

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 561/2022(S.B.)**

Kishore Atmaram Burade,
Aged 64 years, R/o Somalwada,
Rengepar (Kota), Lakhni,
Dist. Bhandara.

Applicant.

Versus

1. State of Maharashtra,
through its Department of Planning,
Mantralaya, Mumbai-32.
2. The Collector,
Bhandara.
3. Tahsildar, Lakhni,
Distt- Bhandara.

Respondents

Shri N.R.Saboo, Ld. Counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated: - 27th February, 2024.

JUDGMENT

Heard Shri N.R.Saboo, learned counsel for the applicant
and Shri V.A.Kulkarni, learned P.O. for the Respondents.

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

The applicant was engaged as Mustering Assistant on 03.03.1992. He was continued as Mustering Assistant. As per the Government G.R. dated 01.12.1995 and 21.04.1999, the applicant should have been absorbed in a regular service but the respondents have not absorbed him. The applicant was discontinued from the service but latter on as per the order of Labour Court he was continued in the service till the date of retirement. He was transferred in the office of Tahsildar Lakhani as per order dated 30.05.2014. The applicant came to be retired on 30.06.2018. At the time of retirement, the applicant was working as Mustering Assistant. The respondents have not regularised the services of the applicant. Hence, the applicant approached to this Tribunal for the following reliefs-

i) To direct Respondents to release pensionary benefits of applicant by treating him in regular service with effect from the initial date of appointment dated 03.03.1992 as Mustering Assistant.

ii) To allow O.A. & direct the respondents to consider representation forthwith grant all consequential monetary benefits & release service benefits as permanent employees from the date of appointment as Mustering Assistant w.e.f. 03.03.1992.

iv) To grant any other relief including costs for which the petitioner is found to be entitled.

3. The respondent no.3 has filed reply. It is submitted that the applicant was not in regular service. He was engaged as Mustering Assistant. The applicant was not in service as on 31.05.1993. The question of including his name in the seniority list of Mustering Assistant does not arise. Therefore, the O.A. is liable to be dismissed.

4. The applicant has filed rejoinder. It is submitted that the applicant was terminated but as per the order of Labour Court he was reinstated in service. Document is also placed on record about his reinstatement.

5. During the course of submission, the learned counsel for the applicant has pointed out the application dated 21.09.1999. This application shows that the applicant was in service from 19.05.1993 to 01.06.1993. Therefore, it is clear that on 31.05.1993 the applicant was in service.

6. The Government of Maharashtra has issued G.R. of 1995 and 1999 to absorb the applicant as Mustering Assistant in regular service. The Mustering Assistants who were in service on daily wages on or before 31.05.1993, they are to be regularised. As per letter dated 18.05.1999 by the applicant, it appears that the applicant was continued in service from 19.05.1993 to 01.06.1993. Therefore,

it is clear that on 31.05.1993 the applicant was working as Mustering Assistant.

7. In the case of **State of Maharashtra and Others Vs. Uttam Narayan Vendait** decided by the Hon'ble Bombay High Court, Bench at Aurangabad has held that services of Mustering Assistant are to be regularised from the date of their initial appointment as Mustering Assistant.

8. The learned counsel for the applicant has pointed out the Judgment of this Tribunal in O.A. No.431/2022 and the Judgment of the Hon'ble Bombay High Court in Writ Petition No.446/2021 **Md.Khalik Shahbuddin Shaikh and Ors. Vs. the State of Maharashtra and Ors decided on 01.03.2023.** The Hon'ble Bombay High Court has held that the Petitioners who were working as Mustering Assistant though their services were terminated, but they were reinstated by the Labour Court then their services are to be treated as regular service. Hence, the Mustering Assistants are entitled to be regularised. The Judgments of Hon'ble Bombay High Court and the Judgement of Supreme Court in the case of **Shaikh Miya S/o. Shaikh Chand etc. Vs. State of Maharashtra** are considered by this Tribunal in the cited Judgment.

9. In the Judgment of **Shaikh Miya S/o. Shaikh Chand etc. Vs. State of Maharashtra** the Hon'ble Supreme Court has held that

services of the Mustering Assistants shall be regularised w.e.f. 31.03.1997. The applicant was in continuous service as Mustering Assistant till the date of his retirement i.e. on 31.06.2018. The respondents have extracted the work of applicant, but not regularised his service as per the G.R. of 1995 and 1999. The applicant is entitled to get his service regularised from 31.03.1997 as per the Judgment of Hon'ble Supreme Court in the case of **Shaikh Miya S/o. Shaikh Chand etc. Vs. State of Maharashtra.** Hence, the following order is passed-

ORDER

1. The O.A. is partly allowed.
2. The respondents are directed to regularise the services of the applicant as Mustering Assistant w.e.f. 31.03.1997 for the purpose of pensionary benefits only.
3. The respondents are directed to fix pay of applicant in regular service and pay pensionary benefits to the applicant within a period of four months from the date of receipt of this order.
4. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated - 27/02/2024.

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 : 27/02/2024.
Uploaded on : 01/03/2024.
