

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.383/2022,

DISTRICT:- AURANGABAD

Gangadhar s/o. Ramchandra Muley,
Age : 59 years, Occu. : Retired as Serior Clerk,
R/o : Omkareshwar Complex, Ulkanagari,
Aurangabad. ...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 Aurangabad,
Station Road, Near Govt. Polytechnic Campus,
Osmanpura, Aurangabad. ...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 for the applicant seeks leave to delete prayer clause B) in the O.A. Leave as prayed for is granted. Necessary amendment be carried out forthwith.

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

“C) The Respondents be directed to consider the service of Applicant from 27.11.1990 to 18.08.1992 for grant of Time Bound Promotion/ Assured Career Progression Scheme on completion of 12/24 years service.”

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

4. Applicant has submitted that considering the provisions under the G.R. dated 07-10-2016 the services of the applicant must have been counted from 27-11-1990, the day on which the applicant entered into Government service as a temporary employee. The services of the applicant are considered for grant of first and second

benefit of the Assured Career Progression Scheme (ACPS) after his completing 12 years and 24 years services, respectively. It is the grievance of the applicant that had the date 27-11-1990 been taken as his date of entry into Government service, he would have earned the first benefit under ACPS on 27-11-2002 whereas it was given to him on 19-08-2004. Similarly, when he would have received the second benefit of ACPS on 27-11-2014, it was given to him on 01-01-2016. The applicant has, therefore, prayed for grant of time bound promotion from the said earlier dates with all consequential benefits.

5. Applicant retired on attaining the age of superannuation on 28-02-2019. Thereafter, the present O.A. has been filed by him with M.A. for condonation of delay caused in filing the O.A. Delay has been condoned and matter is being now decided on merits.

6. The learned Counsel for the applicant has relied upon the judgment of this Tribunal delivered on 19-11-2018 in O.A.No.1090/2017. The identical issue was involved in the said O.A. Applicability of G.R. dated 07-10-2016 is discussed by the Tribunal in the said judgment. Paragraphs no.11 to 14 of the said judgment are relevant.

I deem it appropriate to reproduce the same hereinbelow,
which read 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.”

7. The facts and circumstances involved in the present matter are quite identical with the facts and circumstances which existed in the aforesaid matter. As such, the law laid down in the aforesaid judgment would squarely apply in the present matter. The services of the applicant need to be computed from the date of entry in service on 27-11-1990 as a ‘temporary employee’. The applicant had thus completed 12 years of his service on 27-11-2002 and 24 years on 27-11-2014 and was thus entitled to get first and second benefit of ACPS on the said dates. It is undisputed that the applicant was given first and second benefit of ACPS on 19-08-2004 and 01-01-20016, respectively. It is undisputed that the applicant worked as ‘temporary employee’ during the period between 27-11-1990 to 18-08-1992. As held in the aforesaid judgment the said period deserved to be considered as service period while computing the total service period of the applicant and the applicant has to be held in Government service w.e.f. 27-11-1990. If the said date is

held to be the date of applicant's entry into the Government service, it has to be held that that he completed 12 years of his service on 27-11-2002 making him entitled for the first benefit under the ACPS and thus was liable to be given the second benefit under the ACPS on 27-11-2014. I, therefore, hold the applicant entitled for the first benefit of ACPS w.e.f. 27-11-2002 and second benefit of ACPS w.e.f. 27-11-2014.

8. Though the applicant has prayed for all consequential monetary benefits because of the preponement in the dates of first and second benefit of ACPS, I am not inclined to accept the said request for the reason that the applicant has approached this Tribunal belatedly. However, applicant is certainly entitled for re-fixation of pay taking into account the preponement of dates of grant of ACPS benefits for grant of notional increments. Based on such notional pay-fixation, amount of pension payable to the applicant will have to be determined and the applicant will be entitled for pension at the said revised rate. I also hold the applicant entitled for the arrears in the pension amount restricted to the period of 3 years from the date of his filing the present O.A.

9. Applicant has also prayed for consequential benefits meaning thereby the arrears which may fall due in his favour because of the preponement of the dates of grant of first and second benefit of the ACPS. I am not inclined to accept his said request, however, it appears to me that the applicant must be held entitled for such benefits notionally so that all such benefits which would flow from the preponement of the said dates may be notionally given and ultimately the amount of pension would be fixed on the basis of the said preponement.

10. I, therefore, hold the applicant entitled for arrears which may arise out of such revised pay in the amount of his pension only and not the salary. In the circumstances, following order is passed:

ORDER

[i] By considering the applicant to be in Government service w.e.f. 27-11-1990 the dates of first and second benefits of ACPS be preponed and on the said basis the pay of the applicant shall be notionally re-fixed. On the basis of the revision in his payment, his last drawn salary be determined and accordingly his entitlement for the amount of pension be fixed.

[ii] Arrears of pension which may arise from such revised pay fixation be remitted in favour of the applicant within 4 months from the date of this order.

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

[iv] No order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 20.09.2023.