

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.394 OF 2019

DISTRICT : MUMBAI

Smt. Houshi Hema Gaikwad.)
Since deceased through legal heir :)
Shri Chandar Hema Gaikwad.)
Age : 47 Yrs, Occu.: Nil, R/at : Navpada,)
Sanjay Gandhi National Park, Borivali (E),)
Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai.)
2. The Principal Chief Conservator of)
Forest, 3rd Floor, Van Bhavan,)
Ramgiri Road, Civil Lines, Near)
Police Gymkhana, CBI Colony,)
Nagpur - 440 001.)
3. The Chief Conservator of Forest &)
Director, Sanjay Gandhi National)
Park, Borivali (E), Mumbai.)
4. The Deputy Conservator of Forest.)
Sanjay Gandhi National Park,)
Borivali (E), Mumbai.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

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

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

DATE : 23.02.2021

JUDGMENT

1. The Applicants have sought direction to declare deceased Smt. Houshi Hema Gaikwad (Original Applicant) has absorbed on the post of Van Major in terms of G.R. dated 16.10.2012 and to grant pay and allowances with other consequential service benefits.

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

The O.A. was filed by Smt. Houshi Hema Gaikwad contending that she was appointed as Forest Labour (Van Major) on 03.02.1994 and had worked for more than 240 days in year in between 01.11.1994 to 30.06.2004 as contemplated in G.R. dated 16.10.2012 and entitled for absorption in terms of the said G.R. She worked continuously till her death i.e. upto 01.08.2019. In terms of G.R. dated 16.10.2012, the Government had taken decision to absorb Van Major in regular service who have worked at least for 240 days for five years in between 01.11.1994 to 30.06.2004 and accordingly, 5089 supernumerary posts were created. She contends that though she was eligible for absorption in terms of said G.R, her name remains to be included in the list due to sheer inadvertence and negligence on the part of Respondent No.4. She, therefore, made representation on 05.10.2012 claiming absorption in terms of G.R. dated 16.10.2012, but it is not responded. Unfortunately, she died during the pendency of O.A. on 01.06.2019 and her heir was brought on record for claiming service benefits of the deceased Applicant.

3. Respondent Nos.3 and 4 resisted the O.A. by filing Affidavit-in-reply denying that the deceased Applicant had worked for more than 240 days in terms of G.R. dated 16.10.2012 and was entitled for absorption.

4. Shri K.R. Jagdale, learned Advocate for the Applicant has pointed out that the record maintained by Respondents 3 and 4 itself establishes eligibility of the original Applicant for absorption in terms of G.R. dated

16.10.2012. In this behalf, he referred to the minutes of Committee dated 10.06.2013 headed by Chief Conservator of Forest and Director, Sanjay Gandhi National Park, Borivali, Mumbai, which is at Page Nos.17 and 18 of Paper Book as well as letter written by him dated 08.04.2013 (Page No.37 of P.B.). He, therefore, submits that the benefit of G.R. dated 16.10.2012 was wrongly denied to the Applicant.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer mainly focused on the letter dated 25.07.2013 issued by Shri R.K. Vasave, Divisional Forest Officer wherein it is stated that original Applicant had not worked for 240 days for five years in terms of G.R. dated 16.10.2012. On the basis of this letter, he sought to contend that O.A. is without any merit.

6. There is no denying that the original Applicant had worked as Van Majoor on the establishment of Respondents 3 and 4 in Sanjay Gandhi National Park, Borivali, Mumbai. Admittedly, the Government by G.R. dated 16.10.2012 had taken policy decision to absorb daily wages Van Majoor who have worked at least for 240 days continuously or with break for five years in between 01.11.1994 to 30.06.2004 by creating 5089 supernumerary posts. The contents of G.R. are material, which are as follows :-

“शासन निर्णय :-

याबाबत सविस्तर अभ्यास करून शासनास शिफारस करण्यासाठी अपर प्रधान मुख्य वनसंरक्षक (प्रशासन-दुय्यम संवर्ग), महाराष्ट्र राज्य, नागपूर यांच्या अध्यक्षतेखाली एक अभ्यास गटाची नियुक्ती करण्यात आली. सदर अभ्यास गटाने दिलेल्या अहवालानुसार वनविभागातील रोजंदारीवर काम करणा-या वनमजुरांची ५ वर्षांपेक्षा जास्त सेवा झालेल्या अशा वनविभागाचे ५०८९ सामाजिक वनीकरण विभागाचे ४५१ वन विकास महामंडळाचे १००६ अशा योजना/योजनेत्तर निधीतून दैनंदिन मजुरी घेणा-या व दिनांक १.११.१९९४ पासून दिनांक ३०.६.२००४ पर्यंत सलग पद्धतीने अथवा तुटक-तुटकरीत्या प्रतिवर्षी किमान २४० दिवस या प्रमाणे किमान ५ वर्षे काम केलेल्या दिनांक १.११.१९९४ पासून दिनांक ३०.०६.२००४ पर्यंत कार्यरत असणा-या एकूण ६५४० रोजंदारी मजुरांना दिनांक १.६.२०१२ पासून शासन सेवेत कायम करण्याचा निर्णय घेण्यात येत आहे. या निर्णयाच्या अनुषंगाने वनविभागातील ५०८९ रोजंदारी मजुरांना शासन सेवेत कायम करण्यासाठी ५०८९ अधिसंख्ये पदे निर्माण करण्यास शासन मंजुरी देत आहे.

१) वन विभागातील दि. १.११.१९९४ ते दि. ३०.०६.२००४ पर्यंत सलग पद्धतीने किंवा तुटक तुटकरीत्या प्रतिवर्षी किमान २४० दिवस याप्रमाणे किमान पाच वर्षे काम केलेल्या ५०८९ रोजंदारी कामगारांपैकी दि.१.६.२०१२ ला कामावर असण्यास पात्र ठरणा-या कामगारांना मंत्रिमंडळाच्या निर्णया प्रमाणे खालील अटी व शर्तीच्या अधीन राहून कायम करण्यात याव.

i त्यांना पूर्वीचे वेतन व तद्अनुषंगिक लाभ होणार नाही.

- ii त्यांना दि.१.६.२०१२ रोजी प्रचलित सेवानिवृत्ती वेतन व महाराष्ट्र नागरी सेवेच्या तरतुदी लागू राहतील.
- iii उपरोक्त ५०८९ रोजंदारी कामगारांना वरिष्ठता व पात्रतेचे निकष लावून कायम करण्यात यावे.
- iv उपरोक्त ५०८९ रोजंदारी कामगारांना कायम करण्यात यावे तथापि कुठलाही आर्थिक लाभ देण्यापूर्वी कायम करावयाचे सदर ५०८९ कामगारांची नावनिहाय व विभागनिहाय अंतिम यादी शासनास सादर करण्यात यावी.”

7. Since Applicant's name was not included in the said list of 5089 employees, she had made representation on 15.10.2012 (Page No.9) stating that she had worked for more than 240 days in a year in between 01.11.1994 to 30.06.2004 and requested for absorption in terms of G.R. dated 16.10.2012. In support of her contention, she had also filed minutes of meeting headed by Chief Conservator of Forest and Director, Sanjay Gandhi National Park dated 29.06.2013, which are at Page Nos.17 and 18 of P.B. What is important to note that there is clear mention in the minutes that the name of original Applicant was remained to be included in the list inadvertently though she had worked for more than 240 days for five years in terms of G.R. dated 16.10.2012. There is specific mention in the minutes that the Applicant was appointed w.e.f.01.11.1994. This date is crucial. The Attendance Sheet was also seems to have been placed before the meeting, which is at Page No.19 of P.B. It also clearly shows that the Applicant had worked for more than 240 days for five years in between 01.11.1994 to 30.06.2004. In minutes what is stated is as follows :-

“यापूर्वी श्रीमती हौशी गायकवाड यांचे नाव वनक्षेत्रपाल कृष्णगिरि उपवन बोरीवली यांचेकडून अनावधानाने यादीत समाविष्ट करता आले नाही त्यांचे वर्षवार कामाचे २४० दिवस सलग अथवा तुटकरित्या ५ वर्ष भरलेल्या प्रपत्राची छायांकित प्रत व अधीक्षक सिंहविहार यांचेकडील श्री. बाविस्कर यांचे वर्षवार कामाचे २४० दिवस सलग अथवा तुटकरित्या ५ वर्ष भरलेल्या प्रपत्राची छायांकित प्रत सोबत सादर केली आहे.”

8. It is thus explicit in view of minutes of the meeting dated 10.06.2013, which is supported by Muster Roll (Page No.19 of P.B.) original Applicant had worked for more than 240 days for the period of five years in between 01.11.1994 to 30.06.2004 in terms of G.R. dated 16.10.2012. On the basis of this decision taken in meeting dated 10.06.2013, the Respondent No.3 wrote letter dated 08.04.2013 to

Additional Principal Chief Conservator of Forest [Wildlife], Mumbai to issue necessary orders in this behalf.

9. It appears that subsequently, one another meeting was convened by Shri R.K. Vasave, Divisional Forest Officer on 22.07.2013 to consider the names of some additional Van Majoor for absorption in terms of G.R. dated 16.10.2012. In so far as the original Applicant is concerned, it appears that some Attendance Rolls were produced before the Committee and on the basis of it, the Committee observed that she had not worked for 240 days for five years. In Para No.2, the Committee observed as under :-

“२. श्रीमती हौशी हेमा गायकवाड - श्रीमती हौशी हेमा गायकवाड यांचे बाबतीत वनपरिक्षेत्र अधिकारी कृष्णगिरि उपवन बोरवली यांनी सादर केलेल्या दस्तावेजांवरून (हजेरीपट) खालीलप्रमाणे वर्षवार सलग अथवा तुटकरित्या प्रत्येक वर्षी २४० दिवस भरत नाही त्याचा तपशील खालील प्रमाणे आहे.

अ.क्र.	मजुराचे नाव	१.११.९७ ते ३१.१०.९८	१.११.९८ ते ३१.१०.९९	१.११.९९ ते ३१.१०.००	१.११.२००० ते ३१.१०. २००१	१.११.२००१ ते ३१.१०. २००२	१.११.२००२ ते ३१.१०. २००३	१.११.२००३ ते ३१.१०. २००४
१	श्रीमती हौशी हेमा गायकवाड	२८९	३१९	३१३	३१२	--	१३२	१७३

उपरोक्त वर्षवार दिवसाची तपासणी केली असता श्रीमती हौशी हेमा गायकवाड ह्या मजुराचे सलग अथवा तुटकरित्या प्रत्येक वर्षी २४० दिवस भरत असल्याची अट पूर्ण करित नसल्याने त्या अपात्र ठरत आहे.”

10. Thus, what transpires that on one hand, the higher authority viz. Chief Conservator of Forest and Director, Sanjay Gandhi National Park in meeting dated 10.06.2013 had examined the eligibility of the original Applicant and found that she had worked for more than 240 days in five years. It is further specifically stated that due to sheer inadvertence of Forester, the name of Applicant remained to be included in the list. This decision was based on Muster Sheet, which is at Page No.19 of P.B. which also establishes that the original Applicant had worked for more than 240 days for five years. As stated earlier, there is specific reference in minutes dated 10.06.2013 that the original Applicant had resumed the work w.e.f.01.11.1994. Whereas, in letter dated 25.07.2013, Shri R.K. Vasave, Divisional Forest Officer has counted the period of service of

the Applicant onward 1997-1998. It is thus explicit that the period prior to 1997-1998 was not at all considered by Shri R.K. Vasave, Divisional Forest Officer. He seems to have counted the period only on the basis of record produced before him. Indeed, he should have asked for attendance record of the period right from 01.11.1994 on which the Applicant was appointed. This being the position, the letter of Shri R.K. Vasave stating that the Applicant had not worked for 240 days is totally incorrect in view of the minutes of meeting dated 10.06.2013 convened by Chief Conservator of Forest and Director, Sanjay Gandhi National Park, which is at Page Nos.17 and 18 of P.B. as well as his independent letter dated 08.04.2013 (Page No.37 of P.B.) wherein he made request to Additional Chief Conservator of Forest (Wild-life), Mumbai (Page No.37 of P.B.) stating that the original Applicant had worked for more than 240 days for five years in between 01.11.1994 to 30.06.2004, but inadvertently, her name was not included in the list submitted by the Department. Unfortunately, despite the recommendation made by Chief Conservator of Forest, no further steps were taken to absorb the Applicant in terms of G.R. dated 16.10.2012.

11. As such, the letter dated 25.07.2013 issued by Shri R.K. Vasave, Divisional Forest Officer opining that the Applicant had not worked for 240 days is totally incorrect, since he has completely ignored and excluded the period of service of the Applicant from 01.01.1994 to 01.11.1997. Whereas, attendance record (Page No.19) clearly exhibits that the Applicant had worked for 240 days in 1994-1995 and 290 days in 1995-1996, which was not considered by Shri R.K. Vasave while computing working days of the original Applicant.

12. Indeed, letter dated 25.07.2013 issued by Shri R.K. Vasave, Divisional Forest Officer has been addressed to Respondent No.3 – Chief Conservator of Forest and Director, Sanjay Gandhi National Park, Borivali. As such, it is in the form of report to Respondent No.3 for

appropriate decision. However, till date, no such decision seems to have been taken.

13. As a matter of record, initially, the Respondent No.3 himself by his letter dated 08.04.2013 addressed to Additional Chief Conservator of Forest (Wildlife), Mumbai recommended for absorption of the Applicant having satisfied that she had worked for 240 days in five years in between 01.01.1994 to 30.06.2004. The said recommendations were based upon the Muster Roll/Attendance Record showing eligibility of the original Applicant for absorption in terms of G.R. dated 16.10.2012, but she has been deprived of getting legitimate benefits. Since, the original Applicant no more survives, her legal representative is entitled for the monetary benefits in accordance to Rules.

14. The totality of aforesaid discussion leads me to sum-up that the material on record clearly establishes eligibility of the original Applicant for absorption in terms of G.R. dated 16.10.2012. The O.A, therefore, deserves to be allowed partly. Hence, the following order.

ORDER

- (A) The Original Application is partly allowed.
- (B) The Respondent No.3 – Chief Conservator of Forest and Director, Sanjay Gandhi National Park, Borivali is directed to consider the issue of absorption of the original Applicant in terms of G.R. dated 16.10.2012 in the light of aforesaid discussion and shall provide consequential service benefits to the legal representative of original Applicant within a period of three months from today and the decision thereof shall be communicated to the Applicant within two weeks thereafter.

(C) No order as to costs.

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

Mumbai

Date : 23.02.2021

Dictation taken by :

S.K. Wamanse.

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