

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.79/2018

DISTRICT: - AURANGABAD

Aasha d/o. Kashinathrao Jadhav,
Age : 40 years, Occu. : Jr. Clerk,
Presently working in the office of the
Principal, Health and Family Welfare
Training Center, Cidco, Aurangabad.
District Aurangabad.

...APPLICANT

V E R S U S

1) The Deputy Director of Health Services,
Aurangabad Circle, Aurangabad.

2) The Principal, Health and Family Welfare
Training Center, Cidco, Aurangabad.
District Aurangabad.

...RESPONDENTS

APPEARANCE :Shri J.S.Deshmukh Advocate for Applicant
:Shri M.P.Gude Presenting Officer for
respondents.

CORAM : B. P. Patil, Member (J)

DATE : 3rd January, 2019

O R A L O R D E R
(Delivered on 3rd Day of January, 2019)

1. The applicant has approached this Tribunal and prayed to direct the respondents to release annual increments and arrears of the same by filing the present O.A.

2. The applicant was appointed as Junior Clerk vide order dated 12-10-1999 by the respondent no.1 for the period of 90 days and posted her at Rural Hospital, Soygaon, Dist. Aurangabad. Accordingly, she joined duties on 21-10-1999. Thereafter, she filed O.A.No.26/2000 before the Maharashtra Administrative Tribunal Mumbai Bench at Aurangabad ("Tribunal" for short) for continuation of her services on the same post. Division Bench of the Tribunal passed interim order on 17-01-2000 and directed the respondents to continue the applicant on the same post without giving any technical breaks and to pay usual salary until further orders. Thereafter, the O.A. was disposed of on 06-04-2000 with direction that the applicant's services on ad-hoc basis be continued till selectee from Regional Selection Board is made available and posted on her post. As per the directions given by the Tribunal services of the applicant are continued without giving any technical break. The applicant was adjusted in another office by order dated 22-11-2004. However, by way of modification in the order she was posted at

present post by order dated 13-12-2014 issued by respondent no.1.

3. It is contention of the applicant that respondents are not extending the benefits of annual increments after completion of one year's service as per Rule 36 of the Maharashtra Civil Services (Pay) Rules, 1981 ["M.C.S. (Pay) Rules" for short]. It is contention of the applicant that respondent no.1 extended the said benefits to the similarly situated employees working under the respondent no.1. It is contention of the applicant that she has rendered services for more than 18 years on ad-hoc basis without break but the respondents have not extended the benefit granting annual increments to her. Not only this but her service book was not prepared and therefore she had made several representations with the respondents and requested to grant the said benefits to her.

4. Pursuant to the representation made by her on 13-07-2016, respondent no.2 informed the respondent no.1 that other similarly situated employees are getting such benefits and sought direction from respondent

no.1 as to whether the said benefits should be extended to the applicant by communication dated 04-10-2016 but thereafter respondent no.1 has not extended the benefits till today. Therefore, the applicant has approached this Tribunal by filing the present O.A.

5. It is contention of the applicant that this Tribunal in O.A.No.149/2003 in case of similarly situated employees extended benefit of annual increment to the ad-hoc employees by its order dated 26-08-2003. It is contention of the applicant that similarly situated persons had filed another O.A. before this tribunal in which the Tribunal had granted similar relief. That order of the Tribunal was challenged by the State Government by filing Writ Petition No.3484/2005 before the Hon'ble High Court but the petition was dismissed on 27-11-2008.

6. The Government had challenged the said order of the Hon'ble High Court by filing the SLP Nos.18902-18915 of 2010 before the Hon'ble the Apex Court but those were dismissed on 02-02-2011. It is her contention that since the benefit was extended to the

similarly situated employees, she is entitled to get same relief. Therefore, she has prayed to allow the O.A.

7. Respondent nos.1 and 2 have resisted the contentions of the applicant by filing their affidavit in reply. It is their contention that the applicant is not entitled to get annual increments since he was appointed on ad-hoc basis. It is their contention that some of the employees working on ad-hoc basis are receiving increments because of the wrong orders passed by the concerned Civil Surgeon. Therefore, respondent no.1 has directed the concerned Civil Surgeon to call explanation of the concerned employees as to why their increments should not be withdrawn. It is contended by the respondents that respondent no.1 is taking corrective steps in that regard, and therefore, the applicant cannot claim same benefit on the ground of parity. It is contention of the respondents that annual increments are to be granted to the employees who are permanent in Government service. Applicant is not a permanent Government servant, and therefore, she is not entitled to get the said benefits. Therefore, respondents have prayed to dismiss the O.A.

8. I have heard Shri J.S.Deshmukh Advocate for the Applicant and Shri M.P.Gude Presenting Officer for the respondents. Perused the documents placed on record by both sides.

9. Admittedly, the applicant was initially appointed as Junior Clerk by order dated 12-10-1999 issued by respondent no.1 and posted at Soygaon. Accordingly, she joined her duties on 21-10-1999. Her initial appointment was for 90 days. Thereafter, she had filed O.A.No.26/2000 before the Tribunal.

10. In that O.A. interim relief was initially granted in favour of the applicant. Thereafter, the O.A. came to be disposed of with direction to the respondents that the applicant's services on ad-hoc basis be continued till selectee from Regional Selection Board is made available and posted on the post. In pursuance to the said order, the applicant's services are continued without break till today.

11. There is no dispute about the fact that the respondents have not extended the benefit of annual increment to the applicant since beginning.

12. Learned Advocate for the applicant has submitted that the issue involved in the matter has already been settled up to Hon'ble the Apex Court. He has submitted that the similar issue was involved in O.A. filed by one Dr. Sangita Raghvir Phatale and this Tribunal had extended the said benefits to her. The decision in the case of Dr. Sangita Phatale has been challenged by the Government by filing the Writ Petition No.3484/2005 before the Hon'ble Bombay High Court Bench at Aurangabad. Hon'ble High Court had dismissed the Writ Petition on 27-11-2008. He has submitted that the Government had challenged the said decision of the Hon'ble High Court by filing the SLP (Civil) Nos.18902-18915 of 2010 before the Hon'ble the Apex Court but those were dismissed on 02-02-2011. It is his contention that since the benefit was extended to the similarly situated employees the applicant is also entitled to get same relief.

13. He has further submitted that this Tribunal had also passed similar order in O.A.No.149/2003 in case of Dr. Anil s/o. Panditrao Sakhare V/s. The State of Maharashtra & Anr. decided on 26-08-2003 and

extended the benefits of annual increments to the employees working on ad-hoc basis. He has submitted that in view of the said decision, the applicant is also entitled to get benefits but the respondents had not extended the benefits to her though she has made several representations to them. Therefore, learned Advocate for the applicant has prayed to allow the O.A. and to extend the benefits of annual increments to the applicant on completion of one year's service.

14. Learned Advocate for the applicant has further submitted that respondents had extended benefits of releasing annual increments to other similarly situated employees working with them but they have not extended the benefits to the applicant and thereby made discrimination. He has attracted my attention to representation filed by the applicant which is at page no.16 of the paper book wherein the applicant has given details regarding employees to whom the said benefits are extended. He has submitted that on that ground also the applicant is entitled to get the benefits.

15. Learned P.O. has submitted that the applicant was appointed on ad-hoc basis and she was continued in service in view of the direction given by the Tribunal but she was not made permanent in the service. Therefore, in view of the provisions of MCS (Pay) Rules, she is not entitled to get annual increments. Learned P.O. has further submitted that some of the employees working with the respondents' office have received said benefits wrongly though they are not entitled. Therefore, respondents are taking corrective steps to withdraw their benefits. Hence, the applicant cannot claim same benefit on the ground of parity. He has submitted that respondents have rightly rejected the claim of the applicant, and therefore, he has prayed to reject the O.A.

16. On perusal of record it reveals that the applicant was appointed on ad-hoc basis initially for 90 days. Thereafter, the applicant has been continued in service without break in view of the direction given by the Tribunal. Division Bench of the Tribunal had dealt with the issue as to whether the employees appointed on ad-hoc basis and continued in service are entitled to get

benefit of grant of annual increments while adjudicating the O.A.No.149/2003 in case of Anil Sakhare V/s. The State of Maharashtra & Anr. which was decided on 26-08-2003 and held that the petitioner (ad-hoc employee) shall be entitled to annual increments and leave as admissible to them. Not only this but this Tribunal had an occasion to consider the similar issue in another O.A. in case of Dr. Sangita Raghvir Phatale. In that case also the Tribunal had granted benefit of annual increments and allowances to the employees who are appointed on ad-hoc basis and completed service of one year. The decision of this Tribunal in case of Dr. Sangita Phatale was challenged by the Government by filing the Writ Petition No.3484/2005 before the Hon'ble High Court Bench at Aurangabad. Hon'ble High Court has dismissed the Writ Petition on 27-11-2008 and upheld the order passed by the Tribunal. The Government had challenged the said order by filing the SLP (Civil) Nos.18902-18915 of 2010 before the Hon'ble the Apex Court but those were dismissed on 02-02-2011 on the ground of delay as well as on merit.

17. It is therefore evident that the issue has been settled up to the Hon'ble the Apex Court and it has been held that the employees appointed on ad-hoc basis and continued in service are entitled to get annual increments. The case of the applicant is also squarely covered by the above cited decisions. In view of the said settled legal position, the applicant is also entitled to get annual increments since she had completed continuous service of one year after her initial appointment in the year 1993. Respondents have wrongly rejected her claim, and therefore, the Original Application deserves to be allowed.

18. In view of the discussion in the foregoing paragraph, the Original Application is allowed. Respondents are directed to grant annual increments to the applicant as per rules. There shall be no order as to costs.

MEMBER (J)

Place: Aurangabad
Date : 03-01-2019.