

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****REVIEW APPLICATION NO.24/2019****In O.A.No.226/2018 (S.B.)**

Smt. Bhagirathabai Vithobaji Jambhulkar,
Aged about 72 years. Occ. : Household,
R/o. Tukum Ward, Tadoba Road,
Tah. & Distt. : Chandrapur.

Applicant.

Versus

- 1) State of Maharashtra
through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
- 2) Chief Conservator of Forest,
Forest Division, Chandrapur.
- 3) Divisional Forest Officer,
Chandrapur Forest Division, Chandrapur.
- 4) Assistant Commissioner,
Labour and Controlling Authority
Under payment of Gratuity Act,
1972 at Chandrapur.

Respondents

Shri G.G.Bade, Ld. counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 21st April 2023.

JUDGMENT

Judgment is reserved on 18th April, 2023.

Judgment is pronounced on 21th April, 2023.

Heard Shri G.G.Bade, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the Respondents.

2. By this application the original applicant seeks review of the Judgment and order dated 18.04.2019 passed in O.A.No.226/2018.

3. In the O.A. the applicant who is wife of the deceased employee, raised a grievance that her husband had served for more than 29 years and therefore, he was entitled to get pensionary benefits. The respondents resisted the O.A. on the ground that the deceased was a daily wager, he was employed whenever work was available, by G.R. dated 31.01.1996 daily wagers who had completed uninterrupted service of five years as on 01.11.1994 were eligible to be regularised, the deceased was not in service on 01.11.1994 and consequently his services were not regularised. According to the applicant, the deceased was not holding a substantive post when his services were terminated and hence, as per the first proviso to Rule 30 of the M.C.S.(Pension) Rules, 1982 he was not entitled to get pensionary benefits. While dismissing the O.A. this Tribunal accepted aforesaid contention of the respondents and observed-

6. The first proviso to Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 clearly says that a Government servant shall hold substantively a permanent post in the Government service or shall hold a suspended lien or certificate of permanency. In the present case even as per contention of the applicant deceased Vithoba was in service till 28/02/1994 but his service was not confirmed or he was not regularised, therefore, he was not entitled for the benefit of the G.R. dated 31/01/1996. Admittedly, deceased Vithoba was not holding any permanent post at the time of his alleged retirement of service, therefore, I do not see any merit in this application.

4. In this review it is the contention of the applicant that this Tribunal failed to consider the second proviso to Rule 30 on which the applicant had, in fact, relied, instead reliance was placed on the first proviso to dismiss the O.A. and a precedent of the Hon'ble Supreme Court **A.P.Srivastava Vs. Union of India 1995 (6) SCC 227** was also not considered. According to the applicant, owing to non-consideration of relevant proviso to Rule 30, and binding precedent in the case of A.P.Srivastava (Supra) this Tribunal fell in error which is apparent on the face of the record and the same, therefore, is required to be corrected by exercising powers of review.

5. To resist the review application the respondents have contended as follows. The applicant was a daily wager. He was not a temporary employee.

He was not entitled to be absorbed as per G.R. dated 31.01.1996. There is no error at all in the Judgment under review.

6. Relevant part of Rule 30 of the M.C.S.(Pension) Rules, 1982 reads as under-

30. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency:

[Provided further that, in cases where a temporary Government servant retires on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of Superannuation. Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.]

7. It was contended by Shri G.G.Bade, learned Advocate for the applicant that this Tribunal ought to have considered the second proviso to Rule 30 as well as the ruling of the Supreme Court in A.P.Srivastava (Supra) which it did

not do. It was submitted that such non-consideration has led to an error apparent on the face of the record. In reply, it was submitted by learned P.O. that the deceased was a daily wager, he was not in service on 01.11.1994 and hence not entitled to get the benefit of G.R. dated 31.01.1996.

8. The applicant does not dispute that the deceased was a daily wager and he was not in service on 01.11.1994. In A.P.Srivastava (Supra) the petitioner who was a temporary employee, was compulsorily retired in public interest after serving for more than twenty years. It was held that he was entitled to get pensionary benefits. It was observed that for the purpose of getting pensionary benefits case of such employee could be equated with an employee who opts for voluntary retirement after serving for twenty years. This ruling is distinguishable since the deceased was not a temporary employee. He was a daily wager. It would also follow that for the same reason the second proviso to Rule 30, which I have quoted above, was not applicable to the facts of the case.

9. The applicant has also relied on **the State of Gujarat and Others Vs. Talsibhai Dhanjibhai Patel 2022 LiveLaw (SC) 187.** This was a case of ad-hoc employee. He was held entitled to pensionary benefits since he had served for more than 30 years. This case is also distinguishable on the ground that the deceased was a daily wager.

10. The respondents, on the other hand, have relied on **Subhash Vs. State of Maharashtra 2001 SCC online SC 1475** wherein it is reiterated that scope of review is very limited and perceived error sought to be corrected thereunder must be plain and apparent. The applicant has failed in showing any error which could be said to be plain and apparent on the face of the record, in the judgment under review. For all these reasons review application is dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 21/04/2023

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 21/04/2023.
and pronounced on