

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 509 of 2022 (S.B.)**

Ghanshyam Pandhari Meshram,
Aged 64 years, Occ. Retired,
R/o Arattondi, Andhali, Kurkheda, Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Department of Planning,
Mantralaya, Mumbai-32.
- 2) The Collector, Gadchiroli.

Respondents.

Shri N.R. Saboo, Advocate for the applicant.
Shri A.M. Khadatkhar, learned P.O. for respondents.

WITH**ORIGINAL APPLICATION No. 1164 of 2022 (S.B.)**

Krupal Ganpat Arakh,
Age 76 years, Occ. Retired,
R/o Deoli, Dist. Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Department of Planning,
Mantralaya, Mumbai-32.
- 2) Collector, Wardha.
- 3) Executive Engineer, Public Works Division,
Arvi, District Wardha.

Respondents.

Shri N.R. Saboo, Advocate for the applicant.
Shri M.I. Khan, learned P.O. for respondents.

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

Dated :- 06/11/2023.

COMMON JUDGMENT

Heard Shri N.R. Saboo, learned counsel for the applicants and Shri A.M. Khadatkar, learned P.O. in O.A.No.509/2022 and Shri M.I. Khan, learned P.O. in O.A.No.1164/2022.

2. The cases of the applicants in short is as under –

In O.A.No.509/2022, the applicant was engaged as a Mustering Assistant w.e.f. 13/04/1987. His service was terminated by the respondents. The applicant has challenged the said termination order dated 12/02/1992 before the Labour Court, Chandrapur. The said termination order was quashed and set aside. The applicant was reinstated in service with continuity of service. The applicant is entitled for absorption in a regular service as per the G.Rs. dated 01/12/1995 and 21/04/1999. The respondents have not absorbed the applicant, therefore, he approached to this Tribunal for direction to the respondents to absorb him in a regular service and give him all pensionary benefits.

3. In O.A.No.1164/2022, the applicant was engaged by the respondents as a Mustering Assistant w.e.f. 02/12/1981. He was

terminated by the respondents, therefore, Complaint ULP No.1051/1988 was filed before the Labour Court. The Labour Court quashed and set aside the termination order and directed to reinstate the applicant with continuity of service. The respondents have continued the applicant, but not granted the benefits of G.Rs. dated 01/12/1995 and 21/04/1999. Therefore, the applicant approached to this Tribunal for direction to the respondents to absorb him in a regular service.

4. The learned counsel for applicants Shri N.R. Saboo has pointed out the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in case of ***the State of Maharashtra & Ors. Vs. Uttam S/o Narayan Vendait*** in Writ Petition No.8468/2015, decided on **16/12/2015**, the Judgment of the Hon'ble Supreme Court in the case of ***Shaikh Miya S/o. Shaikh Chand etc. vs. State of Maharashtra*** dated **07/09/2022** in Civil Appeal No.6531-6533 of 2022 and the Judgment of Hon'ble Bombay High Court in the case of ***Aba Shankar Jadhav and Others Vs. the Secretary, Planning Department and Ors.***, decided on **30/03/2023** and the Judgment of this Tribunal in O.A.1158/2022, decided on 11/08/2023.

5. The learned P.O. Shri M.I. Khan has pointed out the Judgment of Hon'ble Supreme Court in the case of ***State of***

Maharashtra & Ors. Vs. Natha Piraji Ingole, decided on 15/02/2019.

6. There is no dispute that both the applicants were engaged as a Mustering Assistant in the year 1987 and 1981 respectively. There is no dispute that both the applicants were terminated. The termination orders were quashed and set aside by the Labour Court with direction to reinstate them with continuity of service. Both the applicants were reinstated by the respondents, but they have not given the benefits of regularization as per the G.Rs. dated 01/12/1995 and 21/04/1999.

7. As per the above G.Rs., the State Government has taken decision to absorb the Mustering Assistants in a regular service who were in service on a particular date i.e. on 31/05/1993 as mentioned in the G.R.

8. The applicants were in service on 31/05/1993 in the establishment of respondents, therefore, it was for the respondents to regularize the services of the applicants.

9. The learned P.O. Shri M.I. Khan has raised objection that in O.A.No.1164/2022 the applicant is retired. After the retirement, the applicant has not approached to this Tribunal within time. After 16 years, 5 months, he approached to this Tribunal.

10. The learned counsel for applicants Shri N.R. Saboo has pointed out the Judgment of the Hon'ble Bombay High Court in the case of ***Aba Shankar Jadhav and Others Vs. the Secretary, Planning Department.*** The Hon'ble Bombay High Court has held in para-3 as under –

“(3) As far as Petitioners are concerned, they have approached the Industrial Court. The Industrial Court had passed an order reinstating them but has not granted permanency. In that event, the judgment of the Apex Court in the case of Shaikh Miya S/o Shaikh Chand etc. vs. State of Maharashtra dated 7th September, 2022 in Civil Appeal No. 6531- 6533 of 2022 will be relevant. In that judgment, it is observed that the persons who have been absorbed over a period of time post 31st March, 1997, for pensionable services, reckoning date will be 31st March, 1997 and such of the persons who have rendered pensionable services will be entitled to that benefit. In view of that, the petitioners shall be considered as permanent from 31st March, 1997 and the pensionable benefits shall be granted to them considering their services with effect from 31st March, 1997, as expeditiously as possible.”

11. In the case of ***State of Maharashtra & Ors. Vs. Uttam S/o Narayan Vendait***, the Hon'ble Bombay High Court, Bench at Aurangabad has held that the Mustering Assistants are entitled to regularize their services from the date of their initial engagement as a Mustering Assistant. But after that Judgment, the Hon'ble Supreme Court in the case of ***Shaikh Miya S/o. Shaikh Chand etc. vs. State of Maharashtra*** has held that the services of Mustering Assistant are to be regularized w.e.f. 31/03/1997.

12. Both the applicants were engaged by the respondents as a Mustering Assistant. After termination of their services, they approached to the Labour Court. Their terminations were set aside and they were directed to reinstate with continuity of service. Therefore, it is clear that the applicants were in continued service from the date of their initial engagement as a Mustering Assistant. The Hon'ble Bombay High Court in the case of ***Aba Shankar Jadhav and Others Vs. the Secretary, Planning Department and Ors.***, has held that even a retired employee are entitled for the benefit of G.Rs. dated 01/12/1995 and 21/04/1999 for absorption in a regular service. In the Judgment near about 32 Mustering Assistants approached to the Hon'ble Bombay High Court. Some of the Mustering Assistants retired in the year 2014,2017,2019 etc. Therefore, it is clear that even the retired employees are entitled for the benefits of G.Rs. dated 01/12/1995 and 21/04/1999. This Tribunal has also in O.A.1158/2022 has held that the applicant who was retired in 2004, is entitled for the benefits of G.Rs. dated 01/12/1995 and 21/04/1999.

13. In view of the Judgment of Hon'ble Bombay High Court even a retired Mustering Assistants are entitled for absorption in a regular service. Hence, the following order –

ORDER

(i) The O.As are allowed.

(ii) The respondents are directed to treat the applicants as a regular employee w.e.f. 31/03/1997 and give them all the pensionary benefits, if they are eligible / entitled for the same.

(iii) No order as to costs.

Dated :- 06/11/2023.

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

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 06/11/2023.