

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 38 of 2021 (D.B.)

Dr. Ashish Manoharrao Mahalle,
Aged about 47 years, working as Professor in the
Department of Mechanical Engineering,
Government College of Engineering, Amravati,
R/o 11/2. Shivarpan Colony, Behind Government Pharmacy
College, Kathoranaka, VMV Road, Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through Principal Secretary,
Department of Higher & Technical Education Department,
Having Office at Mantralaya, Mumbai-400 032.
- 2) The Director of Higher Education (M.S.),Pune,
Having its office at Central Building, Pune.
- 3) The Director of Technical Education (M.S.),
3, Mahapalika Marg, Post Box No.1967,
Near cama Hospital, Mumbai-1.
- 4) Government College of Engineering, Amravati,
Opp. VMV, Kathoranaka, Amravati,
through its Principal.
- 5) Principal Secretary, Department of Finance,
Mantralaya, Madam Kama Road, Mumbai-32.

Respondents.

Shri A.C. & N.A. Dharmadhikari, Ritu P. Jog, Advs. for applicant.

Shri A.M. Ghogre, learned P.O. for respondents.

**Coram :- Hon'ble Shri Shree Bhagwan,
Vice-Chairman and
Hon'ble Shri Justice M.G. Giratkar,
Vice-Chairman.**

Date of Reserving for Judgment : 28th June,2022.

Date of Pronouncement of Judgment : 14th July, 2022.

JUDGMENT

(Delivered on this 14th day of July, 2022)

Per : Shri Justice M.G. Giratkar, Vice-Chairman.

Heard Smt. R.P. Jog, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed on ad-hoc as a Lecturer / Mechanical Engineering in Government College of Engineering, Amravati on 22/10/1999. The appointment was initially only till 31/5/2000. After the break of two months i.e. on 31/7/2000, another order was issued appointing the applicant on the post of Lecturer in the same post by which he was appointed by the order dated 30/9/1999. The applicant and other employees were apprehending that after a period of three months their services came to be replaced and substituted by another ad-hoc employees, they had approached this Tribunal by filing O.A.No.637/2000. This O.A. was filed by 18 employees / applicants (including present applicant). In this application, the applicants had prayed for protecting their services as well as for regularisation of their services. This Tribunal had passed an interim order dated 1/3/2002 modifying the earlier

interim order. The O.A. was finally decided on 18/3/2022. This Tribunal not granted any relief of regularisation. All the applicants and other employees preferred Writ Petition No.1460/2002 before the Bombay High Court, Bench at Nagpur. The Hon'ble High Court had granted interim relief on 16/4/2002 and continued the protection of service given by the Tribunal. The Writ Petition was pending. In the meantime, the posts of Reader in the Laxminarayan Institute of Technology which is managed / conducted by the Rastra Sant Tukdoji Maharaj University, Nagpur were advertised. The applicant applied for the post of Reader. He was appointed on the post of Reader as per order dated 28/7/2009.

3. On 3/8/2009, the applicant submitted application to the Principal, Government Engineering College, Amravati for relieving him to join the posting as a Reader. On 5/8/2009, the applicant was relieved from the post of Lecturer for joining on the post of Reader in the Laxminarayan Institute of Technology. The applicant was granted a lien of three years from this post. On 27/6/2017, the Writ Petition No.1460/2002 was finally decided. The appointment of the applicant on the post of Professor in the Government College of Engineering w.e.f. 12/01/2017 was regularised after completion of probation period. The applicant had given various representations to the respondents as per Annex-A-23 to Annex-A-35.

4. During the pendency of this O.A., the representations of the applicant decided by the respondents on 17/1/2022 and 21/1/2022. The applicant was informed that his services from 22/10/1999 to 05/08/2009 were temporary / seasonal, therefore, that services cannot be counted for regular appointment. Hence, he is not eligible for regular pension as per old pension scheme. The applicant has challenged the communications dated 17/1/2022 and 21/1/2022 in this O.A.

5. The application is strongly opposed by the respondents. It is submitted that initial appointment of the applicant was temporary and he was continued till 2009 on temporary post, therefore, his earlier appointment from 1999 to 2009 cannot be counted as a regular service. Hence, the application is liable to be dismissed.

6. Heard learned counsel for the applicant Smt. Ritu Jog. She has pointed out the various orders passed by the Hon'ble High Court. The learned counsel has pointed out that similarly situated employees who were working with the respondents were regularised as per the Govt. decision dated 13/3/2015 (A-15). Other employees who were on temporary post, they were also regularised. The learned counsel has pointed out the Judgment of Hon'ble High Court by which the directions were given to the respondents to regularise the services of the petitioners, those who were appointed temporarily.

7. The learned counsel has pointed out the decision of this Tribunal in O.A. 43/2018 (P-385) of Maharashtra Administrative Tribunal, Principal Bench, Mumbai dated 6/3/2020. She has pointed out the G.R. dated 28/2/2017 in respect of equal treatment to the similarly situated employees.

8. The learned counsel has pointed out Pursis dated 28/6/2022 (P-429) and submitted that the respondents have regularised the services of the similarly situated employees who had filed Writ Petition No.5273/2017. As per the direction of Hon'ble Bombay High Court, Nagpur Bench in the said petition, the Government of Maharashtra issued G.R. dated 09/12/2021 in respect of the petitioner in the above said writ petitions and has granted the benefits by regularising their ad-hoc services. The case of the applicant is identical. She has pointed out the Govt. Notification dated 09/12/2021.

9. Heard learned P.O. Shri Ghogre. He has submitted that appointment of applicant was on ad-hoc basis and hence his earlier services on ad-hoc basis cannot be taken into consideration for pensionary benefits / regular pension. Hence, the O.A. is liable to be dismissed.

10 There is no dispute that the applicant was appointed on 30/09/1999. His service was continued with technical breaks as per

the order of this Tribunal, their services were protected and applicant along with other employees were continued in service. They had preferred the Writ Petition No.1460/2002 before the Hon'ble Bombay High Court, Bench at Nagpur. The Hon'ble High Court had granted interim relief on 16/4/2002 and continued the protection of service given by the Tribunal. Other similarly situated employees who were appointed along with applicant had also filed W.Ps. 10145/2014 and 7461/2014 (P-113). Those petitions were jointly decided on 27/01/2015. On the basis of the decision of High Court, the Govt. had taken a decision on 13/03/2015 to regularise the services of ad-hoc employees those who were in Govt. service. Material portion of para-2 of the G.R. is reproduced as under –

२. शासकीय अभियांत्रिकी व औषधनिर्माण महाविद्यालयातील हंगामी व कंत्राटी स्वरूपात कार्यरत असलेल्या ३४ अध्यापकांनी याप्रकरणी मा. उच्च न्यायालयाने दिलेल्या आदेशानुसार त्यांच्या सेवा नियमित करण्याबाबत विविध न्यायालयात याचिका दाखल केल्या आहेत. यापैकी न्यायालयात प्रलंबित असलेल्या रिट पिटीशन क्र. १०१४५/२०१४ व ७४६९/२०१४ या याचिकेच्या अनुषंगाने मा. उच्च न्यायालय मुंबई खंडपीठ यांनी एकत्रीतपणे दि. २७/०१/२०१५ रोजी पुढील प्रमाणे आदेश दिले आहेत.

- “Hence for the reasons recorded in the judgment dated १९/१०/२०१३ in Writ Petition No. २०४६ of २०१०, we partly allow these writ petitions and direct the respondents to regularise the services and confer permanency on such petitioners, who have completed ३ years of service with technical breaks and who are still in service. The respondents are directed to absorb the petitioners within a period of ६ weeks and pay the regular salary to the petitioners from the date of their absorption. Just like the order passed in the Writ Petition No.२०४६ of २०१०, though we direct the respondents to grant continuity of service to the petitioners, we make it clear that the petitioners would not be entitled to claim any monetary benefits towards the past services rendered by them.”

11. There is no dispute that the applicant was appointed as a Reader in the Rashtra Sant Tukdoji Maharashtra University, Nagpur. It is government recognised post. The applicant applied for relieving him from Engineering College of Amravati. He was relieved to join the new posting as a Reader. The applicant was in continuous service when he joined the post of Reader in the year 2009.

12. The applicant was made permanent on the post of Professor as per office order dated 11/05/2011 (P-162) of Vice Chancellor, Rastra Sant Tukdoji Maharaj University, Nagpur. The applicant was appointed by the MPSC on the post of Professor in Govt. Engineering College, Jalgaon as per the order dated 28/12/2016 (Annex-A-17). The applicant could not join and therefore on his request he was posted at Amravati in the Govt. Engineering College.

13. It is clear from the documents filed on record that whole service of the applicant was as a Lecturer in the Government Engineering College and as a Reader in the Laxminarayan Institute of Technology. The services of the applicant were protected by this Tribunal and thereafter by the Hon'ble Bombay High Court, Bench at Nagpur. The Hon'ble Bombay High Court, Bench at Nagpur has passed the order in Writ Petition No. 2046/2010. In para-22 of the order passed in Writ Petition No. 2046/2010 is reproduced as under –

“22. The respondents are directed to regularize the services of such of the petitioners and confer permanency on such petitioners who have completed three years’ service with technical breaks. The respondents shall absorb the petitioners within a period of six weeks. Needless to state that the petitioners who are in continuous employment till 15.10.2013, shall be continued in service as regular employees.

However, in the facts and circumstances of the case, we direct that the petitioners shall be entitled to regular salary from 1st November, 2013 and would not be entitled to claim any monetary benefits for the past services rendered by them in spite of their regularization. Needless to state that since the petitioners’ services are regularized, they shall be entitled to the continuity in service for all other purposes except monetary purposes from the date of their first appointment.”

14. The applicant was in service for more than three years from 1999, therefore, he is also entitled for the same relief in view of the G.R. dated 28/2/2017. On the basis of the Judgment of Bombay High Court, similarly situated employees like the applicant were regularised. Therefore, the same treatment should have been given by the respondents to the applicant in view of G.R. dated 28/2/2017. The Judgments pointed out by the learned counsel for applicant show that similarly situated employees approached to the Tribunal / High Court got the benefit of old pension scheme by counting their ad-hoc services as a regular services. In Writ Petition No. 5273/2017 decided on 3/7/2019, the Hon’ble Bombay High Court, Bench at Nagpur passed the following order –

“(4) Writ Petition is allowed. Respondents no.1 and 2 are directed to consider the claim of the petitioner regarding taking into account the ad-hoc

service of the petitioner for granting continuity in service, making of placement in service and grant all pensionary and retiral benefit to the petitioner on the same line as they have done following the directions issued by this Court on 17/9/2018 in Writ Petition No.4770/2017. Of course, we make it clear here that some facts extent, the discretion can be appropriately exercised by the respondents.”

15. The Maharashtra Administrative Tribunal, Principal Bench, Mumbai in O.A. 43/2018 granted relief to the similarly situated employees whose services were ad-hoc basis. It was declared that period of employment of the said employees, i.e., the temporary period shall be treated as ad-hoc employee for the consideration of benefit of time bound promotion. The break in service being a technical break shall be treated as continuity in service.

16. The representations of the applicant are replied by the respondents / government as per communications dated 17/1/2022 and 21/1/2022. It was informed to the applicant that's his service from 22/10/1999 to 5/8/2009 was a temporary / seasonal service, therefore, he is not eligible / entitled for old regular pension scheme. It is pertinent to note that the respondents have regularised the services of similarly situated employees as per the G.R. dated 13/3/2015. It is also pointed out by learned counsel that as per the direction of Bombay High Court, Bench at Nagpur in Writ Petition No. 5273/2017, decided on 3/7/2019 the Bombay High Court, Nagpur Bench directed

the Government of Maharashtra to regularise the services of the similarly situated employees who had completed three years service with a technical break. Services of those employees are now regularised as per G.R. dated 9/12/2021.

17. The respondents are expected to give the same treatment to the similarly situated employees. It is clear that services of similarly situated employees like the applicant were regularised as per the direction of Hon'ble Bombay High Court. The G.R. dated 28/2/2017 was issued by the Govt. of Maharashtra. The relevant portion in para-3 of the G.R. is reproduced as under –

3. The Hon'ble Supreme Court in the case of ***State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava*** reported in ***2015 (1) SCC 347*** has laid down similar principle, thus:

“Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently”.

18. It is clear that the temporary services of similarly situated employees like the applicant were regularised by the Government,

then there was no hurdle for the Government to consider the representations of applicant by taking into consideration the G.R. dated 28/2/2017. The applicant was initially appointed in the year 1999. His service was continued with a technical break. Whole service of the applicant was with the respondents / department and therefore he is entitled for the same treatment as like other similarly situated employees. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned communications dated 17/1/2022 and 21/1/2022 are hereby quashed and set aside.
- (iii) The respondents are directed to regularise the service of the applicant from the date of his initial appointment from 30/09/1999 for the purpose of counting his services for pensionary benefits. The respondents are directed to give all the benefits of old pension scheme to the applicant treating his regular service from 30/09/1999.
- (v) No order as to costs.

(Justice M.G. Giratkar)
Vice-Chairman

(Shree Bhagwan)
Vice- Chairman.

Dated :-14/07/2022.

dnk.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 14/07/2022.

Uploaded on : 15/07/2022.

ok