

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 309/2018 (S.B.)

Dilip S/o Manohar Awadhoot,
Aged about 55 years, Occupation Service,
R/o Madhya Chanda Van Vibhag Parisar,
Out House, Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Ministry of Forest,
Mantralaya, Mumbai- 32.
- 2) Additional Principal Chief
Conservator of Forest (Administration),
State of Maharashtra,
Nagpur.
- 3) Chief Conservator of Forest (Establishment),
Chandrapur Circle,
Chandrapur.
- 4) Deputy Chief Conservator of Forest,
Central Chanda,
Chandrapur.

Respondents

Shri M.K.Mishra, Id. Advocate for the applicant.

Shri A.M.Ghogre, Id. P.O. for the Respondents.

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

JUDGEMENT

Judgment is reserved on 22nd June, 2023.

Judgment is pronounced on 24th Aug., 2023.

Heard Shri M.K.Mishra, Id. counsel for the applicant and Shri
A.M.Ghogre, Id. P.O. for the Respondents.

2. The applicant joined the respondent department as Van Mazoor in January, 1981 on daily wages. On 31.01.1996 G.R. (A-16) was issued by the Revenue and Forest Department. It *inter alia* stated:-

निर्णय

वन विभागामध्ये योजनांतर्गत / योजनेतर योजनेमध्ये सलग कार्यरत असलेल्या ज्या रोजंदारी मजुरांनी दि. 1.11.1994 रोजी 5 वर्षांची सलग सेवा पूर्ण केलेली आहे. अशा संदर्भ क्र. 1 मधील 10160 अधिसंख्य पदापैकी 8038 (परिशिष्टात नमूद केलेल्या) दिनांक 1.11.1994 पासून नियमित करण्यात येत असून त्यांना गट "ड" मध्ये वन मजुर म्हणून समाविष्ट करण्यात आल्यामुळे त्यांच्यासाठी 8038 अधिसंख्य पदे निर्माण करण्यास शासन मंजूरी देत आहे. ही पदे खालील अटीस अधिन राहून निर्माण करण्यात आलेली आहेत.

1) पाच वर्षांच्या सलग सेवेचा कालावधीची गणना करतांना वन विभागातील योजनांतर्गत/योजनेतर योजनेवर रोजंदारी मजुरांनी प्रत्येक वर्षात कमीत कमी 240 दिवस काम केलेले असावे. याकरीता पाच वर्षांचा कालावधी मोजतांना रोजगार हमी योजना किंवा रोजगार हमी घेणा-या तत्सम योजनेवर केलेल्या कामांचे दिवस विचारात घेण्यात घेऊ नयेत.

For the relevant block of five years details of the applicant

were as follows:-

अ.क्र.	कालावधी	कोठे कार्यरत होते	वर्षनिहाय दिवस	शेरा
9	01.11.89 ते 30.09.90	01.01.90 ते 30.09.90 मुर्बाड परिक्षेत्र ठाणे वनविभाग	240 दिवस	प्रमाणपत्र आहे
10	01.10.90 ते 31.03.91	वैद्यकीय कारणास्तव रजेवर	-	-
11	01.04.91 ते 31.10.91	01.04.91 ते 31.05.91, 20.07.91 ते 31.10.91 मध्य चांदा	161 दिवस	प्रमाणपत्र आहे
12	01.11.91 ते 31.10.92	01.11.91 ते 31.10.92 मध्य चांदा	240 दिवस	प्रमाणपत्र आहे

13	01.11.92 31.10.93	ते	पूर्ण कालावधी मध्य चांदा	240 दिवस	प्रमाणपत्र आहे
14	01.11.93 31.10.94	ते	पूर्ण कालावधी मध्य चांदा	240 दिवस	प्रमाणपत्र आहे

By order dated 07.11.2012 (A-1) services of the applicant were regularized as per G.R. dated 16.10.2012 (A-R-2). This order stated:-

ज्याअर्थी आपण वनविभागातील विविध योजनांतर्गत/योजनेत्तर कामावर रोजंदारी मजुर म्हणून दिनांक- 30/06/2004 रोजी 5 वर्षांची सलग सेवा पूर्ण केली आहे. त्याअर्थी आपणास संदर्भिय शासन निर्णया मधील नमूद तरतुदीनुसार या आदेशाद्वारे 'ड' गटात वनमजुर या संवर्गात शासनाने निर्माण केलेले अधिसंख्य पदावर पे बँड-1S 4440-7440 ग्रेड वेतन 1300 या समय वेतनश्रेणीत दिनांक 01.06.2012 पासून नियुक्ती देण्यात येत आहे.

By letter dated 16.06.2015 (A-7) respondent no. 4 submitted the proposal as follows to respondent no. 3:-

श्री दिलीप मनोहर अवधूत, अधिसंख्य वनमजूर हे जानेवारी/1981 पासून विविध वनविभागात रोजंदारीवर प्रदीर्घ कालावधीपासून काम केले असल्याने त्यांचा दिनांक 1.10.90 से 31.3.91 हा वैद्यकीय कालावधी विचारात घेतल्यास त्यांनी दि. 1.11.89 पासून प्रत्येक वर्षी 240 दिवस काम केले आहे, असे समजण्यास हरकत नाही.

सबब सदर बाब विचारात घेता व वरील अधिसंख्य वनमजूराने माहे जानेवारी/1981 पासून विविध वनविभागात काम केले असल्याने त्यांना दिनांक 1-11-1994 पासून नियमित करणेसाठी या विभागाद्वारे प्रस्ताव सादर करण्यात येत आहे.

Identical proposal was sent by respondent no. 3 to respondent no. 2 on 12.08.2015 (A-9). However, respondent no. 2 sent the following proposal dated 02.11.2015 (A-10) to respondent no. 1:-

श्री. दिलीप मनोहर अवधूत यांनी विविध विभागात वनमजूर म्हणून काम केलेले असून त्यांनी दिनांक 01.01.1989 ते 30.09.1990 पर्यंत मुरबाड परिक्षेत्र ठाणे वनविभाग येथे 240 दिवस काम केलेले आहे. परंतु दिनांक 01.10.1990 ते 31.03.1991 पर्यंत ते वैद्यकिय कारणास्तव गैरहजर असल्यामुळे दिनांक 1.11.1990 ते 31.10.1991 ते 31.10.1991 पर्यंत त्यांचे फक्त 161 दिवस पूर्ण होतात. तर दिनांक 1.11.1991 ते 31.10.1994 पर्यंत प्रत्येक वर्षी सलग 240 दिवस पूर्ण होतात. मात्र दिनांक..... ते 31.10.1991 या दरम्यान 79 दिवस कमी पडत असल्याने ते शासन निर्णय दिनांक 31.10.1996 चे निकष पूर्ण करीत नाहीत.

तरी उपरोक्तप्रमाणे शासनास अहवाल सादर करण्यात येत असून शासनस्तरावर या प्रकरणी निर्णय होणेस शासनास विनंती आहे.

No decision was taken. Hence, the applicant filed O.A. No. 140/2017 before this Bench. It was disposed of on 29.08.2017 by passing the following order (A-12):-

The application stands disposed of with direction to respondent nos. 1 and 2 to take decision on the proposal dated 16/6/2015 submitted by the Deputy Conservator of Forests, Chandrapur to the Chief Conservator of Forests, Chandrapur. Such decision shall be taken within three months from the date of this order and same shall be communicated to the applicant in writing. No order as to costs.

Pursuant to order dated 29.08.2017 respondent no. 1 passed the impugned order (A-14) as follows:-

ज्या रोजंदारी मजुरांनी दिनांक ०१.११.१९९४ रोजी सलग ५ वर्षांची सलग सेवा पूर्ण केलेली आहे. अशा वन मजुरांना दिनांक ०१.११.१९९४ पासून नियमितीकरणाबाबतचा धोरणात्मक निर्णय घेण्यात आलेला आहे. ५ वर्षांच्या सलग सेवेच्या कालावधीची गणना करताना वन विभागातील योजनांतर्गत/ योजनेत्तर योजनेवर रोजंदारी मजुरांनी प्रत्येक वर्षात कमीत कमी २४० दिवस काम

केलेले असावे, असा निकष आहे. सदर शासन निर्णयातील निकष श्री दिलीप मनोहर अवधुत, मजूर हे पूर्ण करित नाहीत. त्यामुळे त्यांचा या निर्णयानुसार कार्यवाही करण्याचा प्रश्न उद्भवत नाही. तसे श्री अवधूत यांना कळविण्याची कार्यवाही करण्यात यावी व याबाबत शासनास दिनांक २४.११.२०१७ पर्यंत अवगत करण्यात यावे.

The applicant retired on superannuation on 31.05.2022.

In this factual background the applicant has raised following contentions:-

- A. He is entitled to continuity of service from 01.11.1994 as per G.R. dated 31.01.1996.
- B. Benefit of Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 deserves to be extended to him.
- C. Benefit of note 1 to Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 deserves to be extended to him.

3. Stand of the respondents is as follows. The applicant did not fulfil criterion of having worked for minimum of 240 days during each year of the relevant block of five years stipulated by G.R. dated 31.01.1996. During one of these years (01.04.1991 to 31.10.1991) his attendance was 161 days and it fell short by 79 days. However, he fulfilled the following criteria as per G.R. dated 16.10.2012:-

१) वन विभागातील दि.१.११.१९९४ ते दि. ३०.०६.२००४ पर्यंत सलग पध्दतीने किंवा तुटक तुटक रित्या प्रतिवर्षी किमान २४० दिवस याप्रमाणे किमान पाच वर्ष काम

केलेल्या ५०८९ रोजंदारी कामगारांपैकी दि. १.०६.२०१२ ला कामावर असण्यास पात्र ठरणा-या कामगारांना मंत्रीमंडळाच्या निर्णया प्रमाणे खालील अटी व शर्तीच्या अधिन राहून कायम करण्यात यावे.

- i. त्यांना पूर्वीचे वेतन तद्अनुषंगीक लाभ देय होणार नाही.
- ii. त्यांना दि.१.०६.२०१२ रोजी प्रचलित सेवानिवृत्ती वेतन व महाराष्ट्र नागरी सेवेच्या तरतुदी लागू राहतील.
- iii. उपरोक्त ५०८२ रोजंदारी कामगारांना वरीष्ठता व पात्रतेचे निकष लावून कायम करण्यात यावे.
- iv. उपरोक्त ५०८९ रोजंदारी कामगारांना कायम करण्यात यावे तथापी कुठलाही आर्थिक लाभ देण्यापूर्वी कायम करावयाचे सदर ५०८१ कामगारांची नावनिहाय व विभागनिहाय अंतिम यादी शासनास सादर करण्यात यावी.

Accordingly, his services were regularized w.e.f. 01.06.2012.

The applicant accepted order of regularization w.e.f. 01.06.2012 without demur. For this reason also his contention that he is entitled to benefits of regularization w.e.f. 01.11.1994 deserves to be rejected.

4. First contention raised by the applicant as above merits consideration. The applicant's attendance, during one year from the block of five years fell short because he had availed medical leave. It is not the case of the respondents that the applicant had remained absent without authorization. Viewed from this angle proposal made by respondents 4 & 3 to extend benefit of G.R. dated 31.01.1996 to the applicant was justified. View taken by respondents 2 & 1 to the contrary was hypertechnical and iniquitous, therefore, the impugned order deserves to be quashed and set aside.

5. Second contention of the applicant is based on Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 relevant part of which reads as under:-

30. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency.

6. Third contention of the applicant is based on note 1 to Rule 57 of the Maharashtra Civil Services (Pension) Rules, 1982 which reads as under:-

Note 1 - In case of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count for pension.

7. In support of his second and third contentions the applicant has relied on the following judgments:-

“A. Judgment of Principal Bench of M.A.T. in O.A. No. 263 of 2019 dated 30.09.2021 (Shri Dhondiram Vithoba Kodag Vs. State of Maharashtra & Another).

B. Judgment of Principal Bench of M.A.T. in O.A. Nos. 762 to 766 of 2017 with O.A. Nos. 1012 & 1013 of 2016 dated 08.11.2019 (Shri Subhash Sitaram Shete Vs. State of Maharashtra & 2 Ors).

C. Judgment of Hon’ble Bombay High Court in W.P. No. 7458 of 2010 dated 19.07.2011 (Shri Devidas Bhiku Borker & 2 Ors. Vs. State of Maharashtra & Another).

D. Judgment of Hon’ble Bombay High Court in W.P. No. 3690 of 2005 dated 19.12.2006 (Shri Anant S. Tambde & 7 Ors. Vs. State of Maharashtra & 3 Ors).”

In the judgment at Sr. No. 1 this Tribunal considered and relied upon judgments at Sr. Nos. 2 to 4. Following observations made by the Tribunal in judgment at Sr. No. 1 are relevant:-

12. The interpretation of Rule 30 was the subject matter in Writ Petition No.3690/2005 (cited supra) wherein in the matter of appointment of Seasonal Godown Keepers, their initial service before the date of regularization has been ordered to be counted for pension purpose. It would be profitable to see findings and observations made by the Hon’ble

High Court in Writ Petition No.3690 of 2005 while allowing the claim of the Petitioners therein. The Hon'ble High Court in judgment dated 19.12.2006, in Paragraphs 4 & 5 dealt with the issue of Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 and rejected the contention advanced by the State Government. The relevant paragraph of Judgment in Writ Petition No.3690 of 2005 reads as under:-

"4. The learned Counsel for Petitioner has placed before us the Maharashtra Civil Service (Pension) Rules, 1982 and, in particular, Rule 30 thereof to support his case. We reproduce Rule 30 hereinbelow.

30. Commencement of qualifying service.- Subject to the provisions of these Rules qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity: Provided that at the time of retirement he shall hold substantively a permanent post in Government service or hold a suspended lien or certificate of permanency....."

A bare perusal of this rule would indicate that if a government employee is holding a substantive post at the time of his retirement, his qualifying service shall be computed from the date of his first appointment either substantively or in an officiating capacity or temporary capacity. It is clear from the record that petitioners had been given temporary appointment as seasonal godown keepers and this fact has been recognized by the Tribunal

as also by the respondents in their reply before us. In this view of the matter, we find that the entire period of service from the date of their joining would have to be counted for the purpose of computing their entitlement and quantum of pension.

5. We accordingly allow this Petition and direct the respondents to make payment to petitioners in accordance with their qualifying service within a period of 6 months from today. Rule is made absolute accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.”

13. Undisputedly, the judgment delivered in W.P.No.3690 of 2005 had attained finality and Hon'ble Supreme Court dismissed the SLP. As the Respondents have not complied with the directions given by the Hon'ble High Court, Contempt Petition No.57 of 2008 was filed before the Hon'ble High Court wherein having taken note of dilatory practice adopted by the Government directed to pay interest at the rate of 6% on the amount payable to them.

14. Again similar issue was cropped up in Writ Petition No.7458 of 2010 (Devdas B. Borkar & 2 Ors. Versus The State of Maharashtra & Anr.) decided by Hon'ble High Court on 19.07.2011. In this judgment the Hon'ble High Court referred its earlier decision in Writ Petition No.3690 of 2005 and expressed serious displeasure about findings of the Tribunal rejecting the claim of the Petitioner therein, though they were similarly situated persons. Here it would be apposite to reproduce the paragraph No.5, 6, 8, 10 and 11 of the judgment, which read as below:-

“5. According to the petitioners, this decision was challenged by the respondents before the Apex Court by way of SLP. However, the same was dismissed on 3rd August, 2007. In other words, the view taken by the High Court has been upheld by the Apex Court. Besides, the petitioners also relied on another decision of the Maharashtra Administrative Tribunal, Mumbai in Original Application No.426/2006 decided on 16th March, 2007 in the case of Shri Prabhakar Shankar Bagkar vs. The State of Maharashtra Anr. in which similarly placed employee was granted relief after relying on the decision of the High Court referred to above. It is the case of the petitioners that the decision of this Court has attained finality and has been acted upon by the Department. Similarly, the decision in the case of Shri Prabhakar Shankar Bagkar of the Maharashtra Administrative Tribunal has also been accepted by the Department and has attained finality.

6. Ordinarily, on the basis of this plea, the Tribunal ought to have allowed the Original Application filed by the petitioners. However, the Tribunal in the impugned Judgment has discarded the decision of this Court on the finding that the same does not refer to all aspects of the matter and the relevant decision and provisions were not brought to the notice of the High Court. The Tribunal has then relied on the decision of the Apex Court in the case of Director General, Council of Scientific and Industrial Research vs. Dr.K.Narayanaswami & Ors. reported in AIR 1995 SC 2018 to justify its conclusion that the Government employees such as the

petitioners are not entitled to get pension by taking into account their first date of appointment as Seasonal worker.

8. Having considered the rival submissions, at the outset, we may observe that the Tribunal has misdirected itself in taking the view that the decision of the Division Bench of this Court referred to above, cannot be relied upon, as it has not taken into account all the aspects of the matter. It is indisputable that the decision of the Division Bench of this Court interprets the purport of Rule 30 of the relevant Rules. The assumption of the Tribunal that the High Court has not adverted to all the relevant aspects, in our opinion, is inappropriate. Indeed, the Tribunal has adverted to other rules such as Rule 31(3), 33, and 38(1) to hold that it is necessary to keep in mind as to whether the concerned employee was in continuous service from the date of his initial appointment or whether there were interruptions from time to time. In the first place, the Tribunal was bound by the opinion of the Division Bench of the High Court which decision had attained finality on account of dismissal of SLP by the Supreme Court. In any case, the Tribunal was bound by another decision of the same Tribunal in the case of Shri Prabhakar Shankar Bagkar, which is founded on the decision of the High Court. A coordinate bench of the Tribunal could not have departed from that binding precedent. In any case, the Tribunal misdirected itself on applying the principle of interruptions of service from time to time. What has been glossed over by the Tribunal is the purport of Rule 30, which makes no distinction between the first

appointment either substantively or in officiating capacity or temporary capacity for the purpose of computing qualifying service. Understood thus, Rule 30 would encompass the services rendered by the Government employees even in the capacity of the temporary appointment as Seasonal Godown Keepers.

10. In the circumstances, we have no hesitation in taking the view that the Tribunal has completely misdirected itself in departing from the consistent view of the High Court as well as of the same Tribunal. The Tribunal has misdirected itself in placing reliance on the decision of the Apex Court which is in the context of an employee resigning from temporary service and being appointed in substantive post in another service.

11. In the circumstances, this Petition ought to succeed. The impugned Judgment and Order of the Tribunal is quashed and set-aside and instead, the Original Application filed by the petitioners is made absolute in terms of prayer clause (a) and (b), which reads thus :

(a) to call for the record and proceeding pertaining to the communications dated 16/7/2009 and 27/8/2009 issued by respondent no.2 as per directions of res.no.1 and quash and set aside the same as being unjust, unfair, arbitrary and discriminatory and direct the respondents to extend the benefit or order of the Hon/High Court dated 19/12/2006 in Writ Petition No.3690 of 2005 to the applicants.

(b) to hold and declare that the service rendered by the applicants as Seasonal Godown Keeper should be taken into consideration for the purposes of computing the entitlement and quantum of their pension and to direct the respondents to take into consideration the entire period of service rendered by the applicants from the date of their joining as Seasonal Godown Keeper for the purpose of computing their entitlement and quantum of pension of computing their entitlement and quantum of pension and issue appropriate orders at the earliest."

In para 18 this Tribunal observed:-

18. As such, it would be highly iniquitous, harsh and unjust to deny the pension to the Applicant by refusing to count his previous service for pension purpose. This Tribunal is bound by the decision of Hon'ble High Court referred to above about the interpretation of Rule 30 of 'Pension Rules of 1982'. Admittedly, at the time of retirement, the post held by the Applicant was substantive permanent post in view of creation of supernumerary posts on pensionable establishment, which is the only condition precedent for grant of pension where initial appointment is temporary.

8. In view of factual and legal position crystallised as above the O.A. is allowed in the following terms. The impugned orders dated 22.11.2017 and 24.11.2017 (A-14 and A-15) are quashed and set aside

and it is held that the applicant is entitled to get his services regularized w.e.f. 01.11.1994 as per G.R. dated 31.01.1996. The respondents are directed to count previous service of the applicant for the purpose of pension and accordingly pensionary benefits be released **within three months from today**. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

Dated :- 24/08/2023.
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 : 24/08/2023.
and pronounced on

Uploaded on : 25/08/2023.