

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 942 / 2021 (S.B.)

Shri Ashok S/o Krishna Ingle,
Age : 66 yrs., Occ. Retired,
R/o 29, Guddhe Layout,
Trimurti Nagar, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Education,
Mantralaya, Mumbai- 32,
- 2) The Commissioner of Education,
Maharashtra State, Dr. Anil Besent Road,
Central Building, Pune.
- 3) The Education Officer (Secondary),
Zilla Parishad, Nagpur.

Respondents

With

ORIGINAL APPLICATION NO. 943 / 2021 (S.B.)

Shri Bisan S/o Motiramji Panchbuddhe,
Age : 65 yrs., Occ. Retired,
R/o Tilak Nagar, Tumsar,
District Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Education,
Mantralaya, Mumbai- 32,
- 2) The Commissioner of Education,
Maharashtra State, Dr. Anil Besent Road,
Central Building, Pune.

- 3) The Education Officer (Secondary),
Zilla Parishad, Bhandara.

Respondents

With

ORIGINAL APPLICATION NO. 944 / 2021 (S.B.)

Shri Nandlal S/o Anantram Turkar,
Age : 66 yrs., Occ. Retired,
R/o Chopa, Tah. Goregaon,
Dist. Gondia.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Education,
Mantralaya, Mumbai- 32,
- 2) The Commissioner of Education,
Maharashtra State, Dr. Anil Besent Road,
Central Building, Pune.
- 3) The Education Officer (Secondary),
Zilla Parishad, Gondia.

Respondents

With

ORIGINAL APPLICATION NO. 945 / 2021 (S.B.)

Shri Waman S/o Jangluji Rohane,
Age : 66 yrs., Occ. Retired,
R/o Andhori, Tah. Deori,
Dist. Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Education,
Mantralaya, Mumbai- 32,

- 2) The Commissioner of Education,
Maharashtra State, Dr. Anil Besent Road,
Central Building, Pune.
- 3) The Education Officer (Secondary),
Zilla Parishad, Wardha.

Respondents

With

ORIGINAL APPLICATION NO. 946 / 2021 (S.B.)

Shri Deochand S/o Kisan Bhendarkar,
Age : 66 yrs., Occ. Retired,
R/o Koka, Post Gondia, Tah. &
Dist. Gondia.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Education,
Mantralaya, Mumbai- 32,
- 2) The Commissioner of Education,
Maharashtra State, Dr. Anil Besent Road,
Central Building, Pune.
- 3) The Education Officer (Secondary),
Zilla Parishad, Gondia.

Respondents

With

ORIGINAL APPLICATION NO. 1033 / 2021 (S.B.)

Smt. Nutan Wd/o Asaram Meshram,
Age : 54 yrs., Occ. Housewife,
R/o Sawari, Tah. Lakhani,
Dist. Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Education,
Mantralaya, Mumbai- 32,
- 2) The Commissioner of Education,
Maharashtra State, Dr. Anil Besent Road,
Central Building, Pune.
- 3) The Education Officer (Secondary),
Zilla Parishad, Bhandara.

Respondents

Shri G.G.Bade, Id. Advocate for the applicant.

Shri V.A.Kulkarni, the Id. P.O. for the Respondent nos. 1 & 2.

None for the Respondent no. 3.

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

JUDGMENT

Judgment is reserved on 07th September, 2022.

Judgment is pronounced on 21st September, 2022.

Heard Shri G.G.Bade, Id. counsel for the applicants and Shri V.A.Kulkarni, Id. P.O. for the respondent nos. 1 & 2. None for the R-3.

2. Since the issue involved in all these O.As. is identical, the O.As. were heard together and the same are being decided by this common Judgment.

3. In these O.As. the applicants are Ex-servicemen. They were appointed to the post of Tahsil Commandant on consolidated pay of Rs.

3,000/- + T.A. of Rs. 1,000/-. By G.R. dated 27.05.2004 their services were regularized w.e.f. 01.05.2004. They were fixed in the pay-scale of Rs.3,200/- to Rs.4,900/-. When they retired on superannuation they had not completed regular service of 10 years. Their tenure fell short by less than a year. Their prayer for plugging this deficiency by exercising powers under Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982 was declined by communication dated 19.05.2021. Hence, these original applications.

4. Necessary details of individual applicants in the O.As. are as follows:-

Sr. No.	O.A. No.	Date of Regular Appointment	Date of retirement on superannuation.
1	942/2021	01.05.2004	30.06.2003
2	943/2021	01.05.2004	28.02.2014
3	944/2021	01.05.2004	30.09.2013
4	945/2021	01.05.2004	30.06.2013
5	946/2021	01.05.2004	31.01.2014
6	1033/2021	01.05.2004	30.06.2013

5. The respondents have resisted these O.As. by averring as under:-

“The State Government decided the proposal submitted by Shri Rohane and others and held that the service tenure upto one

year can be condoned in pursuance of Rule 54 of MCS (Pension) Rules 1982, however as per circular issued by the government dated 03.11.2008 it is clarified that the said benefits are admissible only to Class IV employees. As per the G.R. dated 27.05.2004 for the post of Taluqa Samadeshak the pay scale is 3200-4900 and that of Class-IV pay scale is 2550-3200 and therefore all the employees belonging to Taluqa Samadeshak are not entitled for condonation of service tenure. The circular dated 03.11.2008 is filed herewith.”

6. Further contention raised by the applicants in their rejoinder is as follows:-

“Rule 54 (2) of the M.C.S. Pension Rules, 1982, is very clear on the aspect regarding condonation of deficiency in service in respect of Class-III employees also. Further M.C.S. Pension Rules, 1982 will prevail over the Circular dated 03.11.2008 and therefore there is no reason for the department to take into consideration the Circular dated 03.11.2008, for not condoning deficiency in service in respect of the present applicants.

It is the settled position of law that M.C.S. Pension Rules, 1982 were made under Article 309 of the Constitution of India, whereas the Government is relying on the Circular dated

03.11.2008, inspite of the fact that the pensionary benefits, which are to be accorded to the employees are to be governed by the M.C.S. Pension Rules, 1982 and therefore in the present set of circumstances there is no reason for the department for not condoning the deficiency in service, in accordance with Rule 54 of the M.C.S. Pension Rules. ”

7. In support of their prayer the applicants have relied on the Judgments of this Tribunal dated 11.08.2021 and 24.11.2021 in O.A. Nos. 337/2020 and 644/2020, respectively. In the latter Judgment it is observed and held:-

“9. The Hon’ble Bombay High Court, Bench at Aurangabad in Writ Petition No.2589/2012 along with other connected W.Ps. in paras-16 & 17 observed as under –

“16. It is submitted that, some of the petitioners’ qualifying service of pension is nine years and more and the respondent/State be directed to consider condoning one year service for grant of pension under Rule 54 of the Maharashtra Civil Services (Pension) Rules.

17. The petitioners may make representations to that effect with the respondent No. 1/State, which representations would be considered by the respondent No. 1/State sympathetically, considering the fact that, it was the State who was not in a position to absorb the petitioners well within time”.

10. In case of **Arun K. Dhobe Vs. State of Maharashtra & Ors.**, the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.4581/2019, decided on 12/02/2020 held in para-4 as under-

“4] The Deputy Director of Education has obviously judged the case of petitioner with reference to Clause – (1) under Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982. Obviously, it applies only in respect of low paid Government Servants retiring on Invalid or Compensation pension. The petitioner is not the low paid Government Servant. The petitioner is working as an Assistant Teacher, which falls in Class-III post and would, therefore, be governed by Clause - (2) of Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982 reproduced above, which enables the Competent Authority to make addition, which may not ordinarily exceed one year, to the period of service qualifying for pension, performed by a retiring Government Servant which under the provisions of these Rules may be counted for pension. The petitioner is running short of five months and two days to complete the period of qualifying service of ten years for getting pension. The Deputy Director of Education shall examine the matter from this aspect of the matter”.

11. The applicant was working as Talathi on Class-III post. As per the observations of Hon'ble Bombay High Court, Bench at Nagpur in the case of **Arun K. Dhobe Vs. State of**

Maharashtra & Ors., it is clear that the Class-III post would be governed by Clause (2) of Rule 54 of the MCS (Pension) Rules, which enables the Competent Authority to make addition, which may not ordinarily exceed one year, to the period of service qualifying for pension, performed by a retiring Government Servant which under the provisions of these Rules may be counted for pension.”

8. The applicants have also relied on “**Commissioner of Central Excise Vs. M/s Ratan Melting Wire Industries: (2008) 13 SCC 1** wherein it is held :-

“Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.”

9. It is apparent that the deficiency of service in case of all the applicants is of less than a year. I have referred to the legal position laid down in the above referred Judgments. Considering all these circumstances the O.As. deserve to be allowed in the following terms. Hence, the order:-

O R D E R

O.A. Nos. 942, 943, 944, 945, 946 & 1033 of 2021 are allowed in the following terms:-

- A. The applicants shall individually move representations before Respondents 1 & 2 for addition of service as per Rule 54 (2) of the Maharashtra Civil Services (Pension) Rules, 1982.
- B. The respondents are directed to decide these representations **within two months from the date of receipt of the same.**
- C. No order as to costs.

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

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 : 21/09/2022.
and pronounced on

Uploaded on : 22/09/2022.