

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1079 OF 2018

DISTRICT : NASHIK

Shri Dilip Motiram Atre.)
Age : 57 Yrs., Working as Driver,)
Rehabilitation Department, Office of)
Collector, District Nashik and residing at)
B-7, Bachat Pushpa Niwas Sthan,)
Gadkari Chowk, Nashik - 422 002.)...**Applicant**

Versus

1. The Government of Maharashtra.)
Through Addl. Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)
2. Collector, Nashik,)
District : Nashik.)
3. Divisional Commissioner.)
Nashik Division, District : Nashik.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 26.02.2021

JUDGMENT

1. The Applicant has invoked jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking direction the Respondents to grant benefit of Time Bound Promotion Scheme/Assured Career Progression Scheme taking into consideration

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his temporary service from 26.12.1990 to 07.03.1999 in terms of G.R. dated 07.10.2016.

2. Shortly stated facts giving rise to this O.A. are as under :-

The Applicant was initially appointed by order dated 19.12.1990 on the post of Driver purely on temporary basis in view of order passed by Respondent No.2 - Collector, Nashik. Thereafter, he was continued in service with technical break of one day. The Respondent No.1 - Government of Maharashtra by order dated 24th October, 2005 absorbed the Applicant in regular service in terms of G.R. dated 08.03.1999. Thereafter, the proposal was sent to the Government to condone the break in service and to treat his temporary service as his continuous service. However, the Government by order dated 29th March, 2013 rejected the proposal sent by Collector, Nashik stating that Applicant's service was regularized strictly in terms of G.R. dated 08.03.1999 which *inter-alia* specifically prohibits to treat previous service as a regular service. The Applicant thus continued in service. Later, the Respondent No.1 - Government of Maharashtra issued G.R. dated 07.10.2016 for extending the benefit of previous service to certain categories of employees. The Applicant has, therefore, approached this Tribunal to extend the benefit of G.R. dated 07.10.2016 to him and to grant the benefit of TBP considering his temporary service from 26.12.1990 to 07.03.1999.

3. Shri M.D. Lonkar, learned Advocate for the Applicant sought to contend that since the Applicant fulfills all requisite conditions stipulated in G.R. dated 08.03.1999, his services were regularized w.e.f. 08.03.1999, but he was not given the benefit of his earlier temporary service period from 26.12.1990 to 07.03.1999. He further submits that since by G.R. dated 07.10.2016 the Government had given the benefit of TBP to certain employees by considering their previous service on the same analogy, the Applicant is entitled to similar relief. According to him, the issue of consideration of temporary service for grant of TBP

benefit is no more res-integra in view of decision rendered by Hon'ble High Court in **Writ Petition No.9051/2013 (State of Maharashtra Vs. Meena A. Kuwalekar with connected Writ Petitions) decided on 28th April, 2016**. In addition to it, he further referred to the decision rendered by this Tribunal in **O.A.No.1090/2017 (Milind M. Sawant VS. The Joint Director, Technical Education) decided on 19.11.2018**. He, therefore, made fervent plea that Applicant's previous temporary service needs to be considered for grant of benefit of TBP Scheme/ACPS on completion of 12/24 years' service.

4. Per contra, learned Presenting Officer resisted the Original Application contending that initial service of the Applicant was purely temporary and he was absorbed in terms of G.R. dated 08.03.1999 with specific stipulation that he would not get any kind of benefit of earlier temporary period for any purpose, and therefore, cannot claim the benefit of said period for benefit of Time Bound Promotion. She has further pointed out that the Government by order dated 29.03.2013 had already rejected the request of the Applicant to condone the break in service which itself disentitled the Applicant for counting temporary service for any kind of service benefits.

5. In view of the submission advanced at a bar, the question posed for consideration is whether the Applicant's temporary service from 26.12.1990 to 07.03.1999 can be counted for grant of Time Bound Promotion/Assured Career Progression Scheme and in my considered opinion, the answer is in negative for the reasons to follow.

6. Indisputably, initially the Applicant was appointed by order dated 19.12.1990 on the post of Driver purely on temporary basis. In this behalf, contents of appointment order dated 19.12.1990 are material which clearly reveals that one post of Driver was temporarily created for Nashik-Trimbakeshwar Sinhastha Kumbh Mela and for that purpose only the Applicant was appointed purely on temporary basis. There is a specific condition in appointment order that it is purely temporary and it

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can be terminated at any point of time. Suffice to say, the Applicant was temporarily appointed on the post, that too on the post which was temporary for Nashik-Trimbakeshwar Sinhastha Kumbh Mela. As such, it was not on substantively vacant post and this aspect is vital for the decision.

7. True, later in terms of the policy decision taken by the Government in terms of G.R. dated 08.03.1999, the Applicant was absorbed as one time measure. It appears that the decision was taken to absorb 3761 temporary appointees as a one time measure subject to following conditions:-

“२. प्रादेशिक दुय्यम निवडमंडळे, जिल्हा निवड समित्या व सेवायोजन कार्यालये या विहित सेवाभरती माध्यमार्फत शिफारस होऊन येण्याची अट शिथिल करून सोबतच्या परिशिष्ट “अ” मध्ये नमूद केलेल्या विविध मंत्रालयीन विभागाच्या प्रशासकीय नियंत्रणाखाली ३७६१ कर्मचा-यांची प्राप्त झालेली माहिती लक्षात घेऊन शासनाने असा निर्णय घेतला आहे की, या कर्मचा-यांच्या सेवा “एकावेळची बाब म्हणून खालील अटीच्या अधिनस्त नियमित करण्यात याव्यात:-

- अ) संबंधित कर्मचा-याने सेवाप्रवेश नियमाप्रमाणे विहित केलेली शैक्षणिक अर्हता व वयाची अट मूळ नियुक्तीच्यावेळी पूर्ण केलेली असावी.
- ब) दिनांक १ एप्रिल १९९९ रोजी एक वर्षाची सलग सेवा झालेली असावी व कामाचा दर्जा किमान चांगला असावा.
- क) पदे उपलब्ध असावीत.
- ड) नियमितीकरण करताना आरक्षण बिंदू आणि समांतर आरक्षण या सदंर्भात तत्त्वांचे /नियमांचे पालन करण्यात आले असावे.
- इ) कर्मचा-यांची सेवाजेष्ठता प्रस्तुत आदेश निर्गमित झाल्याच्या दिनांकापासून धरण्यात यावी.
- ई) अभावित नियुक्तीचा फायदा कुठल्याही प्रयोजनार्थ/कारणासाठी देण्यात येणार नाही.”

8. Thus, there is no denying that the Applicant was absorbed subject to above mentioned stipulation / conditions and out of which the last condition that earlier fortuitous service would not be considered for any purpose is crucial. The Applicant has accepted these terms and conditions without any demur. Admittedly, he did not challenge it at any point of time. In other words, when the Applicant has accepted the absorption knowing fully well that his temporary service would not be counted or considered for any other purpose, now, he cannot be allowed to turn around and to claim the benefit of the said temporary period. The principle of estoppel is certainly attracted.

9. Furthermore, admittedly before absorption, the Applicant was continued in service with break. The perusal of record reveals that the proposal was forwarded by the Collector, Nashik to Government for necessary orders about condonation of break in service but the Government by order dated 24.10.2005 rejected the proposal with clear mention that temporary service prior to 08.03.1999 could be purely fortuitous and cannot be condoned. Material to note that admittedly this order dated 24.10.2005 rejecting the proposal for condonation of break in service is not challenged by the Applicant and has attained finality.

10. Thus, it seems that in between two appointments, technical break of one day was given to the Applicant during his period of temporary appointment from 26.12.1990 to 07.03.1999. However, the fact remains that even the earlier temporary service of Applicant was not continuous one but it was with break, though one day technical break. Be that as it may, the Government by order dated 24.10.2005, rejected the request for condonation of break in service and the said order has attained finality. This being the position, what ultimately transpires that even earlier temporary services of the Applicant was not continuous but the same was with break. This aspect is again vital to not count the said period for grant of Time Bound Promotion.

11. Thus, the Applicant accepted the absorption order knowing that his earlier temporary service could not be considered for any purpose and also accepted the Government's order dated 24.10.2005 rejecting the proposal for condonation of break in service and remained contented.

12. However, now this Original Application has been filed contending that he is entitled for benefit of Time Bound Promotion by counting his earlier temporary service in terms of G.R. dated 07.10.2016 issued by the Government. Shri M. D. Lonkar, learned Counsel advertng to the said G.R. sought to contend that on applying the principle of analogy of G.R. dated 07.10.2016, the Applicant cannot be deprived of benefit flowing

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from his temporary service. I am afraid that this is not the correct position.

13. Material to note that the benefit of G.R. dated 07.10.2016 was extended to specific categories of employees within the purview of M.P.S.C. for clerical and other cadre from the offices of State Government, Bruhanmumbai and the employees whose services were regularized in terms of G.R. dated 31.03.1999 issued by G.A.D. As such, in respect of these candidates, the decision was taken to consider their temporary services for grant of Time Bound Promotion benefit. Obviously, the Applicant's cadre does not fall in this category as obvious from the conditions of G.R. which are as follows:-

“शासन निर्णय-

महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील मंत्रालयातील तसेच बृहन्मुंबईतील राज्य शासकीय कार्यालयात लिपिकवर्गीय संवर्गत तसेच अन्य संवर्गात महाराष्ट्र लोकसेवा आयोग अपुरस्कृत उमेदवार म्हणून नियुक्त झालेल्या व सामान्य प्रशासन विभागाच्या विविध शासन आदेशान्वये दिनांक ३१.०३.१९९९ पर्यंत सेवा नियमित केलेल्या कर्मचा-यांची सेवा नियमित झाल्याच्या दिनांकापूर्वीची तात्पुरती अखंडीत सेवा, तसेच महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवार म्हणून मंत्रालयात तसेच बृहन्मुंबईतील राज्य शासकीय कार्यालयात लिपिक संवर्गात अथवा अन्य तत्सम संवर्गात नियुक्त झालेल्या कर्मचा-याची पदोन्नतीच्या कोट्यातील तात्पुरत्या पदोन्नतीची अखंडीत सेवा देखील कालबद्ध पदोन्नती/सेवांतर्गत आश्वासित प्रगती योजना/सुधारित सेवांतर्गत आश्वासित प्रगती योजनेच्या प्रयोजनासाठी १२ वर्षांच्या नियमित सेवेची गणना करताना विचारात घेण्यात यावी. तसेच संबंधित कर्मचा-यांकडून संबंधित योजनेबाबतच्या अन्य अटीची पूर्तता झाल्यानंतर त्यांना अनुज्ञेय योजनेंतर्गत यथारिथती कालबद्ध पदोन्नती/सेवांतर्गत आश्वासित प्रगती योजना/सुधारित सेवांतर्गत आश्वासित प्रगती योजनेचा पहिला/दुसरा लाभ मंजूर करण्यात यावा.”

14. Whereas, in the present case, the Applicant was absorbed in terms of G.R. dated 08.03.1999 as onetime measure. Thus, in other words, it was the case of back door entry, and therefore, with specific condition that their earlier services would not be counted for any purpose, they were absorbed as onetime measure. This being the position, G.R. dated 07.10.2016 have no application to the present Original Application.

15. Now, it comes to the decision in **Meena A. Kuwalekar's case in W.P. No.9051/2013** (cited supra). In that W.P. the issue before the Hon'ble High Court was whether the period of 12 years or 24 years

services prescribed as prerequisite for availing benefit of Time Bound Promotion or Assured Career Progression Scheme is to be reckoned from the date of initial appointment of a Government servant or from 01.12.1994 from which their services were regularized in terms of G.R. dated 01.12.1994. The perusal of judgment reveals that in that case, the services of a Government servant even from the date of initial appointment has been taken into consideration for various service benefits including increment, leave, transfer, opening of GPF account, opening of Service Book, Pension, etc. In that matter, the services of a Government servants were regularised since temporary arrangement was made by appointment of candidates sponsored by Employment Exchange or similar agencies. It is in that context, the Hon'ble High Court held that since the services of such Government servants right from their initial appointment has been taken into consideration by the State Government practically for all purposes including pension except seniority, the benefit of earlier temporary service was granted for counting the same for grant of Time Bound Promotion. In other words, in fact situation that the decision was rendered which clearly distinguishes the facts in the present matter. In present case, the Applicant was temporarily appointed on temporary post created for Nashik-Trimbakeshwar Sinhastha Kumbh Mela and not on substantive or clear vacant post. Apart, the Applicant was given break in service and the proposal for condonation for break in service was turned down by the Government. He was not given any other service benefits alike petitioners in W.P. No.9051/2013. The Applicant's service was regularized as one time measure amongst other whose appointments were by way of back door entry. Suffice to say, the decision in W.P. No.9051/2013 is of no assistance to the Applicant.

16. In so far as the decision rendered by this Tribunal in **O.A. No.1090/2017** in **Milind M Sawant's** case, decided on 19.11.2018 (cited supra) is concerned, the appointment was on the post of Laboratory Assistant which was made on the basis of recommendation by Employment Exchange. Later, their services were discontinued which

was challenged in Labor Court and in terms of the decision of Labor Court, they were reinstated in service. They were regularised w.e.f. 01.09.1999. It is in that context, their earlier period of service was ordered to be counted for grant of benefit of Time Bound Promotion. As such, in fact situation that Original Application was allowed. Whereas, in the present case, the Applicant was appointed temporarily as Driver on the post which itself was temporary and besides there was break in service. Therefore, the decision rendered in O.A.No.1090/2017 is of no help to the Applicant.

17. Needless to mention that for grant of benefit of Time Bound Promotion / Assured Career Progression Scheme, prerequisite is continuous regular service on the post for 12 years. Whereas, the Applicant's case cannot be equated with that of regular employee in so far his initial period of appointment from 26.12.1990 to 07.03.1999 is concerned.

18. The totality of the aforesaid discussion leads me to sum up that the Applicant is not entitled to count his temporary service for the purpose of Time Bound Promotion and Original Application is devoid of merit. Hence the following order:-

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J