

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.710 OF 2009 WITH
O.A.NO.711 OF 2009 WITH O.A.NO.714 OF 2009 WITH
O.A.NO.715 OF 2009 WITH O.A.NO.716 OF 2009 WITH
O.A.NO.167 OF 2010 WITH O.A.NO.168 OF 2010 WITH
O.A.NO.169 OF 2010 WITH O.A.NO.33 OF 2015 WITH
O.A.NO.34 OF 2015 WITH O.A.NO.35 OF 2015 WITH
O.A.NO.36 OF 2015 WITH O.A.NO.37 OF 2015 WITH
O.A.NO.38 OF 2015 WITH O.A.NO.56 OF 2015 WITH
O.A.NO.58 OF 2015 WITH O.A.NO.60 OF 2015**

(Subject : Declaration of qualifying service)

DISTRICT : CHANDRAPUR

1. ORIGINAL APPLICATION NO 710 OF 2009

Shri Pandhari G. Pradhan,)
R/o. Ruhi, Tah. Bramhapuri,)
District Chandrapur.)

...APPLICANT

VERSUS

1. The State of Maharashtra,)
Through Secretary,)
Department of E.G.S., Mantralaya,)
Mumbai.)
2. Commissioner, Nagpur Division,)
Nagpur.)
3. Collector, Chandrapur,)
District Chandrapur.)

). Respondents

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2. ORIGINAL APPLICATION NO 711 OF 2009

Shri Devidas Shriram Hajare,)..Applicant

VERSUS

The State of Maharashtra & Ors)Respondents.

3. ORIGINAL APPLICATION NO 714 OF 2009

Shri Moreshwar P. Naxulwar,)..Applicant

VERSUS

The State of Maharashtra & Ors)Respondents

4. ORIGINAL APPLICATION NO 715 OF 2009

Shri Vanraj Maniram Ramteke,)..Applicant

VERSUS

The State of Maharashtra & Ors)Respondents

5. ORIGINAL APPLICATION NO 716 OF 2009

Shri Narayan Laxman Ghongade,)..Applicant

VERSUS

The State of Maharashtra & Ors)Respondents

6. ORIGINAL APPLICATION NO 167 OF 2010

Shri Namdeo Dharmaji Burade,)..Applicant

VERSUS

The State of Maharashtra & Ors)Respondents

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7. ORIGINAL APPLICATION NO 168 OF 2010

Shri Bharat Zingar Raut,)..Applicant

VERSUS

The State of Maharashtra & Ors)Respondents

8. ORIGINAL APPLICATION NO 169 OF 2010

Shri Moreshwar K. Mukundwar,)..Applicant

VERSUS

The State of Maharashtra & Ors)Respondents

9. ORIGINAL APPLICATION NO 33 OF 2015

Shri Devidas D. Bhaware,)..Applicant

VERSUS

The State of Maharashtra & Ors)Respondents

Res 3:- Collector,
Washim

Res 4:- The CEO, ZP, Washim

Res 2:- Commissioner,
Amravati**10. ORIGINAL APPLICATION NO 34 OF 2015**

Shri Parasram Ramji Rathod,)..Applicant

VERSUS

The State of Maharashtra & Ors)Respondents

Res 3:- Collector,
Yavatmal

Res 4:- The CEO, ZP, Yavatmal

11. ORIGINAL APPLICATION NO 35 OF 2015

Shri Tulsiram G. Chavhan,)..Applicant

VERSUS

The State of Maharashtra & Ors)Respondents

Res 4:- The CEO, ZP, Yavatmal

Res 3:- Collector,
Yavatmal

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12. ORIGINAL APPLICATION NO 36 OF 2015

Shri Suresh M. Chaukhade,

)..Applicant

VERSUS

The State of Maharashtra & Ors

)Respondents

Res 3:- The collector, Yavatmal Res 4:- The Dy. Director, Bhujal Sanykshan & Vikas Yantana Amavati Res 5:- The Senior Geologist Bhujal Sanykshan & Vikas Yantana Pune

13. ORIGINAL APPLICATION NO 37 OF 2015

Shri Laxman N. Gudve,

)..Applicant

VERSUS

The State of Maharashtra & Ors

)Respondents

Res 3:- Commissioner, Amavati Res 4:- Collector, Yavatmal

14. ORIGINAL APPLICATION NO 38 OF 2015

Shri Ramesh M. Bagde,

)..Applicant

VERSUS

The State of Maharashtra & Ors

)Respondents

Res 2:- Commissioner, Amavati Res 3:- Collector, Yavatmal Res 4:- Dy. Director Water Resource & Development, Amavati

15. ORIGINAL APPLICATION NO 56 OF 2015

Shri Kawadu H. Mude,

)..Applicant

VERSUS

The State of Maharashtra & Ors

)Respondents

Res 2:- Commissioner, Amavati Res 3:- Collector, Yavatmal Res 4:- CEO, ZP, Yavatmal

16. ORIGINAL APPLICATION NO 58 OF 2015

Shri Sudhakar S. Mokalkar,

)..Applicant

VERSUS

The State of Maharashtra & Ors

)Respondents

Res 2:- Commissioner, Amavati

Res 3:- Collector, Akola

17. ORIGINAL APPLICATION NO 60 OF 2015

Shri Suresh R. Shirbhate,

)..Applicant

VERSUS

The State of Maharashtra & Ors

)Respondents

Res 2 :- Commissioner, Amravati
Res 3 :- Collector, Yavatmal

Shri G.G. Bade, learned Counsel for the Applicants.

Shri P.N. Warjurkar, learned Presenting Officer for Respondents 1 to 3 in O.A nos 710/2009 & 37/2015, Shri A.P. Potnis, learned Presenting Officer for the Respondents in O.A nos 711/2009, 35/2015 & 38/2015 Smt. S.V. Kolhe, learned Presenting Officer for the Respondents in O.A no 714/2009, Shri V.A Kulkarni, learned Presenting Officer for the Respondents in O.A nos 715/2009, 169/2010 and 36/2015, Shri S.A Sainis, learned Presenting Officer for the Respondents in O.A nos 716/2009 & 60/2015, Shri H.K Pande, learned Presenting Officer for the Respondents in O.A nos 167/2010, Respondent nos 1 to 3 in 33/2015 & 58/2015, Shri M.L Vairagade, learned advocate for Respondent no. 4 in O.A no 33/2015, Shri A.M Khadatkhar, learned Presenting Officer for the Respondents in O.A no 168/2010, Shri M.I Khan, learned Presenting Officer for the Respondents no 1 to 3, Shri A.D Girdekar, learned advocate for Respondent no. 4 in O.A no 34/2015, Shri M. Mourya, learned advocate for Respondent no. 4 in O.A 35/2015, Smt M.A Barabde, learned Presenting Officer for the Respondents no 1 to 3 and Shri P.A Kadu, learned advocate for Respondent no. 4 in O.A no 56/2015.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)**Shri J.D. Kulkarni (Member) (J)****DATE : 14-2-.2017.**

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PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri G.G. Bade, learned Counsel for the Applicants, Shri P.N. Warjurkar, learned Presenting Officer for Respondents 1 to 3 in O.A nos 710/2009 & 37/2015, Shri A.P. Potnis, learned Presenting Officer for the Respondents in O.A nos 711/2009, 35/2015 & 38/2015 Smt. S.V. Kolhe, learned Presenting Officer for the Respondents in O.A no 714/2009, Shri V.A Kulkarni, learned Presenting Officer for the Respondents in O.A nos 715/2009, 169/2010 and 36/2015, Shri S.A Sainis, learned Presenting Officer for the Respondents in O.A nos 716/2009 & 60/2015, Shri H.K Pande, learned Presenting Officer for the Respondents in O.A nos 167/2010, Respondent nos 1 to 3 in 33/2015 & 58/2015, Shri M.L Vairagude, learned advocate for Respondent no. 4 in O.A no 33/2015, Shri A.M Khadatkhar, learned Presenting Officer for the Respondents in O.A no 168/2010, Shri M.I Khan, learned Presenting Officer for the Respondents no 1 to 3, Shri A.D Girdekar, learned advocate for Respondent no. 4 in O.A no 34/2015, Shri M. Mourya, learned advocate for Respondent no. 4 in O.A 35/2015, Smt M.A Barabde, learned Presenting Officer for the Respondents no 1 to 3 and Shri P.A Kadu, learned advocate for Respondent no. 4 in O.A no 56/2015,

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are more or less identical.

3. Learned Advocate Shri G.G. Bade argued for the Applicant in O.A.No.710/2009 that the Applicant was initially appointed as Muster Assistant on 01.02.1980 and continue to work in that capacity with technical ~~breaks~~^{breaks}, till 13.01.1987. The Applicant worked as Muster Assistant continuously till his absorption in Class IV post at Thermal Power Station, Bhavarjani, at Chandrapur and subsequently, he joined in Class III post on 03.02.2004 in the office of Sub-Divisional Officer, Brahmapuri, Dist-Chandrapur. The Applicant retired on reaching the age of superannuation on 31.05.2009. He is, however, not being paid pension counting his earlier service as Muster Assistant. Learned Counsel for the Applicant argued that Hon'ble Bombay High Court in Writ Petition No.2946 of 1997 by judgment dated 19.07.2012 has held that Muster Assistants, who were granted status of permanency, will be eligible to count their past services as Muster Assistant for pensionary benefits. S.L.P. against this judgment was dismissed by Hon'ble Supreme Court. Learned Counsel for the Applicant argued that the Applicant is almost a similarly situated person and is eligible to get pensionary benefits.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that Aurangabad Bench of this Tribunal has decided this issued by judgment in O.A.No.76/2013. It was held that the judgment of Hon'ble High Court in Writ

Petition No.2946/1997 dated 19.07.2012 is applicable only to the petitioners in that Writ Petition. Other Muster Assistants absorbed in Government service, who did not file U.L.P.s before Industrial Court were not granted benefit of permanency. They are obviously not covered by the aforesaid judgment of Hon'ble High Court. Some other Muster Assistant, who were granted permanency by Industrial Court, were also held not eligible for counting past service before absorption in Government service as the judgment of Hon'ble High Court was held applicable to the Petitioners in that case only. Learned P.O. argued that by another judgment dated 20.10.2016, the Aurangabad Bench of this Tribunal in a group of O.A.Nos.28 of 2012 etc. has reaffirmed the same view.

5. We find that the ~~posts of~~ Muster Assistants were absorbed in Class III and Class IV posts in Government as per Government Resolution (G.R.) dated 01.12.1995. Subsequently, G.R. dated 21.04.1999 and circular dated 15.04.2009 were issued. G.R.s dated 01.12.1995 and 21.04.1999 and Circular dated 15.04.2009 have been held valid by Hon'ble Bombay High Court by judgment dated 16.07.2007 in Writ Petition No.619/2006. In this judgment Hon'ble High Court has held that:-

"12.The Learned A.G.P. pointed out that the Muster Assistants whose services were regularized from a particular date would get pension from the date of regularization of service. The State Government has taken

a clear stand the past period, of such Muster Assistants prior to the date of regularization would not be counted for the purpose of calculation of pension. We find that the stand adopted by the State was in tune with the Scheme framed by the State Government. Therefore Rule 33 of the Pension Rules would not be applicable to the facts of this case and the Scheme framed by the State Government.”

6. It is also seen that validity of G.R. dated 01.12.1995 was upheld by Hon'ble Supreme Court in S.L.P. (Civil) No.15664 of 1991 by judgment dated 02.12.1996.

Clause 5.2 of this G.R. dated 01.12.1995 states that :-

“5.2 हजेरी सहाय्यकांना सध्या मिळत असलेल्या वेतनश्रेणी व्यतिरिक्त शासकीय कर्मचा-यांना मिळणारे लाभ अथवा इतर सोयी सवलती अनुज्ञेय राहणार नाही व ते शासकीय कर्मचारी म्हणून ओळखले जाणार नाहीत.”

This G.R has been upheld by Hon'ble Supreme Court. There is no question of considering past service as Muster Assistant for pensionary purpose.

7. This issue was again considered by Hon'ble Supreme Court when the judgment of Hon'ble High Court dated 20.12.2001 in Writ Petition No.954 of 1990 was considered in S.L.P. (Civil) No. 5171 of 2003. Hon'ble Supreme Court did not approve the order of Hon'ble High Court to absorb all Muster Assistant w.e.f 31.03.1997 and ordered that they be absorbed gradually on the available vacancies in accordance with seniority and roster.

8. This Tribunal (Aurangabad Bench) by judgment, dated 10.06.2010 in O.A.No.578/2008 has held that the Muster Assistants were not recognized as Govt. servant till their absorption in the Government. Accordingly, their past service before absorption in Government service cannot be counted for pensionary benefits.

9. The judgment dated 21.10.2016 in the group of O.A.s No.28 of 2012 etc. delivered by the Aurangabad Bench of this Tribunal after considering all earlier judgments of this Tribunal, judgments of Hon'ble High Court and Hon'ble Supreme Court. There is no reason for us to take any different view here.

10. Facts in other Original Applications in this Group of O.A.s are more or less identical and a common order can be passed to dispose them of.

11. Having regard to the aforesaid facts and circumstances, these O.A.s are dismissed with no order as to costs.


(J.D KULKARNI)
Member (J)


(RAJIV AGARWAL)
Vice-Chairman

Place : Nagpur

Date : 14-2-2017. *RH*

Typed by : PRK