

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 328 OF 2016

(Subject – Pension)

DISTRICT: OSMANABAD

Shri Kalidas Niwarati Jadhav,)
Age: 59 years, Occu. : (Pensioner),)
R/o Mangrul, Tq. Kallamb,)
Dist. Osmanabad) .. **APPLICANT**

V E R S U S

1) **The District Collector,**)
Collector Office, Beed.)

2) **The Tahshil Office,**)
Georai, Dist. Beed.)

3) **Accountant General Office,**)
Pension Branch Office, Nagpur.) .. **RESPONDENTS**

APPEARANCE : Shri G.J. Kore, Advocate for the Applicant.

: Shri I.S. Thorat, Presenting Officer for the Respondents.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J).

DATE : 06.04.2018.

O R A L - O R D E R

1. Heard Shri G.J. Kore, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for respondents.

2. The applicant has approached this Tribunal by challenging the order dated 12.11.2014 issued by the respondent No. 3 rejecting his claim for pension on the ground that he is not

entitled to get pension and pensionary benefits in view of the G.R. dated 31.10.2005.

3. It is contention of the applicant that he was appointed as Muster Assistant in the Irrigation Department on 03.02.1984 under E.G.S. Thereafter, he came to be absorbed in the Government Service as a Clerk in view of the G.R. dated 25.06.2004 and accordingly, the appointment order has been issued to him on 10.12.2007. Accordingly, he was appointed as a Clerk in the Government service. He retired on 30.04.2014 from the service on superannuation. Thereafter, his pension papers have been forwarded by the concerned department to the Accountant General-II, Nagpur. The Accountant General-II, Nagpur denied to grant pensionary benefits to the applicant in view of the G.R. dated 31.10.2005. It is his contention that the applicant has been absorbed in the regular service of State Government. In view of the G.R. dated 25.06.2004, he is entitled to get pension and pensionary benefits, as he was regularized in the State Government service and provisions of G.R. dated 25.06.2004 are applicable to him. As he has been regularized in the service in view of the G.R. dated 25.06.2004, the provisions of G.R. dated 31.10.2005 are not applicable to him and therefore, he prayed to quash the impugned order.

4. Respondents initially supported the impugned order passed by the Accountant General-II, Nagpur dated 12.11.2014 on the ground that the applicant is not entitled to get benefits of the G.R. dated 31.10.2005, but the respondent Nos. 1 and 2 again filed short affidavit in reply and admitted the fact that the applicant has been regularized in the Government Service in view of the G.R. dated 25.06.2004 and as per the said G.R., the provisions of Maharashtra Civil Services Rules are made applicable to him and he is entitled to get all service benefits available to the Government employees. It is their contention that even it is assumed that the applicant joined the Government service on 25.06.2004, then also he had not rendered qualifying service of 10 years which is required for granting pensionary benefits to him and therefore, he is not entitled to get pensionary benefits in view of Rule 110(2)(b) of the Maharashtra Civil Services (Pension) Rules, 1982 and therefore, they prayed to reject the present Original Application.

5. Learned Advocate for the applicant has submitted that the respondent Nos. 1 and 2 have admitted the fact that the applicant was regularized in the service w.e.f. 25.06.2004 and he rendered total service of 9 years, 10 months and 5 days. He has submitted that only period of two months was short to complete 10 years of service, which will make eligible for getting pension.

In view of the provisions of Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982, the Government may, for special reasons to be recorded in writing condone a deficiency and to make an addition in service and to extend pensionary benefits to the employees. He has submitted that the respondents ought to have considered the said provisions and granted pensionary benefits to the applicant. He has submitted that the applicant is ready to approach the respondent Nos. 1 and 2 with a request to condone a deficiency and to make an addition in service in view of the provisions of Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982 and to make his service pensionable by filing the application and therefore, he prayed to direct the respondents to take appropriate decision in that regard in view of provisions of Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982.

6. Learned Presenting Officer has submitted that since the applicant has not rendered 10 years qualifying service, he is not entitled to claim pensionary benefits in view of the provisions of Rule 110 of the Maharashtra Civil Services (Pension) Rules, 1982. He has submitted that, if the applicant files an application under Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982, the respondents will consider it and will take appropriate

decision as per the Rules and therefore, he prayed to pass necessary orders.

7. On going through the record, it reveals that the applicant has been regularized in the service in view of the G.R. dated 25.06.2004. The G.R. provides that from the date of absorptions, the provisions of Maharashtra Civil Services Rules are made applicable to them and the employees are entitled to get all service benefits as Government employees. The relevant provisions of the said G.R. as follows:-

“

रोजगार हमी योजना

रोजगार हमी योजनेवरील हजेरी सहाय्यकांचे शासन/जिल्हा परिषद सेवेत समावेशनापूर्वी हजेरी सहाय्यक म्हणून अधिसंख्य पदे निर्माण करणे.

महाराष्ट्र शासन
नियोजन विभाग

मंत्रालय, मुंबई- ४०० ०३२

शासन निर्णय, क्रमांक हसका -१३०१/प्र. १०७/रोहयो-३
दिनांक २५ जून २००४.

पहा :-

प्रस्तावना

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शासन निर्णय

सदर शासन निर्णयाच्या दिनांकारोजी जे हजेरी सहाय्यक रोजगार हमी योजनेवर कार्यरत आहेत व जे दिनांक २६ मे ते ३१ मे १९९३ रोजी प्रत्यक्ष कामावर असल्याने त्यांची नावे जिल्हयाच्या ज्येष्ठता सूचीत असतील त्या हजेरी सहाय्यकांकरिता वर्ग “ड” रूपये २५५०-५५-२६६०-६०-३२०० या वेतनक्षेणीत २२ पदे व वर्ग “क” ची रूपये ३०५०-७५-३९५०-८०-४५९० या वेतनक्षेणीत ७२९ अशी एकूण ७५१ अधिसंख्य पदे निर्माण करण्यास शासन मान्यता देत आहे. (विभागनिहाय व जिल्हानिहाय तक्ता सोबत जोडला आहे.). सदर अधिसंख्य पदे ज्या कार्यान्वयीन यंत्रणेकडे हे हजेरी सहाय्यक सध्या कार्यरत आहेत, त्या यंत्रणेकडेच राहतील. वेतन रोहयो निधीतून सध्याच्या पध्दतीप्रमाणे घेतील. या सर्व

हजेरी सहाय्यकांना सदर शासन निर्णय दिनांकापासून राज्य शासन सेवेत घेण्यात आले आहे, त्यांना महाराष्ट्र नागरी सेवा नियम लागू होतील व शासन सेवेत सामावून घेतल्यामुळे त्यांना शासन सेवाविषयक सर्व लाभ मिळतील. थोडक्यात, ते राज्य शासनाचे कर्मचारी म्हणून राहतील, मात्र ही पदे अधिसंख्य स्वरूपात असल्याने त्यांना कायम हजेरी सहाय्यक म्हणून ठेवता येणार नाही. शासनाच्या/जिल्हा परिषदेत विविध विभागात पदे उपलब्ध झाल्यावर त्यांना तेथे सामावून घ्यावयाचे आहे. हजेरी सहाय्यकांना सदर पदावर समाविष्ट करून घेतल्यावर किंवा हजेरी सहाय्यक नियत वयोमानानुसार सेवानिवृत्त झाल्यानंतर सदर पद रद्द होईल.

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महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,
(सही) कांचन विजयन,
अवर सचिव,
नियोजन विभाग”

In view of the said G.R., on 25.06.2004 the applicant has been regularized in the Government service and therefore, his services can be counted from that date. Therefore, the provisions of G.R. dated 31.10.2005 is not applicable in the present case. Therefore, the communication dated 12.11.2014 issued by the Accountant General-II, Nagpur, by which it has denied to extend the pensionary benefits to the applicant is illegal and therefore, it requires to be quashed and set aside by allowing the present Original Application. It is necessary to direct the respondents to consider the claim of the applicant afresh in view of the provisions of Maharashtra Civil Services (Pension) Rules, 1982. The applicant is at liberty to approach the respondent Nos. 1 and 2 to file an application under Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982 for condonation of deficiency and

addition in service on receipt of application from the applicant. The respondents are directed to take appropriate decision on the said application as per Rules.

8. In view of this, the O.A. is allowed. The impugned communication dated 12.11.2014 issued by the respondent No. 3 is hereby quashed and set aside. The respondent Nos. 1 to 3 are directed to consider the claim of the applicant for granting pensionary benefits to the applicant afresh in view of the G.R. dated 25.06.2004 and provisions of Rule 54 and Rule 110 of the Maharashtra Civil Services (Pension) Rules, 1982. The applicant is at liberty to file application under Rule 54 of the Maharashtra Civil Services (Pension) Rules, 1982 with the respondents. The respondents are directed to take appropriate decision in the matter within a period of six months from the date of this order and communicate the decision therein to the applicant in writing. There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 06.04.2018.

**(B.P. PATIL)
MEMBER (J)**

KPB S.B. O.A. No. 328 of 2016 BPP 2018 pension