

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.462 OF 2021

DISTRICT : RATNAGIRI

Shri Rajendra M. Kashelkar.)
Age : 59 Yrs., Occu.: Retired as Orthotics)
and Prosthetics Technician from the office)
viz. District Government Hospital,)
Ratnagiri and R/o. 101, Sai Krupa CHS,)
Joglekar Colony, District : Ratnagiri.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Public Health Department having)
Office at G.T. Hospital Campus,)
Mantralaya, Mumbai – 400 001.)

2. The Deputy Registrar.)
Health Services, Kolhapur Circle,)
Kolhapur and having office at)
Central Administrative Building,)
Kasaba Bawada Road,)
Kolhapur – 3.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 10.03.2022

JUDGMENT

1. The Applicant has challenged the order passed by Government dated 24.12.2020 as well as order dated 05.01.2021 issued by

Respondent No.2 – Deputy Director, Health Services, Kolhapur invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was initially appointed as Orthotics and Prosthetics Technician purely on temporary basis from 26.02.1994. Thereafter, with intermittent breaks, he was again reappointed from time to time. Later, he came to be regularly appointed by order dated 30.04.1997 and joined on 01.05.1997. As such, initially, he was in temporary service with intermittent break from 26.02.1994 to 30.04.1997. In this period, he was actually in service for 560 days and there was break of total 600 days. He made representations to the Respondents to condone intermittent break in service and to treat the period from 26.02.1994 to 30.04.1997 as regular service for all consequential service benefits. Since representations were not responded within reasonable time, the Applicant had filed O.A.No.1265/2013 before this Tribunal. The Tribunal heard the matter on merit and by order dated 03.02.2016 directed the Respondents to consider the representation of the Applicant for condonation of break, grant of annual increments and earned leave, etc. for the period from 26.02.1994 to 30.04.1997. In pursuance of the said direction, initially, the Deputy Director Kolhapur by order dated 24.04.2019 passed order that the temporary service from 26.02.1994 to 15.02.1996 will be considered for the purposes of notional increments and earned leave. However, Director, Health Services, Pune referred the matter to the Government. In turn, the Government by order dated 24.12.2020 cancelled the order passed by Deputy Director, Kolhapur dated 24.04.2019 and also held that there being break in service for more than one year, it cannot be condoned and further rejected the proposal to extend the benefit of earned leave and notional increments. Thus, ultimately, the claim of Applicant for condonation of interruption and to treat temporary service as a regular service for service benefits

stands rejected. It is on the basis of order of Government, the Deputy Director, Kolhapur issued further communication dated 05.01.2021.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that Respondents ought to have given due consideration to the observations made by the Tribunal while deciding O.A.No.1265/2013 and secondly, once Deputy Director, Kolhapur has passed the order to count temporary service for notional increments and earned leave by order dated 24.04.2019, it ought not to have been reviewed by the Government. On this line of submission, he pleads that impugned order passed by the Government is bad in law.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer has pointed out that initial appointment of the Applicant from 26.02.1994 to 30.04.1997 was purely temporary service and it was marred with several interruptions and the period of interruption being more than one year, it cannot be condoned as specifically provided under Rule 48 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity). He, therefore, submits that initial order passed by Deputy Director, Kolhapur on 24.04.2019 was totally wrong and it is rightly cancelled by the Government by impugned order dated 24.12.2020.

5. In view of submissions advanced at the Bar, the issue posed for consideration is whether Applicant is entitled to count his initial temporary service period from 26.02.1994 to 30.04.1997 as regular service by condoning intermittent interruptions and the answer is in emphatic negative.

6. Indisputably, the initial appointment of the Applicant from 26.02.1994 to 30.04.1997 was purely temporary service and the appointment was made without following due process of law. Indeed, while deciding O.A.No.1265/2013, the Tribunal has categorically held

that the Applicant was not selected by due process of law and it was back-door entry. The Tribunal has rejected the contentions raised by the Applicant that he is entitled to service benefits in terms of Judgment of Hon'ble High Court in **Writ Petition No.2046/2010 [Sachin A. Dawale Vs. State of Maharashtra]**. In the said Writ Petition, the appointments of Lecturers who were selected by proper selection method were regularized. Para Nos.6, 7 and 8 of the Judgment of O.A.No.1265/2013 are relevant, which are as under :-

“6. We find that the Applicant is seeking benefit of service for the period from 26.2.1994 to 30.4.1997 after condonation of breaks. The Applicant has placed appointment orders for this period on record. First order is dated 18.2.1994, which has been issued for 29 days. From this order, it does not appear that the Applicant was selected through Regional Selection Board. The Applicant has also not claimed that his appointment was made after following proper procedure till he was selected by the Konkan Regional Subordinate Services Selection Board. A copy of the selection letter by the Board dated 4.1.1997 is at Exhibit 'C' (p. 33 of the Paper Book). The Applicant was appointed on regular basis by order dated 30.4.1997 and joined on 1.5.1997. All earlier appointments were without following proper procedure and he was obviously a back door entrant. Such services, cannot be counted for grant of service benefits. Judgment of Hon'ble High Court in W.P no 2046/2010 is not applicable in the present case, as the petitioners in that Writ Petition were selected through a selection process in which all eligible candidates could have participated. Hon'ble High Court held that they were not back door entrants. However, for the period from 26.2.1994 to 30.4.1997, the Applicant was undoubtedly a back door entrant.

7. In the affidavit in rejoinder dated 8.8.2014, the Applicant claims that after his regular selection, his past service can be counted in terms of Rule 30 and 48 of the Maharashtra Civil Services (Pension) Rules, 1982. Rule 48 is regarding condonation of interruption in service, while Rule 30 is regarding commencement of qualifying service. The qualifying service under this rule means service on appointment on regular basis. The Applicant was appointed on regular basis w.e.f 1.5.1997. The ad hoc service prior to that cannot be counted as commencement of qualifying service. Even under Rule 33, only temporary service after proper selection procedure can be counted. In short, the Applicant cannot be held eligible to count his service before regularization for pensionary purpose. It is true that this Tribunal in O.A no 1284 of 2009 and other O.As have granted condonation of technical breaks, annual increments and earned leave for the period of service before regular appointment. The Applicant is, therefore, eligible for these benefits and nothing more.

8. Having regard to the aforesaid facts and circumstances of the case, the Respondents are directed to consider the case of the Applicant for condoning technical breaks and grant benefit of annual increments and earned leave for the period from 26.2.1994 to 30.4.1997. This Original Application is allowed in above terms with no order as to costs.”

7. As such, there was no adjudication about the claim made by the Applicant on merit in O.A.No.1265/2013 and all that, directions were given to consider the representation of the Applicant. The last two sentences in Para No.7 of the order of Tribunal in O.A.No.1265/2013 reproduced above that “It is true that this Tribunal in O.A.No. 1284 of 2009 and other O.As have granted condonation of technical breaks, annual increments and earned leave for the period of service before regular appointment. The Applicant is, therefore, eligible for these benefits and nothing more” is much emphasized by learned Advocate for the Applicant to contend that the Tribunal held Applicant entitled for annual increments and earned leave in view of decision in O.A.No.1284/2009 is of no assistance to the Applicant, since it is not clear what were the facts in O.A.No.1284/2009. Secondly, interruption is of more than one year, that too, in temporary service, the relief of condonation of break and to treat the period from 26.02.1994 to 30.04.1997 cannot be granted.

8. Rule 48 of ‘Pension Rules 1982’ specifically provides that the period of interruption should not exceed one year. Furthermore, it is applicable to a regular Government servant. In regular service, there could be situation of interruption of one year, where it is caused by reasons beyond the control of the Government servant. Whereas, in the present case, it is explicit that Applicant’s entry in service was backdoor entry and with substantial break, he was again and again appointed purely on temporary basis. His total interruption period comes to 600 days as against total serving 560 days in the said period, as seen from impugned order dated 24.12.2020. The learned P.O. rightly referred to **2001(3) Mh.L.J. 333 [Gajanan B. Dubey Vs. Industrial Court, M.S, Amravati]** wherein delay in interruption of service being exceeding one

year held cannot be condoned in terms of Rule 48(i) of 'Pension Rules of 1982'.

9. The learned P.O. in reference to decision in **2021(6) Mh.L.J. 359 [Rekha A. Khandarae Vs. Bahuuddeshiya Shikshan Prasarak Mandal]** stated that review is creature of statute and authority i.e. Government cannot review the order passed by Deputy Director, Kolhapur dated 24.04.2019 unless power exists in law. True, the Deputy Director, Kolhapur by order dated 24.04.2019 passed order that service from 26.02.1994 to 30.04.1997 be considered for notional increments and earned leave. However, the Government by order dated 24.12.2020 cancelled the order dated 24.04.2019 stating that the competent authority for interruption of period for more than one year is Government. Admittedly, the competent authority is Government, and therefore, the order passed by Deputy Director, Kolhapur is *non-est* in the eye of law. The authority pressed into service is totally distinguishable and of no help to him.

10. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned order is devoid of merit and O.A. deserves to be dismissed. Hence, the order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 10.03.2022
Dictation taken by :
S.K. Wamanse.

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