

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.365 OF 2018

DISTRICT : SOLAPUR

Shri Bhalchandra R. Shinde.)
Age : 58 Yrs., Occu.: Junior Clerk,)
Government I.T.I, Akluj, Tal.: Malshiras,)
District Solapur and residing at B-11,)
Shri Gajanan Sahgriha Sanstha, Harikrupa)
Nagar, Market Yard, Baramati, Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Skill Development & Entrepreneurship)
Department, Mantralaya, Mumbai 32.)
2. Government of Maharashtra.)
Through Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai – 400 032.)
3. Treasury Officer.)
Pay Verification Unit, having office at)
in the Collector Office,)
District : Pune.)
4. Joint Director.)
Vocational Education & Training,)
Regional Office, Ghode Road, Pune – 5.)...**Respondents**

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

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

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

DATE : **28.03.2019**

JUDGMENT

1. In the present Original Application, the Applicant has challenged the orders dated 21.07.2016 and 0408.2017 issued by Respondent Nos.3 & 4 respectively and to grant consequential service benefits 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 Applicant was appointed as Muster Assistant on Daily Wages under Employment Guarantee Scheme (E.G.S) on 01.01.1988 and continued to work on the same post till 08.04.1997. On 27.03.1997, he was absorbed as Class-IV employee in the office of Respondent No.4 in terms of G.R. dated 01.12.1995. Accordingly, the Applicant was placed in pay scale of Rs.750-12-870-15-940. Later in 2008, he was promoted to the rank of Junior Clerk. He was due to retire at the end of April, 2018. When service book was sent for Pay Verification Unit (PVU) by note dated 21.07.2016, it raised objection that the Applicant would be entitled to 5th Pay Commission benefit from 09.04.1997, and therefore, his pay on 09.04.1997 would have been 2550 (instead of 2720). The Principal, Government I.T.I, Akluj, District Solapur where the Applicant was serving by his letter dated 31.05.2017 addressed to Respondent No.4 clarified that, in terms of G.R. dated 21.04.1999, the pay of the Applicant Rs.2720/- which was getting at the time of absorption has been protected, and therefore, requested for appropriate orders in view of ensuing retirement of the Applicant due on 30.04.2018. The Applicant stands retired on 30.04.2018, but his pensionary benefits have been withheld due to objection raised by PVU. The Applicant,

therefore, approached this Tribunal contending that the objection of PVU is erroneous and prayed to grant consequential service benefits.

3. The Respondent Nos.3 and 4 resisted the application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant to the relief claimed. The basic defence revolved on the interpretation of G.R. dated 21.04.1999. The Respondents contend that, as per Clause 5 of G.R. dated 21.04.1999, the Muster Assistant working under EGS are not Government employees, and therefore, pay scale existing of date of absorption will be only applicable to them. The Respondents, therefore, sought to justify the objection raised by PVU.

4. Shri M.D. Lonkar, learned Advocate for the Applicant urged that the interpretation made by Respondents about G.R. dated 21.04.1999 is obviously erroneous and the Applicant has been deprived of getting retiral benefits for long time. He has pointed out that Clause No.4 of G.R. dated 21.04.1999 is quite clear and there is no scope of any other interpretation.

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer tried to justify the objection raised by PVU placing reliance on Clause No.5 of G.R. dated 21.04.1999. She also sought to place reliance on the Judgment rendered by this Tribunal in ***O.A.431/2007 (Narayan Dhekne Vs. State of Maharashtra) decided on 16.08.2010.***

6. Undisputedly, the Applicant was appointed as Muster Assistant on Daily Wages on 01.01.1988 and absorbed as Class-IV employee in regular Government service on 27.03.1997. He was absorbed in terms of G.R. dated 01.12.1995 in the pay scale of Rs.750-12-870-15-940. Later, the Government had issued another G.R. dated 21.04.1999 and Clause Nos. 4 & 5 of the G.R. are material for this purpose, which are as follows :

“४. हजेरी सहाय्यकांना शासकीय जिल्हापरिषद सेवेत सांभाळून घेतांना त्यांच्या वेतन निश्चितबाबत :

हजेरी सहाय्यकांना शासकीय जिल्हापरिषद सेवेत सामावून घेतांना तत्पूर्वी रु. ७५०-९४० या वेतनश्रेणीत जे वेतन ते देत असतील ते वेतन संरक्षित करण्यात येत आहे. किमान तेवढे वेतन लक्षात घेवून त्यांची वेतन विभक्ती शासकीय- जिल्हापरिषद सेवेतील ज्या पदावर त्यांना सामावून घेण्यात येणार आहे त्या पदासाठी करण्यात यावी.

५. हजेरी सहाय्यकांच्या सेवाशर्ती

रोजगार हमी योजनेवर कार्यरत असलेले हजेरी सहाय्यक हे शासकीय कर्मचारी नाहीत म्हणून त्यांना महाराष्ट्र नागरी सेवा नियम तसेच महाराष्ट्र शासनाच्या कर्मचा-यांना लागू असलेले सेवा नियम लागू नाहीत. त्यामुळे त्यांना पाचव्या वेतन आयोगाच्या सवलती लागू राहणार नाहीत.’’

7. The learned Advocate for the Applicant has produced the extract of service book which is taken on record and marked by letter 'X' for identification purpose to appreciate the controversy in proper perspective. The perusal of extract of service book reveals that on 01.12.1996, the Applicant was getting basic pay of Rs.2720 and on 01.10.1997, it was raised to 2780 in view of yearly increment. The date of absorption i.e. 27.03.1997 is material. As per Clause 4 of G.R, it is crystal clear that at the time of absorption of Muster Assistant, his pay which he was getting in pay scale of Rs.750-940 has been protected. This being the position, his basic pay at the time of absorption was Rs.2720 which was to be protected in clear terms of Clause No.4 of G.R.

8. However, the PVU raised objection that the Applicant would be entitled to the benefit of 5th Pay Commission only from 09.04.1997 and his basic pay would have been Rs.2550 which is obviously incorrect in the teeth of Clause 4 of G.R. dated 21.04.1999. It seems that PVU was of the view that the Applicant would be entitled to basis pay of Rs.2550 only in terms of 5th Pay Commission pay scale. In fact, the Principal, I.T.I, Akulj by his letter dated 31.05.2017 (Page 22 of P.B.) clarified the position that the Applicant's pay was Rs.2720 at the time of absorption in the pay scale of Rs.750-940, and therefore, it was protected in terms of Clause 4 of G.R. dated 21.04.1999. It also appears from the letter dated 31.05.2017 that it was brought to the notice of PVU in the camp held on 12.05.2017, but the PVU insisted for obtaining Government order.

9. The Respondents were much harping upon Clause 5 of G.R. dated 21.04.1999. True, as per Clause 5, the Muster Assistant working under EGS were not treated as Government servant, and therefore, not entitled to the pay scale recommended by 5th Pay Commission. Therefore, there could be no quarrel about Clause No.5 of G.R. dated 21.04.1999. However, it should be read along with Clause No.4 of the G.R. and one needs to have harmonious construction of both the Clauses. Clause No.5 of G.R. cannot be read in isolation. As reproduced above, the Clause No.4 of G.R. does not admit any doubt about the protection of pay which Muster Assistant getting at the time of their absorption in regular service.

10. As stated above, the Applicant was absorbed in Government service on 27.03.1997 and at the time of absorption, he was getting basic pay of Rs.2720 as evident from absorption order (Page No.18) as well as Extract of Service Book produced by the learned Advocate for the Applicant marked by letter 'X' for identification purpose. This being the position, the intention was to protect the pay which Muster Assistant was getting at the time of absorption and not to downgrade their pay after absorption. If the interpretation made by the Respondents is accepted, it would be degrading the pay of the Applicant from 2720 to 2550 which is not permissible in view of Clause 4 of G.R. dated 21.04.1999. I, therefore, see no substance in the defence raised by the Respondents in this behalf.

11. In so far as decision in O.A.No.431/2007 referred to above is concerned, it pertains to the claim for pensionary benefits in regard to the service rendered as a Muster Assistant. It is in that context, the Tribunal held that the Muster Assistant cannot claim the pensionary benefits with regard to the service rendered as Muster Assistant and the said period cannot be calculated for computing pensionary benefits as a Muster Assistant. In that case, the Applicant worked as Muster Assistant from 1992 to 2003 and was appointed as a Talathi in

2003 and retired in 2006. He approached the Tribunal for grant of pensionary benefits. It is in that context, the O.A. was dismissed. As such, the facts are totally distinguishable and the decision rendered therein has no relevance in the present case.

12. In the present matter, the issue relates to the protection of pay which the Applicant was getting at the time of absorption in Government service in terms of G.R. dated 21.04.1999. As stated above, there is no ambiguity or scope for interpretation of G.R. dated 21.04.1999 in the manner suggested by the Respondents as well as interpreted by PVU.

13. In so far as impugned communication dated 15.07.2006 is concerned, this seems to have issued by Under Secretary, Planning Department, State of Maharashtra addressed to Deputy Director, Pay and Accounts stating that Muster Assistant will be entitled to the pay scale only from the date of their absorption in service. This letter is contrary to Clause No.4 of G.R. dated 21.04.1999. Therefore, Clause 4 of G.R. will prevail and not communication dated 15.07.2006.

14. For the aforesaid discussion, I have no hesitation to sum-up that the impugned objection by communication dated 27.07.2016 and letter dated 15.07.2006 to the extent that Muster Assistant are applicable to the pay scale only from the date of his absorption is illegal. The O.A, therefore, deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned communication dated 27.07.2016 is set aside.

- (C) The impugned communication dated 15.07.2006 to the extent that Muster Assistant is entitled to the pay scale only from the date of absorption is unsustainable in law for the purposes of this matter.
- (D) The Respondents are directed to release retiral service benefits to the Applicants within two months from today.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 28.03.2019

Dictation taken by :

S.K. Wamanse.

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