

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION 867 OF 2013**

**DISTRICT : PUNE**

Ms Sunita Janardhan Chavan, )  
Working as Clerk I the office of )  
Special Auditor, Class-II, Dairy [Pune], )  
Baramati Doodh Sangh, Market Yard, )  
Pune – 37. )  
Add for service of notice: )  
Shri A.V Bandiwadekar, advocate, )  
Having office at 9, “Ram Kripa”, )  
Lt Dilip Gupte Mag, Mahim, )  
Mumbai 400 014. )...**Applicant**

**Versus**

1. The Divisional Joint Registrar, )  
Cooperative Societies [Audit], )  
Pune Division, Pune. )  
2. The State of Maharashtra, )  
Through Principal Secretary, )  
Cooperation, Marketing and Textile )  
Department, having office at )  
Mantralaya, Mumbai 400 032. )...**Respondents**

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

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Shri Justice A.H Joshi (Chairman)**  
**Shri Rajiv Agarwal (Vice-Chairman)**

**RESERVED ON : 06.02.2017**

**PRONOUNCED ON : 02.03.2017**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 13.4.2010 issued by the Respondent no. 1 and the order dated 25.2.2010 issued by the Respondent no. 2 rejecting the prayer of the Applicant to condone the break in service.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Junior Clerk by the

Respondent no. 1 as a nominee of a Freedom Fighter and she joined duties on 25.2.1993. The aforesaid appointment of the Applicant was found to be invalid as her nomination by a Freedom Fighter was held to be invalid. By order dated 5.7.1997, the Respondent no. 1 terminated her services. The Applicant filed O.A no 87/2002 before this Tribunal. By that time, the Applicant was adopted by the same Freedom Fighter and her nomination by the said Freedom Fighter was held to be valid. This Tribunal by order dated 16.9.2002 directed the Respondent to consider giving appointment to the Applicant in the next available vacancy. The Applicant was given order of reinstatement in service on 20.5.2003 and it was made clear that her appointment was to be governed as per terms and conditions of order dated 25.2.1993. The Applicant was out of service from 6.7.1997 to 21.5.2003. The Applicant applied for condonation of break in service. On 29.3.2008, Commissioner of Cooperation recommended to the Respondent no. 2 to condone the break in service by granting extraordinary leave for the period from 6.7.1997 to 21.5.2003 to the Applicant and count the earlier service for pensionary benefits under Rule 33 of the Maharashtra Civil Services (Pension) Rule, 1982. Learned Counsel for the Applicant contended that this proposal was accepted by the Minister of Cooperation. However, no orders were issued. The Applicant then made representations on 24.7.2009, 23.12.2011 and

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9.7.2012 to various authorities. By impugned orders her representation was turned down. This decision is in ignorance of the decision of Minister of Cooperation dated 29.3.2008. The Respondent no. 2 cannot ignore the order of the Minister. The appointment of the Applicant on 25.2.1993 was not as a nominee of Freedom Fighter. Termination of her services by order dated 5.7.1997 was, therefore, bad in law. The Applicant was reinstated in service by order dated 20.5.2003 and that order made it clear that her service will be continued to be governed by the terms and conditions of order dated 25.2.1993. The Applicant is, therefore, eligible for seniority, pay fixation, increments, pension etc. counting her service from 25.2.1993. Learned Counsel for the Applicant stated that the Respondents have misinterpreted Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982. The service of the Applicant from 25.2.1993 to 5.7.1997 cannot be called illegal or irregular.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that Shri Laxman Baloba Pathade, was a Freedom Fighter. The Applicant was daughter of a cousin of the said Freedom Fighter, who nominated her as his nominee for appointment in Government service by affidavit dated 23.7.1992 and the Applicant was appointed as Junior Clerk by order dated 25.2.1993. The claim of the Applicant that she was not appointed as a nominee of the Freedom Fighter was not

accepted by this Tribunal in O.A no 87/2002. This Tribunal by judgment dated 16.9.2002, held that her appointment a nominee of the Freedom Fighter was invalid. It was further held that the Freedom Fighter later adopted the Applicant on 16.6.2000 and nominated her as his nominee for appointment to Government service. Learned Presenting Officer contended that the order of this Tribunal makes it clear that the appointment of the Applicant by order dated 20.2.1993 was not in accordance with rules. Learned Presenting Officer further argued that though then Minister of Cooperation on 22.9.2008 approved the proposal to condone the break in service of the Applicant from 6.7.1997 to 21.5.2003, when the proposal was resubmitted to him after getting view of the General Administration Department and Finance Department, he agreed with their views that the condonation was not permissible under Rule 48 of Maharashtra Civil Services (Pension) Rules, 1982. Under this rule, break in service can be condoned if such break is upto one year. Here the break was almost for 6 years. Another condition under the rule is the past service which is to be counted should be five years or more. In this case, it was 4 years and 4 months.

5. The Applicant has raised the following issues in this Original Application, viz.

- (i) Services rendered by the Applicant from 25.2.1993 to 5.7.1997 were not illegal or irregular, and therefore, the same should be counted for pensionary benefits under Rule 33 of Maharashtra Civil Services (Pension) Rules, 1982 and Rule 48 has been misinterpreted. (Para 6.15 of O.A and reference to Rule 33 is in para 6.7).
- (ii) The termination of service of the Applicant after 4 years and 4 months by order dated 5.7.1997 was bad in law (Para 6.12 of O.A).
- (iii) Minister of Cooperation had approved the proposal to condone the break in service on 22.9.2008 and the Respondent no. 2 was bound to follow the same.

6. The Applicant has admitted that she had filed Original Application earlier before this Tribunal. Judgment of this Tribunal dated 16.9.2002 in O.A no 87/2002 filed by the Applicant is annexed as Exhibit R-4 with the affidavit in reply filed by the Respondents on 23.1.2014. This Tribunal has passed the following order:-

“4. There is no dispute about the earlier nomination of the applicant by the Freedom Fighter Shri Pathade being invalid. There is also no dispute about the subsequent nomination dated 16.6.2000 being valid. It has also been duly recoded in the office of Collector, Pune on 15.6.2000. The learned



Presenting Officer stated that there is a ban on filling up posts and the applicant could be appointed in the next available vacancy with the approval of the Government.

5. In the light of the above, we hereby direct the Respondents to consider the appointment of the applicant in the next available vacancy. The application is disposed of with these directions. No order as to costs."

This Tribunal has clearly accepted the contention of the Respondents that earlier nomination of the Applicant by Freedom Fighter Shri Pathade was not valid. Obviously, any appointment on the basis of invalid nomination will also be invalid. This issue was decided by this Tribunal in the aforesaid judgment and the claim of the Applicant that her services from 25.2.1993 to 5.7.1997 were not illegal or irregular has to be rejected. As the appointment was given to the Applicant on the basis of invalid nomination, as a nominee of a Freedom Fighter, the services of the Applicant before order of termination was passed on 5.7.1997 cannot be said to be regular.

7. Let us now examine whether Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982 was correctly applied by the Respondents. Rule 48(1) reads as below:-

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“48. Condonation of interruption in service:

(1) The appointing authority may, by order, condone interruption in the service of a Government servant:

Provided that-

- (a) the interruptions have been caused by reasons beyond the control of the Government servant;
- (b) the total service pensionary benefit in respect of which will be lost is not less than five year duration, excluding one or two interruptions, if any; and
- (c) the interruption including two or more interruptions, if any, does not exceed one year.”

The Applicant herself claims that her earlier service was for a period of 4 years and 4 months. As per proviso (b) to Rule 48(1), the interruptions in the service of a Government servant can be condoned if the service lost is not less than five years. It is less than five years in the present case. As per proviso (c), interruption should not exceed one year. Here the interruption is almost six years. The Respondents have correctly interpreted this rule and rightly held that the break in service of the Applicant cannot be condoned.





8. The Applicant has claimed that the Minister of Cooperation has approved proposal to condone break in service on 22.9.2008 and the Respondent no. 2 is legally bound to follow orders of the Minister. In the affidavit in reply dated 23.1.2014, the Respondents have stated in para 10 as follows:-

“.....the Petitioner has not taken into account the further developments in the matter. After directions of Hon'ble Minister, the case was referred to the General Administration Department for condonation of break in her service. The General Administration Department further referred the matter to the Finance Department. The Finance Department declined to condone the break in service of the Petitioner. The condoning the break in service is the subject of the Finance Department and due to the above mentioned remarks of the Finance Department this Department could not condone the break in service of the Petitioner in the present case. Above said remarks of the Finance Department were submitted to Hon'ble Minister for State (Cooperation) and Hon'ble Minister for Cooperation and they have approved the views of the Finance Department that the break in service cannot be treated as qualifying service for pensionary benefits, increments, etc. Accordingly, the decision of the Government was communicated



to the Commissioner by this Department's letter dated 25.2.2010."

It is clear that the decision of Minister dated 22.9.2008 was not final and he changed it in the light of subsequent advice given by G.A.D and F.D. There is no truth in the claim of the Applicant in this regard.

9. We do not find that the Respondent no. 2 has committed any illegality or impropriety in dealing with the representations of the Applicant. We also do not find any reason to interfere with the impugned order dated 25.2.2010 or 13.4.2010. This Original Application is accordingly dismissed with no order as to costs.

Sd/-  
**(Rajiv Agarwal)**  
**Vice-Chairman**

Sd/-  
**(A.H Joshi)**  
**Chairman**

**Place : Mumbai**  
**Date : 02.03.2017**  
**Dictation taken by : A.K. Nair.**