

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 432 OF 2017

DIST. : AURANGABAD

Shri Kishan Pannalal Ghodekar,)
 Age. 64 years, Occ. : Nil,)
 R/o Shri Aniruddha Raste,)
 Bldg. C, Flat No. 301,)
 Alaknanda Co-op. Housing Society,)
 Tejas Nagar, Shivanand Garden,)
 Kothrud, Pune-29.).. **APPLICANT**

V E R S U S

1. The Secretary,
 Medical Education & Drugs)
 Department, Madam Kama Road,)
 Hutatma Chowk, Mantralaya,)
 Mumbai – 32.)
2. The Dean,)
 Govt. Medical College & Hospital,)
 Aurangabad – 431 001.).. **RESPONDENTS**

 APPEARANCE :- Shri S.D. Joshi, learned Advocate for the
 applicant.
 : Shri B.S. Deokar, learned Presenting
 Officer for the respondents.

CORAM : Hon'ble Shri V.D. Dongre, Member (J)
and
Hon'ble Shri Bijay Kumar, Member (A)
RESERVED ON : 12th April, 2023
PRONOUNCED ON: 7th June, 2023

ORDER

(PER : Shri V.D. Dongre, Member (J))

1. By invoking jurisdiction U/s 19 of the Administrative Tribunals Act, 1985 this Original application is filed seeking to issue order or directions against the respondent no. 1 to consider and decide the representation dated 12.5.2016 (part of Annex. A-1 collectively) made by the applicant regarding reviewing the decision in respect of termination of his services from the post of Lecturer in Biochemistry under the order dated 2.6.2003 in view of the Government Resolution dated 21.10.2015 (part of Annex. A-1 collectively) and offer protection to the services of the applicant.

2. Facts in brief giving rise to the Original Application can be summarized as follows :-

The applicant belongs to Open Scheduled Tribe category known as Mannerwarlu. He was appointed as Laboratory Technician from S.T. mannerwarlu category by the order dated 11.10.1977 (Annex. A-2) at the Government Medical College, Nanded under the Department of respondent no. 1 i.e. the Secretary, Medical Education. The applicant worked on that post till 14.9.1994 i.e. for the period of 17 long years.

3. Thereafter the applicant was selected and appointed as Biochemist through the M.P.S.C. by order dated 29.8.1994 (part of Annex. A-3 collectively) at Government Medical College, Nanded under the respondent no. 1. In view of that the applicant was relieved by the relieving order dated 14.9.1994 (part of Annex. A-3 collectively) from the post of Laboratory Technician. Accordingly he worked there for the period from 15.9.1994 till 9.10.1996.

4. Thereafter the applicant applied for the post of Lecturer in Biochemistry through proper channel of his appointing authority and got selected and was appointed as Lecturer in Biochemistry during the period from 10.10.1996 to 2.6.2003 through the M.P.S.C. His services were terminated on 2.6.2003 while working on the post of Lecturer in Biochemistry while working at Government Medical College at Aurangabad. His services were terminated on account of rejection of his caste claim by the Caste Scrutiny Committee on 2.6.2003. In view of that the applicant was not terminated from service as a measure of punishment under the provisions of M.C.S. (Discipline & Appeal) Rules, 1979. In view of above it is the contention of the applicant that his services right from 11.10.1977 till the date of his termination i.e. 26 years was

continuous service under the State Government, moreover, in the same Department.

5. Feeling aggrieved by the order of termination on account of rejection of his caste claim the applicant initially filed Writ Petition No. 2903/2003 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. The said writ petition was got withdrawn under the order dated 18.11.2008 (Annex. A-4) since no protection was accorded to his services.

6. At the time of termination of his services as Lecturer in Biochemistry, the service of about 8 years was left to his credit. At the time of termination he had completed the age of 49 years and 11 months approximately. At the time of termination of services the applicant on 2.6.2003, his 2 daughters were studying and the applicant was facing financial problems. By that time the applicant had put in about 26 years continuous service in the same Department but on different posts. The applicant made representations to the Department seeking pension. The said representations were not decided for quite some time. The applicant, therefore, filed Original Application No. 1095/2005 before this Tribunal. In the said O.A. in view of the statement made by the Department to the effect that his case was under active consideration of the Finance Department,

the said O.A. was disposed of by the Tribunal by order dated 31.1.2007 (Annex. A-5) by giving directions to the Department to take decision on the proposal within the period of 3 months.

7. After the orders of the Tribunal the Department by its communication dated 14.2.2008 (part of Annex. A-6 collectively) issued by the respondent no. 1 informed that his case for grant of pension could not be considered because he was terminated from the service on account of his caste certificate having been found to be invalid and that he was not entitled for protection of G.R. dated 15.6.1995 (part of Annex. A-6 collectively) when he was appointed on the post of Lecturer on 30.6.1996. Being aggrieved by the said communication dated 14.2.2008 (part of Annex. A-6 collectively) the applicant filed O.A. No. 461/2008 pursuant to the opportunity being granted to the applicant by this Tribunal while disposing of O.A. No. 1095/2005 by its order dated 31.3.2007 (Annex. A-5). However, said O.A. No. 461/2008 came to be disposed of by the Tribunal by its order dated 10.12.2009 (Annex. A-7).

8. Thereafter, the applicant made one representation to His Excellency Hon'ble the President of India thereby claiming to grant of pension. It appears that pursuant to the representation so made the respondent no. 1 under the

communication dated 12.4.2012 (Annex. A-8) informed the applicant that although the applicant rendered 26 years of service, however, the said service was rendered on three different posts i.e. Laboratory Technician, Biochemist and Lecturer in Biochemistry. Each service being new service, he is not entitled to seek the benefits by consolidating 3 services. Resultantly, the applicant is not entitled for the benefit of G.R. dated 15.6.1995.

9. It is the contention of the applicant that he has rendered 26 years' service in different capacities but the said service is rendered without any break and under the control of the same Department. This important aspect of the case has throughout been ignored not only by the Department, but also by this Tribunal. Moreover, by the latest G.R. dated 21.10.2015 (part of Annex. A-1 collectively) issued by the G.A.D. a decision has been taken to extend the benefit of G.R. dated 15.6.1995 (part of Annex. A-6 collectively) to all those incumbents, who were appointed up to 17.10.2001. On the basis of the said G.R. dated 21.10.2015 the applicant submitted his representation dated 12.5.2016 (part of Annex. A-1 collectively) requesting to review his case and extend him protection of the said G.R. at

the first instance. Hence, this O.A. is filed by the applicant seeking the abovesaid relief.

10. The Original Application is resisted by filing affidavit in reply on behalf of respondent nos. 1 to 3 (pages 58 to 75 of the paper book) through Shri Anil s/o Rangnathrao Joshi working as Professor, Department of Pathology, Government Medical College, Aurangabad, thereby previous litigations made by the applicant and the outcome thereof is not denied. It is, however, specifically contended that the representation in question dated 12.5.2016 made by the applicant was sent to the G.A.D. The G.A.D. has given remarks that the G.R. dated 21.10.2015 relied upon by the applicant for decision on his representation dated 12.5.2016 is being stayed by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. In view the same the protection is not available to the applicant as prayed for. Moreover, as per the decision of the Hon'ble Supreme Court dated 6.7.2017 in Civil Appeal No. 8928/2015 and other petitions protection is not available to the persons of reserved category, whose caste certificates have been invalidated. Moreover, the O.A. filed by the applicant bearing no. 461/2008 is dismissed by this Tribunal by the judgment and order dated

10.12.2009. In the circumstances, there is no merit in the present O.A. and it is liable to be dismissed.

11. We have heard the arguments of Shri S.D. Joshi, learned counsel for the applicant on one hand and Shri B.S. Deokar, learned Presenting Officer for the respondents on the other hand.

12. After considering the pleadings in the O.A., rival submissions of both the sides and the documents placed on record, it is evident that the applicant has made a representation on 12.5.2016 (part of Annex. A-1 collectively) to the respondent no. 1 seeking protection and service benefits on the basis of G.R. dated 21.10.2015 (part of Annex. A-1 collectively) allegedly extending the benefits of previous G.R. dated 15.6.1995 (Annex. A-6) to the employees, who were in service till 17.10.2001. According to the respondents, however, the representation submitted by the applicant on 12.5.2016 was sent by the respondents to the G.A.D. and the G.A.D. has communicated that G.R. dated 21.10.2015 is being stayed. However, the facts remain that nothing independently is communicated to the applicant by the respondents about the said pending representation dated 12.5.2016 made by the applicant. The applicant is seeking limited relief of giving

directions to the respondents to decide the said representation dated 12.5.2016 and communicate the decision thereof to the applicant in timeframe manner. The applicant however, has not filed any rejoinder affidavit in response to the contentions raised by the respondents that the effect of G.R. dated 21.10.2015 is being stayed by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad or the status of the litigation in that regard about which no details have been furnished in the affidavit in reply.

13. In the circumstances as above, in our considered opinion, it would be just and proper to grant the prayer in this O.A. so that the facts would come on record enabling the applicant to take necessary steps in the matter in accordance with law. Hence, we proceed to pass the following order:-

ORDER

- (i) The Original Application No. 432//2017 is allowed without any order as to costs.
- (ii) Respondent no. 1 is directed to consider and decide the representation of the applicant dated 12.5.2016 and communicate the decision thereof to the applicant in writing within 3 months from the date of this order.

(iii) The applicant is at liberty to seek appropriate remedy before the appropriate forum in case he is aggrieved by the said decision

MEMBER (A)

MEMBER (J)

Place : Aurangabad

Date : 7th June, 2023

ARJ O.A. NO. 432 OF 2017 (TERMINATION)