

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 916 of 2021 (D.B.)**

Shri Bhaurao S/o Devrao Umate,  
aged about 62 Years, Occupation Retired  
R/o Flat No. 102, Vaishnav dham Apartment,  
Janki Nagar, Nagpur, Maharashtra.  
M.No.9763922330 e-mail bhauraumate@gmail.com

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through Principal Secretary,  
Public Health Department,  
Mantralay, Mumbai 32.
- 2) The Director Health Services ,  
Arogya Bhawan, Saint Georges Hospital,  
Near C.S.T. Railway Station, Mumbai-32,
- 3) The Deputy Director of Health Services Nagpur Region,  
Office at Mata Kacheri, Near Diksha Bhumi,  
Shraddhanand Peth, Nagpur – 440 010.
- 4) The Medical Superintendent,  
Daga Memorial Government Women Hospital,  
Office At Gandhi Baugh, Nagpur- 440 012.

**Respondents.**

---

**Shri M.R. Johrapurkar, Advocate for applicant.**

**Shri A.M. Khadatkar, learned P.O. for respondents.**

---

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

**Dated :- 20<sup>th</sup> January, 2023.**

---

## **JUDGMENT**

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

Heard Shri M.R. Joharapurkar, learned counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

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

The applicant had passed the examination of MBBS and therefore he was appointed on the post of Medical Officer vide order dated 14/02/1992. Though the applicant was appointed on a permanent, clear and vacant post, but he was appointed only for four months. Thereafter the applicant was selected by the MPSC and he was appointed on a regular post. Thereafter the applicant was regularized and he is continuous in service from 01/03/1992. There was no any break in his service. The applicant has completed his M.S. degree during his service. The applicant was entitled for time bound promotion after completion of 12 years of service. As per the submission of applicant, promotional Class-I post was available, but he was not granted promotion. The applicant retired on 30/06/2021 after attaining the age of superannuation i.e. 58 years. Thereafter, the applicant was given extension of about four years.

3. It is submitted that the applicant belongs to ST (Halba Koshti) category. The respondents not granted promotion for not

submitting caste validity certificate. It is the submission of the applicant that he was never terminated from the service on that ground. The service of the applicant was continued, no any supernumerary post was created as per the G.R. The applicant is retired from service. But the respondents have not paid any pensionary benefits, he was not granted time bound promotion. Hence, he approached to this Tribunal for the following reliefs –

*“(i) That, this Hon'ble Tribunal be pleased to call for the entire record relating to applicant from the Office of Respondent No. 4 and after examining the same allow this application by issuing direction to respondents No. 1 to 4 as under:-*

*(ii) to Directions, to Respondent's to give continuity of service to applicant from the date of his first appointment i.e. from 01/03/1992.*

*(iii) To issue directions to respondents for granting to applicant the regular promotion on its due date or in the alternative granting the First Assured Career Progression on completion of 12 years services from the date of first appointment i.e. from 01/03/1992 i.e. from 01/03/2004 and granting 2<sup>nd</sup> Assured Career Progression on completion of 12 years services thereafter i.e. from 01/03/2016 and by granting the 1<sup>st</sup> and 2<sup>nd</sup> A.C.P. the pay of the applicant be re-fixed and the pay be given to him as arrears of pay.*

*(iv) To issue Directions to respondent to Calculate the qualifying service of applicant for the purpose of Pension from the date of First Appointment i.e. from 01/ 03/ 1992 to 30/06/2021 i.e. of 29 years Five Months and 29 days i.e. 29 years and Six Months and by calculating this much Qualifying service and then by giving one notional Increment which became due on 01/07/2021 raising the pay of applicant from Rs. 1,14,000/- to Rs. 1,17,400/- the pension of applicant be fixed and accordingly the Gratuity, Leave Encashment and other pensionary benefits be calculated and the*

*same be paid to applicant. Issuing directions to respondent to Calculate the qualifying service of applicant for the purpose of Pension from the date of First Appointment i.e. from 01/03/1992 to 30/06/2001 i.e. of 29 years Five Months and 29 days i.e. 29 years and six months and by calculating this much Qualifying service and then by giving one notional increment raising the pay of applicant from Rs.1,14,000/- to Rs. 1,17,400/- the pension of applicant be fixed and accordingly the Gratuity, Leave Encashment, and other pensionary benefits be calculated and the same be paid to applicant.*

*v. It is submitted that as the respondents have made delay in fixation of initial pension and Gratuity, of applicant therefore they be directed to pay interest at the rate of the interest of G.P.F. as per provisions of Rule 129 A and 129 B of Maharashtra Civil Services (Pension) Rules 1982 on arrears of pension and amount of Gratuity.*

*vi. To issue direction to respondents to pay the Leave encashment amount to applicant together with interest at the rate as prescribed by Rule 129 B of Maharashtra Civil Services (Pension) Rules 1982.*

*vii. To issue direction to respondents to pay the G.P.F. amount to applicant together with interest till the date of making actual payment of G.P.F.*

*viii. To issue direction to Respondents to pay the amount of GIS (Group Insurance Scheme) to applicant. ”*

4. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was appointed in the reserved category, but the applicant failed to produce any caste validity certificate. Though his service was protected, he is not entitled for any service benefits as per the Govt. G.R. dated 21/12/2019. Hence, the O.A. is liable to be dismissed.

5. The Hon'ble Bombay High Court, Bench at Nagpur in the case of **Namdeo S/o Dashrath Nikhare Vs. Secretary, Public Works Department, Mumbai and others** in Writ Petition No. 547/2021 and in the case of **Uday S/o Murlidhar Kohat Vs. State of Maharashtra & others** in Writ Petition No.2474/2021, has held that when the department continued the service of the employee without getting the caste validity certificate, no any supernumerary post was created, his service was not terminated and therefore the respondents cannot withheld the pension and other benefits of the employee. The Hon'ble Bombay High Court, Bench at Nagpur in the case of **Uday S/o Murlidhar Kohat Vs. State of Maharashtra & others** in para-3 has observed as under –

*“(3) It is submitted by the learned Counsel for the petitioner that the petitioner had obtained the Caste Certificate of belonging to “Koshti” Special Backward Class and in view of the Government Resolution issued on 15.06.1995, he was entitled to protection of his service. During his entire service, he was not called upon to submit any validity certificate and he was permitted to retire from service. There was no justification on the part of respondent nos. 2 and 3 in withholding the petitioner’s pension. Reliance was placed on the decision in Writ Petition No. 547/2021 (Namdeo s/o Dashrath Nikhare Vs. Secretary, Public Works Department and ors.) decided on 23.03.2022. It is thus prayed that the pensionary benefits of the petitioner be directed to be released.”*

6. After the decision of Hon'ble Supreme Court in the case of **Chairman And Managing Director Vs. Jagdish Balaram Bahira in Civil Appeal No.892/2015**, decided on 6<sup>th</sup> July, 2017, the Government

has issued G.R. and some guidelines were given to create supernumerary post. If the supernumerary post is created, then the employee is not entitled to claim any service benefit.

7. In the present case, the applicant was allowed to retire without any obstruction. During his service, he was not directed to produce caste validity certificate. Now the respondents have withheld the pensionary benefits only on the ground that the applicant has not produced the caste validity certificate. The respondents have **extracted** the service of the applicant, therefore, the respondents are bound to pay the pensionary benefits. As per the submission of applicant, promotional post was available, but he was not granted promotion. Nothing is on record to show that the respondents have directed the applicant to produce the caste validity certificate during his service and only on that ground, promotional benefits cannot be denied.

8. The respondents were at liberty to discontinue the service of the applicant on the ground of non production of caste validity certificate. The respondents have allowed the applicant to continue his service till the age of superannuation. The applicant is retired on completion of age of 58 years. Now the respondents cannot say that the applicant is not entitled for pensionary benefits, because, he had not produced caste validity certificate. The Hon'ble Bombay High

Court in the above cited Judgments, and in other Judgments have held that the pensionary benefits and other benefits cannot be withheld on the ground of non production of caste validity certificate, because, during the service tenure the employee was allowed to continue his service, no any supernumerary post was created. This Tribunal relying on the Judgment of Hon'ble Bombay High Court has also decided similar matters holding that the respondents / appointing authority cannot withheld the pensionary benefits for non production of caste validity certificate. In the case of ***Uday S/o Murlidhar Kohat Vs. State of Maharashtra & others*** similar situation was there, the employee was allowed to retire, supernumerary post was not created and therefore Hon'ble Bombay High Court come to the conclusion that the employee was allowed to retire without any obstruction and therefore pensionary benefits and other benefits cannot be denied.

9. The respondents should have granted promotional benefits to the applicant because he was allowed to continue the service on the same post without any obstruction. The respondents were at liberty to discontinue the service of the applicant in view of the Judgment of Hon'ble Supreme Court in the case of ***Chairman And Managing Director Vs. Jagdish Balaram Bahira.***, but that is not done. Therefore, the applicant is entitled for promotional pay and also the pensionary benefits.

10. The applicant was continued in service from 01/03/1992 without any break. Though he was temporarily appointed initially, but he was selected by the MPSC and thereafter his service was regularized. As per the Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982, the initial service is to be taken into count for the purpose of pensionary benefits, provided that he should be permanent at the time of retirement.

11. In the present case, the applicant was temporarily appointed on 01/03/1992. He was in continuous service. He was permanent at the time of retirement. Therefore, as per the Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982, the applicant is entitled to get benefit of regular service from the date of his initial appointment, i.e., from 01/03/1992. Hence, we pass the following order-

**ORDER**

(i) The O.A. is allowed.

(ii) The respondents are directed to give continuity of service to the applicant w.e.f. 01/03/1992 for the purpose of pensionary benefits only.



(iii) The respondents are directed to give time bound promotional benefits, if he is entitled after counting his 12 years service from the date of his regular appointment, if he was eligible for promotion.

(iv) The respondents are directed to pay the pension and all the pensionary benefits to the applicant within a period of six months from the date of receipt of this order.

(v) No order as to costs.

**(Justice M.G. Giratkar)**  
**Vice-Chairman**

**(Shree Bhagwan)**  
**Vice- Chairman.**

**Dated** :-20/01/2023.

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 : 20/01/2023.

Uploaded on : 23/01/2023.

ok