

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 941/2019 (S.B.)

Waman Pandurang Patil,
Age 59 years, Occ. Retired Craft Instructor (Carpenter),
R/at 206 Nandwan Nagar,
Wadi, Tq. Khamgaon,
Dist. Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Department of Vocational Education & Training,
Mantralaya, Mumbai- 400 032.
- 2) The Director,
Vocational Education & Training,
3, Mahanagar Palika Road, Dhobi Talav Road,
Mumbai - 1.
- 3) The Joint Director,
Vocational Education & Training,
Regional office, Morshi Road,
Amravati, Dist. Amravati.
- 4) The Principal,
Vocational Education and Training Khamgaon,
Tq. Khamgaon, Dist. Buldana.

Respondents

Shri R.G.Kavimandan, Id. Advocate for the applicant.

Shri M.I.Khan, Id. P.O. for the respondents.

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

JUDGMENT**Judgment is reserved on 07th Nov., 2024.****Judgment is pronounced on 05th March, 2024.**

Heard Shri R.G.Kavimandan, ld. counsel for the applicant and Shri M.I.Khan, ld. P.O. for the Respondents.

2. Case of the applicant is as follows. The applicant joined the respondent department as Craft Instructor by order dated 26.08.1985 (A-1) and was posted at I.T.I., Manikdoh, Tq. Junner, Dist. Pune. By order dated 26.08.1996 (A-2) he was transferred to Amravati region and he was relieved on 30.09.1996. He retired on superannuation on 31.01.2018 (A-4). By virtue of putting in uninterrupted service of 24 years he had become entitled to get selection grade pay scale on 04.09.2009, as per G.Rs. dated 21.08.1993, 08.12.1995 and 08.03.1999. However, while computing this period of 24 years services rendered by him in Pune region from 26.08.1985 to 30.09.1996 were excluded and resultantly wrong pay fixation was made on 04.06.2019 (A-5). His representations dated 14/16-08-2019 (A-7) and 04/05-09-2019 (A-8) went unheeded. Hence, this Original Application for grant of selection grade pay scale w.e.f. 04.06.2009, with consequential benefits, with interest and compensation.

3. According to the respondents, claim of the applicant stood rejected by communication dated 30.10.2002 (A-R-3-III) and thus the O.A. is barred by limitation. There is no substance in this contention. By communication dated 30.10.2002 clarification in respect of G.R. dated 08.03.1999 was issued *inter alia* as follows:-

२	१२/२४ वर्षासाठी कोणती सेवा ग्राह्य धरावी ?	१२ अथवा २४ वर्षांच्या अर्हताकारी सेवेनंतर वरिष्ठ तथा निवडश्रेणीचा लाभ हा संबंधित पदधारकाने त्या पदावर केलेल्या सेवेच्या अनुषंगाने घ्यावयाचा आहे. इतर कोणत्याही पदावरील सेवा त्या करीता विचारात घेतली जाणार नाही.
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G.R. dated 08.03.1999 (A-R-I) *inter alia* states :-

दिनांक १.१.१९८६ रोजी व त्यानंतर १२ वर्षांची अर्हताकारी सेवा पूर्ण करणाऱ्यांना वरिष्ठ श्रेणी व २४ वर्षांची अर्हताकारी सेवा पूर्ण करणाऱ्यांना निवडश्रेणी देण्यात यावी.

In any case, the cause of action set up by the applicant is a continuing one and hence, question of limitation will not arise. In

support of this conclusion reliance may be placed on **M.R.Gupta Vs. Union of India & Ors. 1995 SCC (5) 628** wherein it is held:-

The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind.

It may be reiterated that in this O.A. which is filed on 03.10.2019 the applicant is aggrieved by pay fixation dated 04.06.2019. Thus, the O.A. within limitation.

4. The applicant was given two level senior salary w.e.f. 04.09.1997 i.e. on completing continuous service of 12 years (A-R-II).

5. Stand of the respondents is that the applicant's service in Amravati region started on 03.10.1996, from this date period of 24 years was required to be counted for grant of selection grade pay scale but since the applicant retired on superannuation on 31.01.2018 i.e. before completion of said period of 24 years, there was no question of granting him selection grade pay scale.

6. In support of his case the applicant has relied on judgment of this Tribunal dated 10.03.2017 in O.A. No. 749/2015 wherein it is held:-

The Applicant has relied on the judgment dated 13.02.2017 in O.A no 805/2015. That judgment has been delivered in case of Health Workers who were also transferred from one district to another on their request and they were made to lose seniority. This Tribunal has observed as follows:-

"6. Learned Counsel for the Applicant inter alia relied on the judgment of Bombay Bench of this Tribunal dated 22.12.2015 in O.A. No. 571 of 2015 and judgment dated 06.01.2017 of this Bench in O.A. No. 545/2015 etc., wherein it has been held that past seniority is a relevant factor for determining seniority in the new cadre/post as per Rule 4(2)(c) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. The Applicants have to be given seniority in the cadre of Health Workers in Yavatmal district based on their year of appointment as Health Workers. They may be placed below Health Workers appointed in Yavatmal district in the year the Applicants were initially appointed in other districts. However, clause 3(8) of G.R dated 03.06.2011 is not applicable in their case."

This Rule 4(2) (c) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 provides that past service is a relevant factor for determining seniority in the new cadre when a person is transferred from one cadre or post to another cadre or post. Respondents are relying on G.R. dated 20.9.1990, and another G.R. dated 03.06.2011, which has been issued after the order of transfer of the Applicant was issued, and therefore, may not be relevant in the present Original Application. Obviously, any G.R. cannot be issued in contravention of the statutory rules. In the present case, statutory rules clearly provide that if an employee is transferred from one cadre or post to another cadre or post, he does not lose his past service. In fact, his past service is to be considered while determining his seniority in the new cadre/post. Any undertaking given by the Applicant contrary to the rules will not be binding on him. In fact, the Government should seriously give a rethink to the G.Rs. dated 20.09.1990 and 03.06.2011 to bring them in consonance with the provisions of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982.

6. In the present case, we are, of the opinion that the Applicant cannot be made to lose his earlier service merely on the ground of transfer from one sub division to another sub division. To protect the interest of Talathis in Hinganghat sub division the Applicant can be placed at the

bottom of the list of Talathis in that sub division, who were recruited in the year 1994, the year in which the Applicant was recruited as Talathi in Wardha sub division. He, therefore, loses seniority to those persons who were appointed in the year 1994 or those who were appointed before 1994.

7. Having regard to the aforesaid facts and circumstances of the case, the Respondent no. 2 is directed to make necessary correction in the seniority list of 2015 and place the Applicant in the light of the directions contained in the preceding paragraph of this order. This should be done within 3 months from the date of this order. This Original Application is accordingly allowed with no order as to costs.

7. The applicant has further relied on common judgment dated 16.08.2017 in O.A. Nos. 05 & 06 of 2015 wherein it is held:-

5. We find that G.R dated 21.01.1983 (Annexure-A-3) deals with the seniority of Class-III employees in the Co-operation Department. Clause 4(e) reads as under:-

"4(e) In case of transfer of Class-III employees from one division to other, seniority of the employees concerned should be fixed as per date of his/her recruitment/promotion in the cadre or post and he/she will be placed below the persons recruited/promoted during the year of recruitment/promotion of the employees for transferred."

This clause is quite clear that on transfer from one division to another, a Class-III employee does not lose his seniority. Mumbai Bench of this Tribunal in O.A. No. 36 of 2006 (judgment dated 14.03.2007) has observed that seniority of an employee has to be fixed in terms of Rule 4 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. In para 12 of the judgment, it is observed that:-

"12. The applicant's services all the while being valid, legal and proper as such his placement in the seniority, has to be in terms of Rule 4 of the Seniority Rules. Even assuming that his transfer to Pune Division was on his request, and his placement at Pune Division being in excess of quota thus fortuitous one, but for that matter applicant will not lose his placing in the State seniority, which has to be prepared and maintained in terms of Rules."

Rule 4(2)(c) of the aforesaid Rules reads as below:-

"(c) the seniority of a transferred Government servant vis-à-vis the Government servants in the post, cadre or service to which he is transferred shall be determined by the competent authority with due regard to the class and pay scale of the post, cadre or service from which he is transferred, the length of his service therein and the circumstances leading to his transfer."

It is clear that length of service of an employee is a relevant factor while deciding his seniority when his cadre is changed. He cannot be asked to forgo his earlier service even when transfer is on request. In O.A. No. 785/2014, Nagpur Bench of this Tribunal by judgment dated 13.02.2017 has held that para 3(8) of G.R. dated 03.06.2011 is not in consonance with Rule 4(2)(c) of the Regulation of Seniority Rules and Rules will prevail over the G.R. In the present case, the Applicants cannot be made to lose their seniority, even if their transfer to Aurangabad Division was on their request. At the most, they may be placed below those employees, who were promoted in the same year in Aurangabad, when the Applicants were promoted in other divisions, as Co-operative Officer, Grade-I, before their respective transfers to Aurangabad Division.

8. The applicant has also relied on the judgment dated 10.08.2018 of this Bench in O.A. No. 16/2010 wherein it is held:-

4. The learned counsel for the applicant has relied on two G.Rs. dated 08.12.1995 (Annexure A-6 at page nos. 21 to 23) and another G.R. is dated 8.3.1999 at (Annexure A-7 at page nos. 29 to 31 (both inclusive). The G.R. dated 8.12.1995 states about the procedure to apply selection grade to the officers. From the said G.R., it seems that the Government has decided to grant selection grade pay scale to the Instructors who have completed 24 years of service on or after 01.01.1986. However, while considering the said selection grade, those Instructors working in private schools were to be considered at 20% i.e. for getting selection grade. Instructors must come within the quota of 20%. Relevant condition in the G.R. is as under:-

“या मागणीचा साकल्याने विचार करून शासन आता असे आदेश देत आहे कि, दि. १.१.१९८६ पासून वरिष्ठश्रेणीत वेतन घेणाऱ्या व दि. १.१.१९८६ वा तदनंतर २४ वर्षांची सेवा पूर्ण झालेल्या खाजगी माध्यमिक शाळांतील

तसेच अध्यापक विद्यालयातील वरिष्ठश्रेणीत वेतन घेणाऱ्या शिक्षकांपैकी २० टक्के शिक्षकांना दि. १.१.१९८६ पासून निवडश्रेणी मंजूर करण्यात यावी. मात्र या शिक्षकांना शासन निर्णय शिक्षण व सेवायोजन विभाग दि. २.९.१९८९ सोबत जोडलेल्या परिशिष्टामध्ये निवडश्रेणी प्राप्त करण्यासाठी विहित केलेल्या इतर सर्व अटींची पूर्तता करणे आवश्यक आहे.”

5. As per another G.R. dated 01.01.1986 (Annexure A-7), it was stated that those who have completed 12 years of continuous service as on 01.01.1996 or thereafter, will get senior grade and those who have completed 24 years of service will get selection grade. The learned P.O. has also invited our attention to the G.R. dated 3.10.2002 issued by the Government which is at Annexure A-9 at Page Nos. 37 to 40 (both inclusive). In the said G.R., a specific criteria has been mentioned for those who are transferred from one region to another region and the criteria is as under:-

१	विभागीय बदली झालेल्या निदेशकाला द्विस्तरीय (वरिष्ठ) / त्रिस्तरीय (निवड)वेतनश्रेणी कश्याप्रकारे मंजूर करण्यात यावी ?	एका विभागातून दुसऱ्या विभागात निदेशक पदावर विनंतीने बदली झालेल्या कर्मचाऱ्यांच्या बाबतीत त्यांनी सेवाज्येष्ठता नवीन विभागात ते ज्या दिनांकापासून रुजू झाले त्या दिनांकापासून धरण्यात येते. मात्र वरिष्ठश्रेणी निदेशक संवर्गातील १२ वर्षांची अर्हताकारी सेवा पूर्ण झालेल्या कर्मचाऱ्यांस अनुज्ञेय ठरत असल्याने बदली झालेल्या अशा कर्मचाऱ्यांस वरिष्ठ वेतनश्रेणीचा लाभ देण्याकरिता त्याची निदेशक पदावरील पूर्वीची सेवा विचारात घेण्यात यावी. तथापि निवडश्रेणीकरिता नवीन विभागातील ज्येष्ठतेनुसार निवडश्रेणीचा लाभ त्यांना अनुज्ञेय नाही.
२	१२ / २४ वर्षांसाठी कोणती सेवा ग्राह्य धरावी ?	१२ अथवा २४ वर्षांच्या अर्हताकारी सेवेनंतर वरिष्ठ अथवा निवडश्रेणीचा

		<p>लाभ हा संबंधीत पदधारकाने त्या पदावर केलेल्या सेवेच्या अनुषंगाने द्यावयाचा आहे. इतर कोणत्याही पदावरील सेवा त्याकरिता विचारात घेतली जाणार नाही.</p>
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6. The applicant has not challenged the G.R. dated 30.10.2002 which is explanatory in nature and it shows that the seniority of Instructors who have changed region, will be from the date of joining in the new region. In fact, this condition seems to be not proper. However, same has not been challenged. The learned counsel for the applicant has placed reliance on the judgment reported in **Union of India and another Vs. V.N. Bhat, 2004 SCC (L&S), 167**, wherein it is held that, "even on voluntary transfer, the employee loses his seniority and not other benefits and cannot be deprived of his experience and eligibility for promotion." In view of this, the respondents ought to have considered the applicant's service even prior to the change of region and thereafter applicant's claim ought to have been considered.

7. The learned P.O. has invited our attention to the seniority list placed on record at (Annexure R-2, Page 84), from which it seems that the applicant stands at Sr. No. 12. It is an admitted fact that, only six persons in the said list have been given selection grade, as they fall within the ambit of 20% quota for private schools. It is, however, not clear from the said chart as to whether while considering the seniority, applicant's previous service i.e. the services prior to his change of region have been considered or not. Considering this aspect, instead of rejecting the claim of the applicant straightway, it will be in the interest of justice and equity to direct the respondents to re-consider the case of the applicant and even after considering the applicant's continuous service from the date of joining of his post, if the applicant is eligible for senior scale as per 20% quota as per G.Rs. dated 08.12.1995 and 08.03.1999, the applicant may be considered for such relief and, therefore, following order is passed:-

ORDER

(i) The O.A. is partly allowed.

(ii) The respondents are directed to re-consider the case of the applicant as stated in foregoing paras and to take a decision as to whether the applicant falls within the ambit of G.Rs. dated 08.12.1995 and 08.03.1999.

(iii) Such decision shall be taken within a period of two months from the date of this order and shall be communicated to the applicant in writing.

(iv) No order as to costs.

9. Keeping in view the legal and factual position applicable to and prevailing in the instant O.A., the course adopted by this Bench while deciding O.A. No. 16/2010 deserves to be adopted. Hence, the order:-

(i) The O.A. is partly allowed.

(ii) The respondents are directed to re-consider the case of the applicant as stated in foregoing paras and to take a decision as to whether the applicant falls within the ambit of G.Rs. dated 08.12.1995 and 08.03.1999.

(iii) Such decision shall be taken **within a period of two months** from the date of this order and shall be communicated to the applicant in writing.

(iv) No order as to costs.

Member (J)

Dated :- 05/03/2024
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 : 05/03/2024
and pronounced on

Uploaded on : 06/03/2024