

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 595 OF 2021
(Subject –Continuation in Service)**

DISTRICT:AURANGABAD

Indirakant Narayanrao Bhalerao,)
Age :56 years, Occu. :Service as Peon in)
Ground Water Survey Development Agency,)
Presently Posted to work in the office of)
Deputy Director, G.S.D.A., Aurangabad,)
R/o N-9, L-153/3, Sant Dnyeshwar Nagar,)
HUDCO, Aurangabad.)
Mob. No. 9623599514 **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Secretary,)
Water Supply & Sanitation Dept.)
7th Floor, G.T. Hospital Building Campus,)
Lokmanya Tilak Marg, Mantralaya,)
Mumbai-400 001.)
 2. **The Commissioner of Ground Water)
Survey & Development Agency,**)
Wakadewadi, Near Agriculture University,)
Shivaji Nagar, Pune.)
 3. **The Deputy Director,**)
Ground Water Survey & Development)
Agency, Near Agriculture Office,)
Shahnoormiyan dargah Area,)
Osmanpura Road, Aurangabad.)
- ... RESPONDENTS**

APPEARANCE : Shri Ajay Deshpande, Counsel for
Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
learned Presenting Officer for respondents.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

RESERVED ON : 24.01.2024.

PRONOUNCED ON : 22.02.2024.

ORDER

Heard Shri Ajay Deshpande, learned counsel appearing for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer appearing for respondent authorities.

2. By this application the applicant is seeking direction to consider his services rendered on daily wages from 01.06.1986 till 22.03.2007, so as to enable him to become eligible and entitled for pension and pensionary benefits as well as the benefits under Time Scale Promotion Scheme.

3. Brief facts giving rise to the Original Application are as follows:-

(i) The applicant has joined the service as Daily Wager under respondent No.3 on 01.06.1986. His services were brought to an end and therefore, the applicant had approached to Labour

Court, Aurangabad. The applicant had filed Complaint (ULP) No. 45 of 1991, however, although he was granted protection, ultimately the complaint came to be dismissed on 20.07.2004. Being aggrieved by the said, the applicant has preferred the Revision (ULP) No. 20 of 2004, however, by order dated 07.07.2006, the said Revision came to be dismissed. During pendency of the said revision interim protection was granted to the applicant.

(ii) It is the further case of the applicant that the applicant has preferred Writ Petition No. 5479/2006 against the said orders. He was granted protection during pendency of the said Writ Petition, however, by order dated 22.02.2007, the Hon'ble High Court of Bombay Bench, at Aurangabad had dismissed the said Writ Petition but made it clear that, in the event if the Government takes a decision to regularize services of daily wagers, who have been working as such, the dismissal of this petition would not come in the way of the petitioner/applicant herein, for being considered for employment as per his seniority in the category of daily wagers pursuant to the policy of regularization that the Government would adopt. The applicant has preferred the appeal in the aforesaid Writ Petition No. 5479/2006. There was no interim order granted to his favour

and as such, the services of the petitioner have been brought to an end w.e.f. 23.03.2007. However, the said Letters Patent Appeal No.39/2007 filed by the applicant also stood dismissed by the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad.

(iii) The applicant further contends that there were numbers of daily wagers working on the establishment of Ground Water Survey & Development Agency (GSDA) in the State. Considering the orders in the various proceedings passed by the Hon'ble High Court and by the Hon'ble Apex Court, the Government has taken a policy decision to regularize the services all the 26 daily wagers working under GSDA in the State and accordingly issued a G.R. dated 01.04.2015 (Annexure 'A-2'). It is also stated in the said G.R. that the services of most of the employees are regularized from a particular date and approval is being accorded for regularizing their services from such dates. Learned counsel for the applicant submits that in continuation of the said policy decision of the Government at Annexure 'A-2', the respondent No.3 has issued a consequential order dated 13.04.2015, thereby regularizing the services of the applicant in Class-IV cadre as Peon w.e.f. 13.04.2015.

(iv) The applicant further contends that because of unemployment he was required to suffer for about 8 years. Thus the applicant had no option but to accept all the terms and conditions enumerated in the order of regularization issued by the respondent No.3 dated 13.04.2015 (Annexure 'A-3'). The applicant even do not wish to question the legality and validity of the order of his absorption, however, all that he is claiming is a consideration of his longstanding services rendered from 01.06.1986 till 22.02.2007 almost of 21 years. In so far as a gap about 8 years from 23.02.2007 till 19.04.2015, the applicant do not claim any financial benefits nor he claims consideration thereof, counting the same for the purpose of pension and pensionary benefits.

(v) The period during which he suffered unemployment for whatever reasons, may not be considered for any purposes yet the earlier services of almost 21 years cannot get wiped out. The break in service having been foisted upon the applicant deserves to be treated as extra-ordinary leave when the Government has issued orders of regularization and issued the G.R. at Annexure 'A-2'. Hence, this Original Application.

4. Learned counsel for the applicant submits that if the facts of the case of the applicant are considered along with the

G.R. dated 01.04.2015 (Annexure 'A-2'), it is clear that the services rendered by the applicant from 01.06.1986 till 22.03.2007 are required to be taken into consideration for the purpose of pension and pensionary benefits. Learned counsel for the applicant submits that the applicant is due to retire on attaining the age of superannuation on 28.02.2014 and he would be put to a great loss, if his past service of almost 21 years are not taken into consideration for the purpose of service benefits. There is absolutely no justification for exclusion of his past service of almost 21 years, during which he has rendered services uninterruptedly. The respondents therefore need to be appropriately directed to treat the period of absence, which was obviously not because of mistake of the applicant but the cause of the termination effected by the respondents, as extra-ordinary leave, for which the applicant may not be able to force any benefit except for the purpose of counting his past service of almost 21 years.

5. Learned counsel for the applicant submits that by order dated 29.12.2015 the respondent No.3 has been pleased to regularize the services of as many as 16 incumbents and services of some of them have been regularized from their initial dates of appointment on daily wages. As a result, most of them have

become eligible for Old Pension Scheme introduced under 1982 Pension Rules, as stood modified from time to time. Therefore, depriving the applicant from such benefit of counting his past service, which he has rendered from 01.06.1986 to 22.02.2007 for almost 21 years is absolutely unjust, improper and incorrect.

6. Learned counsel for the applicant submits that even otherwise in terms of Kalelkar Award, if services rendered on daily wages are required to be taken into consideration to extend all service benefits to which he would have otherwise been entitled in law. Learned counsel for the applicant submits that the correction in the order of his appointment is required to be made by treating him to be an appointee from 01.06.1986, so as to make eligible for pension and pensioner benefits.

7. Learned Presenting Officer based upon the affidavit in reply filed by respondent Nos. 1 to 3 submits that the applicant was engaged on daily wages from 01.06.1986 as a Labourer and he was given work as per availability of work and requirement. The applicant was never given permanent nor temporary appointment as he was working on daily wages. The applicant came to be discontinued and the applicant has approached to Labour Court, Aurangabad by way of Complaint (ULP) No. 45/1991. By judgment and order dated 20.07.2004, the Labour

Court has dismissed the said complaint. The Labour Court has denied the request of regularization and benefits of permanency. The applicant approached the Industrial Court, Aurangabad by filing Revision which also came to be dismissed by order dated 07.07.2006. Further the Writ Petition filed by the applicant bearing Writ Petition No. 5479/2006 also came to be dismissed by order dated 07.07.2006 and thereafter, the LPA No. 39/2007 also came to be dismissed by the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad. There was no interim relief granted in favour of the applicant during pendency of the LPA and as a result, the services of the applicant have been brought to an end w.e.f. 23.03.2007.

8. Learned P.O. submits that considering the long standing services rendered by the daily wagers, the State of Maharashtra considered the cases of the applicant and other similarly situated employees sympathetically and by Government Resolution dated 01.04.2015 sanctioned the post and decided to regularize the services of the applicant from specific date. Though the applicant and other employees had no right to claim permanency, the Government had considered their cases sympathetically and took a policy decision to regularize a daily rated labourer's services from the date of order on which the

competent court directed them regularize. Learned P.O. submits that from the order passed by the Labour Court, Industrial Court and Hon'ble High Court it is clear that no specific directions have been given to regularize the services of the present applicant from any specific date. However, pursuant to the policy decision taken by the Government, the applicant came to be regularized after Government decision vide G.R. dated 01.04.2015 and in accordance with the order of Deputy Director, GSDA, Aurangabad dated 13.04.2015. There is no illegality and perversity in the said order dated 13.04.2015. Learned P.O. submits that the services of the applicant were regularized as per the guidelines mentioned in the G.R. dated 01.04.2015. It is the admitted position that the applicant was a daily wages worker. It is not his case that he was recruited and appointed on regular basis by following the due procedure for selection. Therefore, for all practical purposes, his appointment was treated to be an appointment terminable with non-availability of the work. There is no need to consider his service rendered on daily wages from 01.06.1986 to 22.03.2007 as regular service for pension and pensionary benefits. The same cannot be done to enable the applicant for pension and pensionary benefits or benefits of A.C.P.S.

9. Learned P.O. submits that in the aforesaid premises, there is no substance in the Original Application and the same is liable to be dismissed with costs.

10. It is the case of the applicant himself that he had joined the service as daily wager with respondent No.3 on 01.06.1986 and apprehending the termination he had filed the Complaint (ULP) No. 45 of 1991 before the Labour Court, Jalna. By judgement and order dated 20.07.2004, the Labour Court, Jalnahas dismissed the Complaint. Being aggrieved by the same, the applicant has filed the Revision (ULP) No. 20 of 2004 and by judgment and order dated 07.07.2006, the Industrial Court, Jalnahas rejected the said Revision. The applicant thereupon has filed Writ Petition No. 5479/2006. The Hon'ble High Court of Bombay, Bench at Aurangabad has dismissed the said Writ Petition. Aggrieved by the same, the applicant filed LPA No. 39/2007. The Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in the said LPA No. 39/2007 has confirmed the order passed by the learned Single Judge of the Hon'ble High Court of Bombay, Bench at Aurangabad and dismissed the LPA.

11. It is undisputed that the applicant's services with respondent No.3 on 01.06.1986 as a Labourer on daily wages

under Employment Guarantee Scheme. He had continued to work till his services were terminated with effect from 01.08.1991. In paragraph No. 6 of the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in said LPA No. 39/2007 had made the following observations in respect of the case of the applicant.

“6.

In the matter at hands, even after going through the judgements of the Labour Court and the Industrial Court, there is nothing to indicate that the appellant was issued any appointment orders, nor any such appointment orders were referred to, or relied upon by learned Counsel for the appellant, in order to demonstrate that his case would not fall in the category of a temporary worker contracted for a fixed period. No doubt, case of the appellant is not identical to the one of the appellant in the reported case. But, it is an admitted position that the appellant was a daily wager on EGS. It is not his case that he was recruited and appointed on regular basis, by following due process for selection and, therefore, for all practical purposes, his appointment must be treated to be an appointment terminable with non-availability of the work. In any case, he cannot stand on better footing than the appellant in the reported case.

12. It further appears that during pendency of the Writ Petition No. 5479/2006, the Advocate representing the applicant has produced a copy of letter dated 25.03.1994, whereby Deputy Director – respondent No.3 herein had forwarded a proposal to regularize services of those working on daily wages. There is a

list alongwith the proposal, in which name of the applicant is also shown. It further observed by the Hon'ble High Court of Bombay, Bench at Aurangabad in the said Writ Petition No. 5479/2006 by order dated 15.12.2006 that this fact is brought for the first time to the notice of Court. In the light of the said production of letter dated 25.03.1994, in paragraph No.3 the Hon'ble High Court of Bombay, Bench at Aurangabad in the aforesaid Writ Petition No. 5479/2006 has made the following observation while disposing of the Writ Petition vide order dated 22.02.2007.

“3. I have perused the impugned orders of the Labour Court as well as Industrial Court and I do not find any infirmity or illegality committed by the Courts below for this Court to interfere in its supervisory jurisdiction under Article 227 of the Constitution of India. The petition is accordingly dismissed. However, it is made clear that in the event the Government takes a decision to regularize the services of the daily wagers who have been working as such, the dismissal of this petition would not come in the way of the petitioner for being considered for employment as per his seniority in the category of daily wagers pursuant to any policy of regularization that the Government would adopt. The interim relief stands vacated.”

13. In terms of the aforesaid observations in the event Government takes a decision to regularize the services of the daily wagers who have been working as such, the dismissal of the petition would not come in the way of the petitioner for being considered for employment as per his seniority in the category of

daily wagers pursuant to any policy of regularization that the Government would adopt.

14. It is also undisputed that from the date of filing of the Complaint (ULP) No. 45 of 1991 before the Labour Court, Jalna till disposal of the Writ Petition No. 5479 of 2006 the interim relief was in force protecting the services of the applicant as daily wager. After dismissal of the Writ Petition, interim relief stood vacated. The Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad in the said LPA No. 39/2007 has not continued the said interim relief.

15. It further appears that in the year 2015 by issuing G.R. dated 01.04.2015 the State of Maharashtra has formulated the policy to accommodate the daily wagers in terms of the Courts order directing their regularization from particular dates. The name of the present applicant is appearing at Sr. No. 18 of chart of the said G.R. dated 01.04.2015.

16. It is undisputed position that the LPA came to be dismissed confirming the order passed by the learned Single Judge of the Hon'ble High Court of Bombay, Bench at Aurangabad in Writ Petition No. 5479/2006. Thus the Hon'ble High Court of Bombay, Bench at Aurangabad has neither in the

Writ Petition nor in the LPA has directed regularization of the applicant from certain dates. However, in terms of the observations in the Writ Petition by the Hon'ble High Court in paragraph No. 3 as reproduced in the foregoing paragraph and since the said letter dated 25.03.1994 was produced before the Hon'ble High Court in the aforesaid W.P. while disposing of the Writ Petition, certain directions have been given and the same are subject to the policy decision, if taken by the State Government in respect of the daily wagers.

17. Even in the order dated 13.04.2015 issued by the respondent No.3 in this regard, it is clearly stated that no specific directions have been given by the Hon'ble High Court in the Writ Petition No. 5479/2006 about regularization of the services of the applicant from certain date. However, in view of the said observations and in terms of the G.R. dated 01.04.2015, the respondent No.3 has regularised the services of the applicant from 13.04.2015 with the further observation that the applicant is not working as a daily wager since 07.07.2006, which is an admitted position.

18. Learned counsel for the ultimately submitted that it would be preposterous to treat the orders of the appointment of the applicant dated 13.04.2015 (Annexure 'A-3') as a fresh

appointment. Conjoint reading of the G.R. dated 01.04.2015 (Annexure 'A-2') and the appointment order at Annexure 'A-3', there is no scope to deliberations that because the applicant had rendered services for about 19 years from 01.06.1986 to 22.03.2007, the Government in its Water Supply and Sanitation Department took a policy decision to regularize the services of the applicant and similar other 25 employees.

19. It is also accepted by the learned counsel that the applicant has not been assigned with any particular date by any Court for regularizing his services. Learned counsel for the applicant has further submitted that in terms of Rule 44 of Maharashtra Civil Service (Pension) Rules, 1982, the Government servant who is reinstated in service is entitled to count his past service as qualifying service. He has further accepted that Rule 44, however, does not allow the gap period to be counted even for the purpose of pension, unless the said absence is regularized as duty period of leave period. Learned counsel for the applicant has thus subjected that since there is a gap of about 8 years in two spells of service, the said period of service would not count for pension, however, 19 years services rendered by the applicant from 01.06.1986 to 22.03.2007 cannot be wiped out. Learned counsel for the applicant further submitted that to avoid the

break in service, the said period of gap of 8 years may be directed to be treated as an extra-ordinary leave.

20. Learned counsel for the applicant in order to substantiate his contention placed his reliance in a case **Management of the Barara Cooperative Marketing-Cum-Processing Society Limited Vs. Workman Pratap Singh**, reported in (2019) 2 Supreme Court Cases 743 wherein in paragraph No. 20, the Hon'ble Supreme Court has made the following observation:-

“20. In our view, there lies a distinction between the expression “employment” and “regularization of the service”. The expression “employment” signifies a fresh employment to fill the vacancies whereas the expression “regularization of the service” signified that the employee, who is already in service, his services are regularized as per service regulations.”

21. The facts of the aforesaid case are all together different and cannot be made applicable to the facts and circumstances of this case. It was not a case of daily wager. The respondent in the aforesaid case was working with the appellant as a Peon from 01.07.1973 and the appellant terminated the services of the respondent on 01.07.1985. The respondent, therefore, got the reference made through the State to the Labour Court to decide the legality and correctness of the termination

order. By order dated 03.02.1988, the Labour Court held that the respondent's termination is bad in law and accordingly he awarded lump sum compensation to the respondent in lieu of reinstatement in service. The Labour Court has answered the reference against the respondent. The Labour Court held that the respondent was not entitled to claim any benefit of Section 25-H of Industrial Dispute Act to claim re-employment in the appellant's services on the facts stated in the statement of claim. In the background of these facts, the Hon'ble Supreme Court by restoring the order of Labour Court and by setting aside the order passed by the Hon'ble High Court allowing the respondent prayer for employment has made observations in paragraph No. 20 as reproduced above.

22. Learned counsel for the applicant has further placed reliance in a case **Devidas Bhiku Borker & Ors. Vs. State of Maharashtra & Anr.**, reported 2011 (6) Mh. L.J. 332. The Hon'ble High Court in the aforesaid case in paragraph No. 8 has made the following observation.

"8. Having considered the rival submissions, at the outset, we may observe that the Tribunal has misdirected itself in taking the view that the decision of the Division Bench of this Court referred to above, cannot be relied upon, as it has not taken into account all the aspects of the matter. It is indisputable that the decision of the Division Bench of this Court interprets the purport of Rule 30 of the

relevant Rules. The assumption of the Tribunal that the High Court has not adverted to all the relevant aspects, in our opinion, is inappropriate. Indeed, the Tribunal has adverted to other rules such as Rule 31(3), 33 and 38 (1) to hold that it is necessary to keep in mind as to whether the concerned employee was in continuous service from the date of his initial appointment or whether there were interruptions from time to time. In the first place, the Tribunal was bound by the opinion of the Division Bench of the High court which decision had attained finality on account of dismissal of the SLP by the Supreme Court. In any case, the Tribunal was bound by another decision of the same Tribunal in the case of Shri Prabhakar Shankar Bagkar, which is founded on the decision of the High Court. A co-ordinate Bench of the Tribunal could not have departed from that binding precedent. In any case, the Tribunal misdirected itself on applying the principle of interruptions of service from time to time. What has been glossed over by the Tribunal is the purport of Rule 30, which makes no distinction between the first appointment either substantively or in officiating capacity or temporary capacity for the purpose of computing qualifying service. Understood thus, Rule 30 would encompass the services rendered by the Government employees even in the capacity of the temporary appointment as Seasonal Godown Keepers.”

23. In the instant case, it is the case of the applicant himself that he has joined the service with respondent No.3 on 01.06.1986 as a Labourer on daily wages under the Employment Guarantee Scheme and he continued to work as such till his services were terminated w.e.f. 01.08.1991. The Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in the said Letters Patent Appeal No.39/2007 has observed that there is nothing in the judgments of the Court below to indicate that the

appellant (applicant herein) was issued any appointment orders, nor any such appointment orders were referred to, to demonstrate that his case would not fall in the category of a temporary worker contracted for a fixed period.

24. In terms of Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 which speaks for commencement of qualifying service, the qualifying service commences from the date the employee takes charges of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

25. It is well steered that the daily wager does not hold any post and unless there is evidence about creation of sanctioned post on which the complainants were working continuously, the services rendered as daily wager cannot be counted as qualifying service for pensionary benefits.

26. In the instant case, even though none of the Court has directed regularization of the applicant from any fixed date, however, considering the period of daily wagers working continuously with certain department, the Government has issued the G.R. dated 01.04.2015 and so far as the applicant is concerned, since no specific directions have been given by any of

the Court about his regularization, regularized his services from the date of 13.04.2015. The said order dated 13.04.2015 passed by respondent No. 3 is in accordance with and a policy decision taken by State of Maharashtra and G.R. dated 01.04.2015 issued in this regard.

27. In view of above, in my considered opinion, the applicant's previous services as daily wager cannot be treated for any purposes. Further, there is gap of considerable period for which it is urged that the same may be treated as extra-ordinary leave. I do not think that this exercise is warranted in the facts and circumstances of the preset case. I find no substance in the Original Application and the same is liable to be dismissed. Hence, the following order:-

ORDER

- (A) The Original Application is hereby dismissed.
- (B) In the circumstances there shall be no order as to costs.
- (C) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 22.02.2024

SAS O.A. 595/2021(S.B.) Continuation of Service/Benefit of TBP.