

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 139 OF 2017

(Subject:- Appointment)

DISTRICT:-AURANGABAD

Shaikh Liyakat s/o Shaikh Dildar)
Age : 47 years, Occu: Unemployed,)
R/o Roshan Gate, Aurangabad,)
Taluka and District Aurangabad.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra**)
Through its Secretary,)
Water Supply & Sanitation Department)
Mantralaya, Mumbai-400 032.)
 - 2. The Director,**)
Directorate of Ground Water Survey,)
and Development Agency,)
Bhoojal Bhavan,)
Near Agricultural College,)
Maharashtra State, Pune.)
 - 3. The Deputy Director,**)
Ground Water Survey and)
Development Agency)
Anvikar Building, Adalat Road,)
Aurangabad.)
 - 4. The Senior Geologist,**)
Ground Water Survey and)
Development Agency,)
Shastri Mohalla, Mehra Building,)
Jalna, District Jalna.)...**RESPONDENTS**
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APPEARANCE : Shri V.P. Golewar, learned counsel for
the applicant.
: Shri A.P. Basarkar, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

RESERVED ON : **03.07.2024.**

PRONOUNCED ON : **14.08.2024.**

ORDER

Heard Shri V.P. Golewar, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application the applicant is seeking quashing and setting aside the order dated 10.12.2018 passed by the respondent No.1 thereby rejecting the claim of the applicant for bringing him on Converted Regular Temporary Establishment (hereinafter referred to as "C.R.T.E.") as per the scheme framed by the Government Resolution dated 24.04.2001. The applicant is also seeking declaration that the applicant is eligible and entitled for getting the benefit of C.R.T.E. as per the scheme of Government of Maharashtra in view of his completion of

continuous five years services with the respondent authorities. The applicant is also seeing direction to the respondents to bring the applicant to CRTE and take him in the employment with the respondent authorities on the post of Watchman and give him all benefits as given to other similarly situated employees.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The applicant had worked with the respondent No.4 as a Helper from 1985 to 1992 and thereafter till December, 2000, as Watchman. The respondents have illegally denied the legitimate and lawful claim of the applicant regarding grant of C.R.T.E. as per the scheme framed by the Government of Maharashtra, though the respondents have granted the said benefit to the similarly situated employees. Hence, this Original Application.

4. Learned counsel for the applicant submits that the Government of Maharashtra appointed Kalelkar Committee to study and guide the Government about the employees working on daily wages work charged basis in Public Works Department, Irrigation Department, Rural Development

Department and Water Resources Department before 1986 and thereafter it was advised by the said Committee that the employees who were working before 1986 or thereafter on daily wage basis/work charged basis in different establishments of the above departments and who had completed five years services, such employees shall be brought on C.R.T.E. Accordingly, the scheme was framed by Government Resolutions dated 24.11.2000 and 24.04.2001 respectively. Learned counsel for the applicant submits that the proposals were called from all the departments regarding the details of daily wage/work charged employees who were in the Government service on daily wage basis/work charges basis and as on 31.12.1998 those who have completed five years. The respondent authorities have also called the proposals of such employees who were employed before 1986 or thereafter, on daily wage basis/work charged basis and whose services are discontinued or terminated.

5. Learned counsel for the applicant submits that the applicant has fulfilled all the conditions as considering his first date of appointment as 1985 till December, 2000, he has rendered continuous service of five years with the respondents and as on 31.12.1998 he has also completed five

years continuous service with the respondents. Therefore, the applicant is eligible and entitled for the benefits of aforesaid G.R. which is issued by the Government of Maharashtra in furtherance of recommendations of Justice Kalelkar Committee. Even though the applicant is eligible and entitled for the same and though the proposal in respect of his bringing on C.R.T.E. was forwarded, the respondent authorities picked and chosen the employees from the said list and not considered the case of the applicant.

6. Learned counsel for the applicant submits that as on the date of issuance of G.R. dated 24.11.2000, the applicant was very well in the employment and therefore, as per the condition no.1, he is eligible and entitled to be brought on C.R.T.E. However, in order to deprive the applicant from the benefits of said scheme, he was terminated from the services by the respondents in the month of December, 2000 and the proceedings initiated by the present applicant went up to the Hon'ble High Court. In Writ Petition No. 1526/2001 by order dated 13.03.2012 the Hon'ble High Court of Bombay, Bench at Aurangabad was pleased to direct the respondent authorities to consider the case of the

applicant in terms of his representation to be submitted to the State Government within a month.

7. Learned counsel for the applicant submits that, however, instead of considering the case of the applicant on the basis of Kalelkar settlement and recommendations committee, the respondent authorities have rejected the claim of the applicant stating therein that he has not completed 240 days of continuous service. Learned counsel for the applicant submits that in fact as per the recommendations of Kalelkar Settlement/agreement and award there is no condition that an employee is required to complete 240 days continuous service in each calendar year. Thus the respondents have illegally deprived the applicant from the benefits of G.R. dated 24.11.2000, for which the applicant has raised several grievances.

8. Learned counsel for the applicant submits that recently in the year 2015, the proposal submitted by the respondents to the Government was considered, in which the name of the applicant was also included, however, the respondents have considered the cases of others, but the benefits are not given to the applicant.

9. Learned counsel for the applicant submits that the applicant had filed the complaint of unfair labour practice before the Labour Court challenging his illegal termination order. In the said complaint, it was submitted by the respondent authorities before the Labour Court that though the applicant had served from 1985 to 2000, however he has not rendered 240 days in the each calendar year and therefore, he is not entitled for protection of provisions of Section 25-F of the Industrial Disputes Act. It is the admitted position that the applicant has rendered the services from 1985 to 2000. The complaint filed by the applicant came to be rejected. The Revisions filed by the applicant challenging the said order passed by the Labour Court also came to be rejected. The applicant has therefore, filed the Writ Petition No. 1526/2001 before the Hon'ble High Court of Bombay, Bench at Aurangabad. The Hon'ble High Court of Bombay, Bench at Aurangabad and by order dated 13.03.2012 directed the applicant to submit the representation to the authorities afresh and to seek regularization by virtue of the scheme of Government of Maharashtra framed vide G.R. dated 24.04.2001 or 26.10.2000 or 24.11.2000, as the case may be

and if such representation is made, the respondent authorities were directed to decide the same on its own merits.

10. Accordingly, on 23.03.2012 (Annexure 'A-6') the applicant has made detailed representation stating therein that he has rendered continuous eight years of service with the respondent No.4 and he is entitled for the benefits of Kalelkar Settlement /Award and scheme framed by the Government of Maharashtra in furtherance thereof. However, the respondent Nos. 1 and 2 have not at all considered the said representation dated 23.03.2012 independently, but called the report of respondent No.3. The respondent No.3 has submitted the irrelevant information by suppressing the fact that the applicant is eligible for the benefits of C.R.T.E. as per the scheme of Government of Maharashtra framed in furtherance of the recommendation of the Kalelkar Commission. It has been informed by the respondent No.3 that the applicant was not in the employment and as such, he is not eligible for taking in the employment. The respondent No.3 has made misleading statement and in consequences thereof, the applicant came to be deprived from the benefits of the said scheme.

11. Learned counsel for the applicant submits that being aggrieved by the same, the applicant has filed the Writ Petition No. 390/2013 before the Hon'ble High Court claiming monetary benefits in respect of his services rendered during the period of 1992 to 1996 by order dated 30.01.2014. However, the respondent authorities have seriously challenged the claim therein as belated claim put by the applicant. The Hon'ble High Court has rejected the Writ Petition keeping the option of the applicant open for availing the alternate remedy by order dated 30.01.2013.

12. Learned counsel for the applicant submits that the respondent No.1 has not applied its mind to the facts of the case. The respondent No.1 while rejecting the claim of the applicant has stated that the applicant has not completed continuous five years of service and his claim for permanency has been rejected by the Courts.

13. Learned counsel for the applicant submits that on the face of the proposal dated 23.05.2018 submitted by the respondent No.3 to the respondent No.1 itself shows that the applicant is fulfilling the condition of five years of service as on 31.12.1998 as required under the Government Resolution

dated 24.04.2001. In view of forwarding letter dated 23.05.2018 by the respondent No.3 to the respondent No.1, this Tribunal vide order dated 25.10.2018 passed in the Original Application No. 139/2017 taken the said correspondence along with annexures thereto on record and marked as document 'X' for identification and directed the respondent No.1 to take the decision on the said proposal and report about the same on 14.12.1998. The copy of the order passed by this Tribunal in O.A.No. 139/2017 dated 25.10.2018 is marked and annexed as Annexure 'A-15'.

14. Learned counsel for the applicant submits that there are voluminous records filed by the applicant showing that the applicant fulfills the above conditions. Learned counsel for the applicant submits that in service jurisprudence, the benefits of scheme should be given to all the eligible persons whether such persons approached to the Court of law or not. In the instant case however, the respondent authorities in spite of repeated direction by the Court of law and Tribunal, illegally deprived the applicant from getting the benefits of the scheme. Learned counsel for the applicant submits that the Original Application deserves to be allowed.

15. Learned counsel for the applicant in order to substantiate his contentions placed reliance upon the case of **State of Maharashtra Vs. M.V. Ghalge and Another (W.P. No.4867/1984 with W.P.No. 5030/1984** decided on 18.10.1991.

16. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 4 submits that as on the cut off date the applicant has not completed five years continuous service, more particularly non-litigious in nature. It is not the case that by virtue of the terms of the Kalelkar Award, the applicant has withdrawn the proceedings. It is clarified that the applicant has not fulfilled the terms of Kalelkar Award. Learned Presenting Officer submits that the applicant has served for the period of May, 1985 to October, 1985 and later on May, 1986 to October, 1986 and thereafter, from 17.03.1992 to 08.07.1992. In the meanwhile, the services of the applicant came to be terminated. The applicant has challenged the said order by way of Complaint ULP No. 165/1992 before the Labour court, Aurangabad and the same came to be dismissed on 08.01.2001.

17. Being aggrieved by the same, the applicant has challenged the said order passed by Labour Court before the Industrial Court by way of Revision ULP No. 02/2001 and the same came to be dismissed on 01.02.2001. The said judgment and order came to be challenged before the Hon'ble High Court of Bombay, Bench at Aurangabad by way of Writ Petition No. 1526/2001. The Hon'ble High Court of Bombay, Bench at Aurangabad was pleased to grant liberty to the applicant to submit the representation in connection with the grievance of C.R.T.E. Pursuant to the same, the applicant has tendered the representation and the same is turned down on 16.06.2012. Later on the applicant has filed the Writ Petition No. 390 of 2013 and the same came to be rejected by the Hon'ble High Court of Bombay, Bench at Aurangabad on the ground of delay and laches on the part of the applicant. Thus the relief claimed by the applicant is suffers from the factual and legal defects in respect of challenge to the judgment and order of Labour Court and Industrial Court as these proceedings finally culminated into dismissal. Thus there is no any withdrawal of the said proceedings in terms of Kalelkar Award.

18. Learned Presenting Officer submits that the order of termination of the applicant has attained finality and that has been fully justified in the light of decision dated 01.02.2001 passed by the learned Industrial Court. In any case, rule/clause No. 28 of the Kalelkar Award contemplates continuation of a workman on the daily rated establishment for the period of at least five years consecutively and without interruption. In the instant case, in view of the observation in paragraph No. 5 of the decision in Writ Petition No. 1526/2001, the applicant has not rendered the work consecutively for five years. There is no violation of the principles of equality and equal opportunity as alleged by the applicant. The applicant is not entitled to claim the benefit of G.Rs. dated 24.11.2000 and 24.04.2001 respectively in view of aforesaid situation.

19. Learned Presenting Office submits that it is not the case of the applicant that his termination either set aside by the orders of Court or withdrawn on his behest until the finality of the result of dismissal and thus the litigious employment cannot be construed as consecutive services because the said employment is due to the interim orders of the Court as referred and therefore, the non-inclusion of the

name of the applicant is neither intentional or deliberate and hence, on this count, the applicant cannot set any blame on the respondents. Learned P.O. submits that there is no substance in the Original Application and the same is liable to be dismissed.

20. It is the case of the applicant that he has fulfilled all the conditions considering his first date of appointment as 1985 till December, 2000. The applicant has rendered continuous service of five years with the respondents and as on 31.12.1998 he has also completed five years continuous service with the respondents. Therefore, the applicant is eligible and entitled for the benefit of aforesaid Government Resolutions dated 24.11.2000 and 24.04.2001 respectively issued by the Government of Maharashtra in furtherance of Justice Kalelkar Committee.

Per contra learned Presenting Officer submits that the applicant has served for the period of May, 1985 to October, 1985 and later on May, 1986 to October, 1986 and thereafter, from 17.03.1992 to 08.07.1992. In the meanwhile, the services of the applicant came to be terminated. Though the applicant has challenged the said order by way of Complaint ULP No. 165/1992 before the Labour court, Aurangabad,

however, the same came to be dismissed on 08.01.2001 and the revision preferred against the said order by the applicant before the Industrial court bearing Revision ULP No. 02/2001 also came to be dismissed on 01.02.2001. Though the applicant has challenged the said orders before the Hon'ble High Court of Bombay, Bench at Aurangabad by way of Writ Petition No. 15226/2001, the Hon'ble High Court was pleased to grant liberty to the applicant to submit the representation in connection with the grievance of C.R.T.E. Learned P.O. has raised the specific ground that the applicant has not rendered the work continuously for five years. In view of same, the applicant is not entitled to claim to benefit of G.Rs. dated 24.11.2000 and 24.04.2001 respectively.

21. The Hon'ble High Court of Bombay, Bench at Aurangabad by order dated 13.03.2012 has disposed of the Writ Petition No. 1526/2001 preferred by the applicant against the orders passed by the Labour Court dated 08.01.2001 and confirmed by the Industrial Court by order dated 01.02.2001. In paragraph No.3 of the said order, the Hon'ble High Court of Bombay, Bench at Aurangabad has observed that the calculation of the period of his working from May 1985 to 1987 is certainly less than 240 days and

again, the petitioner has worked from March 1992 to July 1992 for 101 days. Consequently, both the Courts found that the petitioner has not completed with the working schedule of having completed 240 days of service and as such, there is no breach of Section 25-F and 25-G of the Industrial Disputes Act, 1947. Though the Hon'ble High Court of Bombay, Bench at Aurangabad has found substance in the assertions, by virtue of Government Resolutions and the chart of work displayed by the petitioner, granted liberty to the applicant to make representation to the State Government, to stake regularization by virtue of Government Resolution dated 24.04.2001 or 16.10.2001 or 24.11.2000, as the case may be.

22. On perusal of the annexures particularly Annexure 'A-11' collectively, it appears that the applicant has collected certain information under Right to Information Act. On perusal of the same it appears that the applicant had worked from 1992 till 2000 as daily wager Watchman and he has been paid the daily wages for the said period. He may not have worked for 240 days in each of the calendar year, however, he has rendered the services as daily wager for the

continuous period of 1992 to 1998 and further for the period of two years i.e. upto 2000.

23. In a case **State of Maharashtra Vs. M.V. Ghalge & Anr.**, the Hon'ble High Court of Bombay in the identical set of facts has disposed of the **Writ Petition No. 4867 of 1984 with Writ Petition No. 5030 of 1984** by judgment and order dated 18.10.1991. The Hon'ble High Court of Bombay in aforesaid Writ Petitions had an occasioned to deal with the expression "continuous service" in terms of Rule 28 of Kalelkar Award. The Hon'ble High Court of Bombay has observed that the said Rule 28 of Kalelkar Award contemplates continuation of a workman on the daily rated establishment for a period of at least five years, consecutively and without interruption. It does not contemplate actual working for any specified number of days in any of the requisite five years. The Hon'ble High Court of Bombay in paragraph Nos. 9 to 12 has made the following observations:-

"9. Turning next to the merits of the case, I find it difficult to accede to the argument made by the Petitioners. The claim of the two workmen was based on clause 28 of the rules applicable to the daily rated, work charged and converted permanent/temporary establishment workmen of the Public Works and Housing Department. These Rules appear to have been arrived at by agreement between the Government of Maharashtra and the Union representing such workmen. The agreement, I am told, was arrived at

on the lines of an Award of one Kalelkar and therefore the parties popularly refer to these Rules as Kalelkar Award. I shall also use the same terminology hereinafter. Clause 28 of Kalelkar Award deals with the benefit available to the daily rated workmen. The Rule, when freely translated into English, would read as under:

“28. The benefits available to the daily rated employees under the Kalelkar Agreement (regarding availability of definite appointments on definite establishments)—Such of the workmen on daily wages who have been working continuously for five years on such establishment shall be entitled, upon completion of five years, to have the posts held by them converted into posts on temporary establishment and such daily rated workmen shall be appointed on such converted posts. The post created on the converted establishment shall be personal to the incumbent and if the incumbent, for any reason leaves service, such post shall come to an end. Upon appointment on the converted temporary establishment, the workmen shall be covered by the Bombay Civil Service Rules.”

10. I am unable to accept the contention of Mr. Devnani that this rule would become applicable only after the workman has rendered continuous service of five years on the daily rated establishment. The expression “continuous service” has not been defined in the Rules in connection with this rule, though in connection with lay off and retrenchment, it has been defined to mean rendering of 240 days' actual work in a year. In the absence of any definition of the expression “continuous service”, for the purpose of Rule 28, a reasonable construction will have to be put on this expression. In my view, the rule contemplates continuation of a workman on the daily rated establishment for a period of at least five years, consecutively and without interruption. The Rule does not contemplate actual working on the part of the daily rated employee for any specified number of days in any of the requisite five years. In other words, if the employee is on the daily rated establishment, in five consecutive years, irrespective of number of days of actual work rendered in each of the said five years, the employee would be entitled to the benefit of Rule 28 of having his post converted to the post of converted temporary establishment.

11. Mr. Devnani placed reliance on Rule 1 in Part III which applies to converted employees to regular temporary establishment and contended that this Rule indicates that the workmen should have continuously worked for five

years. In my view, the interpretation of Rule 28 is not governed by Rule 1 in Part III as the entire Part III contemplates a situation which would come into play only after there has been conversion in accordance with Rule 28.

12. This is the only reasonable construction that can be put upon Rule 28. I am not prepared to accede to the argument of the Petitioners that continuous service as contemplated in this Rule means working for greater part of the year or for any specific number of days. There is no such indication in the Rule. Thus read, there is no difficulty in agreeing with the orders of the Labour Court impugned in the petitions. The Labour Court has correctly assessed the material before it and come to the conclusion that the cases of the two workmen fell within the purview of Rule 28 and that they were entitled to the benefits flowing therefrom. There is no infirmity in the reasoning of the Labour Court, nor is there any other reason to interfere with the two impugned orders.”

24. Learned Presenting Officer has not placed before this Tribunal any other view in this context expressed by the Hon'ble High Court of Bombay in the later stage.

25. In the instant matter on careful perusal of annexure 'A-14' i.e. the proposal dated 23.05.2018 submitted by the respondent No.3 i.e. the Deputy Director, Ground Water Survey and Development Agency, Aurangabad to respondent No.1 it appears that the information about the applicant is detailed at Sr. No. 2. It is not denied that the applicant was working as Paharekari on daily wages in the office of respondent No.4 from 17.03.1992. Though he was terminated on 09.07.1992, however, by filing Complaint ULP

No. 165/1992 before the Labour Court, Aurangabad, the applicant has obtained stay to the said order on 17.07.1992 and the applicant has continuously worked thereafter as a Paharekari till 08.01.2001. The question No. 4 which contemplates as to whether the applicant has completed five years of continuous services as on 31.12.1998, the answer is given as "Yes".

26. So far as this period is concerned, the respondents have contended that the employment of the applicant is litigious in nature and therefore, cannot be considered. I find no substance in the said contention for the reason that the clause No. 28 of the Kalelkar Award so also the G.Rs. dated 24.11.2000 and 24.04.2001 does not have a reference about the non-consideration of the litigious employment. Thus the ratio laid down by the Hon'ble Bombay High court in Writ Petition No. 4867 of 1984 with Writ Petition No. 5030/1984 in a case of State of Maharashtra Vs. M.V. Ghalge & Anr. squarely applies to the facts and circumstances of the present case.

27. In view of same, I am of the opinion that the ratio laid down in the aforesaid case is squarely applicable to the present case. The applicant is entitled to claim the benefit of

G.Rs. dated 24.11.2000 and 24.04.2001 respectively in view of aforesaid situation. I do not find any substance in the submission made by learned Presenting Officer that the termination order of the applicant was neither set aside under the orders of the Courts nor withdrawn on his behest till the finality of the result of dismissal and in view of same, the litigious employment cannot be construed as continuous services. The fact remains that the applicant had worked continuously and uninterruptedly for the period of five years from 1992 to 1998 and thereafter for the further period of two years i.e. upto 2000. Thus considering the entire facts of this case, I am inclined to allow this Original Application. Hence, the following order:-

ORDER

- (A) The Original Application is hereby allowed.
- (B) The order dated 10.12.2018 issued by the respondent No.1 thereby rejecting the claim of the applicant for bringing him on Converted Regular Temporary Establishment (C.R.T.E.) as per the scheme framed by Government Resolution dated 24.04.2001 is hereby quashed and set aside.

- (C) The respondents are hereby directed to consider the case of the applicant afresh for bringing him on Converted Regular Temporary Establishment (C.R.T.E.) in terms of Government Resolutions dated 24.11.2000 and 24.04.2001 respectively and also other Government Resolutions and schemes framed in furtherance of recommendation of Kalelkar Committee report on the post of Watchman.
- (D) It is declared that the applicant is eligible and entitled for getting the benefit of Converted Regular Temporary Establishment (C.R.T.E.) as per the scheme of Government of Maharashtra in view of his completion of continuous five years service with the respondent authorities.
- (E) In the circumstances there shall be no order as to costs.
- (F) The Original Application is accordingly disposed of.

MEMBER (J)