

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 58 & 114 OF 2016

DISTRICT : PALGHAR

1. ORIGINAL APPLICATION NO. 58 OF 2016

Smt Pramila Prakash Thakur,)
[since before marriage – Kum Pramila)
Parshuram Mhatre], Retd as Clerk-Typist)
from the office of the Secretary,)
Maharashtra State Vocational Education)
Examination Board, having office at)
Government Polytechnic Building,)
2nd floor, A.J Marg, Kherwadi,)
Bandra [E], Mumbai 400 051.)
R/O: A/P, Darpale-Pali, Tal-Vasai,)
Dist-Palghar.)...**Applicant**

Versus

1. The Secretary,)
Maharashtra State Vocational)
Education Examination Board,)
having office at)

- Government Polytechnic Building,)
 2nd floor, A.J Marg, Kherwadi,)
 Bandra [E], Mumbai 400 051.)
2. The Director of Education,)
 Skill Development &)
 Entrepreneurship, [M.S], Mumbai.)
 Having office at 3, Mahapalika Marg,)
 P.B No 10036, Mumbai-1.)
3. The State of Maharashtra,)
 Through Principal Secretary,)
 Skill Development &)
 Entrepreneurship, having office at)
 Mantralaya, Mumbai 400 032.)...**Respondents**

2. ORIGINAL APPLICATION NO. 114 OF 2016

1. Smt Priyanka Prashant Sawant,)
 Occ : Clerk-Typist)
 Since deceased, through legal heirs)
 and representatives,)
 Shri Anuj Prashant Sawant,)
 Occ : Educaiton, R/o: 198/3,)
 M.H.B Colony, TATA POWER,)
 Near Magathane Bus Depot,)
 Borivali [E], Mumbai 400 066)

2. Smt Shilpa Anil Gamre,)
Occ : Notary Assistant.)
3. Smt Sandhya Sadanand Kankekar)
Occ : Clerk cum Typist.)
4. Smt Manisha Dattatray Satam,)
Occ : Clerk cum Typist.)
5. Smt Nilam Anand Kambli.)
Occ : Clerk cum Typist.)
6. Smt Rohini Ghanshyam Salkar)
Occ : Notary Assistant.)
7. Smt Vaishali V. Chavan.)
Occ : Notary Assistant.)
8. Smt Megha Ulhas Patil)
Occ : Notary Assistant.)
9. Smt Vidya Naresh Satvidkar)
Occ : Notary Assistant.)
10. Shri Vinayak R. Rewale)
Occ : Notary Assistant.)
Applicants no 1 to 10 working in)
The office of Maharashtra State)

Board of Technical Education,)
 Mumbai, 49, Govt. Polytechnic Bldg)
 4th floor, Aliyawar Jung Marg,)
 Kherwadi, Bandra [E],)
 Mumbai 400 051.)...**Applicants**

Versus

1. The Director,)
 Directorate of Technical Educaiton,)
 M.S, Mumbai, having office at)
 Mahapalika Marg, P.B No. 1967)
 Opp. Metro Cinema, Dhobi Talao,)
 Fort, Mumbai – 1.
2. The Secretary,)
 Maharashtra State Board of)
 Technical Education, Mumbai,)
 49, Government Polytechnic Bldg,)
 4th floor, Aliywar Jung Marg,)
 Kherwadi, Bandra [E], Mumbai-51.)
3. The State of Maharashtra,)
 Through Principal Secretary,)
 Higher & Technical Education,)
 Having office at 4th floor,)
 Madam Cama Road, Nariman Point)
 Mantralaya, Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicants.

Ms Archana B.K. learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 23.08.2016

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicants and Ms Archana B.K. learned Presenting Officer for the Respondents.

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are identical.

3. O.A no 48/2014 has been filed by the Applicant challenging the order dated 25.2.2014, issued by the Respondent no. 1 informing her that the benefit of order of this Tribunal dated 10.4.2013 in O.A no 1034/2012 is available to only those employees who were Applicants in that Original Application.

4. Learned Counsel for the Applicant argued that the present Applicant is similarly situated person as the

Applicants in O.A no 1034/2012. The Applicant was initially appointed on temporary basis as Junior Clerk on 1.10.1984. Her services were regularized along with other non-M.P.S.C candidates by G.R dated 1.12.1994. This Tribunal in O.A no 1034/2012 by judgment dated 10.4.2013 held that services of the employees before regularization by G.R dated 1.12.1994 will be counted for extending benefit of Time Bound Promotion in terms of G.R dated 8.6.1995. The Applicant is a similarly situated person as the Applicants in O.A no 1034/2012. Learned Counsel for the Applicant argued that the aforesaid judgment of this Tribunal is a judgment in 'rem' and the stand of the Respondents that it is a judgment in 'personam' is incorrect. The Applicants in O.A no 1034/2012 were also non-M.P.S.C candidates, whose services were regularized by G.R dated 1.12.1994. They had approached this Tribunal with the request that for determining their eligibility for Time Bound Promotion in terms of G.R dated 8.6.1995, the services before regularization should be counted. This Tribunal had accepted the claim of the Applicants therein. By no stretch of imagination such a judgment could be called a judgment in 'personam'. The aforesaid judgment is applicable to all the employees who are similarly situated and who are seeking benefit of Time Bound Promotion in terms of G.R dated 8.6.1995. Learned Counsel for the Applicant argued that in Writ Petition no. 9051/2013, Hon'ble Bombay High Court by judgment dated

20.4.2016 has upheld the earlier decisions of this Tribunal in such matters, wherein it was held that services before regularization would count for Time Bound Promotion, once an employee's services are regularized. This Tribunal by judgment dated 8.6.2016 in a bunch of O.A nos 732 of 2011 etc. has held that for Time Bound Promotion / Assured Career Progression Scheme, the services of the employees required to be counted from the date of their initial appointments.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant was appointed on 1.10.1984 on purely temporary basis till the candidate selected through the Maharashtra Public Service Commission was available. By G.R dated 1.12.1994, services of the Applicant (and other employees) were regularized from that date. It was made clear that services before regularization will not count for seniority and any service related benefits. G.R dated 8.6.1995 also provided for 12 years of regular continuous service for an employee to become eligible for Time Bound Promotion. The Applicant was, therefore, eligible for Time Bound Promotion only on completion of 12 years of service from 1.12.1994. Learned Presenting Officer argued that the judgment of this Tribunal in O.A no 1034/2012 is applicable only to the Applicants in that Original Application.

6. It is seen that this Tribunal has in a number of judgments including the judgment dated 10.4.2013 in O.A no 1034/2012 has held that temporary / ad hoc service before regularization of service of an employee will count for determining eligibility of an employee for Time Bound Promotion in terms of G.R dated 8.6.1995. A few such matters were taken to the Hon. Bombay High Court and to the Supreme Court. By order dated 28.9.2012 in SLP no 17927-17930/2012, Hon'ble Supreme Court upheld the decision of the Hon'ble Bombay High Court, upholding the decisions of this Tribunal. Now in Writ Petition no 9051/2013 by judgment dated 20.4.2016, the issue is once again decided by Hon'ble Bombay High Court and the decisions of this Tribunal have been upheld. This Tribunal by judgment dated 8.6.2016 in a group of O.A nos 732 of 2011 etc. has directed the State Government to reconsider cases of all the Applicants in these Original Applications in the matter of grant of Time Bound Promotion / Assured Career Progression Scheme by counting the services from the date of initial appointment. No different view can be taken in the present Original Application. There is absolutely no doubt that the Applicant is a similarly situated person as the Applicants in O.A no 1034/2012. There is also no doubt that judgment dated 10.4.2013 in O.A no 1034/2012 was judgment in 'rem' and it was applicable to all similarly situated employees. The Applicant is entitled to the benefits of that aforesaid judgment of this

Tribunal, as were given to the Applicants in O.A no 1034/2012.

7. Coming to O.A no 114/2016, it is filed by employees of Higher & Technical Education Department, Government of Maharashtra, working in various subordinate offices in Mumbai. The Applicant no. 1 (since deceased) is represented by her legal heirs. The Applicants were appointed on different dates from 1986 to 1991 and their services were regularized by G.Rs dated 1.12.1994 /9.7.1996. These Applicants, some of whom have since retired, are seeking benefit of Time Bound Promotion/Assured Career Progression Scheme from the date of their initial appointments. This Tribunal by judgment dated 8.6.2016 in a group of O.A nos 732 of 2011 and others has held that in the matter of grant of Time Bound Promotion / Assured Career Progression Scheme benefits, the services of the employees from the date of their initial appointment have to be counted. This is based on the judgment of Hon'ble Bombay High Court in Writ Petition no 9051/2013 dated 20.4.2016. The Applicants in this Original Application no.114/2016 are also entitled to similar benefits.

8. Having regard to the aforesaid facts and circumstances of the case, these Original Applications are allowed. The Respondents are directed to consider the case of the Applicants for grant of Time Bound

Promotion in terms of G.R dated 8.6.1995, if they were otherwise eligible, by counting their services from the date of initial appointment, within a period of three months from the date of this order. There will be no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 23.08.2016

Dictation taken by : A.K. Nair.