

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.957 OF 2018**

**DISTRICT : MUMBAI**

Smt. Shweta Satish Sawant. )  
R/at. B-601, Vitthal Apartment, Link Road,) )  
Kandarpada, Dahisar (W), Mumbai – 68. )...**Applicant**

**Versus**

The State of Maharashtra. )  
Through Principal Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai – 400 032. )...**Respondent**

**Mr. S.S. Dere, Advocate for Applicant.**

**Mr. S.D. Dole, Presenting Officer for Respondent.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 07.08.2019**

**JUDGMENT**

1. The Applicant has challenged the impugned order dated 08.12.2017 refusing to grant benefit of Assured Career Progression Scheme (ACPS)/Time Bound Promotion w.e.f.16.07.2011 and for direction to grant the same.

2. Shortly stated facts giving rise to the application are as follows:-

The Applicant was appointed as Peon on 25.06.1990 in the office of Public Works Department, Mantralaya, Mumbai on ad-hoc basis. Later, by letter dated 19<sup>th</sup> April, 1994, the Respondent (Govt. of Maharashtra) regularized the services of the Applicant in view of G.R. dated 19.09.1975. Thereafter, the Applicant was considered for temporary promotion to the post of Clerk-cum-Typist on temporary basis by order dated 20.07.1999 thereby giving temporary promotion w.e.f.16.07.1999. Later, the Government by order dated 07.05.2007 regularized and confirmed the promotion on the post of Clerk-cum-Typist. In 2009, the Applicant had passed Lower Grade Examination as required under Maharashtra Government Mantralaya Secondary (Lower Grade) Service Post Services Training Exam Rules, 1977 (hereinafter referred to as "Exam Rules 1977" for brevity). Thereafter, as the Applicant has completed 12 years' service on the post of Clerk-cum-Typist, his case was considered for ACPS and by order dated 04.02.2016, the benefit of 1<sup>st</sup> TBP (ACPS) was granted w.e.f.16.07.2011. While granting the said benefit, 12 years' service period of service was counted from 20.07.1999 i.e. the date of ad-hoc / temporary promotion.

3. However, later, the Respondent by order dated 03.03.2016 withdrew the benefit of ACPS granted to the Applicant on the ground that he had not completed 12 years' continuous service on the post of Clerk-cum-Typist. Being aggrieved by it, the Applicant made representation on 13.07.2017 contending that he had completed 12 years' service considering his ad-hoc promotion by order dated 20.07.1999, and therefore, entitled to the benefit of ACPS. However, the Respondent rejected the same by impugned order dated 18.12.2017 with the reason stating that his case is not covered by G.R. dated 07.10.2016. The Applicant, therefore, approached this Tribunal contending that the withdrawal of ACPS granted to him is illegal and he is entitled to the benefit of ACPS. He has also raised the ground of discrimination contending that the same benefit has been

given to Shri Shirke, who is similarly situated but he is subjected to discrimination which is violative of Article 14 of the Constitution of India.

4. The Respondent resisted the application by filing Affidavit-in-reply (Page Nos.39 to 45 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. It is not in dispute that earlier, the benefit of ACPS was granted to the Applicant considering his service on the post of Clerk-cum-Typist from 20.07.1999. In this behalf, the Respondent contends that by letter dated 20.07.1999, the Applicant was promoted temporarily to the post of Clerk-cum-Typist which was confirmed by order dated 07.05.2007, and therefore, his service on the post of Clerk-cum-Typist has to be counted from 07.05.2007 and not from 20.07.1999. As such, having realized the mistake, the benefit of ACPS granted was rightly withdrawn. The Respondent further contends that the Applicant's case does not fall within the G.R. dated 07.10.2016 issued by Finance Department, and therefore, he is not entitled to the benefit of ACPS. With this pleading, the Respondent prayed to dismiss the O.A.

5. Heard Shri S.S. Dere, learned Advocate for the Applicant and Mr. S.D. Dole, learned Presenting Officer for the Respondents.

6. The following facts are uncontroverted:-

- (i) 25.06.90 Applicant was appointed as Peon on temporary basis in the Office of P.W.D, Mantralaya, Mumbai.
- (ii) 19.04.1994 Applicant and other 10 employees working as ad-hoc Peon were confirmed in the service in view of G.R. dated 19.09.1975.

- (iii) 20.07.1999 Applicant and other six employees were given temporary promotion on the post of Clerk-cum-Typist w.e.f. 16.07.1999.
- (iv) 07.05.2007 Applicant and 9 other employees were confirmed and regularized on the post of Clerk-cum-Typist.
- (v) 20.05.2009 Applicant cleared Lower Grade Examination as required under 'Exam Rules 1977'.
- (vi) 04.02.2016 Benefit of ACPS was granted to the Applicant considering his 12 years' service from 16.07.1999 from the post of Clerk-cum-Typist and non-functional promotion was granted in the post of Assistant.
- (vii) 03.03.2016 Respondent has withdrawn the benefit granted to the Applicant by order dated 04.02.2016 on the ground that the Applicant has not completed 12 years' regular service on the post of Clerk-cum-Typist.

7. In view of the pleadings and the submissions advanced at the Bar, the question posed for consideration is whether the Applicant was entitled to benefit of 1<sup>st</sup> ACPS considering his service on the post of Clerk-cum-Typist from 20.07.1999 or whether the service was to be counted from regular confirmation on the post of Clerk-cum-Typist from 07.05.2007. In my considered opinion, the impugned action withdrawing the benefit already granted to the Applicant is unsustainable and he is entitled to the benefit of 1<sup>st</sup> ACPS counting his 12 years' period from 20.07.1999.

8. As state above, the controversy is as to from which date the period of 12 years has to be counted for the benefit of 1<sup>st</sup> ACPS in terms of G.R. dated 20<sup>th</sup> July, 2001. True, one of the condition is 12 years' regular service on the said post which is the only disputed

factor in the present case. The Applicant had joined the service as a Peon on ad-hoc basis on 25.06.1990 and he was confirmed in service on 19.04.1994 in terms of G.R. dated 19.09.1975. Later, within five years, he was temporarily promoted to the post of Clerk-cum-Typist on 20.07.1999 having found fulfilling the criteria. Later, by order dated 04.02.2016, the benefit of 1<sup>st</sup> ACPS was granted to him counting his service from 26.07.1999 on the post of Clerk-cum-Typist. The perusal of order dated 04.06.2016 reveals that the benefit was granted w.e.f.16.07.2011 in the pay scale of Assistant which is non-functional promotion in terms of G.R. dated 20.07.2001. However, later, the benefit was withdrawn solely on the ground that in seniority list, his regular appointment on the post of Clerk-cum-Typist is 08.05.2007. Having recorded so, it was held that the Applicant has not completed 12 years from 08.05.2007 while granting the benefit of 1<sup>st</sup> ACPS, and therefore, not eligible for the same. This interpretation and reasoning is obviously contrary to the various decisions rendered by this Tribunal and confirmed by Hon'ble High Court wherein it has been consistently held that ad-hoc service deserves to be considered for counting 12 years' period from for the benefit of ACPS. The very object of grant of ACPS is to address the issue of stagnation and to give monetary benefit by giving pay scale of next promotional post which is called as non-functional promotion or ACPS. In the present case, the Applicant was temporarily promoted on the post of Clerk-cum-Typist on 20.07.1999 and confirmed on 07.05.2007. However, the fact remains that he worked on the post of Clerk-cum-Typist since 20.07.1999 and had completed 12 years' period on the same post in 2011. It was rightly considered and the benefit of ACPS was granted. As such, only because the promotion was confirmed on 07.05.2007 on the post of Clerk-cum-Typist, that will not deprive the Applicant from getting the benefit of ACPS having completed 12 years' service on the post of Clerk-cum-Typist.

9. The issue where the temporary or ad-hoc service of the employee can be treated as regular service for grant of ACPS is no more *res-integra* in view of the latest Judgment of Hon'ble High Court in ***Writ Petition No.9051/2013 & other connected matters (State of Maharashtra Vs. Smt. Meena A. Kuwalekar) decided on 28.04.2016***. In these Writ Petitions, the challenge was to the order passed by this Tribunal granting the benefit of ACPS considering the period of ad-hoc / temporary service. The Hon'ble High Court after examining it's earlier various decisions and Judgments of Hon'ble Supreme Court dismissed the Writ Petitions confirming the Judgments passed by this Tribunal. Here, it would be appropriate to reproduce relevant Paragraphs in the Judgment, which are as follows:-

**22.** *The objective and the purpose for introduction of TBPS or ACPS is to relieve the employees, at least partially, from the frustration which normally arises on account of stagnation in a particular post for long years on account of limited availability of promotional opportunities. The scheme does not involve actual, functional promotion to the next higher post, but provides for the award of "next higher pay scale in the promotional chain" or "pay scale of promotional post" or where promotional posts is unavailable "the pay scales as mentioned in Appendix A" (to GR dated 20 July 2001) to employees, who may have completed "regular service of 12 years" or "12 years of regular service". The GR dated 8 June 1995 which concerns TBPS uses the expression "after regular service of 12 years" . The GR dated 20 July 2001, which concerns ACPS uses the expression "after twelve years of regular service on concerned post". None of learned counsel appearing for the respective parties have made any distinction between the two expressions.*

**26.** *The crucial expression in the GR dated 1 December 1994, upon which both the sides have placed emphasis reads thus :“.....and those who are in service on the date of issue of this Government Resolution and those who fulfill all the three following conditions their services should be treated as regularized from the date of this Government Resolution”.*

**27.** *The aforesaid expression in GR dated 1 December 1994 does not in so many terms state that the services of the employees covered under the GR are being regularised with effect from the date of the GR and that the services rendered prior to the said date will not be regarded as 'regular service' for any purposes whatsoever. Therefore, at least the plain reading of the GR, does not fully support the*

construction suggested by Mr. Kumbhakoni. Rather, the expression makes use of the past tense i.e. 'regularised', lending support to the construction that the past services were also intended to be regularised. Similarly, the use of the expression 'should be treated as once again lends support to the construction that the past services were intended to be treated as regularised. The use of the past tense coupled with the fiction introduced, at least does not render the view taken by the MAT as grossly erroneous or untenable. In matters of interpretation, the use of past tense is required to be assigned some meaning. So also, it is fairly well settled that the deeming provision may be intended to enlarge the meaning of a particular word or to include matters which otherwise may or may not fall within the main provision. The effect of such fiction is also quite well known. If one is bidden to treat an imaginary state of affairs as real, then one must, unless prohibited from doing so, also imagine as real, the consequences and the incidents which inevitably flow from such a situation. One must not permit one's imagination to boggle when it comes to inevitable corollaries of the state of affairs.

**49.** The decisions rendered by this Court in *Nanda Chavan (supra)* and *Smt. Sushma Kumar Arya (supra)*, as of today hold the field. In terms of these decisions, services of employees placed in virtually identical position as compared to respondent - employees from the date of their initial appointments, have been taken into consideration for the grant of benefits under TBPS and ACPS. The decisions of the co-ordinate benches of this Court bind us. The State Government in some cases has extended some benefit to its employees on its own. In other cases, the State Government has extended such benefit in pursuance of orders made by MAT and this Court. The State Government has been selective in matters of extension of such benefits and further in the matter of challenging the orders made by MAT and this Court in virtually identical matters. The peculiar expressions used by the State Government in its GR dated 1 December 1994, also render the view expressed by MAT as well as co-ordinate benches of this Court, a plausible view. This is not a case where respondent - employees were either appointed on purely ad hoc basis de hors the recruitment rules or in some whimsical, inconsistent or haphazard manner. This is also not a case where respondent - employees were appointed on work charged basis or as daily wagers. Rather, this is a case where respondent - employees, though appointed on temporary basis, were so appointed against permanent, clear, substantive and sanctioned vacancies. The services of such respondent - employees, right from the date of their initial appointment has been taken into consideration by the State Government practically for all purposes except perhaps seniority. In so far as non consideration of service prior to 1 December 1994 for purposes of seniority is concerned, the GR dated 1 December 1994 has made specific provisions. However, there are no specific provisions in the GR dated 1 December 1994 with regard to taking into consideration such services for other purposes. The practice indicates that such services has been taken into consideration practically for all purposes except determination of seniority. The GR dated 1 December 1994 directs that the services 'should be treated as regularised'. The use of the past tense as well as legal fiction employed, also suggests

*that the intention was always to treat such past services as regular for all purposes except perhaps in the matter of determination of seniority for which special provisions were made. Upon cumulative consideration of all such factors, including the selective approach being adopted by the State Government, we are satisfied that these are not fit cases to exercise our extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.”*

10. In view of aforesaid decision, it is no more in *res-integra* that the temporary service / ad-hoc service of the employee deserves to be considered for the grant of 1<sup>st</sup> ACPS, and therefore, the impugned action of withdrawing the benefit granted to the Applicant is clearly untenable in law.

11. The whole thrust of the Respondent's contention is upon the GR. Dated 07.10.2016. In this respect, the Respondent sought to contend that in terms of this G.R., the benefit of consideration of temporary service is available only to those Government servants, whose services were regularised by G.A.D. till 31.03.1999. It would be useful to reproduce the relevant Para from the G.R. which is as follows :-

“महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील मंत्रालयातील तसेच बृहन्मुंबईतील राज्य शासकीय कार्यालयात लिपिकवर्गीय संवर्ग तसेच अन्य संवर्गातील महाराष्ट्र लोकसेवा आयोग अपुरस्कृत उमेदवार म्हणून नियुक्त झालेल्या व सामान्य प्रशासन विभागाच्या विविध शासन आदेशान्वये दिनांक ३१.३.१९९९ पर्यंत सेवा नियमित केलेल्या कर्मचा-यांची, सेवा नियमित झाल्याच्या दिनांकापूर्वीची, तात्पुरती अखंडीत सेवा तसेच महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवार म्हणून मंत्रालय तसेच बृहन्मुंबईतील राज्य शासकीय कार्यालयात लिपिक संवर्गातील अथवा अन्य तत्सम संवर्गात नियुक्त झालेल्या कर्मचा-यांची पदोन्नतीच्या कोट्यातील तात्पुरत्या पदोन्नतीची अखंडीत सेवा देखील कालबद्ध पदोन्नती/ सेवांतर्गत आश्वासित प्रगती योजना/ सुधारित सेवांतर्गत आश्वासित प्रगती योजनेच्या प्रयोजनासाठी १२ वर्षांच्या नियमित सेवेची गणना करताना विचारात घेण्यात यावी. तसेच संबंधित कर्मचा-यांकडून संबंधित योजनेबाबतच्या अन्य अटीची पूर्तता झाल्यानंतर त्यांना अनुज्ञेय योजनेंतर्गत यथास्थिती कालबद्ध पदोन्नती/ सेवांतर्गत आश्वासित प्रगती योजना / सुधारित सेवांतर्गत आश्वासित प्रगती योजनेचा पहिला / दुसरा लाभ मंजूर करण्यात यावा.”

12. It may be noted that, admittedly, the aforesaid GR. Dated 07.10.2016 has been issued in view of decision of Hon'ble Supreme Court in SLP No.14070/2012 arising from the decision of Hon'ble Bombay High Court in ***Writ Petition No.9962/2010 decided on 06.02.2012 (Director of Technical Education Vs. Kum. Nanda C. Chavan)***. Here, significant to note that in this matter, the decision was rendered by Hon'ble Bombay High Court in favour of the



employees and State Government had filed Special Leave Petition before Hon'ble Supreme Court and the said Special Leave Petition was dismissed by Hon'ble Supreme Court but kept the question of law raised in the Special Leave Petition open. It is on this basis, the submission was advanced before the Hon'ble High Court in **Meena Kuwalekar's** matter that the decision in **Nanda Chavan's** case was not approved by the Hon'ble Supreme Court and the Courts are not bound to follow the decision in **Nanda Chavan's** case. However, the Hon'ble Bombay High Court in **Meena Kuwalekar's** matter did not find favour with the submission and confirmed the decision rendered by this Tribunal to reckon the period of temporary or ad-hoc service for the grant of benefits of 1<sup>st</sup> ACPS.

13. As such, in view of the decision of Hon'ble Bombay High Court in **Nanda Chavan's** matter, which is relied by Hon'ble Bombay High Court while deciding Writ Petition No.9051/2013, the criteria adopted in G.R. dated 7th October, 2016 restricting the benefit to one class of employee is apparently contrary to the spirit of the Judgment of Hon'ble Bombay High Court. This being the position, the Applicant's case needs to be examined independently keeping aside the G.R. dated 7th October, 2016 and while doing so, the only conclusion is that the ad-hoc service of the Applicant on the post of Clerk-cum-Typist was required to be considered for grant of 1st ACPS. Suffice to say, the G.R. dated 07.10.2016 is of no help to the Respondents and it will have no adverse effect on the case of the Applicant.

14. Apart, the learned Advocate for the Applicant also raised the ground of discrimination. He has pointed out that in the matter of colleague of the Applicant Shri Parab, who is similarly situated, the benefit of 1<sup>st</sup> ACPS has been granted to him considering his temporary service on the post of Clerk-cum-Typist from 15.07.2011. Shri Shirke was also appointed in 1992 and was given temporary promotion on the post of Clerk-cum-Typist in P.W.D. on 16.07.1999. Later, he was

regularly promoted on 08.05.2007. However, the benefit of 1<sup>st</sup> ACPS was given to him considering his temporary service from 16<sup>th</sup> July, 1999. Thus, the benefit was granted w.e.f. 15.07.2011. As such, the Applicant is subjected to discrimination which is violative of Article 14 of the Constitution. The Respondent has not disputed the factual aspect of benefit of 1<sup>st</sup> ACPS to Shri Parab and all that stated in reply that the matter of Shri Parab is of different Department. This can hardly be accepted as an explanation much less justifiable as the discrimination is obvious. Needles to mention that the State being model employer is required to consider the employees who are situated similarly alike, otherwise it will be violative of Article 14 of the Constitution.

15. The Applicant's entitlement to the benefit of 1<sup>st</sup> ACPS is disputed only on the ground that his continuous service was to be reckoned with from 2007 and no other ground is raised about his non-eligibility in terms of G.R. dated 20<sup>th</sup> July, 2001. The Applicant was temporarily promoted on the post of Clerk-cum-Typist on 20.07.1999 and had completed 12 years' service on the same post. This being the position, there is no justification much less valid one to deny the benefit of 1<sup>st</sup> ACPS to him.

16. The totality of aforesaid discussion leads me to sum-up that the impugned order is not sustainable in law and O.A. deserves to be allowed. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The impugned order dated 08.12.2017 is quashed and set aside.
- (C) The Applicant is declared entitled for the benefit of 1<sup>st</sup> ACPS.

- (D) The Respondent is, therefore, directed to re-fix the pay of the Applicant and extend the monetary benefits within two months.
- (E) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 07.08.2019  
Dictation taken by :  
S.K. Wamanse.

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