

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 431/2022(S.B.)**

Yashwant s/o Dhekaluji Ramteke,  
Age 63 yrs., Occu.; Service,  
R/o. Boladha, Koregaon,  
Dist. Gadchiroli.

**Applicant.**

**Versus**

1. The State of Maharashtra,  
Through its Department of Planning,  
Mantralaya, Mumbai - 32.
2. Collector, Gadchiroli.
3. Block Development Officer,  
Panchayat Samitti, Desaiganj,  
Dist. Gadchiroli.

**Respondents**

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Shri N.R.Saboo, Ld. Counsel for the applicant.  
Shri A.M.Khadatkar, Ld. P.O. for the respondents 1 & 2.  
Smt.S.P.Giratkar, Ld. Counsel for the respondent no.3.

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**Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.**  
**Dated: - 2<sup>nd</sup> November, 2023.**

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## **JUDGMENT**

Heard Shri N.R.Saboo, learned counsel for the applicant, Shri A.M.Khadatkar, learned P.O. for the Respondents 1 & 2 and Smt.S.P.Giratkar, ld. Counsel for the respondent no.3.

2. Case of the applicant in short is as under-

The applicant was engaged as Mustering Assistant on 25.11.1984. The applicant was not absorbed in the regular service as per the Government G.R. dated 01.12.1995 and the G.R. dated 21.04.1999. Therefore, the applicant had filed O.A.No.33/2018 with other connected O.As., Judgment dated 07.11.2019 has directed the respondents to extend the benefit of G.Rs. dated 01.12.1995 and 21.04.1999 to the applicant and absorbed them in service without giving any monetary benefit.

3. The respondents have not complied the order where the applicant is continued in service. The applicant is retired as a Mustering Assistant on 30.06.2019.

4. The O.A. is strongly opposed by the respondents 1 and 2 and submitted that the applicant is already retired on 30.06.2019. He cannot get the benefit of G.Rs. dated 01.12.1995 and 21.04.1999. Therefore, the O.A. is liable to be dismissed.

5. During the course of submission, the learned counsel for the applicant has pointed out the Judgment of this Tribunal in

O.A.No.305/2023 decided on 20.06.2023 and the Judgment of the Hon'ble High Court, Principal Seat Bombay in Writ Petition No.446/2021 decided on 01.03.2023.

6. After the Judgment of the Hon'ble High Court in the case of **Shaikh Miya s/o Shaikh Chand etc. Vs. State of Maharashtra dated 07/09/2022 in Civil Appeal No.6531/6533 of 2022**, the specific date is given for regularisation of the Mustering Assistant. The Hon'ble Supreme Court has directed to all the concerned to regularise the services of the Mustering Assistant w.e.f. 31.03.1997. The applicant is retired from 30.06.2019.

7. The learned P.O. has submitted that after the retirement regularisation cannot be given. The Hon'ble Bombay High Court in Writ Petition No.446/2021 in the case of **Md. Khalik Shahbuddin Shaikh and Others Vs. the State of Maharashtra and Others decided on 01.03.2023** has held in para 3 as under-

***3. As far as Petitioners are concerned, they have approached the Industrial Court. The Industrial Court had passed an order reinstating them but has not granted permanency. In that event, the judgment of the Apex Court in the case of Shaikh Miya S/o. Shaikh Chand etc. vs. State of Maharashtra dated 07/09/2022 in Civil Appeal No.6531-6533 of 2022 will***

*be relevant. In that judgment, it is observed that the persons who have been absorbed over a period of time post 31/03/1997 for pensionable services reckoning date will be 31/03/1997 and such of the persons who have rendered pensionable services will be entitled to that benefit. In view of that, the petitioners shall be considered as permanent from 31/03/1997 and the pensionable benefits shall be granted to them considering their services with effect from 31/03/1997, as expeditiously as possible.*

8. This Tribunal has also in O.A.No.305/2023 in para 8 has held as under-

**8. The Hon'ble Bombay High Court, Bench at Aurangabad in case of the State of Maharashtra & Ors. Vs. Uttam S/o Narayan Vendait in Writ Petition No.8468/2015, decided on 16/12/2015 has held that service of Mustering Assistant shall be treated from the initial date of engagement of Mustering Assistant and same shall be counted for pensionary benefits. Now the Hon'ble Supreme Court in the case of Shaikh Miya S/o Shaikh Chand etc. Vs. State of Maharashtra, decided on 07/09/2022 has held that service of**

**Mustering Assistant shall be counted for the purpose of pensionary benefits from 31/03/1997. The Hon'ble Bombay High Court in Writ Petition No.446/2021 in paras-2 and 3 has held as under-**

*“ (2) It is not disputed that the Petitioners in the present writ petition were Muster Assistant. The Petitioners were dismissed from service. They filed dispute with the Industrial Court. The Industrial Court allowed the dispute and granted reinstatement but did not grant permanency.*

*(3) As far as Petitioners are concerned, they have approached the Industrial Court. The Industrial Court had passed an order reinstating them but has not granted permanency. In that event, the judgment of the Apex Court in the case of Shaikh Miya S/o. Shaikh Chand etc. vs. State of Maharashtra dated 07/09/2022 in Civil Appeal No.6531-6533 of 2022 will be relevant. In that judgment, it is observed that the persons who have been absorbed over a period of time post 31/03/1997 for pensionable services reckoning date will be 31/03/1997 and such of the persons who have rendered pensionable services will be entitled to that benefit. In view of that, the*

*petitioners shall be considered as permanent from 31/03/1997 and the pensionable benefits shall be granted to them considering their services with effect from 31/03/1997, as expeditiously as possible."*

9. The first Judgment in respect of Mustering Assistant is in the case of *the State of Maharashtra and Others Vs. Uttam Narayan Vendait in Writ Petition No.8468/2015, decided on 16/12/2015.* The Hon'ble Bombay High Court, Bench at Aurangabad in the case of *the State of Maharashtra and Others Vs. Uttam Narayan Vendait* has held that the services of the Mustering Assistant shall be treated as regular from the date of their initial engagement as a Mustering Assistant. But, now as per the Judgment of the Hon'ble Supreme Court in the case of *Shaikh Miya s/o Shaikh Chand etc. Vs. State of Maharashtra* the services of Mustering Assistant are to be treated regular w.e.f. 31.03.1997. In the case of *Md. Khalik Shahbuddin Shaikh and Others Vs. the State of Maharashtra and Others* they were also not permanent employees, they were not absorbed as per the G.R. of 1995. Hence, according to the Judgment of the Hon'ble Supreme Court in the case of *Shaikh Miya s/o Shaikh Chand etc. Vs. State of Maharashtra* the benefit was given to them to regularise their services w.e.f. 31.03.1997.

10. There is no dispute that the applicant was engaged as Mustering Assistant. But, benefit of the G.Rs. of 1995 & 1999 were not given to the applicant. He was not absorbed in the regular service. The respondents should have granted regularisation as per the direction of this Tribunal in O.A.No.33/2018. This Tribunal has specifically directed to give the benefit of G.Rs. of 1995 & 1999 to the applicant. It was duty of the respondents to absorb the applicant in a regular service by giving benefit of G.Rs. of 1995 and 1999. The respondents have not complied the order of this Tribunal. Therefore, the applicant has approached to this Tribunal. Hence, in view of the Judgment of the Hon'ble Bombay High Court in the case of **Md. Khalik Shahbuddin Shaikh and Others Vs. the State of Maharashtra and Others**, Judgment of the Hon'ble Supreme Court **Shaikh Miya s/o Shaikh Chand etc. Vs. State of Maharashtra** and the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **the State of Maharashtra and Others Vs. Uttam Narayan Vendait** following order is passed.

### **ORDER**

1. The O.A. is allowed.
2. The respondents are directed to treat the applicant as a regular employee and regularised his services w.e.f.

31.03.1997 and give all the consequential benefits to the applicant.

4. No order as to costs.

(Justice M.G.Giratkar)  
Vice Chairman

Dated - 02/11/2023  
rsm.



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 Vice Chairman.

Judgment signed on : 02/11/2023.

Uploaded on : 08/11/2023.