

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 1082/2019 (S.B.)**

1. Yashwant Wasudeo Raut,
Aged about 57 years,
Occ. Muster Assistant,
R/o P.S.Kurkheda, Dist. Gadchiroli.
2. Bhaskar S/o Atmaramji Bhagadkar,
Aged about 57 years, Occ. Muster Assistant,
R/o P.S.Kurkheda, District Gadchiroli.
3. Purushottam S/o Kawdu Janbandhu,
Aged 56 years, Occ. Muster Assistant,
R/o Post Talegaon, Tahsil Kurkheda,
Dist. Gadchiroli.

Applicants.**Versus**

- 1) The State of Maharashtra,
Through it's Secretary,
Ministry of Planning,
Mumbai- 400 032.
- 2) Collector Gadchiroli,
District Gadchiroli.

Respondents

Shri G.N.Khanzode, Id. Advocate for the applicants.

Shri A.P.Potnis, Id. P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 25th Jan., 2024.

Judgment is pronounced on 31st Jan., 2024.

Heard Shri G.N.Khanzode, ld. counsel for the applicants and Shri A.P.Potnis, ld. P.O. for the Respondents.

2. Applicants 1 to 3 were appointed as Muster Assistant on 20.12.1984, 18.10.1985 and 28.01.1987, respectively under the Employment Guarantee Scheme. Applicants 1 & 2 challenged their termination and though Labour Court held in their favour and directed their reinstatement with continuity of service, Revisional Court held against them. Against the order of Revisional Court applicant no. 1 & 1 another filed W.P. No. 4044/2003. In this W.P., by order dated 07.11.2003 the respondents were directed to consider case of the petitioners for absorption in accordance with the scheme (A-1). The Writ Petition was, however, dismissed. Against the order of Revisional Court applicant no. 2 and 9 others filed W.P. No. 5864/2004. In this O.A. following order (A-2) was passed on 20.12.2004:-

On the backdrop of above facts, petition is dismissed as withdrawn with liberty as prayed for. If representation is made by the petitioners for

redressal of their grievance within four weeks from today, the respondent no. 4 is directed to decide the same on its own merits according to law and procedure applicable in this regard as early as possible and in any case not beyond the period of eight weeks from the date of receipt of such representation.

Applicant no. 3 and 9 others filed W.P. No. 4336/2001. In this W.P. following order was passed on 17.07.2003 (A-3):-

We therefore, direct the respondents to implement and enforce the said G.R. and extend the benefits thereunder to the Petitioners within 8 weeks from today.

3. It is the grievance of the applicants that inspite of aforesaid orders of Hon'ble High Court their cases are not yet considered for absorption.

4. The applicants have relied on a common judgment of this Bench dated 05.07.2016 in O.A. Nos. 316/2016 and 317/2016 (A-6). The applicants in these O.As. were held to be notionally in service on the relevant date i.e. 31.05.1993 since continuity of service was granted to them, and hence they were held entitled to benefit of G.Rs. dated 01.12.1995 and 21.04.1999.

5. The applicants have further relied on a common judgment of this Bench dated 01.08.2019 (A-7) in a batch of 8 Original Applications. In this judgment it was observed:-

I have perused this case. It seems that in case of statutory appeal, period of limitation commences from date when statutory appeal was decided and in absence of any provision with regard to statutory appeal, simply by making representations period of limitation would not get extended. In the present case the facts are all together different, the applicants are in service and length of service is from 1980 and onwards. The services of the applicants were determined without following the procedure laid down in law, consequently, the applicants approached the Labour Court, they were reinstated in service with continuity. It further appears that the respondents in most of the matters not challenged the decisions of the Labour Court. Secondly, in some matters the decision was challenged by filing the revision, but undertaking was given by the respondents before the Industrial Court to absorb the applicants in service on the post of Mustering Assistant. Thus, it appears that the applicants were under apprehension that the respondents will fulfil their obligation as per the undertaking. In view of this matter, I do not see any substance to the contention that the claim is barred by limitation. On the contrary, I will say that the cause is continuing one.

In the instant case, so far as applicant no. 1 is concerned, his contentions were not accepted by the High Court and the respondents were only directed to consider his case for absorption in accordance with the scheme. Applicant no. 2 (and the co-petitioners) withdrew the W.P. filed by them, and it was dismissed. However, the High Court gave them liberty to make a representation for redressal of their grievance. In W.P. 4336/2001 the respondents were directed to extend the benefit of G.R. dated 21.04.1999 to applicant no. 3 (and the co-petitioners).

6. On 21.11.2019 the applicants made representations (A-8 collectively) to respondent no. 2 that they be absorbed as per G.Rs. dated

01.12.1995 and 21.04.1999 in view of common judgment of this Bench in O.A. Nos. 316 & 317/2016. Hence, this Original Application.

7. Respondents 1 & 2 resisted the O.A. on the following grounds. Duly constituted committee under the Chairmanship of Divisional Commissioner had taken a decision that seniority list of only those Muster Assistants was to be prepared by District Collector for absorption who were working during the period from 26.05.1993 to 31.05.1993. The applicants were not working during this period. Therefore, they cannot claim parity with those to whom this Tribunal had granted benefit of the scheme by Judgments dated 05.07.2016 and 01.08.2019. Absorption of the applicants would amount to giving them a backdoor entry which is not permissible. The O.As. are barred by limitation.

8. It may be reiterated that W.P. No. 4044/2003 wherein applicant no. 1 was one of the petitioners, was dismissed on 01.11.2003 by observing that the respondents shall consider case of the petitioners for absorption in accordance with the scheme. W.P. No. 5864/2004 wherein applicant no. 2 was one of the petitioners was dismissed as withdrawn on 20.12.2004 with liberty to make a representation to the appropriate authority. W.P. No. 4336/2001 wherein applicant no. 3 was

one of the petitioners was disposed of on 18.07.2003 with a direction to the respondents to implement and enforce G.R. dated 21.04.1999. In W.P. Nos. 4044/2003 and 5864/2004 applicants 1 & 2 failed to obtain substantive relief. Both these petitions were dismissed. However, limited relief was granted whereby applicants 1 & 2 had one more opportunity to put forth their grievance and get it redressed. It is apparent that grievance of applicants 1 & 2 was not redressed. W.P. No. 4044/2003 was dismissed on 07.11.2003. W.P. No. 5864/2004 was dismissed as withdrawn on 20.12.2004. Inaction on the part of the concerned Authority to consider grievance of applicants 1 & 2 within reasonable time thereafter, pursuant to orders passed by the Hon'ble High Court, could have, perhaps, furnished a fresh cause of action to applicants 1 & 2 to approach this Tribunal. Viewed from this angle the O.A. is clearly time barred so far as applicants 1 & 2 are concerned. So far as applicant no. 3 is concerned, relief was granted to him in W.P. No. 4336/2001 by order dated 18.07.2003. For execution of said order applicant no. 3 ought to have availed appropriate remedy and not the remedy of instant O.A.. This being the factual position, **O.A. is dismissed with no order as to costs.**

Member (J)

Dated :- 31/01/2024

aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 31/01/2024
and pronounced on

Uploaded on : 01/02/2024