

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.805 OF 2021

**DISTRICT : MUMBAI/ BHANDARA/
KOLHAPUR**

**Sub.:- Benefit of Old Pension
Scheme/Career Advancement
Scheme**

- 1) Dr. Amit Yadaorao Saraf.)
Age : 47 Yrs, Occu.: Assistant Professor,)
C/o. Ismail Yusuf College, Mumbai.)
- 2) Shri Rajesh Bhaskar Thakare.)
Age : 45 Yrs, Occu.: Assistant Professor,)
C/o. Elphinstone College, Mumbai.)
- 3) Shri Sunil Arjun Sonawane.)
Age : 49 Yrs, Occu.: Assistant Professor,)
C/o. Govt. College of Education, Mumbai.)
- 4) Smt. Nita Laxmanrao Choure.)
Age : 55 Yrs, Occu.: Assistant Professor,)
C/o. Govt. College of Education, Bhandara.)
- 5) Dr. Sushama Raju Ambadekar.)
Age : 49Yrs, Occu.: Assistant Professor,)
C/o. Institute of Science, Mumbai.)
- 6) Dr. Rameshwar S. Padme.)
Age : 45 Yrs, Occu.: Assistant Professor,)
C/o. Govt. College of Education, IASE,)
Aurangabad.)
- 7) Shri Charandas Y. Kamble.)
Age : 53 Yrs, Occu.: Assistant Professor,)
C/o. S.M.T. Govt. College of Education,)
Kolhapur.)
- 8) Smt. Radhika Iyer.)
Age : 42 Yrs, Occu.: Assistant Professor,)
C/o. Sydenham College, Mumbai.)

9) Smt. Shabana Khan.)
 Age : 46 Yrs, Occu.: Lecturer,)
 C/o. Ismail Yusuf College, Mumbai.)...**Applicants**

Versus

1. The State of Maharashtra.)
 Through its Principal Secretary,)
 Higher and Technical Education)
 Department, Mantralaya,)
 Mumbai – 400 032.)
2. The State of Maharashtra.)
 Through its Addl. Chief Secretary,)
 Finance Department, Mantralaya,)
 Mumbai – 400 032.)
3. The State of Maharashtra.)
 Through its Addl. Chief Secretary,)
 General Administration Department,))
 Mantralaya, Mumbai – 400 032.)
4. The Director of Higher Education,)
 State of Maharashtra, Having its)
 Office at Central Building, Pune – 1.)...**Respondents**

Shri Yashodeep Deshmukh holding for Shri V.P. Sangvikar, Advocates for Applicants.

Smt. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 23.06.2023

JUDGMENT

1. The Applicants have filed the O.A. for counting their past service from the date of initial appointment on ad-hoc/contract basis with all consequential service benefits and for condonation of technical break in service, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Following Chart discloses initial date of appointment on ad-hoc basis/contract basis, selection through MPSC, break in service during ad-hoc service, etc.

Sr. No.	Name of the Applicant	Age	Educational Qualification	Category	Current Designation With Subject Taught	Date of 1 st Temporary / Ad-hoc Contract Appointment	Total Period of Service as Ad-hoc / Contract Appointment	Appointment Date through MPSC	Total Period of break in service & if and when condoned
1.	Dr. Amit Y. Saraf	47	M.Sc. (1995) SET (1998) NET (1999) Ph.D. (2019)	OBC	Assistant Professor (Botany)	26/09/2000	8 years	19/04/2007	69 days
2.	Rajesh B. Thakare	45	M.Sc. (1998) NET (1999)	OPE N	Assistant Professor (Mathematics)	24/07/2001	6 years	10/09/2007	16 days
3.	Sunil A. Sonawane	49	M.A. (1995) M.Ed. (1998) SET (1999) & M.Phil. (2002)	OBC	Associate Professor (Education)	17/07/2001	6 years	28/08/2006	Nil
4.	Nita L. Choure	55	M.Sc. (1994) M.Ed. (1996) SET (1998)	OBC	Assistant Professor (Maths Method)	3/10/2000	7 years	28/8/2006	39 days
5.	Dr. Sushama R. Ambadekar	49	M.Sc. (1995) SET (1999) PhD (2009)	OBC	Associate Professor (Chemistry)	11/08/2000	7 years	10/9/2007	139 days
6.	Dr. Rameshwar S. Padme	45	M.A. (1998) M.Ed. (1999) NET (1999) Ph.D. (2011)	SC	Associate Professor Geography Pedagogy	23/07/2001	05 years 01 month 19 days	28/8/2006	Nil
7.	Charandas Y. Kamble	43	M.Ed. (2000) M.A (2003) SET (2004) M.Phil. (2007)	SC	Assistant Professor (Education)	23/09/2005	11 months	28/8/2006	84 days
8.	Dr. Radhika R. Iyer	42	M.Com. (2001) SET (2002) Ph.D. (2019)	OPE N	Assistant Professor (Commerce)	19/9/2003	4 years	26/9/2007	243 days
9.	Shabana S. Khan	46	M.Com. (1997) B.Ed. (2000)	OPE N	Lecturer (Commerce)	22/8/2000	12 years	15/09/2012	Nil

3. Uncontroverted facts giving rise to this application to appreciate the contentions made by the parties are as under :-

(i) Applicant Nos.1 to 6 and 9 were initially appointed as ad-hoc Lecturer as shown in the Chart in between 2000 to 2005 through duly constituted Selection Board.

(ii) Applicant Nos.7 and 8 were appointed on contract basis in 2005 on consolidated pay of Rs.8000/- per month.

(iii) In appointment orders, there is specific stipulation that they were appointed till the availability of candidates through MPSC and on any such appointment through MPSC, their candidature would stand cancelled.

(iv) Later, MPSC initiated process to fill-in the post of Lecturers on regular basis in which Applicants participated and were appointed as Lecturers in Government College in 2006-2007 and 2012 as shown in the Chart.

4. The Applicants have filed this O.A. for counting their service rendered as ad-hoc/contractual employees for consequential service benefits, particularly Career Advancement Scheme (CAS) benefits and entitlement to old pension scheme *inter-alia* contending that in the matter of several other candidates, the Government rendered the benefits of past service, they are deprived of the said benefit though they are similarly situated persons. According to Applicants, non-granting the said benefit to them amounts to discrimination, violative of Article 14 of the Constitution of India in view of decision rendered by Hon'ble Supreme Court in **2015(1) SCC 341 [State of Uttar Pradesh & Ors. V/s. Arvind Kumar Srivastava]**.

5. The Respondents resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that since Applicants were appointed on ad-hoc/contract basis, they are not entitled to count their initial service for service benefits. The Respondents, all that in Para Nos.7 and 8 of Affidavit-in-reply stated as under :-

7. I say that, Applicant 1 to 6 and 9, Ad-hoc basis previous service was without any service break, hence Applicant No. 1 to 6 and 9, service shall be calculated only for Career Advancement Scheme (CAS) benefits and not for the any pecuniary benefit arises from Ad-hoc basis previous service as well as Old Pension Scheme, hence State Government i.e. Respondent No.1 may proceed with active consideration in above mentioned GR's directions. Besides Applicant No.7 and 8 previous service was totally Contract Basis, hence their Career Advancement Scheme (CAS) benefits issues are under consideration. State Government i.e. Respondent No.1 may proceed with above mentioned GR's directions.

8. I say that, Applicants are not similarly situated employees and not entitled to all benefits receivable under G.R. dated 23.03.2016 as also GR dated 24.01.2018 and G.R. dated 16.02.2021. Applicants were recruited by proper procedure through MPSC. They are only entitled for Career Advancement Scheme (C.A.S.) benefits as per G.R. dated 11.02.1994.”

Thus, Respondents concede the entitlement of the Applicant to CAS Scheme as per G.R. dated 11.02.1994.

6. Heard Shri Yashodeep Deshmukh and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.

7. In view of pleadings and submissions, the issue posed for consideration is whether Applicants are entitled to count their service rendered on ad-hoc basis/contractual basis for other consequential service benefits.

8. At the very outset, it needs to be clarified that Applicants' claim raised in this O.A. stems from the various decisions rendered by Hon'ble High Court as well as Tribunal and implemented by the Government giving benefits of initial service rendered as ad-hoc employees by regularizing their services from initial date of appointment. To begin with, in this behalf, Hon'ble High Court in **Writ Petition No.526/2015 and 850/2015 [Sahabrao Balaso Kashid Vs. State of Maharashtra & Ors.] decided on 03.02.2015** issued following directions.

“The Respondents are directed to regularize the services of the petitioners and confer permanency. The respondents are directed to absorb the petitioners in service within a period of six weeks, on parity with the petitioners in Writ Petition No.2046/2010. Since the petitioners are in continuous employment,

the petitioners should be continued in service as the regular employees. We direct the respondents to pay the regular salary to the petitioners from 1.09.2015. Though the petitioners would be entitled to continuity in service, the said continuity would be for purposes other than monetary purposes.”

9. Later, Tribunal in O.A.No.781/2013, 868/2014 and 150/2015 decided on 26.06.2015 issued directions which are as under :-

“The Respondents are hereby directed to regularize the services of the Applicants Nos.1 to 13 and 15 to 20 in O.A.No.781/2013 and the Applicants in O.A.150/2015 and 868/2014 and confer permanency to them. The Respondents shall absorb the Applicants just referred to by 31st July, 2015 and the said Applicants will continue in service as regular employees. However, in the facts and circumstances of the case, we direct that the Applicants shall be entitled to regular salary from 1st August, 2015 and would not be entitled to claim any monetary benefits for the past services rendered by them in spite of their regularization. Needless to state that since the above referred Applicants’ services are regularized, they shall be entitled to the continuity and service for all other purposes except monetary purposes from the date of their first appointment. The government may take an appropriate decision about the scheme of pension applicable to the Applicants.”

10. Admittedly, Government implemented the aforesaid orders by issuing G.R. dated 23.03.2016 (Page No. 27 of O.A.) and regularized their services from the date of initial appointment with consequential service benefits except monetary benefits. In G.R. dated 23.03.2016, there is specific reference of the decisions rendered by Hon’ble High Court as well as Tribunal.

11. Now turning to the facts of the present case, the perusal of appointment order of the Applicants (Page No.77) reveals that Government by G.R. dated 29.01.1994 had constituted Selection Committee through which Lecturers were to be appointed on ad-hoc basis. Notably, it is in pursuance of selection through duly constituted Selection Committee, the Applicants were appointed albeit on ad-hoc basis/contract basis. There is no denying that Applicants were fulfilling all eligibility criteria and there were sanctioned vacancies in the Department. However, they were appointed under the nomenclature of ad-hoc employees till the availability of candidates through MPSC. Later, Applicants participated in recruitment process conducted by MPSC and got selected. Thus, Applicants are already

selected through MPSC and this is not a case of seeking regularization nor it could be termed entry into service through backdoor. The Applicants were appointed through duly constituted Selection Committee on sanctioned posts, having found them eligible. Applicant Nos.1 to 6 and 9 were appointed in regular pay scale of Rs.8000-13500. Whereas Applicant Nos.7 and 8 were appointed on consolidated salary of Rs.8,000/- p.m.

12. Shri Deshmukh, learned Advocate for the Applicants also placed reliance on the decision rendered by the Tribunal in **O.A.No.34/2016 (Rajesaheb Marodkar Vs. State of Maharashtra) decided on 14.02.2017** and in **O.A.No.43/2018 (Babasaheb D. Bhosale Vs. State of Maharashtra) decided on 06.03.2020**. Admittedly, both these decisions were implemented by the Government without assailing the same before Hon'ble High Court. The facts in O.A.43/2018 was that Applicant Babasaheb Bhosale was appointed on contract basis by order dated 22.08.2002 on consolidated salary of Rs.8,000/- p.m. and later, he got selected through MPSC by order dated 10.09.2007. The Government by order dated 14.05.2012 regularized the services of Assistant Professors appointed on contract basis (Dr. Vishakha Saoji, Dr. Mamta Upgade, Smt. Chhaya C. Patil, Smt. Anita M. Malge and Shri Bhimrao M. Patil), who were similarly situated persons. In O.A, Applicant Babasaheb Bhosale, therefore, claimed parity and sought benefit of service rendered on ad-hoc basis with consequential service benefits including applicability of old pension scheme. Notably, Applicant in O.A.No.43/2018 as well as Dr. Vishakha Saoji and others named above were appointed in pursuance of same Advertisement dated 01.06.2002. The only difference was that later, Applicant Babasaheb Bhosale was selected through MPSC. Whereas in respect of Dr. Vishakha Saoji and others, their services were regularized by the Government at their own by G.R. dated 14.05.2010 and later by G.R. dated 20.03.2016, they were also held entitled to old pension scheme existing in 2002. Whereas in **Rajesaheb Marodkar's** case, the benefit of regularization was granted considering initial date of appointment in 2001. He was also selected through MPSC later in 2013. The Tribunal granted relief of condonation of

break in service with further direction to count his initial service for all consequential service benefits. As stated above, the decision in **Rajesaheb Marodkar's** case was also implemented by the Government.

13. Per contra, Smt. A.B. Kololgi, learned Presenting Officer sought to contend that since Applicant's appointment was purely on *ad-hoc* and contract basis having accepted the terms and conditions, they cannot now turn around for claiming the benefit of old pension scheme and other service benefits. However, she has not been able to distinguish the facts of the present case from the facts of **Bhosale** and **Marodkar's** case in which decisions rendered by the Tribunal for counting *ad-hoc*/contract service for pension purpose in terms of old pension scheme was implemented by the Government.

14. The learned Presenting Officer made feeble attempt to defeat Applicants' claim in reference to certain decisions which are indeed are of no assistance to her in the present case. In this behalf, she referred the decision of Hon'ble High Court in **Writ Petition No.1338/2015 [Union of India Vs. Smt. Lalita Mertia] decided on 08.10.2021**. It was a case of contractual appointment to fill-in contractual post. Smt. Lalita filed O.A. before Central Administrative Tribunal, Mumbai Bench for regularization of service and to set aside the order dated 14.03.2011 whereby her request for regularization was rejected. The Tribunal allowed the O.A. and being aggrieved by it, Union of India filed Writ Petition. Hon'ble High Court in view of catena of decisions of Hon'ble Supreme Court, particularly in **(2006) 4 SCC 1 [Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.]** held that regularization cannot be a source of recruitment, but Tribunal erroneously distinguished the decision of Hon'ble Supreme Court. As such, in that matter, the post was filled-in purely on contract basis and there seems to be no such appointment on regular sanctioned post. Whereas in the present case, Applicants were appointed on substantive vacant post through duly constituted Selection Committee. Hon'ble High Court quashed and set aside the order of CAT. As such, the facts of the present case are

totally distinguishable. Similarly, reference of decision of Hon'ble High Court delivered in **Writ Petition No.4546/2016 [Ganesh D. Jambharunkar & Ors. Vs. State of Maharashtra & Ors.] decided on 20.09.2022** is also of no assistance to the Applicants. In that case, there was appointment on contractual basis on fixed consolidated salary and they rendered 3 to 5 years' service as Lecturers. They filed Writ Petitions seeking relief of regularization of their services with consequential service benefits. Hon'ble High Court found that their salaries were to be paid by College out of their own funds and Government has no liability to pay their salary. It was further found that they were appointed on contractual basis by Colleges by exercise of complete autonomy given to the College. Therefore, in fact situation, Applicants' claim for regularization of service and payment of salary in pay scale prescribed by University Grant Commission (UGC) was dismissed. While dismissing Writ Petition, the Hon'ble High Court referred to the decision in **Umadevi's** case (cited supra) amongst others and also referred to the decision in **(2016) 87 SCC [State of Maharashtra Vs. Anita & Ors.]** wherein it was held that after having accepted the contractual appointments, the appointees are estopped from challenging the terms of their appointment.

15. The learned P.O. further referred to the decision of Hon'ble High Court in **Writ Petition No.1609/2020 [State of Maharashtra & Ors. Vs. Santosh D. Khadse & Ors.] decided on 13.10.2022**. The Writ Petition was filed challenging the decision rendered by the Tribunal regularizing the services of 25 Lecturers in various Colleges. Thus, it was a case of claim for regularization. Hon'ble High Court, however, found that the posts were subsequently abolished by the Government in terms of G.R. dated 08.07.2020 and consequently, the order of Tribunal granting regularization was set aside. Suffice to say, the facts of all these decisions referred by the learned P.O. are quite distinguishable and none of the decisions is of any assistance to the Respondents in facts and circumstances of the present case.

16. True, the Applicants are contributing in DCPS pension scheme which has come into effect from 01.11.2005. However, once they are found entitled to old pension scheme by counting their service rendered as ad-hoc/contract basis, the contribution towards DCPS hardly matters. All that, the contribution made by the Applicants in DCPS scheme will have to be credited into GPF scheme. In case of some of the Applicants, during their *ad-hoc* service itself, GPF Account was opened.

17. In view of above, the Applicants being similarly situated persons, the denial of service benefits to them would be definitely violative of Article 14 of the Constitution of India. Indeed, Hon'ble Supreme Court in **Arvind Kumar Srivastava's** case laid down the following principles in the matter of service jurisprudence.

“The most 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.”

18. The totality of aforesaid discussion leads me to conclude that the Applicants are entitled for counting past service rendered from the date of appointment on ad-hoc/contract basis till their selection through MPSC for grant of CAS/TBP Scheme. Applicants' break in service being less than one year, it is also required to be condoned for pension purpose. Similarly, consequent to counting of past service for service benefits, they are entitled for old pension scheme in terms of M.C.S. (Pension) Rules, 1982. The O.A. therefore deserved to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) Applicants are entitled for counting their past service rendered from initial date of appointment on ad-hoc/contract basis till their selection through MPSC for the purpose of CAS/TBP Scheme benefits and necessary orders shall be issued within two months from today.
- (C) Applicants' break in service is condoned for the purpose of pension only.
- (D) Applicants are also held entitled for old pension scheme in terms of M.C.S. (Pension) Rules, 1982.

- (E) The Respondents are directed to credit DCPS contribution made by the Applicants in their GPF Account by opening new GPF Account, if not opened earlier.
- (F) No order as to costs.

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

Mumbai

Date : 23.06.2023

Dictation taken by :

S.K. Wamanse.

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