice is allowed t them or not, when they do not have an active or suspended lien on any other permanent posts under Government.

Note1.- In case of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count for pension.

Note2.- In the case of persons who were holding the posts of Attendants prior to 1st April 1966, one-half of their previous continuous service as Attendants, shall be allowed to count for pension."

[underline supplied]

12. The interpretation of Rule 30 was the subject matter in Writ Petition No.3690/2005 (cited supra) wherein in the matter of appointment of Seasonal Godown Keepers, their initial service before the date of regularization has been ordered to be counted for pension purpose. It would be profitable to see findings and observations made by the Hon'ble High Court in Writ Petition No.3690 of 2005 while

allowing the claim of the Petitioners therein. The Hon'ble High Court in judgment dated 19.12.2006, in Paragraphs 4 & 5 dealt with the issue of Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 and rejected the contention advanced by the State Government. The relevant paragraph of Judgment in Writ Petition No.3690 of 2005 reads as under:-

> *"**4.** The learned Counsel for Petitioner has placed before us the Maharashtra Civil Service (Pension) Rules, 1982 and, in particular, Rule 30 thereof to support his case. We reproduce Rule 30 hereinbelow.*
>
> > *30. Commencement of qualifying service.- Subject to the provisions of these Rules qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity: Provided that at the time of retirement he shall hold substantively a permanent post in Government service or hold a suspended lien or certificate of permanency……."*
> >
> > *A bare perusal of this rule would indicate that if a government employee is holding a substantive post at the time of his retirement, his qualifying service shall be computed from the date of his first appointment either substantively or in an officiating capacity or temporary capacity. It is clear from the record that petitioners had been given temporary appointment as seasonal godown keepers and this fact has been recognized by the Tribunal as also by the respondents in their reply before us. In this view of the matter, we find that the entire period of service from the date of their joining would have to be counted for the purpose of computing their entitlement and quantum of pension.*
>
> ***5.** We accordingly allow this Petition and direct the respondents to make payment to petitioners in accordance with their qualifying service within a period of 6 months from today. Rule is made absolute accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs."*

13. Undisputedly, the judgment delivered in W.P.No.3690 of 2005 had attained finality and Hon'ble Supreme Court dismissed the SLP. As the Respondents have not complied with the directions given by the Hon'ble High Court, Contempt Petition No.57 of 2008 was filed before the Hon'ble High Court wherein having taken note of dilatory practice adopted by the Government directed to pay interest at the rate of 6% on the amount payable to them.

14. Again similar issue was cropped up in ***Writ Petition No.7458 of 2010 (Devdas B. Borkar & 2 Ors. Versus The State of Maharashtra & Anr.) decided by Hon'ble High Court on 19.07.2011.*** In this judgment the Hon'ble High Court referred its earlier decision in Writ Petition No.3690 of 2005 and expressed serious displeasure about findings of the Tribunal rejecting the claim of the Petitioner therein, though they were similarly situated persons. Here it would be apposite to reproduce the paragraph No.5, 6, 8, 10 and 11 of the judgment, which reads as below:-

> *"**5.** According to the petitioners, this decision was challenged by the respondents before the Apex Court by way of SLP. However, the same was dismissed on 3rd August, 2007. In other words, the view taken by the High Court has been upheld by the Apex Court. Besides, the petitioners also relied on another decision of the Maharashtra Administrative Tribunal, Mumbai in Original Application No.426/2006 decided on 16th March, 2007 in the case of **Shri Prabhakar Shankar Bagkar vs. The State of Maharashtra Anr.** in which similarly placed employee was granted relief after relying on the decision of the High Court referred to above. It is the case of the petitioners that the decision of this Court has attained finality and has been acted upon by the Department. Similarly, the decision in the case of **Shri Prabhakar Shankar Bagkar** of the Maharashtra Administrative Tribunal has also been accepted by the Department and has attained finality.*
>
> ***6.** Ordinarily, on the basis of this plea, the Tribunal ought to have allowed the Original Application filed by the petitioners. However, the Tribunal in the impugned Judgment has discarded the decision of this Court on the finding that the same does not refer to all aspects of the matter and the relevant decision and provisions were not brought to the notice of the High Court. The Tribunal has then relied on the decision of the Apex Court in the case of **Director General, Council of Scientific and Industrial Research vs. Dr.K.Narayanaswami & Ors. reported in AIR 1995 SC 2018** to justify its conclusion that the Government employees such as the petitioners are not entitled to get pension by taking into account their first date of appointment as Seasonal worker.*
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> ***8.** Having considered the rival submissions, at the outset, we may observe that the Tribunal has misdirected itself in taking the view that the decision of the Division Bench of this Court referred to above, cannot be relied upon, as it has not taken into account all the aspects of the matter. It is indisputable that the decision of the Division Bench of this Court interprets the purport of Rule 30 of the relevant Rules. The assumption of the Tribunal that the High Court has not adverted to all the relevant aspects, in our opinion, is inappropriate. Indeed, the Tribunal has adverted to other rules such as Rule 31(3), 33, and 38(1) to hold that it is necessary to keep in mind as to whether the concerned employee was in continuous service from the date of his initial appointment or whether there*

were interruptions from time to time. In the first place, the Tribunal was bound by the opinion of the Division Bench of the High Court which decision had attained finality on account of dismissal of SLP by the Supreme Court. In any case, the Tribunal was bound by another decision of the same Tribunal in the case of ***Shri Prabhakar Shankar Bagkar,*** *which is founded on the decision of the High Court. A coordinate bench of the Tribunal could not have departed from that binding precedent. In any case, the Tribunal misdirected itself on applying the principle of interruptions of service from time to time. What has been glossed over by the Tribunal is the purport of Rule 30, which makes no distinction between the first appointment either substantively or in officiating capacity or temporary capacity for the purpose of computing qualifying service. Understood thus, Rule 30 would encompass the services rendered by the Government employees even in the capacity of the temporary appointment as Seasonal Godown Keepers.*

10. *In the circumstances, we have no hesitation in taking the view that the Tribunal has completely misdirected itself in departing from the consistent view of the High Court as well as of the same Tribunal. The Tribunal has misdirected itself in placing reliance on the decision of the Apex Court which is in the context of an employee resigning from temporary service and being appointed in substantive post in another service.*

11. *In the circumstances, this Petition ought to succeed. The impugned Judgment and Order of the Tribunal is quashed and set-aside and instead, the Original Application filed by the petitioners is made absolute in terms of prayer clause (a) and (b), which reads thus :*

> *(a) to call for the record and proceeding pertaining to the communications dated 16/7/2009 and 27/8/2009 issued by respondent no.2 as per directions of res.no.1 and quash and set aside the same as being unjust, unfair, arbitrary and discriminatory and direct the respondents to extend the benefit or order of the Hon/High Court dated 19/12/2006 in Writ Petition No.3690 of 2005 to the applicants.*
>
> *(b) to hold and declare that the service rendered by the applicants as Seasonal Godown Keeper should be taken into consideration for the purposes of computing the entitlement and quantum of their pension and to direct the respondents to take into consideration the entire period of service rendered by the applicants from the date of their joining as Seasonal Godown Keeper for the purpose of computing their entitlement and quantum of pension of computing their entitlement and quantum of pension and issue appropriate orders at the earliest."*

15. As the Respondents-State Government have not complied with the directions given in Writ Petition No.7458 of 2010, Contempt Petition No.215 of 2012 was filed which was decided by the Hon'ble High Court

on 22.07.2013, wherein again the Hon'ble High Court frowned upon the indifferent attitude of the State Government and granted interest at the rate of 8% on the amount payable to the Petitioners.

16. Suffice to say, in view of interpretation of Rule 30 of 'Pension Rules of 1982' by Hon'ble High Court in Writ Petitions referred to above, the inevitable conclusion is that Applicant's previous service prior to regularization needs to be counted for qualifying service.

17. Apart, as per Note 1 below Rule 57 of 'Pension Rules of 1982' as reproduced above, even in case of employees paid from contingencies who are subsequently brought on regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count pension. In this behalf, in impugned order, the Respondent No.2 states that the said Note does not apply since Applicant was not paid from contingencies but was paid from other regular schemes. However, no material or document in this behalf are produced to substantiate as to from which fund, the Applicant was paid before regularization of his service. If one-half of previous continuous service has to be counted where employees are paid from contingencies, then I see no reason much less justifiable to deny the said benefit to the employee where he is paid from other regular schemes floated by the Department. As such, if one-half of the previous service is counted, in that event, the Applicant's pensionable service comes to more than 10 years which is minimum requirement for grant of pension.

18. As such, it would be highly iniquitous, harsh and unjust to deny the pension to the Applicant by refusing to count his previous service for pension purpose. This Tribunal is bound by the decision of Hon'ble High Court referred to above about the interpretation of Rule 30 of 'Pension Rules of 1982'. Admittedly, at the time of retirement, the post held by the Applicant was substantive permanent post in view of creation of supernumerary posts on pensionable establishment, which is the only

condition precedent for grant of pension where initial appointment is temporary.

19. The totality of aforesaid discussion leads me to conclude that the impugned communication dated 21.11.2018 is arbitrary and totally unsustainable in law. It is liable to be quashed. The Applicant's previous service is required to be counted for pension purpose. Hence, the order.

O R D E R

(A) The Original Application is allowed.

(B) The impugned communication dated 21.11.2018 is quashed and set aside.

(C) The Respondents are directed to count previous service of the Applicant for the purpose of pension and accordingly, pensionary benefits be released within three months from today.

(D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 30.09.2021
Dictation taken by :
S.K. Wamanse.
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