

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.382/2022

DISTRICT:- JALNA

Rajendra s/o. Ratilal Shah,
Age : 59 years, Occu. : Retired as Lab. Assistant,
R/o : Sardar Patel Road, Near Rukmini Garden,
Jalna, Tq. & Dist. Jalna. ...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Technical Education Department,
Mantralaya, Mumbai.
2. The Director of Technical Education,
3, Mahapalika Marg, CST Area,
Fort, Mumbai.
3. Joint Director, Technical Education,
Aurangabad Region, Aurangabad,
Station Road, Near Govt. Polytechnic Campus,
Osmanpura, Aurangabad.
4. The Principal,
Govt. Polytechnic Ambad, Mhada Colony,
Pachod Road, Ambad. ...RESPONDENTS

APPEARANCE :Shri R.A.Joshi, Counsel for
Applicant.

:Smt. Sanjivani Ghate, Presenting
Officer for the respondents.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on: 20-09-2023.

ORAL ORDER

1. Heard Shri R.A.Joshi, learned Counsel for applicant and Smt. Sanjivani Ghate, learned Presenting Officer appearing for respondent authorities.

2. Learned Counsel has filed the present O.A. seeking following reliefs (p.b.page 7):

“B) By issue of appropriate order or direction in the like nature, the Respondents be directed to consider the service of Applicant from 18.03.1989 up to 28.11.89, for grant of third benefit contemplated under recommendations of seventh pay commission.

C) The By issue of appropriate order or direction in the like nature, the Respondents be directed to release the annual increments as per G.R. dated 24.05.2002.”

(Reproduced ad-verbatim from p.b.page 7 of O.A.)

3. It is the contention of the applicant that the order of regularization of his service, though was issued on 29-11-1989, while computing the period of his service, the period during which he had served on the same post as ‘temporary employee’ also is liable to be considered. The

Government Resolution dated 07-10-2016 has been referred to and relied upon by the applicant.

4. Learned Counsel for the applicant submitted that had the aforesaid date considered as the date of his entry in service, applicant would have certainly be entitled for third benefit of Assured Career Progression Scheme (ACPS) which accrues in favour of Government employee after his putting in 30 years of service. Learned Counsel submitted that since the period of service of the applicant was reckoned from 28-11-1989 and he retired on 31-07-2019, third benefit of ACPS could not be earned by him. Learned Counsel submitted that had 18-03-1989 been taken as his date of entry in Government service, the applicant would have been entitled for third benefit of ACPS after completion of 30 years' service on 18-03-2019. Learned Counsel submitted that as the period of temporary service was not considered while computing the entire service period of the applicant, he has been deprived of the third benefit of ACPS. Learned Counsel in the circumstances, has prayed for allowing the O.A. The learned Counsel relied upon the judgments delivered by the Tribunal in O.A.Nos.1090/2017 and 550/2019.

5. Respondents have filed affidavit in reply and have opposed the contentions raised in the O.A. as well as the prayers made therein. It is the contention of the respondents that benefits of ACPS are liable to be given only from the date of regular service and the prior period of service rendered by the concerned Government employee as ad-hoc or temporary cannot be considered for the same. Learned P.O. reiterating the contentions raised in the affidavit in reply filed on behalf of the respondents prayed for rejecting the O.A.

6. I have gone through the G.R. dated 07-10-2016 and the judgments passed in O.A.No.1090/2017 as well as in O.A.No.550/2019 which are relied upon by the learned Counsel for the applicant. The facts and the issue involved in the present O.A. are identical to the facts which existed in O.A.No.1090/2017. As such the decision rendered in the said O.A. would squarely apply to the present matter.

7. I deem it appropriate to reproduce hereinbelow the discussion made in paras 11 to 14 of the judgment delivered by the Tribunal on 19-11-2018 in O.A.No.1090/2017, it reads thus:

“11. As regards the matter in issue referred to above, there are various pronouncements of this Tribunal and confirmed by the Hon’ble Bombay High Court. In this behalf, reference be made to **O.A.467/2007 (Pushpalata Sonawane Vs. State of Maharashtra) decided by this Tribunal on 29th August, 2008.** This Tribunal has considered the G.R. dated 20.06.2001 and clearly held that what is needed is only continuous service of 12 years and not necessarily regular service. The Judgment was upheld by Hon’ble Bombay High Court on 22.06.2009. Same view was reiterated by Hon’ble Bombay High Court in **Maharashtra State Transport Corporation, Yavatmal Vs. Fakira s/o Champatrao Neware and Anr. : 2009 (5) Maharashtra Law Journal Page 50.** The Hon’ble Bombay High Court held that what is required is 12 years continuous service and there was no necessity of confirmation on regular basis in the said post. Again, the issue has raised in **O.A.No.695/2009 (Dattatray K. Bhalshankar and Ors. Vs. State of Maharashtra) decided by this Tribunal on 21st January, 2010.** Adverting to the Judgments pronounced by this Tribunal in earlier O.As, this Tribunal again held that earlier period of service on ad-hoc basis needs to be considered while granting benefit of Time Bound Promotion / ACP Scheme. This Judgment in O.A.695/2009 was challenged before Hon’ble Bombay High Court in Writ Petition No.2257/2011. While deciding the Writ Petition, the Hon’ble Bombay High Court by order dated 6th February, 2012 confirmed the Judgment of this Tribunal. This Judgment of Hon’ble Bombay High Court dated 6th February, 2012 was challenged before Hon’ble Supreme Court in Special Leave Appeal which also came to be dismissed on 28.09.2012. In **O.A.1023/2012 (Suresh Kokitkar Vs. State of Maharashtra) decided on 21.06.2013** directions were issued to consider the earlier service period from the date of initial appointment on ad-hoc basis while

granting benefit of Time Bound Promotion / ACP Scheme.

12. Thus, in view of the decisions of this Tribunal delivered in various O.As confirmed by higher forum, this issue has settled and attained the finality.

*13. Furthermore, it will be apposite to refer the recent Judgment of Hon'ble Bombay High Court in **Writ Petition No.9051/2013 with bunch of Writ Petitions (State of Maharashtra Vs. Smt. Meena A. Kuwalekar) decided on 28.04.2016.** In these Writ Petitions, the orders passed by this Tribunal directing the Government to take into consideration Applicant's services from the date of his initial appointment on ad-hoc basis in Group 'C' was directed to be considered while granting the benefit of Time Bound Promotion / ACP Scheme in terms of G.R. dated 1st December, 1994. The Hon'ble Bombay High Court observed that the State Government had adopted pick and choose approach in the matter and although the MAT has granted relief to several employees, the State Government has chosen to question only some of the orders passed by MAT whereas in remaining matters, the directions were implemented. The Hon'ble Bombay High Court in the said Judgment referred to various Judgments and held that the services of the employees from the date of their initial appointment though on ad-hoc or temporary basis needs to be considered while extending the benefit of Time Bound Promotion / ACP Scheme and dismissed the petitions.*

14. Suffice to say, it is no more disintegrated that the benefit of Time Bound Promotion / ACP Scheme needs to be extended considering the period from the date of initial appointment of the employee rendered on ad-hoc basis. As such, the contention of the Respondents that the services of the Applicants has to be reckoned with from the date of regularization in service i.e. 01.09.1999 holds no water and their earlier period of service

rendered on ad-hoc basis on 14.08.1989 to 31.08.1999 has to be considered while extending the benefit of Time Bound Promotion / ACP Scheme.”

8. It is undisputed that the applicant worked as temporary employee during the period between 18-03-1989 to 29-11-1989. The said period deserves to be considered as the service period while computing the service period of the applicant and the applicant has to be held in Government service w.e.f. 18-03-1989. Applicant had, thus, completed 30 years of his service on 17-03-2019 and was, therefore, entitled for the benefit of 3rd ACPS having completed 30 years of his service. Applicant's service period since was counted from 29-11-1989, it fail short to 30 years till the date of his retirement on 31-07-2019 and he was, therefore, not given the benefit of 3rd ACPS. In view of the fact that services of the applicant were liable to be computed w.e.f. 28-03-1989 the applicant must be held to have completed 30 years of his service on 17-03-2019. Applicant is, therefore, held entitled for the benefit of 3rd ACPS.

9. So far as prayer clause C) is concerned, it is for grant of annual increments as per the G.R. dated 24-05-2002. I have gone through the said G.R.

dated 24-05-2002. As provided in the said G.R. if the temporary appointment of the Government employee is continued for more than a year then he becomes entitled for the annual increments which are due even during the period of his temporary service. In the present matter, admittedly, period of temporary service of the applicant is less than 7 months. As such, it does not appear to me that the applicant can be held entitled for the relief prayed for in prayer clause C).

10. For the reasons stated above the following order is passed:

ORDER

[i] Respondents are directed to consider the services of the applicant from 18-03-1989 for grant of 3rd benefit of ACPS contemplated under the recommendations of the 7th Pay Commission with consequential benefits.

[ii] The monetary arrears which may fall due shall be paid to the applicant within 12 weeks from the date of this order.

[iii] O.A. stands partly allowed in the aforesaid terms.

[iv] No order as to costs.

Place : Aurangabad

VICE CHAIRMAN

Date : 20.09.2023.