

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.549 OF 2017

[Subject : Regularisation (Denial of service benefits of Permanent Government service)]

DISTRICT : PUNE

Shri Arjun Nana Raut,)
Age : 59 years, Occ. Nil,)
(Retd. As Aval Karkun SGY),)
Daund Tahashil Office,)
Taluka : Daund, District : Pune.)
AND)
R/at. Vinayaka Apartment F.No.07,)
Whil Colony, T.C. Collage Road,)
Baramati, Taluka : Baramati, District : Pune.) **..Applicant**

Versus

1. The Sub Divisional Officer,)
Baramati Sub Division,)
Baramati, District : Pune.)

2. The District Collector,)
Pune, Having office at Pune.)

3. The State of Maharashtra,)
Through Principal Secretary (Revenue),)
Revenue and Forest Department,)
Having office at Mantralaya,)
Mumbai 400 032.)

4. The State of Maharashtra,)
Through General Administration Department,)
Having office at Mantralaya, Mumbai 400 032.) **..Respondents**

Shri B.S. Shinde, the learned Advocate for the Applicant.

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

CORAM : Justice Shri A.H. Joshi, Chairman

RESERVED ON : 10.01.2018

PRONOUNCED ON : 18.01.2018.

J U D G M E N T

1. Heard Shri B.S. Shinde, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

2. In this Original Application notice for final disposal was issued on 30.04.2017. The Respondents are served. The case was adjourned from time to time for filing reply. Since reply was not filed this Tribunal passed order of 14.09.2017, relevant part of which reads as follows :-

“The request of the learned P.O. to grant further time to file Affidavit-in-Rely is rejected because the last chance was already given. It is however made clear that if the Affidavit-in-Reply is tendered just before the matter is heard on the next date, it will be taken on record but no adjournment shall be given for Reply.

The Original Application is admitted and appointed for final hearing on 11.10.2017.”
(Quoted from order dated 14.09.2017.)

3. Thereafter, the case came on board on four occasions i.e. 11.10.2017, 02.11.2017, 30.11.2017 and 12.12.2017, however reply has not been filed. Hence, case is taken up for final hearing.

4. Learned P.O. for the Respondents has tendered para-wise remarks which are received from the Respondent No.1. It is taken on record.

5. Applicant claims judgment in his favour in view of the judgment of this Tribunal in O.A.No.242 of 2015, Shri V.D. Kulkarni & 11 Ors. Versus The Sub Divisional Officer & 3 Ors. dated 18.07.2016 (as confirmed by Hon’ble High Court in Writ Petition No.14199 of 2016, The State of Maharashtra & Ors. Versus Shri V.D. Kulkarni & Ors. decided on 06.01.2017).

6. Points of facts as well as of law involved in present O.A. are the same as were involved in Writ Petition No.14199 of 2016. All those are narrated in the judgment of Hon'ble High Court and are referred to in foregoing paragraph 2 of the judgment of Hon'ble High Court. Those are as follows :-

"2] It is not controverted that the Original Applicants were inducted in employment as Talathis during 1983 and 1985 on the basis of orders of appointment issued by the Sub-Divisional Officer. They have been continued in employment for more than 10 years. It is also not a matter of dispute that Original Applicants do fulfill qualification requirements and have been inducted in employment to fill-in the regular vacancies. The Original Application tendered by the Applicants has been opposed by the State Government only on the ground that their induction in employment is not in accordance with service regulations and that the Sub-Division Officer is not an appointing authority qua the post of Talathi and, as such, in view of the judgment of the Supreme Court in *State of Karnataka vs. Umadevi (3)*¹, Original Applicants are not entitled to claim regularization in the employment. It has been pointed out that out of eleven Original Applicants, one had already passed away and three were permitted to retire on attaining the age of superannuation. It has also been brought to our notice that some of the employees inducted in employment alongwith Original Applicants were awarded promotion to the post of Circle Inspector. It does appear that the State Government all the while during the span of last 25 years treated the Original Applicants and other such employees inducted in employment alongwith the Original Applicants as regular employees."

(Quoted relevant portion of paragraph 2 in Writ Petition No.14199/ 2016.)

7. The judgment of Hon'ble Supreme Court in case of **State of Karnataka & Ors. vs M.L. Kesari & Ors. (2010) 9 SCC 247**, was relied on by this Tribunal while deciding O.A.No.242 of 2015 as well as by Hon'ble High Court while deciding Writ Petition No.14199 of 2016.

8. Facts of present application are concurrent to facts in O.A.No.242 of 2015. Applicant's name is seen at serial No.1 in the order of selection and appointment which is a common list covering the Applicants in O.A.No.242 of 2015. Copy of said order is at page 28 of paper book of O.A.. Applicant's name appears at serial No.4 in document at page 33 of the paper book of O.A.. Both these documents are common in present O.A. and also in decided O.A.No.242 of 2015.

9. Question of facts and law involved in present O.A. and those in O.A.No.242 of 2015 are one and the same. Therefore in view of the principal of *res-judicata*, Applicant's case has to be lead to the same result as in O.A.No.242 of 2015.

10. In the result present O.A. deserves to be allowed in terms of prayer clause (a) and (b) of paragraphs, which reads as follows :

- “a) By a suitable order, this Hon’ble Tribunal may be pleased to direct the Respondents to treat the Petitioner as regular / permanent Government servants from their respective initial date of appointments as mentioned in the **EXHIBIT – C** to the O.A. in the post of Talathi (Petitioner Project Affected Persons category) and accordingly the Petitioner be granted all the consequential service benefits including that of the time bound promotion and Assured Career Progression Scheme and / or regular functional promotion, superannuation Pension and post Pension benefits.
- b) By a suitable order, this Hon’ble Tribunal may be pleased to direct the Respondent No.3 to treat Petitioner as regular/ permanent servant and as such be granted the regularization from the initial date of the appointment as per the order dated 18/07/2016 passed by this Hon’ble Tribunal in O.A.No.242 of 2015 and Government Resolution dated 30/05/2017 with all consequential service benefits;”

(Quoted from prayer clause (a) and (b) from page 21 and 22 of paper book of O.A..)

11. Hence following order is passed :-

- (A) Original Application is allowed in terms of prayers quoted in foregoing paragraphs.
- (B) Applicant shall be entitled to all consequential and consequent of fixation of pay upon grant of Assured Career Progression Scheme etc. which be done within the period of three months from the date of receipt of order of this Tribunal.
- (C) Arrears of Pay and allowances as be calculate consequent upon this order be done as expeditiously as possible.
- (D) Until completion of all actions and steps, provisional pension be paid to the Applicant and it shall be continued till completion of all other steps of ascertaining pensionable pay of the Applicant, after giving him Assured Career Progression benefit as admissible in law.
- (E) Parties are directed to bear own costs.

Sd/-
(A.H. Joshi, J.)
Chairman
18.01.2018