

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATIONS NO.1062, 1066 & 1067 OF 2018**

ORIGINAL APPLICATION NO.1062 OF 2018

DISTRICT : MUMBAI

1. Shri Arvind Sakharam Tandel,)
Age 60 years, Retired as Senior Clerk from the)
Office of Addl. Commissioner, (West Region),)
Bandra (W), Mumbai 400050)
R/o 301, Hill View Society, Unnatnagar,)
Goregaon (W), Mumbai 400104)

2. Shri Anil Krishna Salgaonkar,)
Age 58 years, Retired as Senior Clerk from the)
Office of Commissioner of Police (HQ), Desk-8)
Mumbai R/o 41/3071 Abhudaya Nagar,)
Kalachowkie, Mumbai-33)

3. Smt. Sandhya Prakash Garud,)
Age 56 years, working as Senior Clerk in the)
Office of Commissioner of Police, Mumbai)
R/o Building No.200/7993, Kannamwar Nagar-1))
Vikhroli, Mumbai)..Applicants

Versus

The Commissioner of Police,)
L.T. Marg, Opp. Crawford Market, Fort, Mumbai-1)..Respondent

WITH**ORIGINAL APPLICATION NO.1066 OF 2018****DISTRICT : MUMBAI**

Smt. Aarti Nandan Nimkar,)
Age 60 years, Retired as Junior Clerk from the office of)
belownamed Respondent,)
R/o Teachers Colony, Flat No.1/9, Second Floor,)
Bandra (E), Mumbai 400051)..Applicant

Versus

The State of Maharashtra,)
Through Principal Secretary, Industries Department,)
Mantralaya, Mumbai 400032)..Respondent

AND**ORIGINAL APPLICATION NO.1067 OF 2018****DISTRICT : MUMBAI**

Shri Madhukar Virappa Sonawane,)
Age 68 years, Retired as Junior Clerk from the office of)
belownamed Respondent,)
R/o Sujit Mhatre Building, Ground Floor, Room No.4,)
Khargaon, Sector-13, Tal. Panvel, District Raigad)..Applicant

Versus

The State of Maharashtra,)
 Through Principal Secretary, Public Health Department)
 Mantralaya, Mumbai 400032)..Respondent

Shri B.A. Bandiwadekar – Advocate for the Applicants
 Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
 RESERVED ON : 16th December, 2019
 PRONOUNCED ON : 19th December, 2019

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicants and Smt. Archana B.K., learned Presenting Officer for the Respondents.
2. Theses three Original Applications viz. OAs. No.1062, 1066 & 1067 of 2018 are heard together since they pertain to the common cause viz. to consider their temporary services for the purpose of Time Bound Promotion.
3. The undisputed facts covering 5 applicants in the 3 OAs. are as under. All these applicants were appointed in 1990 as Junior Clerks in the establishment of the respondents on ad hoc basis on the condition that their services would be terminated as soon as persons recommended by the Public Service Commission become available. In 1997 the services of these employees were terminated. The GAD issued a GR dated 31.3.1999 stating that these employees may be reinstated (पुनर्स्थापित) from the date of issue of GR i.e. 31.3.1999. It further stated that decision

regarding how to treat the period of their absence from the date of termination till their reinstatement will be taken separately.

4. The Finance Department issued a GR dated 7.10.2016 stating that in case of those who have completed unbroken ad hoc services, their service should be counted for benefits of 12 years' Time Bound Promotion. The relevant portion of the GR reads as under:

“शासन निर्णय

महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील मंत्रालयातील तसेच बृहन्मुंबईतील राज्य शासकीय कार्यालयात लिपिकवर्गीय संवर्ग तसेच अन्य संवर्गात महाराष्ट्र लोकसेवा आयोग अपुरस्कृत उमेदवार म्हणून नियुक्त झालेल्या व सामान्य प्रशासन विभागाच्या विविध शासन आदेशान्वये दिनांक ३१.०३.१९९९ पर्यंत सेवा नियमित केलेल्या कर्मचाऱ्यांची, सेवा नियमित झाल्याच्या दिनांकापूर्वीची, तात्पुरती अखंडीत सेवा, तसेच महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवार म्हणून मंत्रालय तसेच बृहन्मुंबईतील राज्य शासकीय कार्यालयात लिपिक संवर्गात अथवा अन्य तत्सम संवर्गात नियुक्त झालेल्या कर्मचाऱ्यांची पदोन्नतीच्या कोट्यातील तात्पुरत्या पदोन्नतीची अखंडीत सेवा देखील कालबद्ध पदोन्नती / सेवांतर्गत आश्वासित प्रगती योजना / सुधारित सेवांतर्गत आश्वासित प्रगती योजनेच्या प्रयोजनासाठी १२ वर्षांच्या नियमित सेवेची गणना करताना विचारात घेण्यात यावी. तसेच संबंधित कर्मचाऱ्यांकडून संबंधित योजनेबाबतच्या अन्य अटीची पूर्तता झाल्यानंतर त्यांना अनुज्ञेय योजनेंतर्गत यथास्थिती कालबद्ध पदोन्नती / सेवांतर्गत आश्वासित प्रगती योजना / सुधारित सेवांतर्गत आश्वासित प्रगती योजनेचा पहिला / दुसरा लाभ मंजूर करण्यात यावा.”

(Quoted from page 27 of OA)

(Underlines added)

5. Following the above quoted GR the applicants submitted representations that they had joined in 1990, they failed in the special

examination held by the Government and hence their services were terminated in 1997, however, their services have been regularized from 1999 and therefore they should be provided the benefits of GR dated 7.10.2016 quoted above.

6. In support of the same the applicants have furnished following grounds which are summarized as under:

(1) The services of their colleagues have been regularized by this Tribunal in OAs No.695/2009 and 214/2010 decided on 21.1.2010 & 21.4.2010 and the same has been upheld by the Hon'ble Bombay High Court in Writ Petition No.2257 of 2011 decided on 6.2.2012 and the Hon'ble Supreme Court in SLP (Civil) (CC) No.14070 of 2012 decided on 28.9.2012.

(2) The GR dated 7.10.2016 grants Time Bound Promotion after taking into consideration earlier temporary services.

(3) In 1990 the applicants had cleared the written examination and interview test held by the District Collector.

(4) Though they had cleared the written examination and interview by the Collector they were subjected to special written examination by the MPSC for absorption in which they failed. As the Government has taken decision to reinstate them in 1999 their services should be considered as never terminated and as if they were in service for continuous period. They cannot be considered as reappointed from 31.3.1999. Their services should be considered as reinstated and not as reappointed. Break in their services for long period should be ignored.

7. During hearing the Ld. Advocate for the applicants has also tendered a communication dated 3.12.2019 from Finance Department obtained by one of the applicants. The same is taken on record and marked 'X' for identification. This reads as under:

“श्रीमती आरती नंदन निमकर,
अरुणोदय सोसायटी, रुम नं.४०१, बी विंग,
आंबेडकर गार्डन समोर, कलेक्टर कचेरी समोर,
बांद्रे (पूर्व) पिन कोड न. ४०० ०५१
विषय :- मा.अ.अ. २००५ अंतर्गत माहिती मिळणेबाबत.....
अर्जदार - श्रीमती आरती नंदन निमकर,
संदर्भ :- आपला दि.२/१२/२०१९ रोजीचा अर्ज

महोदय,

उपरोक्त विषयाबाबतचा आपला महितीचा अधिकारातील दिनांक २/१२/२०१९ रोजी अर्ज या विभागास दिनांक ३/१२/२०१९ रोजी प्राप्त झाला आहे.

उदर संदर्भासोबत जोडलेल्या वि-त विभागाच्या दिनांक ४/२/२००३ च्या पत्राचे अवलोकन केले असता असे दिसून येते की, तत्कालिन मा. मंत्री (सार्वजनिक आरोग्य कुटुंब कल्याण आणि वैद्यकीय शिक्षण) यांनी कर्मचा-याच्या सेवेतील खंड खास बाब म्हणून क्षमापित करण्याबाबत मा.मंत्री (वि-त) केलेल्या विनंतीच्या अनुषंगाने विषयांकित कर्मचा-याचा प्रशासकीय विभाग हा सार्वजनिक आरोग्य विभाग असल्याने सदर कागदपत्रे दि.४/२/२००३ च्या पत्रान्वये पुढील कार्यवाहीसाठी सार्वजनिक आरोग्य विभागाला पाठविण्यात आलेली आहेत. त्यामुळे आपण मागणी केलेली कागदपत्रे सार्वजनिक आरोग्य विभागाकडून उपलब्ध करून घेण्यात यावीत.”

8. Ld. Advocate for the applicants has relied on the following judgments in support of his contention that the technical breaks should be condoned and temporary services should be considered for the Time Bound Promotions:

(1) Sudhakar Baburao Bodke Vs. The State of Maharashtra & Anr. 1990(3) Bom.C.R. 465.

(2) Shri Milind Mahadeo Sawant & Ors. Vs. The Joint Director, Technical Education & Ors. decided by this Tribunal on 19.11.2018.

(3) OAs No.249 of 2009 & other group matters decided by this Tribunal on 2.5.2016.

(4) Suresh Subrao Kokitkar & Ors. Vs. The Joint Director, Technical Education, OA No.1023 of 2012 decided by this Tribunal on 21.6.2013.

(5) Dr. Vijay Pandharinath Sawant Vs. The State of Maharashtra & Ors. decided by this Tribunal on 13.7.2009.

9. The applicants have therefore prayed in para 9(a) that their temporary services should be counted for the purpose of Time Bound Promotion as continuous service and they should be given Time Bound Promotion benefits and in para 9(b) that the respondents be directed to extend the benefits of the GR dated 7.10.2016 in the matter of first and second benefit of the Time Bound Promotion and avoid discrimination.

Submissions by the Respondents:

10. The respondents have contested the submissions and claims made by the applicants as under:

(1) In respect of OA No.1062/2018 the respondent no.1 has pointed out that the State of Maharashtra has the authority to consider the continuation of service period. However, the State has not been made party in the OA.

(2) The alleged cause is in 1999 in view of GR dated 31.3.1999. The applicants were aware that adverse decision was taken against them regarding intervening period as break. The decision to this

effect was taken by the Government on 26.7.2000. Hence, there is delay from 26.7.2000 and the same has not been condoned nor any application has been made for the same.

(3) In respect of the applicants there are no technical breaks as claimed by the applicants. In fact, the applicants were terminated in 1997 and they failed to pass the examination taken by the State Government to regularize their services. As per the GR dated 31.3.1999, applicants are freshly appointed in 1999.

(4) The applicants are relying on the GR dated 7.10.2016. However, the GR dated 7.10.2016 is not applicable in their cases, as the GR specifically mentions that it is applicable to those having continuous service.

(5) The respondents pointed out that the order was issued on 14.8.2000 based on communication from the State Government on 26.7.2000. The communication dated 14.8.2000 states that the decision regarding how to treat the period of absence of the applicants was under the consideration of the State Government. The State Government has taken the decision that the break in service of the applicants cannot be regularized. The communication received from the State Government on 26.7.2000 reads as under:

“विषय :- आयोग अपुरस्कृत (नॉन-पी.एस.सी) कर्मचाऱ्यांच्या सेवा नियमाधीन करण्याबाबत.

संदर्भ :- शासन निर्णय, सामान्य प्रशासन विभाग क्रमांक: इएक्सएम-१०९७/२४१०/प्र.क्र.१०/९८/१४-अ, दिनांक ३१/३/९९

महोदय,

संदर्भाधीन शासन निर्णयाच्या अनुषंगाने सेवा नियमित करण्यात आलेल्या आपल्या विभागातील / कार्यालयातील खाली नमूद केलेल्या कर्मचाऱ्यांबाबत त्यांच्या सेवा समाप्त करण्यात आल्या तेव्हापासून ते त्यांच्या सेवा नियमित करण्यात आल्या तोपर्यंतचा कालावधी कशा प्रकारे गणण्यात यावा याबाबतचा निर्णय स्वतंत्रपणे घेण्यात येणार होता. प्रस्तुत प्रकरणी वित्त विभागाशी विचार विनियम करण्यात आला असून सदर कर्मचाऱ्यांच्या सेवेमध्ये पडलेला खंड नियमित करण्यात येणार नाही. तसेच हा खंड रजा, वेतनवाढ, निवृत्तीवेतन इ. कारणासाठी देखील क्षमापित होण्याजोगा नाही, अशा निर्णयाप्रत हा विभाग आला आहे.

(सोबतच्या यादीप्रमाणे)

२. तरी उपरोक्त बाब संबंधित कर्मचाऱ्यांच्या निदर्शनास आणण्यात यावी.”

(Quoted from page 46 of OA)

(6) This communication encloses a list of the applicants among others and states that their service books are also enclosed for making necessary entries. It includes names as under:

“सोबत :-

- १) अवर सचिव (आस्थापना), सार्वजनिक आरोग्य विभाग, मंत्रालय, मुंबई - ४०००३२.
 - १) श्री.म.वि. सोनवणे
 - २) श्रीमती आ.न. निमकर
- ३) पोलीस आयुक्त, पोलीस आयुक्त बृहन्मुंबई यांचे कार्यालय, धोबीतलाव, मुंबई - ४००००९.
 - १) श्री. ए.एस. तांडेल
 - २) श्री. अ.कृ. साळगांवकर
 - ३) कु. एस.डी. डांगळे”

(Quoted from page 47 of OA)

These are applicants in the present OAs.

11. The respondents further pointed out that the decision of the DPC in respect of all the applications made by the applicant was published on 19.12.2017. The same reads as under:

“(अपात्र)

खालील नमूद केलेल्या म.लो.आ. अपुरस्कृत कर्मचाऱ्यांचे प्रकरण निकषांमध्ये बसत नसल्याने त्यांना सदर वरिष्ठ वेतनश्रेणीचा लाभ देण्यासाठी निवडमंडळाने अपात्र ठरविले आहे.

अ.क्र.	कर्मचाऱ्याचे नांव	पदनाम	कारण
१.	श्री. रमाकांत विष्णू तांबे	सेवानिवृत्त कार्यालय अधीक्षक	सेवेची १२ व २४ वर्ष पूर्ण होण्यापूर्वी नियमित पदोन्नती देण्यात आली आहे.
२.	श्री. अनिल कृष्णा साळगावकर	वरिष्ठ लिपीक	सेवेत खंड असल्याने
३.	श्री. अरविंद सखाराम तांडेल	सेवानिवृत्त वरिष्ठ लिपीक	सेवेत खंड असल्याने

(Quoted from page 50 of OA)

12. According to the respondents the applicants were reappointed as Group ‘C’ employees as per GR dated 31.3.1999 and as their termination was legally valid, they cannot claim the period from 1997 to 1999 for the purpose of continuous service. The respondents have therefore submitted that the OAs are devoid of any merit and deserve to be dismissed.

13. The applicants in their affidavit in rejoinder have claimed that they have not received the order dated 26.7.2000 whereby the decision regarding the period of absence was taken and communicated to them. The applicants also reiterate that they were not reappointed but reinstated and therefore they are entitled for benefits for the period of absence.

14. The respondents in their sur-rejoinder claim that the applicants were aware of the decision by the State Government of 26.7.2000 and

entries have been made in the service book accordingly. Even after the reply filed, the applicants have not challenged the same. The respondents have therefore prayed that the OAs are without any merits and deserves to be dismissed.

Observations and findings:

15. I have examined the appointment order dated 16.5.1990, termination order dated 16.12.1997, GR dated 31.3.1999, communication dated 14.8.2000 and Government order dated 26.7.2000 communicating the decision regarding period of absence from termination to reinstatement. I have also seen the office order dated 19.12.2017.

16. As stated above, the applicants were appointed on 16.5.1990 as ad hoc employees. Since they were not recruited by MPSC, it was decided to conduct an examination for them. The applicants failed in the prescribed examination. Hence, as per the directions issued by the State Government on 11.12.1997, the services of the applicants were terminated on 16.12.1997. On 31.3.1999 the Government decided to reinstate 14 employees whose services were terminated. The GR further observed that seniority of these reinstated persons would be counted from 31.3.1999. It further stated that separate decision would be taken regarding the period from termination to reinstatement. Accordingly, on 26.7.2000 after consulting Finance Department the Government has decided not to regularize the period of absence from termination to reinstatement. It further clarified that the period of absence cannot be condoned for the purposes of leave, increments, pension etc. This communication was specifically addressed to the applicants including Shri Madhukar Virappa Sonawane, Smt. Aarti Nandan Nimkar, Shri Arvind Sakharam Tandel, Shri Anil Krishna Salgaonkar, Smt. Sandhya Prakash Garud nee Kumari S.D. Dangale.

17. The GR issued on 7.10.2016 categorically mentions that persons who have had service without break would be entitled for benefits of the ACP Scheme. As far as the applicants are concerned, Government has taken conscious decision as per record on 26.7.2000 not to regularize the period from termination to reinstatement. In view of the same, the GR dated 7.10.2016 cannot be made applicable to the applicants.

18. The judgments relied upon by the Ld. Advocate for the applicants pertain to condonation of technical breaks of minor nature and are of little assistance to the applicants as in their cases the period of termination to reinstatement is prolonged and more than one year. Hence, the prayer made by the applicants to make them eligible for benefits of the GR dated 7.10.2016 is not authorized by the GR.

19. For the reasons stated above, there is no merit in the OAs and same deserves to be dismissed.

20. Accordingly, OAs. No.1062, 1066 & 1067 of 2018 are dismissed. No order as costs.

(P.N. Dixit)
Vice-Chairman (A)
19.12.2019

Dictation taken by: S.G. Jawalkar.