

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 934/2022 (S.B.)

Late Prakash Janardhan Gajbhiye
Through his L.R.,
Smt. Shila wd/o Prakash Gajbhiye
R/o Saoner, Th. Saoner,
Dist. Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Department of Revenue,
Mantralaya, Mumbai- 400 032.
- 2) Collector, Nagpur.
- 3) Tahsildar, Saoner.

Respondents

Shri N.R.Saboo, Id. Advocate for the applicant.

Shri V.A.Kulkarni, 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 N.R.Saboo, Id. counsel for the applicant and Shri V.A.Kulkarni, Id. P.O. for the Respondents.

2. Husband of Smt. Shila Gajbhiye – since deceased – was working as Muster Assistant (who will be hereinafter referred to as the applicant for the sake of clarity). The applicant and 20 others Muster Assistants filed O.A. No. 462/2004 claiming relief in the nature of issuing directions to the respondents to implement G.Rs. dated 01.12.1995 and 21.04.1999, and absorb them since they were in service on the relevant date i.e. 31.05.1993. By judgment dated 14.08.2015 (A-2) this Bench held that all the applicants will have to be treated as in service on the relevant date i.e. 31.05.1993 since the decision of the Labour Court to reinstate them with full backwages with continuity of service had an effect of notionally putting them in service as on 31.05.1993. Thus, the applicant and some of the other applicants in the said O.A. were held entitled to benefits of G.Rs. dated 01.12.1995 and 21.04.1999. By order dated 30.05.2016 (A-3) the applicant and six others were absorbed and given posting. By order dated 13.07.2016 (A-4) the applicant was posted as Peon in Tahsil office, Saoner. Name of his wife Shila Gajbhiye was entered in service record as his nominee. The applicant died on 20.09.2020. On 03.12.2021 his wife submitted application (A-6) to

release the benefits in her favour. For releasing the benefits she made representations (A-7 & A-8). The benefits were, however, not released. Hence, this Original Application.

3. On the basis of judgment of this Bench dated 09.02.2022 in a batch of O.As. (A-9) it was submitted on behalf of the applicant that pensionable service of the applicant be counted from the date of his entry as Muster Assistant. Previously there were two views one held that pensionable service would commence on the date of entry as Muster Assistant and the other view held that it would commence from the date of absorption. This divergence has been set at rest by the **Hon'ble Supreme Court in Shaikh Miya S/o Shaikh Chand Vs. State of Maharashtra in Civil Appeal No. 6531-6533/2022** by holding that for Muster Assistants who were absorbed after 31.03.1997, their pensionable service shall notionally commence from 31.03.1997.

4. Principal contention raised by respondent no. 2 in his reply is founded on a view that pensionable service of Muster Assistant commences from the date of absorption. This view, as stated above, no longer holds the field. Keeping in mind the legal position laid down as above by the Hon'ble Supreme Court, following order deserves to be passed. Hence, the order:-

ORDER

The O.A. is allowed in the following terms:-

It is declared that pensionable service of the applicant (since deceased) commenced from 31.03.1997. Benefits payable to the wife of the deceased applicant shall be calculated accordingly and paid **within three months from today**. Issue of interest is kept open. 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