

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.563 OF 2022**

**DISTRICT : RATNAGIRI**

Vasant Dattatray Panvalkar, )  
Age 70 years, Retired, R/at Gaurinandan Building, )  
Devrukh, Tal. Sangmeshwar, District Ratnagiri 415804)..Applicant

Versus

1. The Collector, Ratnagiri, )  
Asthapana Branch, Ratnagiri )
2. Food, Civil Supplies & Consumer Protection )  
Department, Madam Cama Road, )  
Hutatma Rajguru Chowk, Mantralaya, Mumbai )..Respondents

Smt. Preeti Walimbe – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 9<sup>th</sup> February, 2024

PRONOUNCED ON: 20<sup>th</sup> February, 2024

**J U D G M E N T**

1. In this OA the applicant, who was working as Seasonal Warehouse Keeper, Ratnagiri, challenges the impugned order dated 7.3.2017 issued by respondent no.2 whereby his application for condoning his period of

discontinued service of 6 years 11 months 12 days for computing his pensionary benefits as continued service was rejected. He also challenges the inaction in deciding his representation dated 28.2.2022 by the respondent no.1.

Brief facts:

2. The applicant was working as Seasonal Warehouse Keeper at Ratnagiri District from 11.4.1968 to 30.11.1985. He was regularized in service on the post of Clerk vide order dated 28.4.1986.

3. Ld. Advocate for the applicant pointed out that applicant worked as Seasonal Warehouse Keeper for a total period of 11 years 3 months out of which discontinued service was of 6 years 11 months and 12 days. Ld. Advocate for the applicant refers to Rule 30 of MCS (Pension) Rules, 1982. However, pointed out that respondent has not counted the entire service period of the applicant for the purpose of calculating entitlement and quantum of pension. Ld. Advocate for the applicant pointed out that Rule 30 of MCS (Pension) Rules, 1982 states that if a Government employee is holding a substantive post at the time of his retirement his qualifying service shall be computed from the date of his first appointment either substantively or in an officiating or temporary capacity. She pointed out that despite this legal provision respondents no.1 and 2 did not count his service as Seasonal Warehouse Keeper for computing the amount of pension as a result of which he is facing financial loss and hardship.

4. Ld. Advocate for the applicant relies on the ratio laid down by the Hon'ble Bombay High Court in **W.P. No.3690 of 2005 Anant S. Tambde & Ors. Vs. The Collector, Ratnagiri & Ors. decided on 19.12.2006** where the petitioners were also Warehouse Keepers who were absorbed as Clerk and whose case was similar to the applicant.

5. Ld. Advocate for the applicant also relied on the judgment and order dated 8.11.2019 passed by this Tribunal in **OAs No.762 to 766 of 2017 with OAs No.1012 & 1013 of 2016 Subhash Sitaram Shete & Ors. Vs. The State of Maharashtra & Ors.**

6. Ld. PO refutes the contention of the Ld. Advocate for the applicant. She relied on the affidavit in rely dated 7.9.2023 filed by Hanamant Ramchandra Mhetre, Leave Reserve Tahsildar, Collector Office, Ratnagiri. Ld. PO relies on Rule 33 of MCS (Pension) Rules, 1982 which states that, service rendered under Government followed without interruption by confirmation counts in full as service qualifying for pension. She pointed out that there has been a break in service and he is not entitled to count that period for computing his pension. Ld. mentions that the name of the applicant was not mentioned in the GR dated 24.1.2000 and therefore he is not entitled to pensionary claim. Ld. PO pointed out that there has been long break of 6 years 11 months 12 days in his service and hence OA deserves to be dismissed.

7. Considered the submissions of both the sides. Similar matter has been decided by the Hon'ble High Court in *Anant S. Tambde* (supra). The said writ petition was allowed by the Hon'ble High Court and directions were given to the respondents to make payments to the petitioners therein in accordance with their qualifying service within a period of six months. Relevant portion in para 4 of the said judgment reads as under:

*“A bare perusal of this rule would indicate that if a government employee is holding a substantive post at the time of his retirement, his qualifying service shall be computed from the date of his first appointment either substantively or in an officiating capacity or temporary capacity.”*

8. Similar matter has also been decided by this Tribunal in OAs No.762 to 766 of 2017 with OAs No.1012 & 1013 of 2016 Subhash Sitaram Shete & Ors. Vs. The State of Maharashtra & Ors., whereby the services of the applicants rendered by them before regularization of their services excluding period of break has been taken into consideration for purposes of computing pension. In view of the ratio of the judgments mentioned above the OA deserves to be allowed and therefore I pass the following order.

**ORDER**

- (a) The Original Application No.563 of 2022 is allowed.
- (b) Impugned order dated 7.3.2017 is quashed and set aside.
- (c) Services of the applicant rendered by him before regularization of his services (excluding the period of break) shall be taken into consideration for the purpose of computing the pension.
- (d) Respondents are directed to recalculate the retiral benefits of the applicant in terms of above and monetary benefits be extended to him within a period of three months from today.
- (e) No order as to costs.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**  
**20.2.2024**

Dictation taken by: S.G. Jawalkar.