

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI, BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.832 OF 2012  
(Subject : Challenge to Government Resolution)**

**DISTRICT : AURANGABAD**

Shri Bhaskar Pandu Arke )  
R/o. C/o. Senior Geologist, )  
Ground Water Surveyor Department, )  
MHADA Building, CBS Road, )  
Aurangabad. )

**...APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
Through its Secretary, )  
Planning Department, )  
Mantralala, Mumbai )  
Copy to be served on P.O., M.A.T. )  
Bench at Aurangabad )
2. The Regional Deputy Director, )  
Ground Water Surveyor, )  
And Development Agency Aurangabad, )  
Manav Vikas Building, )  
Near Raviraj Hotel, Adalat Road, )  
Aurangabad. )

3. The Accountant General, )  
Civil Line, Nagpur. )

**....RESPONDENTS.**

Shri V.B. Wagh, learned Advocate for the Applicant.

Mrs. Resha S. Deshmukh, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN (A)  
SHRI B.P. PATIL, MEMBER (J)

DATE : 16.08.2017.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN (A)

**J U D G M E N T**

1. Heard Shri V.B. Wagh, learned Advocate for the Applicant and Mrs. Resha S. Deshmukh, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant, who was initially appointed as a Muster Assistant on Employment Guarantee Scheme (E.G.S.) on 20.08.1984. The Applicant was absorbed in Government Service by order dated 21.09.2003 issued by the Collector, Aurangabad. The Applicant joined as Junior Clerk in the office of Senior Geologist, Ground Water Survey and Development Agency (G.S.D.A.) on 04.12.2003. The Applicant retired on 31.12.2013. He is seeking that his service as Muster Assistant should be counted as regular service for pensionary benefits.

3. Learned Counsel for the Applicant argued that Government issued a Government Resolution (G.R.) dated 01.12.1995 framing a scheme of absorption of Muster Assistants working of E.G.S. who were in service on 31.05.1993. This scheme was modified by G.R. dated 21.04.1999. Learned Counsel for the Applicant argued that many provisions of these Government Resolutions are contrary to the Maharashtra Civil Services (Pension) Rules, 1982, and are, therefore, ultra vires the Constitution of India. Rule 33 of M.C.S. (Pension) Rules, permits clubbing of temporary service with regular service. Rule 48 permits condonation of breaks in service. Learned Counsel for the Applicant relied upon the judgment of Hon'ble High Court Writ Petition No.3690 of 2005, where Hon'ble High Court directed that Muster Assistant were eligible to get benefits of service from the date of initial appointment as Muster Assistant in E.C.S. work.

4. Learned Presenting Officer argued on behalf of the Respondents that the Government Resolutions dated 01.12.1995 and 21.04.1999 have been upheld by Hon'ble Supreme Court. Once it is held that these G.R.s are valid by Hon'ble Supreme Court, this Tribunal will have no authority to take a view contrary to that. The judgment of Hon'ble High

Court is applicable to the Petitioners in the Writ Petition only. Learned P.O. argued that the Muster Assistants were never appointed by following due procedure. In fact, there were no sanctioned posts on which they were appointed. They were not governed by Maharashtra Civil Services Rules. Rule 3 of M.C.S. (Pension) Rules gives powers to the Government to interpret these rules. Government has issued circular dated 03.11.2008 clarifying that temporary service as a result of appointment without due procedure cannot be treated as qualifying service under Rule 30. Similarly, breaks in service, which is irregular, cannot be condoned under Rule 48. This position has been clarified by judgment dated 29.09.2015 by Mumbai Bench of this Tribunal in O.A.No.568 and 569 of 2013 in case of adhoc service of Medical Officers. Learned P.O. argued that G.R.s dated 01.12.1995 and 21.04.1999 do not violate M.C.S. (Pension) Rules.

5. Learned P.O. contended that this Tribunal by judgment dated 21.10.2016 in a group of Original Application Nos.28 of 2012 etc. has observed that G.R. dated 01.12.1995 has been upheld by Hon'ble S.P. in S.L.P. (Civil) No.15664 of 1999 by order dated 02.12.1996.

Clause 5.2 of this G.R. reads :

“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 issue was again considered by Hon'ble Supreme Court in S.L.P. Civil No.5171/2003, Hon'ble Supreme Court did not approve the order of Hon'ble High Court to absorb all Muster Assistants from 31.03.1997 and ordered that they be absorbed gradually in accordance with seniority and roster. Learned P.O. argued that the applicant has not made out any case for the reliefs he is seeking. This Tribunal has held that benefit of judgment of Hon'ble High Court dated 19.07.2012 in Writ Petition No.2946 of 1997 is applicable to the Petitioners in the Writ Petition only.

6. We have carefully perused the case papers and various judgments referred to by the parties. It is true that Hon'ble Supreme Court has at least on two occasions upheld the G.R. dated 01.12.1995. This G.R. clearly holds that Muster Assistants on E.G.S. will not be entitled to any benefits available to Government servant except the pay scale granted to them. Obviously, they cannot count their service as Muster Assistant as qualifying service for pensionary benefits. When the Muster Assistants on E.G.S. were not even Government servants, the question of such service being treated as qualifying services does not arise. In some case, where Muster Assistants have approached Industrial Courts, their services were continued. Hon'ble High Court has held that services should be treated as regular service. However, that judgment is applicable only to Petitioners in the W.P.s

7. This Tribunal has held that service as a result of appointment without following due procedure cannot be counted as qualifying service under M.C.S. (Pension) Rules. What is applicable to ad hoc Medical Officers is also applicable to Muster Assistants. We are of the opinion that the Applicant has failed to make out any case requiring one intervention. There is no merit in this O.A. and it is dismissed with no order as to costs.

Sd/-

**(B.P. PATIL)**  
**MEMBER(J)**

Sd/-

**(RAJIV AGARWAL)**  
**VICE-CHAIRMAN(A)**

**Place : Aurangabad**  
**Date : 16.08.2017**  
**Typed by : PRK**