

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.50 OF 2019

DISTRICT : PUNE

Shri Vithal Tulshiram Jadhav.)
Age : 49 Yrs, Occu. : Service,)
R/o. Plot No.31, Near Tukaram Maharaj)
Karyalay, Bendure Nivas, 3rd Floor,)
Bhosari, Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Medical Education & Research,)
Gokuldas Tejpal Hospital Campus,)
9th Floor, Mumbai.)
2. The Director.)
Medical Education & Research,)
St. Georges Hospital Compound,)
Mumbai – 400 001.)
3. The Dean.)
Sasoon General Hospital,)
Pune.)...**Respondents**

Mr. V.A. Sugdare holding for A.D. Sugdare, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 02.02.2022

JUDGMENT

1. The Applicant has challenged the communication dated 27.09.2018 issued by Government thereby rejecting the claim of Applicant to count his temporary service for consequential service benefits invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Following are the undisputed events giving rise to this O.A.:-

(i) Initially, the Applicant was appointed as X-ray Technician in the office of Civil Surgeon, Parbhani as a temporary appointee by appointment order dated 13.03.2000 in the pay scale of Rs.5000-8000.

(ii) Recruitment process was initiated to fill-in the post of X-ray Technician by Advertisement dated 19.05.2007. The Applicant participated in the recruitment process, but he was not selected. He, therefore, filed O.A.No.320/2007 before MAT, Aurangabad which was decided along with O.A.Nos.325/2007 and 607/2007. Having found that Applicant was less meritorious, O.A. was dismissed.

(iii) The Applicant has challenged termination order dated 28.12.2007 by filing Writ Petition No.79/2008 before Hon'ble High Court, Bench at Aurangabad. In Writ Petition, the Government Pleader made a statement that appointment order in favour of Applicant would be issued within a period of four weeks and in view of statement made by him, Writ Petition was disposed of as withdrawn.

(iv) The Applicant then filed Contempt Petition No.23/2010 for contempt of order of Hon'ble High Court stating that he is not appointed in the Department of Health Services at Aurangabad

and secondly, the appointment given to him was not permanent. The Government in Affidavit made it clear that Petitioner is appointed as X-ray Technician at Sasoon General Hospital, Pune by order dated 25.09.2019. Hon'ble High Court, therefore, found that there is no contempt of order and observed that, if Petitioner is aggrieved by non-compliance, he can revive Writ Petition. With this observation, Contempt Petition was disposed of by order dated 27.06.2011.

(v) Since Applicant was appointed by order dated 25.05.2009, he joined at Sasoon General Hospital, Pune on the post of X-ray Technician. Thereafter, he made representation on 15.02.2014 to the Government for counting his earlier temporary service for all service benefits for consequential benefits. However, it came to be rejected by Government by communication dated 15.03.2016.

(vi) The Applicant again challenged the communication dated 15.03.2016 by filing O.A.1143/2016 before this Tribunal, which was disposed of by order dated 20.07.2018 with direction to the Respondents to look into the matter in view of decision rendered by the Tribunal, Bench at Aurangabad in O.A.No.509/2013 dated 25.04.2018 and pass appropriate order within a period of two months.

(vii) The Government by communication dated 27.09.2018 reconsidered the issue and rejected Applicant's claim on the ground that there is near about 2 years' break in service and decision rendered by the Tribunal in O.A.No.509/2013 referred by the Applicant is not applicable to his case.

3. It is on the above background and events, the Applicant has challenged the impugned communication dated 27.09.2018 in the present O.A.

4. Shri Sugdare, learned Advocate for the Applicant assailed the impugned communication dated 27.09.2018 *inter-alia* contending that, since Applicant was appointed initially as Project Affected Person (PAP), his previous temporary service is required to be counted for service benefits in terms of G.R. dated 21.01.1980 and his service is required to be treated as continuous service. In this behalf, he also placed reliance upon the decision of MAT, Aurangabad Bench in **O.A.No.509/2013 (Mohan Pawar Vs. State of Maharashtra) decided on 24th April, 2018**. He has further pointed out that the reason mentioned in the impugned order that in the present case, interruption in service is near about two years, and therefore, it cannot be condoned is apparently incorrect, since there is no capping on interruption period in G.R. dated 21.01.1980 and secondly, interruption in between two services is 1 year, 4 months and not 2 years as mentioned in impugned order. On this line of submission, he submits that the impugned communication is bad in law and Applicant is entitled to service benefits by counting his initial temporary service being PAP.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to defend impugned order *inter-alia* contending that fresh appointment of the Applicant by order dated 25.05.2009 is from VJ-A category and not as PAP, and therefore, he cannot claim the benefit of G.R. dated 21.01.1980. Secondly, in terms of Rule 33 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity), the period of interruption cannot be considered as qualifying service.

6. In view of pleadings and submissions advanced at the Bar, the issue posed for consideration is whether Applicant's previous service in the light of interruption in service can be counted as qualifying service for grant of pension and other service benefits.

7. Indisputably, initially, the Applicant was appointed as X-ray Technician in the office of Civil Surgeon, Parbhani as a temporary appointee by order dated 13.03.2000 and his selection was in pursuance of Advertisement issued by the Department. Later in 2007, the Department has issued Advertisement for recruitment process in which Applicant also participated for regular selection, but he was not selected, and therefore, challenged the recruitment process by filing O.A.No.320/2007 before MAT, Aurangabad Bench which came to be dismissed having found that Applicant was let us meritorious candidate. Being aggrieved by it, the Applicant has filed Writ Petition No.79/2008 before Hon'ble High Court, Bench at Aurangabad. What is important to note that in Writ Petition, the AGP made a statement that in view of interim order passed by the Court, one post of X-ray Technician was kept vacant and Respondents are willing to accommodate the Petitioner in the said post. It is on the basis of this statement made by AGP, Writ Petition was disposed of on 11.08.2009. Here, it would be apposite to reproduce Para Nos.1, 2 and 4 of the order, which is as follows :-

1. The learned Assistant Government Pleader has placed on record a communication addressed by the Deputy Director of Health Services, Aurangabad, dated 11th August, 2009, stating therein that in view of the earlier interim orders passed by this court, one post of X-ray Technician is kept vacant and the respondents are willing to accommodate the petitioner on the said post.

2. Mr. K.G. Patil, learned Assistant Government Pleader appearing for respondent nos.1 and 2, on instructions from the Deputy Director of Health Services, Aurangabad, namely, Dr. L.N. Dolas, who is personally present in the court, makes a statement that the appointment order in favour of the petitioner would be issued within a period of four weeks from today.

4. Hence, the petition is disposed of as withdrawn. The presence of the Deputy Director of Health Services is discharged.”

8. Suffice to say, in Writ Petition No.79/2008, interim order was passed by directing the Department to keep one post vacant and secondly, Department itself shown willing to accommodate the Applicant on the said post. As such, it is on this background, the Applicant again

came to be appointed by order dated 25.05.2009 as X-ray Technician. Furthermore, there is specific stipulation in appointment order dated 25.05.2009 that the appointment was issued in view of order passed by Tribunal in O.A.No.646/2008 on 16.02.2009 by relaxing his age limit which was filed by the Applicant against Government.

9. O.A.No.646/2008 was filed by the Applicant wherein directions were given by the Tribunal to consider Applicant's claim for appointment as X-ray Technician by giving relaxation in age taking into consideration his temporary service. The perusal of Judgment of O.A.No.646/2008 reveals that Applicant was claiming age relaxation on the basis of G.R. dated 01.11.2003. The Tribunal accepted his contention and allowed the O.A. The operative order is as under :-

“Respondent No.2 to consider the Applicant's claim for appointment on the post of X-ray Technician by giving relaxation in age taking into consideration his temporary service for a period of 7 years and 9 months in the Government Department, if otherwise, he is fit for the said post.”

10. It is thus explicit that age limit was extended considering his earlier temporary service of 7 years and 9 months and Applicant came to be appointed as regular appointee by order dated 25.05.2009.

11. In view of aforesaid facts, it is manifest that since beginning, the Applicant was claiming the benefit of his previous temporary service being PAP and before Hon'ble High Court in Writ Petition No.79/2008, the Department itself expressed willingness to accommodate the Applicant at one post. Suffice to say, his fresh appointment by order dated 25.05.2009 has to be considered on the backgrounds noted above and it was not totally independent or fresh appointment.

12. In O.A, there is specific pleading in Para No.6(a) that Applicant is PAP and initially by order dated 13.03.2000, he was appointed in PAP category in Civil Hospital, Parbhani. There is no denial to this pleading in reply. Furthermore, the Applicant has also produced Certificate dated

30.11.1989 to establish that he is PAP (Page No.11 of P.B.). As such, there is no denying that Applicant is PAP and his initial appointment dated 13.03.2000 was also from PAP category.

13. Now turning to the 2nd appointment order dated 25.05.2009, true, in appointment order (Page No.18 of P.B.), he is shown from VJ-A category. Since he belongs to VJ-A category, obviously he is shown from reserved category. Undoubtedly, there is no reference in appointment order dated 25.05.2009 that he is selected from PAP category. However, the fact remains that Applicant is PAP. Initially, in fact he was appointed as PAP but his service was terminated w.e.f.27.12.2007 and thereafter, appointed by order dated 25.05.2009. As such, there is interruption of 1 year, 4 months and 28 days in these two spells of service.

14. Now let us see G.R. dated 21.01.1980 which is relied by the learned Advocate for the Applicant and foundation of the claim put forth by the Applicant in this O.A. (Page No.24 of P.B.). Para No.1 of G.R. is as under :-

“प्रकल्पग्रस्त व्यक्ती व त्यांच्यावर अवलंबून असणा-या व्यक्तींना शासकीय सेवेतील वर्ग-३ व वर्ग-४ मधील भरती बाबत प्राथम्यक्रम

महाराष्ट्र शासन

सामान्य प्रशासन विभाग

शासन निर्णय क्रमांक ए इ अम-१०८०-३५-१६-अ

मंत्रालय, मुंबई ४०० ०३२ दिनांक २१ जानेवारी १९८०

संदर्भ : १. शासन निर्णय महसूल व वन विभाग क्रमांक आरपीअ-१०७१-१७७७८५-२-१ दिनांक २० नोव्हेंबर, १९७३

२. शासन निर्णय सामान्य प्रशासन विभाग क्रमांक एसआरव्ही-१०७८-आरअपी-१२-दिनांक २२ सप्टेंबर १९७८

निर्णय :

१. शासनाच्या पुनर्वसनविषयक धोरणानुसार प्रकल्पग्रस्त व्यक्ती व त्यांच्यावर अवलंबून असण-या व्यक्ती यांना शासकीय सेवा प्रवेशासाठी तारतम्य दाखवून नोकरीत पसंती देण्याबाबत सवलत देण्यात आली आहे. त्यानुसार अशा व्यक्तींनी त्यांची नावे सेवायोजन कार्यालयामध्ये नोंदवलेली असतील आणि संबंधित शासकीय पदांबाबत असलेल्या भरतीच्या अटी पूर्ण केल्या असतील, शासकीय कार्यालयामधील महाराष्ट्र लोकसेवा आयोगाच्या कक्षेबाहेर असलेल्या पदांवर नेमणूक करण्यासाठी त्यांना तारतम्याने पसंती देण्यात येते. शासन ठराव, महसूल व वन विभाग क्रमांक आरपीअ-१०७१-१७७७८५-२-१ दिनांक २० नोव्हेंबर १९७३ मधील आदेशानुसार प्रकल्पग्रस्त पाटबंधारे प्रकल्पाच्या आस्थापनेवरील भरतीसाठी सर्वोच्च प्राथम्यक्रम देण्यात येतो. त्यासाठी सेवायोजन कार्यालयात नावे नोंद होण्याची अट त्यांचे बाबतीत लागू करण्यात येत नाही. शासन ठराव सामान्य प्रशासन क्रमांक एसआव्ही-१०७८-आरअपी-१२ दिनांक २२ सप्टेंबर १९७८ द्वारा काढलेल्या आदेशाप्रमाणे बृहन्मुंबई बाहेरील शासकीय कार्यालयातील पदात भरतीबाबत ज्या प्रकल्पग्रस्तांची घरे किंवा ७५ टक्के शेतजमीन प्रकल्पासाठी संपादनात येते त्यांच्याबाबतीत शासकीय सेवा भरतीसाठी असलेली कमाल वयोमर्यादा ३(तीन) वर्षांने शिथिल करण्यात आली आहे. तसेच अशा प्रकल्पग्रस्तांची शासनामध्ये अस्थायी सेवा केली असेल तर, त्या अस्थायी सेवेचा कालावधी शासन प्रवेशासाठी असणारी कमाल वयोमर्यादा निश्चित करण्यासाठी लक्षात घेण्यात येतो आणि सदर कमाल वयोमर्यादा

अस्थाची सेवेच्या कालावधीने शिथिल करण्यात येते. प्रकल्पग्रस्तांना शासनाच्या सेवेत पुन्हा प्रवेश मिळाल्यावर त्यांच्या पूर्वीच्या अस्थाई सेवेचा कालावधी त्यांच्या शासन सेवेचा एकूण कालावधी निर्धारित करण्यासाठी ग्राह्य धरण्यात येतो व शासनामधील त्यांची सेवा अखंड असल्याचे मानण्यात येते.”

15. It is thus obvious that Government has taken policy decision by G.R. dated 21.01.1980 to extend certain benefits to PAP, so as to accommodate them in Government service. Importantly, it was decided to count initial temporary service of PAP for continuity in service where after some interruption, such PAP again gets employment in the Government. As such, the decision was taken to obviate the difficulties of PAP considering their distressed financial condition faced by them because of acquisition of their land for certain projects rendering them jobless. Suffice to say, benevolent policy decision was taken to count previous service of PAP for continuous service. Significantly, there is no such capping or limit about the period of interruption in two spells of service in G.R. dated 21.01.1980, as rightly pointed out by the learned Advocate for the Applicant. This being so, when there is no such capping or constrain in policy decision dated 21.01.1980, the reason mentioned in impugned order that interruption in service is longer, and therefore, it cannot be condoned is totally unacceptable in law. What matters is PAP category and not length of interruption.

16. At this stage, it would be apposite to refer the decision rendered by MAT, Aurangabad Bench in **Mohan Pawar** (cited supra). In that case, there was interruption of 342 days in service but continuity of service was rejected. The employee Mohan Pawar, therefore, challenged it by filing O.A.No.509/2013. The Tribunal Bench at Aurangabad on the basis of same G.R. dated 21.01.1980 condoned the break of 342 days and directed Respondents therein to count it for pension benefits only. This decision was referred by the Applicant while claiming condonation of break in service, but by impugned order dated 27.09.2018, the Respondent tried to differentiate the said decision stating that in that case, break in service was only 342 days, but in the present case, it is near about 2 years, and therefore, it cannot be condoned. In fact, break

in service is 1 year, 4 months and 28 days and not two years. Secondly, there is no capping on the interruption period in G.R. dated 21.01.1980. This being the factual position, the grounds mentioned in the impugned order for rejecting the claim of Applicant are not at all sustainable in law. Therefore, Applicant being similarly situated person, he cannot be deprived of the same benefit, otherwise it would be amounting to discrimination which is violative Article 14 of the Constitution of India. In this behalf, reference may be made to the decision of Hon'ble Supreme Court in **2015(1) SCC 347 (State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava**, wherein it has been held as under :-

“Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”

17. The Respondents in Affidavit-in-reply referred to Circular dated 03.11.2008 issued by General Administration Department about clarification of certain issues raised by the Department in the matter of grant of pensionary benefits to Government servants. In this Circular, it is stated in reference to Rule 48 of 'Pension Rules of 1982' that retiral benefits can be paid where interruption in service is condoned in terms of Rule 48 of 'Pension Rules of 1982'. True, as per Rule 48(1)(c), interruption period should not exceed one year. Here material to note that prior to 'Pension Rules of 1982', the issue was governed by Bombay Civil Services Rules, 1959 comprising all service matters, but later Government of Maharashtra published Rules separately subject-wise in 1982. Here important to note that Rules 250 Note-2 of Bombay Service Rules, 1959 was corresponding to Rule 48 of 'Pension Rules of 1982'. In

Note-2 below Note 250 of Bombay Civil Services Rules, there was same provision that interruption should not exceed beyond one year. As such, despite this provision that interruption should not exceed one year, the Government by G.R. dated 21.01.1980 has taken policy decision that in the matter of PAP, their initial temporary service should be counted for pension purposes. As stated above, there was no such capping or constraint about duration of interruption period. In other words, where knowing the provisions of Bombay Civil Services Rules, the Government has issued G.R. dated 21.01.1980 for the benefit of PAP, the provision in Bombay Civil Service Rules or as reproduced in 'Pension Rules of 1982' will not come in the way of Applicant to count his previous temporary service for pension purpose.

18. One more important aspect to be noted is that G.R. dated 21.01.1980 does not stipulate that second appointment should be from PAP category. All that, it states that where PAP got fresh appointment in Government service, his temporary service has to be counted and the service has to be treated as continuous one.

19. The totality of aforesaid discussion leads me to sum-up that the impugned communication dated 27.09.2018 is unsustainable in law and Applicant is entitled to count his previous service by condoning interruption in service only for purpose of pensionary benefits. Hence, the order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned communication dated 27.09.2018 is quashed and set aside.
- (C) The Respondents are directed to count initial temporary service of the Applicant by condoning interruption in service only for purpose of pension.

(D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 02.02.2022

Dictation taken by :

S.K. Wamanse.

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