

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO.178/2011.**

Ashok Narayanrao Shanware,  
Aged about 64 yrs.,  
Occ- Service,  
R/o Vishwakarma Nagar, Nagpur.

**Applicant**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of E.G.S.,  
Mantralaya, Mumbai-440 032.
- 2) The Commissioner,  
Nagpur Division, Nagpur.
- 3) The Collector,  
Nagpur.

**Respondents**

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**ORIGINAL APPLICATION NO.216/2011.**

Haridas Kashiram Nagapure,  
Aged about 55 yrs.,  
Occ- Service,  
R/o Bramhapuri, Distt. Chandrapur.

**Applicant**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of E.G.S.,  
Mantralaya, Mumbai-440 032.
- 2) The Commissioner,  
Nagpur Division, Nagpur.

3) The Collector,  
Chandrapur.

Respondents

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**ORIGINAL APPLICATION NO.217/2011.**

Kishor Kashiram Sontakke,  
Aged about 52 yrs.,  
Occ- Service,  
R/o Bramhapuri, Distt. Chandrapur.

Applicant

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of E.G.S.,  
Mantralaya, Mumbai-440 032.
- 2) The Commissioner,  
Nagpur Division, Nagpur.
- 3) The Collector,  
Nagpur.

Respondents

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Shri P.P. Khaparde, Ld. Counsel for the applicants.  
Shri H.K. Pande, learned P.O. for the respondents.

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**Coram:- Hon'ble Shri J.D. Kulkarni,**  
**Member (Judicial)**

**Dated: - 8<sup>th</sup> March 2017.**

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**Order**

Heard Shri P.P. Khaparde, the learned counsel for  
the applicants and Shri H.K. Pande, the learned P.O. for the  
respondents.

2. These three applications are being disposed of by this common order.

3. The applicant Ashok Narayanrao Shanware in O.A. No.178/2011 was initially appointed as Mustering Assistant vide order dated 1.5.1983 and after technical break, he was reinstated on 31.12.1993. He was absorbed in service in Class-III post on 7.6.2003.

4. The applicant Haridas Kashiram Nagapure in O.A. No. 216/2011 was appointed as Muster Clerk on 11.2.1979. He was terminated on 31.8.1992. He challenged the said termination by filing U.L.P. No. 149/1992 before the Labour Court, Chandrapur. His application was allowed on 17.4.2000. He was subsequently absorbed in service on 17.3.1997.

5. The applicant Kishor Kashiram Sontakke in O.A. No. 217/2011 was appointed as Muster Clerk on 13.3.1980. He was terminated on 31.7.1992. He challenged the said termination by filing U.L.P. No. 212/1992 before the Labour Court, Chandrapur. The said U.L.P. was allowed on 25.2.1993 and the applicant was absorbed in service on 8.3.1998.

6. It is stated that all the applicants are continued in service since their absorption. Applicants are claiming relief as under:-

(1) Declare that, the applicant having completed more than 20 years of qualifying service as per the M.C.S. (Pension) Rules, 1982, is entitled for pension, gratuity and other retirement benefits.

(2) Direct the respondents to fix the pay scale of the applicant in the revised pay scale of Rs. 3200-45-4900 on the date of his absorption in permanent Govt. Service vide letter dated 7.6.2003 by protecting his basis pay as per the State Govt. G.R. dated 21.4.1999 and release arrears of pay and difference of leave encashment accordingly.

(3) Direct the respondents to fix pension and gratuity of the applicant as per rules.

(4) Grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case so also in the interest of justice.

7. The learned P.O. submits that the issue involved in these O.As have been earlier considered by this Tribunal in various matters and the issue has been finally decided. The learned P.O. has invited my attention to the judgment delivered on 14.2.2014 in O.A.

Nos. 710/2009 with 711,714, 715, 716 of 2009 and O.A.Nos. 167,168 and 169 of 2010 and O.A. Nos.33,34,35,36,37,38,56,58 and 60 of 2015. In the said judgment, the issue of absorption of Mustering Assistants and the fact as to whether they are entitled to continuation of service for the purpose of pensionary benefits, was considered. This Tribunal has observed in the said judgment as under:

5. We find that the Muster Assistants were absorbed in Class-III and Class-IV posts in Govt. as per G.R. dated 1.12.1995. Subsequently, G.R. dated 21.4.1999 and circular dated 15.4.2009 were issued. G.Rs dated 1.12.1995 and 21.4.1999 and circular dated 15.4.2009 have been held valid by the Honble Bombay High Court by judgment dated 16.7.2007 in W.P. No. 619/2006. In this judgment, the Honble High Court has held that:

12. The learned AGP pointed out that the Mustering Assistants whose services were regularised from a particular date would get pension from the date of regularisation of service. The State Govt. has taken a clear stand that the past period of such Mustering Assistants prior to the date of regularisation would not be counted for the purpose of calculation of pension. We find that the stand adopted by the State was in tune with the scheme framed by the State Govt. Therefore Rule 33 of the Pension Rules would not be applicable to the facts of this case and the scheme framed by the State Govt.

6. It is also seen that validity of G.R. dated 1.12.1995 was upheld by the Hon'ble Supreme Court in S.L.P. (Civil) No. 15664 of 1991 by judgment dated 2.12.1996.

Clause 5.2 of this G.R. dated 1.12.1995 states that:

**5.2-** हजेर सहायकांना सया मळत असलेया वेतनणी यत्तत शासकय कमद्याया मळणारे लाभ अथवा इतर सोयी सवलती अनुये राहणार नाह व ते शासकय कमद्वार ाहणून ओळखले जाणार नाहस.”

This G.R. has been upheld by the Hon'ble Supreme Court.

There is no question of considering past service as Mustering Assistant for pensionary purpose.

7. This issue was again considered by the Hon'ble Supreme Court when the judgment of the Hon'ble High Court dated 20.12.2001 in W.P. No. 954 of 1990 was considered in S.L.P. (Civil) No. 5171 of 2003. The Hon'ble Supreme Court did not approve the order of the Hon'ble High Court to absorb all Muster Assistants w.e.f. 31.3.1997 and ordered that they be absorbed gradually on the available vacancies in accordance with seniority and roster.

8. This Tribunal (Aurangabad Bench) by judgment, dated 10.6.2010 in O.A. No. 578/2008 has held that the Muster Assistants were not recognised as Govt. servants till their

absorption in the Govt. Accordingly their past service before absorption in Govt. service cannot be counted for pensionary benefits.

9. The judgment dated 21.10.2016 in the group of O.As No. 28 of 2012 etc. delivered by the Aurangabad Bench of this Tribunal after considering all earlier judgments of this Tribunal, judgments of the Hon'ble High Court and the Hon'ble Supreme Court. There is no reason for us to take any different view here.

8. The facts in these O.As are more or less identical and even the learned counsel for the applicants and the learned P.O. admit that the applications can be disposed of by passing common order in view of the view taken by this Tribunal in the judgment delivered in the group of O.A. No. 710/2009 and other O.As as aforesaid. Hence, the following order.

Having regard to the facts and circumstances, these O.As are dismissed with no order as to costs.

(J.D.Kulkarni)  
Member (J)

