

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 202 OF 2017
(Subject – Pay Scale as per G.R./Regularization)**

DISTRICT : AURANGABAD

Shri Ashok S/o Bhanudas Wagh,)
Age: 56 years, Occ.: Service,)
R/o: At Post Bhadji, Tq. Khultabad,)
District Aurangabad.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra**)
2. **The Principal Secretary,**)
Revenue and Forest Department,)
Mantralaya, Mumbai - 32.
3. **The Chief Conservator of Forest,**)
Aurangabad Region, Vanvrutta,)
Osmanpura, Aurangabad.
4. **The Deputy Conservator of Forests,**)
Aurangabad Region, Vanvrutta,)
Osmanpura, Aurangabad.
5. **The Range Forest Officer,**)
Khultabad Range, Tq. Khultabad,)
District Aurangabad.)

... **RESPONDENTS**

APPEARANCE : Shri A.S. Shelke, Counsel for the Applicant.

: Smt. Resha Deshmukh, Presenting Officer for
respondent authorities.

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

RESERVED ON : **13.08.2024**

PRONOUNCED ON : **24.10.2024**

ORDER

1. Heard Shri A.S. Shelke, learned counsel for the applicant and Smt. Resha Deshmukh, learned Presenting Officer for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the sides at the admission stage.

3. By filing the present Original Application, though the applicant has made prayer for direction to the respondent authorities to confer the benefits of G.R. dated 31.01.1996 in favour of the applicant w.e.f. 01.11.1994 and to issue order of regularization in favour of the applicant w.e.f. 01.11.1994 in terms of G.R. dated 31.01.1996, he has added prayer clause C-2 in the year 2022 i.e. on 25.04.2022 and seeking quashment of impugned letter dated 30.07.2021 (Annexure A-13) issued by the Additional Secretary, Revenue and Forest Department, Mantralaya, Mumbai.

4. Brief facts as stated by the applicant giving rise to the present Original Application are as follows :-

- (i) The applicant came to be appointed on daily wages under the respondent No. 5 at Khultabad Range w.e.f.

01.09.1985. He performed the work of Watchman and completed continuous service of five years as on 01.11.1994. The State of Maharashtra in its Revenue and Forest Department framed a policy in respect of regularization of services of daily rated employees working in the Forest Department. The G.R. dated 31.01.1996 was issued in terms of the said policy. The said G.R. laid down certain conditions for regularization and one of the conditions is that, an employee should have completed continuous service of five years as on 01.11.1994 including 240 days of service in each of these five years. While calculating the service of 240 days, the number of days worked under Employment Guarantee Scheme (hereinafter referred as "EGS") should be excluded.

(ii) It is the contention of applicant that he was served with the letter dated 13.08.2021 issued by the Deputy Conservator of Forest, Aurangabad Division, Aurangabad. It is communicated that the Government has taken decision in the light of order dated 28.02.2005 passed in O.A. No. 675/2003. It is further communicated that considering the record of work of the applicant for the period of 01.11.1989 to 31.10.1994, the applicant did not

work for continuous 5 years under plan/non-plan scheme of the Forest Department and does not fulfill the terms and conditions of G.R. dated 31.01.1996. Thus the applicant is not eligible for regularization as per the G.R. dated 31.01.1996. Hence, the present Original Application.

5. Learned counsel for the applicant submits that the impugned order dated 30.07.2021 issued by the Additional Secretary, Revenue and Forest Department is illegal and contrary to the documentary evidence placed on record. The said impugned letter dated 30.07.2021 is issued to show compliance of directions / order dated 28.02.2005 passed in O.A. No. 675/2003. Learned counsel submits that it is clearly an afterthought decision to cover up the lethargic and casual approach of respondent department towards their own employee who has rendered unblemished service to the department. Learned counsel submits that the impugned decision is not supported by any documentary evidence. Learned counsel submits that the applicant, when sought information under Right to Information Act, the same is not supplied to him and the department holds him ineligible relying on the documents, which are not supplied to him. The impugned decision is clearly an arbitrary exercise of power.

6. Learned counsel for the applicant submits that the applicant has preferred Original Application No. 675/2003 before this Tribunal for seeking directions to the respondents therein to take decision on the proposal of the applicant for regularization in terms of the G.R. dated 31.01.1996. By order dated 28.02.2005, this Tribunal has directed respondent No. 2 to take decision on the proposal within stipulated time frame i.e. within two months from the receipt of copy of the order. Learned counsel submits that in para No. 2 of the said order, however this Tribunal has specifically observed that *“It is now not disputed that the case of the applicant squarely falls within the parameters of the scheme. A proposal accordingly is stated to have been submitted to the State Government for regularization of the services of the applicant by his absorption in Class-IV in terms of G.Rs. dated 5.01.1996/31.01.1996. Such a proposal, it appears, has been submitted to the State Government before October, 2004 as is evident from the observations of this Tribunal dated 19.10.2004.”* Learned counsel submits that in the backdrop of para No. 2, this Tribunal has given directions in para No. 3 to respondent No. 2 to take a decision on the proposal within a period of two months from the receipt of the order.

7. Learned counsel for the applicant submits that the respondent authorities have decided the said proposal in terms of the impugned communication dated 30.07.2021, which is also contrary to the observations made by this Tribunal, so also, the record maintained by the department in connection with the service rendered by the applicant. Learned counsel thus submits that the present Original Application deserves to be allowed.

8. Learned Presenting Officer on the basis of affidavit in reply on behalf of respondent Nos. 1 to 5 submits that the applicant has no documentary evidence to show that he had worked on daily wages from 1985 under respondent No. 5 at Khultabad Range. The applicant had worked with the respondent No. 5 in the year 1988-89 in the scheme of EGS, which is under the control of Collector. In the year 1989-90, the applicant has worked some time on EGS and some time on plan. In the year 1990-91 to 1994-95, the applicant had worked on plan on a daily wages. In terms of G.R. dated 31.01.1996 in respect of regularization of service of the daily wages employees, the condition is prescribed that the daily wager, who has completed 240 days service in each calendar year from preceding five years since from 01.11.1994 were held eligible and entitled for continuation and regularization. It is thus required to take into

consideration such an employee, who has completed 240 days with Forest Department excluding the work done by him under EGS.

9. Learned Presenting Officer has pointed out the chart as referred in affidavit in reply filed on behalf of respondent Nos. 1 to 5, the same is reproduced herein below :-

Sr. No.	Year	Working on plan	Working on EGS
1	1.11.1989-90	209	145
2	1.11.1990-91	359	00
3	1.11.1991-92	315	00
4	1.11.1992-93	317	00
5	1.11.1993-94	255	00

Learned Presenting Officer submits that as per this chart, the applicant does not fulfill the terms and conditions of G.R. dated 31.01.1996. The applicant has not been regularized for the reason that he has not worked continuously for five years. He had worked some time in EGS and some time on Plan.

10. Learned Presenting Officer submits that so far as directions given in O.A. No. 675/2003 filed by the present applicant are concerned, during pendency of the said O.A. No.

675/2003, the present applicant was terminated from service on 01.04.2004 and this fact was not brought to the notice of this Tribunal. Consequently, this Tribunal was pleased to pass the order on 28.02.2005. The applicant has no right to take benefits of the said order. After termination, the applicant has filed representations on 26.08.2010 and 16.09.2010 to the respondent authorities and requested therein to rejoin him in the service.

11. Learned Presenting Officer submits that the Government has issued another G.R. dated 16.10.2012 and decided that the daily wagers, who were in service and who have not regularized in service as per G.R. dated 31.01.1994, but who have completed 240 days service in a year continuously or by stop-gap from 01.11.1994 to 30.06.2004 are held eligible to regularize. The applicant has fulfilled the terms of G.R. dated 16.10.2012 and therefore he has been regularized. Even the applicant has given affidavit in writing that he would not claim the benefit till his regularization i.e. till the year 2012.

12. Learned Presenting Officer submits that the applicant was terminated from his service in the year 2004 during pendency of O.A. No. 675/2003 and he was given appointment

on 22.11.2012. It means that since 2004 to 2012 the applicant was not in service with the respondent authorities. The respondents have given benefits under G.R. dated 16.10.2012 to the applicant and the applicant has been appointed in Group-D category. The applicant has accepted the same and also given affidavit in writing to that effect that he would not claim the other benefits. Learned P.O. thus submits that there is no substance in the present Original Application and the same is liable to be dismissed.

13. Learned counsel for the applicant on the basis of rejoinder affidavit submits that the chart as per Exhibit R-1 is absolutely incorrect and contrary to the record of the department. The applicant has annexed the copies of letters dated 28.01.2003 and 10.02.2003 at Annexure A-3, which clearly indicates that the applicant has worked on planned / non-planned scheme of the Forest Department for the period from 01.11.1989 to 31.10.1994. The chart annexed at page No. 18 of the Original Application clearly shows that the applicant had worked for 241, 336, 318, 255 & 316 days respectively on planned / non-planned scheme of the department during the period of five years as described in G.R. dated 31.01.1996. In view of the same, the Deputy Conservator of Forest, Aurangabad

Division sent the information to all the eligible employees vide letter dated 10.02.2003.

14. Learned counsel for the applicant submits that interpretation of the order dated 28.02.2005 passed by this Tribunal in O.A. No. 675/2003 is not correct. The respondent authorities have ignored the observations made by this Tribunal in para No. 2 of the said order. It is also incorrect that the applicant was terminated from service w.e.f. 01.04.2004 and therefore, has no right to take the benefit of the order dated 28.02.2005 passed in O.A. No. 675/2003. The subsequent termination of the applicant has no bearing on the regularization in terms of G.R. dated 31.01.1996.

15. Learned counsel for the applicant submits that so far as affidavit filed by the applicant while regularization of his services as per G.R. dated 16.10.2012 is concerned, the applicant has filed the same for withdrawal from the W.P. No. 3208/1997 which has no bearing in the present Original Application. On the contrary, the judgment and order dated 19.01.2017 passed by the Hon'ble High Court in W.P. No. 3208/1997 supports the case of the applicant. The Hon'ble High Court while deciding the said W.P. has clearly issued directions

to the respondent department to regularize the services of the employees, who have fulfilled the criteria of the G.R. dated 31.01.1996. The said copy of the judgment and order dated 19.01.2017 passed by the Hon'ble High Court in W.P. No. 3208/1997 is marked as Annexure AR-2.

16. In the context of the above submissions G.R. dated 31.01.1996 is having utmost importance. The said G.R. is self-explanatory and pursuant to the order passed by the Hon'ble High Court of Bombay, Bench at Aurangabad dated 04.12.1997. Even several respondents have been absorbed as per the G.R. dated 31.01.1996, however, those workers who were working on EGS work, were excluded from the benefits of the said G.R. by the order of the Hon'ble High Court. In terms of G.R. dated 31.01.1996 not only continuous period of five years from 01.11.1994 is important, but the concerned daily wager is required to work on plan or non-plan scheme of the Forest Department for minimum 240 days in each calendar year excluding the work on EGS.

17. Though learned counsel for the applicant has heavily relied upon Annexure A-2 and Annexure A-3, however, on perusal of प्रपत्र-ब (Annexure A-2) so also Annexure A-3 it appears

that only daily wage period from 01.11.1994 is mentioned with the daily work of each and every calendar year in the chart. It is not specifically mentioned in these Annexure A-2 and Annexure A-3 that the daily wager mentioned therein had worked on plan or non-plan work of Forest Department or on EGS. In the backdrop of these facts, this Tribunal seems to have observed while disposing of O.A. No. 675/2003 and further directed respondent No. 2 therein to take decision on the proposal within stipulated time frame about the case of the applicant in this context.

18. Having gone through carefully the Annexures submitted with the affidavit in reply filed on behalf of respondent Nos. 1 to 5 particularly explanatory proposal dated 15.10.2004 (page No. 118 of paper book) by Deputy Conservator of Forest, Aurangabad Forest Division, Aurangabad. So far as ग्राम-ड along with the said explanatory proposal dated 25.10.2004 submitted in this regard is concerned, the name of the applicant is mentioned at Sr. No. 6. There are 11 employees mentioned in ग्राम-ड with the specific remarks that they have completed working days in each of the calendar year on plan/non-plan scheme, so also on EGS. So far as the applicant, who is at Sr. No. 6 is concerned, column No. 7 from 01.11.1989 or prior to that till

31.10.1990, the period is mentioned as 181 days, column No. 8 i.e. from 01.11.1990 to 31.10.1991, the period is mentioned as 336 days, column no. 9 i.e. from 01.11.1991 to 31.10.1992, the period is mentioned as 318 days, column no. 10 i.e. from 01.11.1992 to 31.10.1993, the period is mentioned as 255 days and column no. 11 i.e. from 01.11.1993 to 31.10.1994, the period is mentioned as 316 days. Further after going through the statement of showing details of the applicant at page No. 57 of the paper book, which is annexed to the affidavit in reply filed on behalf of respondent Nos. 1 to 5, it appears that this is the statement of showing details in connection with the daily wages work of the applicant from 1988-89 to 1994-95. It appears from the said statement that so far as the period from 1988-89 is concerned, in most of the months of April to March the applicant had almost worked on EGS. So far as the period from 1989-90 is concerned, the applicant had worked for some months on plan and some months on EGS.

19. Thus in view of the above discussions, if the EGS work as daily wager completed by the applicant is considered, if it is excluded from computing the period, then the applicant has hardly completed 240 days in each calendar year of 1988-89 and 1989-90 respectively on plan or non-plan work of the Forest

Department. Thus the case of the applicant is not covered by the aforesaid G.R. dated 31.01.1996. In view of the same, there is no substance in the present Original Application and the same is liable to be dismissed. Hence, the following order :-

ORDER

- (i) The Original Application is hereby dismissed.
- (ii) In the circumstances, there shall be no order as to costs.
- (iii) The Original Application is accordingly disposed of.

PLACE : Aurangabad.
DATE : 24.10.2024

(Justice V.K. Jadhav)
Member (J)

KPB S.B. O.A. No. 202 of 2017 VKJ Pay Scale as per G.R. / Regularization