

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NOS.762 to 766 OF 2017
WITH
ORIGINAL APPLICATION NOS.1012 & 1013 OF 2016**

DISTRICT : RATNAGIRI

ORIGINAL APPLICATION NO.762 OF 2017

Subhash Sitaram Shete,)
Aged : 69 years, Occu.: Retired,)
Residing at Ajay Apartment,)
Room No.5, Sahyadri Nagar, Sadavali,)
Tal. Sangameshwar, Dist.: Ratnagiri.)...**Applicant**

Versus

1. The State of Maharashtra,)
Through the Department of Food,)
Civil Supplies and Consumer)
Protection, Mantralaya, Mumbai.)
2. The Collector,)
District : Ratnagiri.)
3. Tahsildar (Revenue),)
Collector Officer, Dist. : Ratnagiri.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.763 OF 2017

Omprakash Madanlal Laddha,)
Aged : 64 years, Occu.: Retired,)
Residing at Khed, Gujar Ali, Som Niwas,)
Tal. Khed, Dist.: Ratnagiri.)...**Applicant**

Versus

1. The State of Maharashtra & Ors.)...**Respondents**

WITH**ORIGINAL APPLICATION NO.764 OF 2017**

Jaysing Ramchandra Sawant,)
Aged : 70 years, Occu.: Retired,)
Residing at Tal. Sangameshwar, Ramtek,)
District : Ratnagiri.)...**Applicant**

Versus

1. The State of Maharashtra & Ors.)...**Respondents**

WITH**ORIGINAL APPLICATION NO.765 OF 2017**

Arvind Gopal Rajwade,)
Aged : 70 years, Occu.: Retired,)
Residing at Devrukhh, Tal. Sangameshwar,)
Near Matru Mandir,)
Madhali Ali, Dist.: Ratnagiri.)...**Applicant**

Versus

1. The State of Maharashtra & Ors.)...**Respondents**

**WITH
ORIGINAL APPLICATION NO.766 OF 2017**

Balkrishna Dattatray Kadam,)
 Aged : 70 years, Occu.: Retired,)
 Residing at Post Miradpur,)
 Tal. Chiplun, District : Ratnagiri.)...**Applicant**

Versus

1. The State of Maharashtra & Ors.)...**Respondents**

**WITH
ORIGINAL APPLICATION NO.1012 OF 2016**

Shri Shivram Sambhaji Mirgal,)
 Aged : 60 years, residing at Pag,)
 Tal. Chiplun, District : Ratnagiri.)...**Applicant**

Versus

1. Government of Maharashtra,)
 Through Principal Secretary,)
 Food, Civil Supplies and Consumer,)
 Protection Department, Mantralaya,)
 Mumbai - 400 032.)

2. Collector,)
 District : Ratnagiri.)...**Respondents**

**WITH
ORIGINAL APPLICATION NO.1013 OF 2016**

1. Shri Deepak Yashwant Warang,)
 Aged : 68 years, retired Clerk,)
 Residing at House No.3678, Bandar)
 Road, Mandvi, Taluka and)
 District : Ratnagiri.)

2. Shri Kalyan Seetaram Shridhankar,)

Aged about 65 years, retired Clerk,)
 Residing at House No.385,)
 Jakimirya, Talekar Wadi,)
 Navaldevi Chowk,)
 Tal. and District : Ratnagiri.)...**Applicants**

Versus

1. Government of Maharashtra & Anr.)...**Respondents**

Mrs. P.B. Walimbe, Advocate for Applicants in O.A.Nos.762 to 766/2017

Mr. M.D. Lonkar, Advocate for Applicants in O.A.Nos.1012 & 1013/2016

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 08.11.2019

JUDGMENT

1. In all these Original Applications, the Applicants have challenged the impugned orders whereby the Respondents refused to condone the break in service and thereby totally neglected earlier period of service rendered by them before regularization. As all these O.As are arising from common issues, it is decided by common Judgment.

2. All these Applicants were temporarily appointed in between 1969 to 1975 as Seasonal Godown Keepers. After initial appointment, they were discontinued for some period and again appointed from time to time with breaks. The Government by Resolution dated 5th February, 1990 regularized their services. Accordingly, their services were regularized from different dates in terms of G.R. dated

05.02.1990. They continued in service and retired on attaining age of superannuation. After retirement, the pension was granted ignoring their earlier period of service i.e. the service rendered by them before regularization of their services. Resultantly, they got less pension as substantial part of their service was ignored. The Applicants, therefore, made representation for counting their earlier service, which came to be rejected by the Government. The grounds on which representation is rejected will be dealt with during the course of discussion. Being aggrieved by it, the Applicants have filed the present O.As.

3. The following Chart would indicate the details of their service.

O.A.Nos.	Party Names	Date of Joining	Govt. Resolution	Date of Regularization	Date of Retirement	Impugned Order
762/17	Subhash S. Shete	29.3.1971	5.2.1990	23.7.1992	30.4.2006	7.3.2017
763/17	Omprakash M. Laddha	26.4.1973	5.2.1990	22.7.1993	28.2.2011	22.3.2017
764/17	Jaysing R. Sawant	17.3.1970	5.2.1990	2.2.1993	31.5.2005	7.3.2017
765/17	Arvind G. Rajwade	17.3.1969	7.4.1986	1.5.1986	1.3.2005	7.3.2017
766/17	Balkrishna D. Kadam	4.5.1970	5.2.1990	24.7.1992	31.5.2006	25.3.2010
1012/16	Shivram S. Mirgal	23.4.1974	5.2.1990	23.10.1992	30.9.2013	14.10.2014
1013/16	Deepak Y. Warang	2.4.1973	5.2.1990	22.7.1992	30.6.2006	10.9.2014
1013/16	Kalyan S. Shridhankar	1.6.1975	5.2.1990	30.10.1992	31.5.2009	10.9.2014

4. The Applicants contend that in view of the decision rendered by Hon'ble High Court in ***Writ Petition No.3690 of 2005 (Anant Tamboli Vs. Collector, Ratnagiri and Ors.) decided on 19th December, 2006*** and in ***Writ Petition No.7458 of 2010 (Devidas Borkar, Anant Sinkar and Pramod Talathi Vs. State of Maharashtra) decided on 19th June, 2011*** as well as the decision rendered by this Tribunal in ***O.A.No.426/2006 (Prabhakar Bhapkar Vs. State of Maharashtra) decided on 16th March, 2007***. They being similarly situated persons are entitled to count their earlier

service for pension purpose. They further contend that their cases are also covered by the subsequent G.R. dated 24.01.2000 issued by the Government whereby the services of another similarly situated persons were regularized.

5. The Respondents resisted the application by filing Affidavit-in-reply thereby inter-alia denying the entitlement of the Applicants to the relief claimed. The Respondents contend that the benefits of G.R. dated 24.01.2000 cannot be extended to the Applicants, as it is restricted to the employees whose names are figured in the said G.R. for the regularization from the date of initial appointment. As regard decisions of Hon'ble High Court in Writ Petition No.3690/2005 and Writ Petition No.7458/2010 of Hon'ble High Court, the Respondents contend that it is applicable only to the Petitioners who were parties to those Writ Petitions and it cannot be made applicable to the present Petitioners being Judgment in *personam*.

6. Mrs. Walimbe and Shri Lonkar, learned Advocates appearing for the Applicants vehemently urged that in view of decision of Hon'ble High Court in Writ Petition No.3690/2005 and Writ Petition No.7458/2010, the Applicants being exactly similarly situated persons are entitled to the relief claimed. They have further pointed out that the Applicants' services are regularized in terms of G.R. dated 05.02.1990, and therefore, there is no question of applicability of G.R. dated 24.01.2000 referred by the Respondents. They have further pointed out that, though the Applicants have tendered long service prior to date of regularization, their substantive part of service is ignored and thereby severe injustice is caused to them by grant of less pension. The sum and substance of the submission is that, on the ground of parity and well settled principle in service jurisprudence, the Applicants are entitled to the relief granted to their contemporary in terms of decision in Writ Petition No.3690/2005 and Writ Petition No. 7458/2010.

7. Per contra, Ms. N.G. Gohad, learned P.O. was harping upon the applicability of G.R. dated 24.01.2000 contending that the benefits are applicable only to those employees whose names are figured in G.R. dated 24.01.2000, and therefore, the Applicants are not entitled to the relief claimed. In this behalf, she further submits that similar situation was posed for consideration in earlier **O.A.No.88/2016 (Sakharam Ambekar Vs. State of Maharashtra) decided by this Tribunal on 18th January, 2016** as well as in **O.A.No.274/2014 (Shri B.S. Bhogale Vs. Collector, Sindhudurg) decided on 07.10.2015** wherein the claim of the Applicants therein whose names were not figured in G.R. dated 24.01.2000 was dismissed. At this juncture itself, it is necessary to make it clear that those decisions have been challenged by the Petitioners therein by filing Writ Petition before Hon'ble High Court and the same are subjudice.

8. At the very outset, it needs to be stated that there is absolutely no dispute about the date of initial appointment of the Applicants on the post of Seasonal Godown Keeper as described above in the Para in Chart No.3 of the Judgment. Besides, indisputably, the services of the Applicants were regularized in terms of G.R. dated 05.02.1990 and G.R. dated 07.04.1986 in so far as the Applicant in O.A.765/2017 is concerned. The Applicants have given details of their service rendered from time to time with breaks before their services were regularized in terms of G.R. dated 05.02.1990 and 07.04.1986.

9. Here, let us see the duration of their service rendered prior to regularization with break in service, which is tabulated in the following Chart.

O.A.Nos.	Name of Applicant	Total service rendered from time to time	Total period of breaks
762/2017	Shri S.S. Dhete	12 years, 2 months, 16 days	9 years, 4 months, 18 days

763/2017	Shri O.M. Laddha	11 years, 10 months, 25 days	8 years, 2 months, 2 days
764/2017	Shri J.R. Sawant	12 years, 12 months, 7 days	9 years, 4 months, 17 days
765/2017	Shri A.G. Rajwade	8 years, 11 months, 24 days	5 years, 1 month, 23 days
766/2017	Shri B.D. Kadam	15 years, 1 month, 17 days	9 years, 14 days
1012/2016	Shri S.S. Mirgal	10 years, 10 months, 4 days	7 years, 8 months, 1 day
1013/2016	Shri D.Y. Warang & Shri K.S. Shirdhankar	11 years, 1 month, 25 days 9 years, 11 months, 16 days	7 years, 8 months, 23 days 7 years, 4 months, 19 days

It is an obvious that the substantial portion of service ranging from 8 years to 12 years have been totally excluded from the consideration for computation of pension due to break in their service. This break into service happened due to break given by the Respondents and not because of any fault on the part of Applicants. Consequently, it resulted into grant of less pension.

10. Now, let us see the ground of rejection of the representations made by the Applicants. In so far as O.A.Nos.762 to 766 of 2017 are concerned, the representation was rejected on two grounds. Firstly, the benefit of regularization in terms of G.R. dated 24.01.2000 is applicable only to the persons whose services were regularized in terms of said G.R. and secondly, the break in service of the Applicants cannot be condoned in the light of Rules 33 and 48 of M.C.S. (Pension) Rules, 1982. Whereas, in O.A. Nos.1012 & 1013 of 2010, the representation was rejected solely on the ground that the decision in Writ Petition No.3690/2005 is applicable only to the Petitioners therein and it cannot be made applicable to the present Applicants.

11. As stated above, material to note that the services of the present Applicants are regularized in terms of G.R. dated 05.02.1990 and 07.04.1986 and not in terms of G.R. dated 24.01.2000. Indeed, it is

explicit that the G.R. dated 24.01.2000 was restricted to exempt age limit and fulfillment of educational qualification and it was pertaining to another set of Godown Keepers whose names are figured in the list attached to G.R. dated 24.01.2000. Whereas, in the present case, the Applicants' services are regularized by G.R. dated 05.02.1990 and 07.04.1986. Significant to note that the Applicants have filed additional Affidavit and brought G.Rs. dated 05.02.1990 and 07.04.1986 on record, but there is no counter to this pleading. Apart, it cannot be disputed that the Applicants' services were regularized in terms of G.Rs. dated 05.02.1990 and 07.04.1986.

12. Here, vital to note the contents of Para No.5 of G.R. dated 05.02.1990, which is as follows :-

“५. या शासन निर्णयान्वये ज्या कर्मचा-यांच्या सेवा विधीग्राह्य ठरविण्यास येतील त्यांच्या बाबतील नियमांच्या तरतुदींच्या अनुषंगाने जो सेवा खंड देण्यात आला असेल तो संबंधित कर्मचा-यास देय व अनुज्ञेय रजा मंजूर करून विनियमित करण्यात यावा. यासाठी संबंधित कर्मचा-याने अशा तांत्रिक खंडाच्या कालावधी इतकी देय व अनुज्ञेय रजा मिळण्यासाठी संबंधित नियुक्ती प्राधिका-याकडे अर्ज करावा. अशा कर्मचा-यांचा अर्ज प्राप्त झाल्यानंतर संबंधित नियुक्ती प्राधिका-यांनी सेवा खंड करण्याबाबतचे आपले पूर्वीचे आदेश रद्द करून संबंधित कर्मचा-यास उक्त सेवा खंडाच्या कालावधी इतकी देय व अनुज्ञेय रजा मंजूर करावी. अशाप्रकारे रजा मंजूर केल्यानंतर संबंधित कर्मचा-यांची मूळ नेमणूकीच्या दिनांकापासूनची संपूर्ण सेवा सर्व प्रयोजनांसाठी अखंडीत सेवा गणण्यात यावी.”

13. As such, the Government was conscious about the huge period of service rendered by the Applicants with breaks therein, and therefore, the Government thought it appropriate to direct the Competent Authority to take application of the Applicants, so as to regularize their breaks by grant of permissible leave, as the case may be. However, this vital aspect is completely glossed over. The Applicants seem to have not applied in terms of Clause 5 of G.R. However, at the same time, it was also an obligation on the part of Competent Authority to seek applications of the Applicants and to pass appropriate orders about regularization of break period. Had this exercise completed at that time itself, this litigation would have been avoided. Be that as it may, the fact remains that there is failure on the part of concerned authority to act as per Para 5 of the G.R,

which resulted in loss of substantial service due to non-regularization of breaks.

14. As rightly pointed out by Smt. Walimbe, learned Advocate for the Applicants that the names of all these Applicants except Applicant in O.A.No.765/2017 are figured in the Annexure attached to the G.R. dated 05.02.1990, which is at Page No.105 in O.A.762/2017. In so far as the Applicant in O.A.765/2017 is concerned, his name is figured in G.R. dated 07.04.1986, which is at Page No.63 in O.A.765/2017. As such, there is no denying that the services of all those Applicants were regularized in terms of these G.Rs. and G.R. dated 24.01.2000 is not at all relevant for them.

15. It would be profitable to see findings and observations made by the Hon'ble High Court in Writ Petition No.3690 of 2005 while allowing the claim of the Petitioners therein. The Hon'ble High Court in judgment dated 19.12.2006, in Paragraphs 4 & 5 dealt with the issue of Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 and rejected the contention advanced by the State Government. The relevant paragraph of Judgment in Writ Petition No.3690 of 2005 reads as under :-

“4. The learned Counsel for Petitioner has placed before us the Maharashtra Civil Service (Pension) Rules, 1982 and, in particular, Rule 30 thereof to support his case. We reproduce Rule 30 hereinbelow.

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.....”

A bare perusal of this rule would indicate that if a government employee is holding a substantive post at the time of his retirement, his qualifying service shall be computed from the date of his first appointment either substantively or in an

officiating capacity or temporary capacity. It is clear from the record that petitioners had been given temporary appointment as seasonal godown keepers and this fact has been recognized by the Tribunal as also by the respondents in their reply before us. In this view of the matter, we find that the entire period of service from the date of their joining would have to be counted for the purpose of computing their entitlement and quantum of pension.

5. *We accordingly allow this Petition and direct the respondents to make payment to petitioners in accordance with their qualifying service within a period of 6 months from today. Rule is made absolute accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs."*

16. Undisputedly, the judgment delivered in W.P.No.3690 of 2005 had attained finality and Hon'ble Supreme Court dismissed the SLP. As the Respondents have not complied with the directions given by the Hon'ble High Court, Contempt Petition No.57 of 2008 was filed before the Hon'ble High Court wherein having taken note of dilatory practice adopted by the Government directed to pay interest at the rate of 6% on the amount payable to them.

17. Again similar issue was cropped up in **Writ Petition No.7458 of 2010 (Devdas B. Borkar & 2 Ors. Versus The State of Maharashtra & Anr.) decided by Hon'ble High Court on 19.07.2011.** In this judgment the Hon'ble High Court referred its earlier decision in Writ Petition No.3690 of 2005 and expressed serious displeasure about findings of the Tribunal rejecting the claim of the Petitioner therein, though they were similarly situated persons. Here it would be apposite to reproduce the paragraph No.5, 6, 8, 10 and 11 of the judgment, which reads as below:-

5. *According to the petitioners, this decision was challenged by the respondents before the Apex Court by way of SLP. However, the same was dismissed on 3rd August, 2007. In other words, the view taken by the High Court has been upheld by the Apex Court. Besides, the petitioners also relied on another decision of the Maharashtra Administrative Tribunal, Mumbai in Original Application No.426/2006 decided on 16th March, 2007 in the case of **Shri Prabhakar Shankar Bagkar vs. The State of Maharashtra Anr.** in which similarly*

placed employee was granted relief after relying on the decision of the High Court referred to above. It is the case of the petitioners that the decision of this Court has attained finality and has been acted upon by the Department. Similarly, the decision in the case of **Shri Prabhakar Shankar Bagkar** of the Maharashtra Administrative Tribunal has also been accepted by the Department and has attained finality.

6. Ordinarily, on the basis of this plea, the Tribunal ought to have allowed the Original Application filed by the petitioners. However, the Tribunal in the impugned Judgment has discarded the decision of this Court on the finding that the same does not refer to all aspects of the matter and the relevant decision and provisions were not brought to the notice of the High Court. The Tribunal has then relied on the decision of the Apex Court in the case of **Director General, Council of Scientific and Industrial Research vs. Dr.K.Narayanaswami & Ors. reported in AIR 1995 SC 2018** to justify its conclusion that the Government employees such as the petitioners are not entitled to get pension by taking into account their first date of appointment as Seasonal worker.

8. Having considered the rival submissions, at the outset, we may observe that the Tribunal has misdirected itself in taking the view that the decision of the Division Bench of this Court referred to above, cannot be relied upon, as it has not taken into account all the aspects of the matter. It is indisputable that the decision of the Division Bench of this Court interprets the purport of Rule 30 of the relevant Rules. The assumption of the Tribunal that the High Court has not adverted to all the relevant aspects, in our opinion, is inappropriate. Indeed, the Tribunal has adverted to other rules such as Rule 31(3), 33, and 38(1) to hold that it is necessary to keep in mind as to whether the concerned employee was in continuous service from the date of his initial appointment or whether there were interruptions from time to time. In the first place, the Tribunal was bound by the opinion of the Division Bench of the High Court which decision had attained finality on account of dismissal of SLP by the Supreme Court. In any case, the Tribunal was bound by another decision of the same Tribunal in the case of **Shri Prabhakar Shankar Bagkar**, which is founded on the decision of the High Court. A coordinate bench of the Tribunal could not have departed from that binding precedent. In any case, the Tribunal misdirected itself on applying the principle of interruptions of service from time to time. What has been glossed over by the Tribunal is the purport of Rule 30, which makes no distinction between the first appointment either substantively or in officiating capacity or temporary capacity for the purpose of computing qualifying service. Understood thus, Rule 30 would encompass the services rendered by the Government employees even in the capacity of the temporary appointment as Seasonal Godown Keepers.

10. In the circumstances, we have no hesitation in taking the view that the Tribunal has completely misdirected itself in departing from the consistent view of the High Court as well as of the same Tribunal. The Tribunal has misdirected itself in placing reliance on the decision of the Apex Court which is in the context of an employee resigning from

temporary service and being appointed in substantive post in another service.

11. *In the circumstances, this Petition ought to succeed. The impugned Judgment and Order of the Tribunal is quashed and set-aside and instead, the Original Application filed by the petitioners is made absolute in terms of prayer clause (a) and (b), which reads thus :*

(a) to call for the record and proceeding pertaining to the communications dated 16/7/2009 and 27/8/2009 issued by respondent no.2 as per directions of res.no.1 and quash and set aside the same as being unjust, unfair, arbitrary and discriminatory and direct the respondents to extend the benefit or order of the Hon/High Court dated 19/12/2006 in Writ Petition No.3690 of 2005 to the applicants.

(b) to hold and declare that the service rendered by the applicants as Seasonal Godown Keeper should be taken into consideration for the purposes of computing the entitlement and quantum of their pension and to direct the respondents to take into consideration the entire period of service rendered by the applicants from the date of their joining as Seasonal Godown Keeper for the purpose of computing their entitlement and quantum of pension of computing their entitlement and quantum of pension and issue appropriate orders at the earliest.”

18. As the Respondents-State Government have not complied with the directions given in Writ Petition No.7458 of 2010, Contempt Petition No.215 of 2012 was filed which was decided by the Hon'ble High Court on 22.07.2013, wherein again the Hon'ble High Court frowned upon the indifferent attitude of the State Government and granted interest at the rate of 8% on the amount payable to the Petitioners.

19. Pertinent to note that the Writ Petition No.7458 of 2010 was filed by Devidas B. Borkar, Anant Sinkar and Pramod Talathi. Shri Anant Sinkar's name is prominently figured along with the names of Applicants in G.R. dated 05.02.1990. Shri Anant Sinkar was also temporarily appointed on 01.04.1969. These three employees viz. Devidas B. Borkar, Anant Sinkar and Pramod Talathi have filed Writ Petition No.7458/2010 for regularization of their services from the date of initial appointment. The said Writ Petition was allowed

rejecting the stand taken by the Respondents that their breaks cannot be condoned in the light of Rules 31, 33 and 38 of M.C.S. (Pension) Rules, 1982. Suffice to say, the Applicants are similarly situated persons and their claim is no different than Anant Sinkar's claim, which was allowed in Writ Petition No.7458/2010.

20. Thus, it merges that the Applicants being similarly situated persons are entitled to the benefit of the decision of the Writ Petition No.3690 of 2005 as well as Writ Petition No.7458 of 2010. Admittedly, the judgments delivered in these Writ Petitions were complied with and the benefits were released in favour of the Petitioners therein. As such on the ground of parity and on the principle of similarly situated persons, State cannot deny benefits of these judgments to the Applicants.

21. In this behalf, Smt. Walimbe learned Advocate for the Applicants relied upon the decision of Hon'ble Supreme Court in **(2005) 1 SCC 347 (State of Uttar Pradesh and Others Versus Arvind Kumar Srivastava and others)**, wherein the Hon'ble High Court summarized the legal position as follows :-

"The moot question that requires determination is as to whether the approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled out from the judgments cited both by the appellants as well as the respondents can be summed up as under:

(i) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(ii) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as

acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

*(iii) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see **K.C. Sharma & Ors. v. Union of India** (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”*

22. In present case, nothing is pointed out by the learned P.O. that there is any laches or delay on the part of the Applicants so as to deny the benefit of the judgments delivered in Writ Petition No.3690 of 2005 and Writ Petition No.7458 of 2010 to them.

23. As noted earlier indeed the State Government ought to have taken appropriate steps to regularize the absence period of the Applicants in view of the specific stipulation in paragraph No.5 of Government Resolution dated 05.02.1990 as reproduced above in paragraph 12 of this judgment. Due to inaction on the part of Government, the substantial service of the Applicants rendering for 8 to 12 years is totally ignored on account of break in their service, as a result of which they get less pension. True there is total break of period from 7 to 9 years in the service of the Applicants. Now, this aspect has become insignificant and it cannot be the ground to deny

their claim in view of the decision rendered by the Hon'ble High Court in Writ Petition No.3690 of 2005 and Writ Petition No.7458 of 2010. It is more so because of the inaction on the part of concerned authority to follow instructions given in paragraph No.5 of Government Resolution dated 05.02.1990. The Applicant being appointed as Seasonal Godown Keepers coming from unprivileged part of society they cannot be deprived of the pensionary benefits and wrong needs to be undone. In other words the issue now raised in the present O.A. is no more *res-integra* and the Applicants claim deserves to be allowed.

24. The only submission advanced by learned P.O. that the Applicants name are not mentioned in the Government Resolution dated 24.01.2000 and therefore they are not entitled to the pensionary claim as fallacious and misconceived. In the present case, the Applicants service were regularized by G.R. dated 05.02.1990 and therefore reference to G.R. dated 24.01.2000 is totally irrelevant. Resultantly, the decision rendered by this Tribunal in O.A.No.88 of 2016 and O.A.No.274 of 2014, wherein the claim of the Applicants therein for condonation of break in service was rejected by this Tribunal on the ground that their names were not figured in G.R. dated 24.01.2000 is of no assistance to the Respondents. Besides, these judgments passed by the Tribunal in O.A.No.88 of 2016 and O.A.No.274 of 2014 are under challenge and the matter is *sub judice* before the Hon'ble High Court, therefore the decision rendered in these Original Applications being arising in different situation is of no help to the Respondents in the fact situation. As such, the reasons mentioned rejecting the representations in the impugned order are not at all sustainable, as the matter in issue is already covered by the decisions rendered in Writ Petition No.3690/2005 as well as Writ Petition No.3458/2010. Now, this Tribunal cannot travel beyond the mandate and findings recorded by Hon'ble High Court in these

decisions and denial of the benefits to the Applicants would be discouragement of justice.

25. The totality of the aforesaid discussion leads me to sum-up that the Applicants' claims are meritorious and Original Applications deserve to be allowed.

ORDER

- (a) All these Original Applications are allowed.
- (b) Impugned orders dated 07.03.2017, 22.03.2017, 25.03.2010, 24.10.2014 and 10.09.2014 are quashed and set aside.
- (c) Services of the Applicants rendered by them before regularization of their services (excluding the period of break) shall be taken into consideration for the purpose of computing the pension.
- (d) Respondents are directed to recalculate the retirement benefits of the Applicants in terms of above and monetary benefits be extended to them within a period of three months for today.
- (e) No order as to costs.

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

Mumbai
Date : 08.11.2019
Dictation taken by :
S.K. Wamanse.