

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.65 OF 2020

DISTRICT : NASHIK

Shri Siddharth P. Kapdne.)
Age : 62 Yrs., Occu.: Pensioner,)
R/o. Nandan Vally Apartment, Old)
Sayakheda Road, Opp. Of Echamani)
Jogging Track, Upnagar Nashik,)
District : Nashik.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department (Transport),)
Mantralaya, Mumbai – 400 032.)
2. The Commissioner of Transport,)
Office of Transport Commissioner,)
Administrative Building, 4th Floor,)
Government Colony, Bandra (E),)
Mumbai – 400 051.)
3. The Regional Transport Officer,)
Nashik Division, Nashik.)
4. Assistant Accountant General/)
Senior Accounts Officer,)
Office of Principal Accountant)
General (A & E)-I, Maharashtra,)
Mumbai.)...**Respondents**

Mr. S.B. Bhosale, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 16.02.2022

JUDGMENT

1. The Applicant has filed the present O.A. for direction to the Respondents to count his one-half service from total period of service done on the post of Sweeper w.e.f.04.07.1985 to 09.07.2004 for determination of pension invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

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

Respondent No.3 – Regional Transport Officer, Nashik Division by his order dated 30.08.1985 appointed the Applicant as Part-time Sweeper purely on temporary basis on salary of Rs.80/- p.m. at Border Checking Post, Palasner, District Dhule w.e.f. 04.07.1985. Accordingly, he rendered the services. Thereafter, he made various representations for grant of advancement in salary/remuneration, but in vain. Ultimately, he filed O.A.No.586/2002 before this Tribunal for regularization and absorption in the service as full time employee. The said O.A.No.586/2002 was resisted by Respondents *inter-alia* stating that there was no vacant post and Applicant was appointed Part-time purely on temporary basis and he has no such right to claim enhancement in wages. The Tribunal by order dated 11.06.2003 held that Applicant was entitled to at least remuneration of Rs.600/- p.m. or half of minimum wages payable to full time employee and direction was issued to the Respondents to take policy decision about absorption or continuation of the Applicant in service. Thereafter, Respondent No.3 – Divisional Transport Officer by order dated 09.07.2004 appointed Applicant as full time Sweeper on vacant post in the office of Assistant Regional Transport Officer, Malegaon in the pay scale of Rs.2550-55-3200 on pensionary establishment. The Applicant accepted the appointment and continued the service. He stands retired on 30.06.2017 on attaining age of superannuation. After retirement, the

Applicant made various representations to count his temporary service done from 04.07.1985 to 09.07.2004 for pension purposes. However, it was not responded. It is on this background, the Applicant has approached this Tribunal by filing the present O.A. claiming relief to count one half his service for pension purposes.

3. The Respondents resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that initial period of service from 04.07.1985 to 09.06.2004 cannot be considered or counted for the purposes of pension, since in that period, the Applicant was appointed temporarily as Part-time Sweeper on salary of Rs.80/- p.m. which was later increased to Rs.600/- p.m. in view of decision rendered by this Tribunal in O.A.No.586/2002. The Respondents thus contend that the said period of service cannot be counted as qualifying service for grant of pension and other consequential service benefits.

4. Shri S.B. Bhosale, learned Advocate for the Applicant sought to contend that one half service from temporary service done by the Applicant i.e. from 04.07.1985 to 09.07.2004 deserves to be counted for pension purpose in terms of Note No.1 of Rule 57 read with Rule 30 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity). In this behalf, he sought to place reliance on certain decisions, which will be referred during the course of discussion.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that the initial period of service was Part-time temporary service which cannot be counted for pension purposes. He has pointed out that later the Applicant was appointed on clear vacancy by order dated 09.07.2004 for the first time, and therefore, pensionary benefits are rightly granted considering his service from 09.07.2004 to 30.06.2017. Thus, according to him, Note No.1 of Rule 57 of 'Rules of 1982' have no application in the present situation.

6. In view of submissions advanced at the Bar, the issue posed for consideration is whether one-half of Applicant's previous temporary service can be counted for pension purposes.

7. Indisputably, as seen from initial appointment order dated 30.08.1985, the Applicant was appointed as Part-time Sweeper purely on temporary basis. The contents of appointment order dated 30.08.1985 are relevant, which are as under :-

“श्री सिद्धार्थ प्रभाकर कापडणीस रा.मु.पो. पळसनेर ता. शिरपूर जिल्हा धुळे यांची दि. ४.७.१९८५ पासून सीमा तपासणी नाका पळसनेर जिल्हा धुळे येथे अर्धवेळ सफाई कामगार म्हणून कायम पगार रु. ८०/- दरमहा प्रमाणे नेमणूक तात्पुरत्या स्वरूपात करण्यात येत आहे. श्री कापडणीस यांना वेळकाळी कामावरून कमी करण्यात येईल, याची त्यांनी नोंद घ्यावी.”

8. Since he was not getting enough salary, he filed O.A.No.586/2002 for absorption in regular service. The perusal of Judgment of O.A.No.586/2002 reveals that Respondents resisted the claim stating that Applicant was working Part-time as a purely temporary worker and not as full time Sweeper, since there was no necessity for full time worker nor there was any such vacant post of full time Sweeper. However, the Tribunal found that Applicant at least should get 600/- p.m. or half of minimum wages payable to full time employee and disposed of O.A. on 11.06.2003 with following directions.

“5. In view of the above, we direct as under :

1. The Respondents are directed to pay an amount of Rs.600/- per month to the applicant as salary from 1st of July, 2003 provided applicant presently works and continues to work as Part-Time Sweeper at the office at Hadakhed, Tq.Shirpur, Dist.Dhule.
2. The Respondents are directed to take a policy decision in respect of part time employees like the applicant about the proper salary that can be paid to them. This decision can be taken in the light of the relevant factors and earlier Government decisions on the said subject.
3. The respondents to consider the applicant along with others whenever any full time vacancy occurs under the offices of R.T.O, Nashik.
4. Disposed off accordingly.”

9. Thereafter, Respondent No.3 – Regional Transport Officer, Nashik by order dated 09.07.2004 appointed the Applicant on clear vacancy available in the office of Assistant Regional Transport Officer, Malegaon in pay scale of Rs.2550-55-2660-60-3200. Accordingly, the Applicant rendered service on clear vacancy in regular pay scale and stands retired w.e.f.30.06.2017. He is granted retiral benefits considering his regular service from 09.07.2004 to 30.04.2017.

10. Rule 30 and Rule 57 of 'Rules of 1982' as relied by learned Advocate for the Applicant are 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.”

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 to them or not, when they do not have an active or suspended lien on any other permanent posts under Government.

Note 1.- 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.

Note 2.- 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.”

11. Thus, the harmonious construction of Rule 30 read with Rule 57, particularly Note No.1 reveals that where employee is paid from contingencies who are subsequently brought on regular pensionable establishment by conversion of their post, in that event, one half of their previous continuous service shall be allowed to count for pension. In the present case also, initially, the Applicant was appointed by order dated 30.08.1985 as Part-time Sweeper and later, he was taken on regular establishment on vacant post as Full-time Worker by order dated 09.07.2005. It being the admitted position, Note No.1 of Rule 57 of ‘Rules of 1982’ as reproduced above is fully attracted and Applicant’s claim to count one half of his earlier temporary service has to be counted for pension purposes.

12. Indeed, the issue of counting one half of temporary service of employee who is paid from contingency and later brought on pensionable establishment and his entitlement to count one half of his previous temporary service for pension purpose is no more *res-integra* in view of various decisions referred by learned Advocate for the Applicant. In this behalf, reference may be made to **2005(3) Mh.L.J. 709 (Shivappa Bhujangappa Vs. State of Maharashtra)**. In that case, the Petitioner was appointed as Part-time Peon in Zilla Parishad and later, he was taken on regular cadre. The Hon’ble High Court held that in terms of Note No.1 of Rule 57, the Petitioner is entitled to count his one half of his previous service for pension purposes. In Para No.6, Hon’ble High Court held as under :-

“**6.** The only crux in the present matter as the Zilla Parishad authorities has rejected the claim of present petitioner relying on Note 2, however, considering the factual aspect from the present case as it is seen that the initial appointment order of the present petitioner as part time Peon is 24-7-1970; he continued as part time Peon till 10-7-1990 and thereafter by order dated 6-7-1990 the petitioner was taken on regular cadre in the pay

scale of Rs. 750-12-870-DR-14-940 by the Chief Executive Officer, Zilla Parishad. The order passed by the Chief Executive Officer, Zilla Parishad is also on record and the very wording of the said order safely makes it clear that the persons who are working as part time and salary being paid from contingency, those persons are being taken on regular cadre in class-4 and being fixed in the pay scale of Rs. 750-12-870-DR-14-940. After going through the order dated 7-7-1990 it can be said that it is the fresh order giving regular employment to the petitioner, however, as he was already worked as part time Peon and being paid from contingency the services being regularised in the pay scale in class-4 servant. We have gone through the Note 1 and Note 2 of Rule 57 and we find that the Zilla Parishad has wrongly applied Note 2 in the present matter while rejecting the claim of the petitioner to grant pension, as in fact in the present case, Note 1 of Rule 57 is applicable. Therefore, we find that the claim as set up by the present petitioner that he is entitled for pensionary benefits, is definitely justified.”

13. Reliance was also placed upon **2016(3) Mh.L.J. [Mukund B. Dhadkar Vs. State of Maharashtra & Ors.]**. In that case, the Petitioner worked as Part-time Librarian and thereafter, he was taken on regular establishment. He was held entitled to count one half of previous service for pensionable purpose in view of Note 1 of Rule 57 of ‘Rules of 1982’. This issue had again crop-up in **2017(6) Mh.L.J. [Mone R. Shriram Vs. State of Maharashtra & Ors.]**. In similar situation, the Hon’ble High Court held that half of part time service rendered by Petitioner has to be counted for pension purposes. In this authority, Hon’ble High Court confirmed its earlier view taken in **Shivappa Bhujangappa’s** case (cited supra).

14. As such, the issue of entitlement of Applicant for counting his one half previous temporary service for pension purposes is no more *res-integra* in view of consistent view taken by Hon’ble High Court in aforesaid decisions. It being binding precedent, Applicant’s claim cannot be defeated.

15. The learned Presenting Officer could not point out any other provision or decision contrary to the decisions referred to above. Despite various representations made by the Applicant, the Respondents did not consider his legitimate claim.

16. The totality of aforesaid discussion leads me to sum-up that Applicant is entitled to count his one half service rendered from 04.07.1985 to 09.07.2004 for pension purpose and O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondents are directed to count Applicant's one half service rendered on the post of Sweeper from 04.07.1985 to 09.07.2004 for pension purpose and accordingly, benefits be extended to him within two months from today.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 16.02.2022

Dictation taken by :

S.K. Wamanse.

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