

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 88 OF 2016

DISTRICT : RATNAGIRI

1. Shri Sakharam Kashiram Ambekar)
Occ : Retired,)
Residing at:A/P Ambed [Budruk])
Tal : Sangameshwar, Dist-Ratnagiri)
2. Sadanand Parshuram Jadhav,)
Occ : Retired,)
Residing at Kokan Apartment,)
Flat no. 10, Bapat Ali, Chiplun,)
Dist-Ratnagiri 415 605)...**Applicants**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Department of Food & Civil)
Supplies, Mantralaya, Mumbai-32.)
2. The Collector,)
Ratnagiri, Dist-Ratnagiri 415 612)

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3. The Commissioner [Supply],)
Konkan Division, Konkan Bhavan,)
Navi Mumbai.)...**Respondents**

Shri A.V Shinde, learned advocate for the Applicants.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 18.04.2016

ORDER

1. Heard Shri A.V Shinde, learned advocate for the Applicants and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicants seeking declaration that the entire period of service as Seasonal Godown Keeper should be counted as qualifying service for pension.

3. Learned Counsel for the Applicants argued that the Applicants were appointed in 1968-69 as Seasonal Godown Keepers by Collector, Ratnagiri. Their services were regularized with effect from 24.1.2000 by Government Resolution dated 24.1.2000. The Applicants


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retired from Government service on 31.3.2006 and 31.12.2004 respectively. Their services from 1969 to 1986 were not considered as qualifying service. The Applicants made representations dated 28.8.2013 and 26.12.2014 for considering their seasonal service as qualifying service which was rejected by letters dated 10.10.2008 and 29.9.2014. The Applicants have, therefore, filed the present Original Application. The Applicants are relying on the judgments of Hon'ble Bombay High Court dated 19.12.2006 in W.P no 3690 of 2005 and 19.7.2011 in W.P no 7458 of 2010. Learned Counsel for the Applicants argued that in O.A no 426 of 2006 by judgment dated 16.3.2007, this Tribunal has also held that Seasonal Godown Keepers are eligible to count their services for pension purposes.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that though the delay in filing the present Original Application has been condoned by this Tribunal, the Applicants are not eligible to get any relief in the present Original Application, in view of the judgments of Hon'ble Supreme Court in **C. JACOB Vs. DIRECTOR OF GEOLOGY AND MINING - AIR 2009 SC 264** and **UNION OF INDIA VS M.K SARKAR reported in LAWS (SC) - 2509-12-79**. Hon'ble Supreme Court has held that a belated representation in regard to a 'stale' or 'dead' issue cannot be considered by a Tribunal/Court. The issue of limitation or delay and laches should be

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considered with reference to original course of action. Learned Presenting Officer argued that the Applicants are seeking relief long after they retired from Government service. They are not entitled to any relief now, as the relevant records may also not be available. This is an important fact, which cannot be ignored. Learned Presenting Officer argued that judgment of Hon'ble High Court in W.P no 7458 of 2010 was given in respect of Seasonal Godown Keepers working in inaccessible areas of Ratnagiri and Sindhudurg districts and who were given relaxation in age and educational qualification by G.R dated 24.1.2000. This Tribunal based on judgment of Hon'ble Supreme Court in the case of ACCOUNTS OFFICER (A & I) APSRTC & ORS Vs. K.V RAMANA & ORS in Special Leave Petition (Civil no 9098 of 2004 has held that absorption or regularization of temporary, contractual, casual, daily wage or ad hoc employee de hors the rules and Constitutional scheme of public employment cannot be granted by Courts. In the present case also, there is nothing on record to show that the Applicants were working in difficult and inaccessible areas. The services of the Applicants stood regularized in 1986 and they never approached this Tribunal or Hon'ble High Court for counting earlier service for pensionary benefits. When other seasonal godown keepers had filed Writ Petition no 3690 of 2005 and the judgment was given in the context of G.R dated 24.1.2000. Learned Presenting Officer argued that this Tribunal by judgment



dated 7.10.2015 in O.A no 274/2014 has clearly held that those not covered by G.R dated 24.1.2000 are not entitled to get the benefit of counting their service as Seasonal Godown Keepers before regularization of their services.

5. The Applicant no. 1 had retired on 31.3.2006 while the Applicant no. 2 retired on 31.12.2004. Their services were regularized by order dated 7.4.1986 and 7.5.1986 respectively from the date of the order by relaxing educational qualification and age limit as claimed by the Applicants. The W.P no 3690 of 2005 was filed by Seasonal Godown Keepers whose services were regularized by G.R dated 24.1.2000. From the judgment of Hon'ble High Court is based on this G.R. This G.R is placed at Exhibit A-2 (page 11 of the Original Application) and reads that:

“ पावसाळी हंगामात वाहतूकीच्या दृष्टीने अत्यंत दुर्गम असलेल्या गावांना सार्वजनिक वितरण व्यवस्थेअंतर्गत अन्नधान्य पुरवठा करता येणे शक्य व्हावे यासाठी उघण्यात येणा-या हंगामी गोदाम केन्द्रावरील गोदाम कर्मचा-यांना शासन सेवेत समावून घेणेबाबत संदर्भिय क्रमांक ४ व ५ च्या शासन निर्णय /पत्रान्वये देण्यात आलेले आदेशान्वये नियुक्त करण्यात आलेले कर्मचारी.....”

The Applicant no. 1 claims that his services were regularized by G.R dated 7.4.1986 (Exhibit A-3, page 13 of the Paper Book). However, this does not appear to be correct as the name of the Applicant no. 1 as per title of

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the Original Application is Sakharam Kashiram Ambekar and the G.R dated 7.4.1986 has names of S/Shri S.V Jambokar, R.V Khedekar and A.G Rajwade. The Applicant no. 2 claims that his services were regularized by G.R dated 7.5.1986, which appears to be correct as the said G.R is at page 14 of the Paper Book. Both these G.Rs are not mentioned in G.R dated 24.1.2000. The Applicants are, therefore, obviously not covered by G.R dated 24.1.2000. The circumstances in which their services were regularized cannot be ascertained now. The Applicants have not furnished any details. They have not explained as to why they did not join others in W.P no 3690 of 2005. Probably there were material differences in their circumstances compared to the Applicants in W.P no 3690 of 2005 before Hon'ble Bombay High Court. The Applicants have also not explained as to why they did not approach this Tribunal or Hon'ble High Court immediately after the judgment of Hon'ble High Court was delivered in W.P no 3690 of 2005 on 19.12.2006. These are the pitfalls which this Tribunal has to face when very old claims are sought to be revived. Hon'ble Supreme Court has observed in para 6 of the judgment in SARKAR's case (supra) that:-

“6. From 1980 onwards, gradually the pension scheme become more and more attractive as compared to the Contributory Provident Fund Scheme, on account of various factors, like

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dearness allowance being included in the pay for computing pension, ceiling on pension being removed and liberalization of family pension etc. But the respondent was well aware that not having opted for pension scheme and having received the PF amount on retirement, he was not entitled to switch over to pension scheme. But in 1996, when the respondent learnt that some others who had retired in and around 1973 to 1976 have been permitted to exercise the option in 1993-94, on the ground that they had not been notified about the option, he decided to take a chance and gave representation seeking an option to switch over to pension scheme.”

Facts are remarkably similar in the present case. The Applicants are not covered by G.R dated 24.1.2000. Hon'ble High Court in W.P no 3690 of 2005 has held that those Seasonal Godown Keepers who are covered by the said G.R are entitled to some benefits. The Applicant no. 2 had apparently made a representation for condonation of breaks in service which was rejected by order dated 10.10.2008 by the Respondent no. 2 and he was informed that the break in service of 7 years could not be condoned under Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982. (page 10 of the Paper Book). The Applicant no. 1 did not make any representation. He has failed to produce even order

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regularizing his services. The Applicants have taken a chance, after all these years to again seek condonation of breaks in service, knowing full well that they are not covered by G.R dated 24.1.2000.

In JACOB's case (supra), Hon'ble Supreme Court has observed in para 6 that:-

“....As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal.”

Elsewhere in same para, it is observed that:-

“We fail to understand how the Learned Single Judge could find fault with the department of Mines and Geology for failing to prove that a termination made in 1982 was preceded by an enquiry in a proceedings after 22 years, when the department in which appellant had worked had been wound up as long back as 1983 itself and the new department had no records of his service. The appellant neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement, or resignation or abandonment.”

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6. In the present case also, there is hardly any material on record, which would support the case of the Applicant that they are entitled to get breaks in their service condoned. If the breaks in service could not be condoned under Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982, that period could not be counted as qualifying service and Rule 30 of the M.C.S (Pension) Rules, will not be attracted.

7. At this stage, after the Applicants had retired from service in 2004 and 2006 respectively, it is not possible for this Tribunal to conclude that they were entitled for condonation of breaks in their service. Their claim is solely based on decision of Hon'ble High Court in W.P no 3690 of 2005, which is in the context of G.R dated 24.1.2000, which is not applicable in the case of the present Applicants.

8. This Tribunal by order dated 7.10.2015 in O.A no 274 of 2014 has held that those not covered by G.R dated 24.1.2000 are not entitled to any relief as per decision of Hon'ble High Court in W.P 3690 of 2005. The Applicants were already informed that the breaks in their services cannot be condoned under Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982. In absence of condonation of breaks in service, Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 will

not be attracted. The Applicants have not claimed that they were eligible for condonation of breaks in service.

9. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 18.04.2016
Dictation taken by : A.K. Nair.