

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.231/2021 (S.B.)

Dr. Murlidhar Prabhakarrao Wadekar,
aged 46 years, Occu.-Service,
R/o "Suprabha", Vidyut Nagar,
V.M.V road, Amravati.

Applicant.

Versus

1) State of Maharashtra,
through its Secretary,
Department of Higher and Technical Education,
Mantralaya, Mumbai-32.

2) Director of Higher Education,
State of Maharashtra, Central Building, Pune-1.

3) Director,
Government Vidarbha Institute of Science and Humanities,
Katora Naka, Amravati.

Respondents

Shri R.V.Shiralkar, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 29th November, 2024.

JUDGMENT

Judgment is reserved on 14th November, 2024.

Judgment is pronounced on 29th November, 2024.

Heard Shri R.V.Shiralkar, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the respondents.

2. Undisputed facts are as follows. The applicant possessed M.Sc., NET, SET and Ph.D. qualification required for appointment as Lecturer in Chemistry. He underwent regular selection procedure and by order dated 01.08.2001 (Annexure A-1) issued by respondent no.2 he was appointed as senior Lecturer in Chemistry on ad-hoc basis at Vidarbha Mahavidyalaya, Amravati which is a Government College and which receives grants from the State. The appointment was subject to availability of suitable candidate to be selected by M.P.S.C.. The applicant worked from 01.08.2001 to 30.04.2002 and also in ensuing summer vacation. He received fresh appointment order dated 18.06.2002 (Annexure A-2) pursuant to which he worked till 30.04.2003. He then worked during the ensuing summer vacation on same terms and conditions. Then he received fresh appointment order dated 17.06.2003 (Annexure A-3). In a batch of Original Applications which included O.A.No.212/2004 filed by the applicant, Principal Bench of this Tribunal

passed interim order dated 26.02.2004 (Annexure A-4) directing *inter alia* as follows-

1) *The applicants not to be replaced by appointing some other ad-hoc Lecturer. The applicants to be continued till duly selected candidate from MPSC becomes available and their continuation shall be subject to their satisfactory performance.*

By virtue of order dated 26.02.2004 the applicant continued to work till 04.09.2010. He had applied for the post of Lecturer in Chemistry in Government Engineering College, Amravati. He was selected and recommended by M.P.S.C. and he received appointment order dated 06.08.2010 (Annexure A-5). He worked on this post till 30.12.2011. He had applied for the post of Associate Professor in Chemistry which was advertised by M.P.S.C. He was selected and recommended for the post and was appointed to the post by order dated 29.12.2011 (Annexure A-6) in Government Vidarbha Institute of Science and Humanities. He is working on the said post since then.

3. The applicant has prayed as under-

A. *Hold and declare that the applicant is entitled for protection of pay by counting his earlier service from 1.8.2001 to 30.12.2011 and revision of his salary.*

B. *Direct the respondents to revise the salary of the applicant by granting pay protection and further direct the respondents to count his earlier service from 1.8.2001 to 30.12.2011 for the purpose of pension and pensionary benefits.*

C. by a suitable order or direction, respondents the State of Maharashtra and others be directed to hold that the applicant to be entitled for old pension scheme as per the provisions of the Maharashtra Civil Services (Pension) Rules 1982 as well as General Provident Fund scheme with a further direction to count the qualifying service for pensionary and retirement benefits with effect from 1.8.2001 as a continuous service.

In support of these prayers the applicant has raised the following contentions-

Undisputedly, Vidarbha Mahavidyalaya, Amravati and Govt. Engineering College, Amravati are 100% grant in aid colleges recognized by the state.

The appointment was made after selection by the duly constituted statutory selection committee as per law.

There was no break in service as the applicant was asked to work in summer vacation and was paid salary for that period. Entry of the same has been taken in service book. A Copy of service book showing entry of working in summer vacation and payment of salary is annexed and marked as ANNEXURE-A-8.

Hence the entitlement of the applicant for fixation of pay, old regular pension scheme and G.P.F. scheme stands confirmed in view of specific directions issued by the State Government in terms of circular dated 12.01.2007 and G.R. dated 01.12.2008. The copies of the circulars dated 12.1.2007 and 1.12.2008 are annexed collectively and marked as ANNEXURE-A-9.

The applicant respectfully submits that there is clear statutory provision of Rule 11(2) of the Pay Rules 1981 and clear directions issued vide circular dated 12.01.2007 and G.R. dated 01.12.2008 which the respondents are under obligation to follow but till date nothing is done.

4. Stand of respondents 1 and 2 is as follows-

In the order dated 29.12.2011 it is clearly mentioned by terms condition No. 11 that the Candidate who will fulfill the terms and conditions in Government circular dt. 12.01.2007, Pension and Provident Fund Scheme will be applicable to him. The Candidate who does not fulfill the terms and conditions, new Defined Contribution Pension Scheme (DCPS) will be applicable to him. The Applicant does not fulfill the terms and conditions in Government circular dt. 12.01.2007, the new Defined Contribution Pension Scheme (DCPS) will be applicable hence to the Applicant. A copy of said order dated 29.12.2011 is annexed as ANNEXURE NO. R-4.

The ad-hoc appointment orders of the applicant in between the period 2001 to 17.06.2003 were purely on temporary and stop gap arrangement and after 2003 the ad-hoc services were continued till the selected candidate was made available through the MPSC by virtue of order passed by Hon'ble Tribunal. The ad-hoc orders were subject to conditions specifying that the applicant will not claim any right over the post such as continuation and any other benefits. Ad- hoc service is not counted as the MPSC selected candidate service for the purpose of continuity and other benefits including old pension and other service benefits.

Ad-hoc/Contractual Lecturers had filed the original applications in the Hon'ble Tribunal regarding regularization of their ad-hoc/contractual services. The Hon'ble Tribunal has decided those original applications and passed an order to regularize the ad-hoc/contractual services of the applicants therein. The Government of Maharashtra has challenged these orders by filing Writ Petitions bearing Nos. 8708/2015, 8270/2015, 10075/2018 and 10502/2019 in the Hon'ble High Court and these writ petitions are sub judice in the Hon'ble High Court. The subject matter of representations dated 20.04.2017 and dated 21.08.2018 of applicant is similar to the sub judice writ petitions.

General Administration Department, Government of Maharashtra has communicated Hon'ble Supreme Court decision on regularization of ad-hoc/contractual services of employees vide Government circular dated 25.08.2005 and directed that Department should not regularize ad-hoc/contractual services and should not absorb ad-hoc/contractual employee in the Government service. A copy of said circular dated 25.08.2005 is annexed herewith and marked as ANNEXURE NO. R-7

The service conditions of selected lecturers through MPSC are different and their services are governed by separate set of rules framed by government. The selection of lecturers on ad-hoc basis is different. They are engaged on fixed remuneration for a fixed period on purely temporary basis. Hence they are not entitled to claim the experience/service on par with regularly selected lecturers through MPSC.

Recently the Hon'ble High Court Bench at Aurangabad has dismissed the writ petitions No.4546/2016, 6661/2017 and others on 20.09.2022 regarding regularization of service and the Hon'ble High Court Bench at Nagpur has dismissed the writ petitions No.1609/2020, 1592/2020 and others on 13.10.2022 regarding regularization of service. The copies of the orders dated 20.09.2022 and 13.10.2022 are annexed herewith and marked as ANNEXURE NO.R-8 colly. In view of these decisions the applicant is not entitled to count past service rendered by him as ad-hoc employee.

The applicant has relied on order of his initial appointment dated 01.08.2001 (Annexure A-1) which states –

संबंधीतांची नियुक्ती ही प्रचलीत सेवाप्रवेश नियमानूसार करण्यात येत आहे.

The applicant has further relied on order of his appointment through M.P.S.C. dated 06.08.2010 (Annexure A-5) which *inter alia* states –

८) उपरोक्त उमेदवारांचे वेतन महाराष्ट्र नागरी सेवा (वेतन) नियम १९८१ मधील तरतुदीनुसार निश्चित करण्यात यावे.

5. The applicant has also relied on order of his appointment dated 29.12.2011 (Annexure A-6) made as per recommendation of M.P.S.C. which *inter alia* states-

९. उपरोक्त उमेदवारांचे वेतन महाराष्ट्र नागरी सेवा (वेतन) नियम, १९८१ मधील तरतुदीनुसार निश्चित करण्यात येईल.

6. The applicant has also relied on the Judgment of this Tribunal dated 14.02.2017 (Annexure A-7) in O.A.No.34/2016 in the case of **Rajesaheb Dasrao Morodkar Vs. the State of Maharashtra and 4 Others.** In this case the Tribunal *inter alia* relied on the following observations made by the Hon'ble Bombay High Court in Writ Petition No.9051/2013 **(State of Maharashtra Vs. Smt.Meena A.Kuvalekar)** –

- (i) "The appointments, though styled as 'temporary's were made to permanent, clear, substantive and sanctioned vacancies;
- (ii) The names of the respondents-employees were sponsored by respective Employment Exchanges or other authorised agencies;
- (iii) The selection process was fair, transparent and above board.
- (v) The respondents-employees fulfilled the qualifications prescribed in the recruitment rules as applicable'

(v) *From the date of initial appointments, the respondents-employees were placed in the regular pay scale applicable to the posts to which they came to be appointed.*

(vi) *The services of the respondents-employees, from the date of their initial appointments, have been taken into consideration for various service benefits, including Increments, leave, transfer, opening of GPF account, opening of service book and pension etc.;*

(vii) *The services of the respondents-employees, from the date of their initial appointments, however, do not appear to have been taken into consideration for purposes of seniority or functional promotion;*

(viii) *It is not even the case of the State Government that the appointment of the respondents-employees were on daily wage basis or on work charged basis.*

7. The respondents on the other hand, have relied on a Common Judgment of the Hon'ble Bombay High Court dated 13.10.2022 in a batch of Writ Petitions. The opening para of this Judgment reads as under-

In this batch of writ petitions a challenge has been raised to the direction issued by the Maharashtra Administrative Tribunal, Nagpur (for short, the Tribunal) to regularise the services of 25 Lecturers in various colleges in the faculty of Arts that are administered by the State Government as well as to confer permanency to them. It has been further directed that the said Lecturers would be entitled for regular salary from 01.10.2019 but would not be entitled to claim any monetary benefits for the services rendered by them earlier. The benefit of continuity in service has been granted for all other purposes. Consequentially the process of recruitment initiated by the State Government through the

Maharashtra Public Service Commission (MPSC) has been quashed to the extent of the posts held by the aforesaid Lecturers.

8. The respondents have also relied on a Common Judgment of the Bombay High Court dated 20.09.2022 in a batch of Writ Petitions opening para of which reads as under-

By present petitions, petitioners seek regularization of their services and all benefits of permanency including deemed date with effect from 01 April 2016. The petitioners also seek directions for payment in the pay scales prescribed by the University Grant Commission (for short "U.G.C."). They are working as lecturers in various departments/subjects in Shri Guru Govind Singhji Institution of Engineering and Technology. Nanded and had rendered about 3/5 years of service on the date of filing of the petitions.

Both these Judgments are clearly distinguishable on facts.

9. So far as Judgment of this Bench in O.A.No.34/2016 dated 14.02.2017 is concerned, the applicant has pleaded in his rejoinder –

It is submitted that one Shri. Rajesaheb Dasrao Marodkar had filed O.A.no. 34/2016 in this Hon'ble Tribunal for pay fixation and seeking all benefits. The Hon'ble tribunal was pleased to allow the Original Application vide order dated 14.02.2017 and held that the applicant therein i.e. Shri. Marodkar was entitled for the continuity in service, pension and pensionary benefits. It is submitted that the respondents have challenged this order before the Hon'ble High Court by writ petition No.5127/2017. It is submitted that Hon'ble High Court on 24.02.2018 has passed following order in the W.P.No.5127/2017 "We Stay the order of the tribunal only to the extent that it directs the petitioners to pay the arrears of difference of salary to the respondent

in terms of pay fixation during the pendency of the writ petition." It is submitted that the applicant is similarly situated as Shri. Marodkar and therefore the applicant is also entitled for the pay fixation and old pension scheme and its benefits. A copy of the order dated 24.2.2018 passed by the Hon'ble High Court in W.P.No.5127/2017 is annexed here and marked as ANNEXURE-A-11.

The applicant has further reiterated –

9. *It is submitted that the Selection Committee of MPSC recommends the lecturer and Selection Committee constituted by government recommend lecturer on ad-hoc basis. MPSC followed the rules and regulation of government for recruitment of lecturer. Both MPSC recommend or on ad-hoc basis lecturer recruited through government rules and regulation. The ad-hoc basis lecturer appointed on regular pay scale (8000-275-13500 as per fifth pay, 15600-39100, AGP 6000 as per sixth pay) for academic session and thereafter petitioner continued till duly selected candidate become available from MPSC. Therefore, applicant is entitled to get all service benefit.*

10. *It is submitted that the Applicant is regular employee working as associate professor recommended by MPSC since 29.12.2011. The applicant has claimed that his past service rendered as ad-hoc employee should be counted for the purpose of service benefit including condonation of break in service, pay fixation, yearly increment and old pension scheme (existing at the time of first appointment) without monetary benefit not for regularization of services of past ad- hoc service. It is further submitted that recently the Judgement passed by Hon'ble High Court Nagpur bench in Writ Petition 5273/2017 dated 03.07.2019 and based on this judgement all benefit to the contractual employee is given vide Government order dated 09.12.2021 in which break of 23 months 19 days in contractual services has been condoned and given benefit to the petitioner. A Copy*

of the judgement dated 9.12.2021 passed in Writ Petition No.5273/2017 is annexed here and marked as ANNEXURE-A-12.

10. The applicant has also relied on the Judgment of Principal Bench of this Tribunal dated 06.03.2020 in O.A.No.43/2018 (Annexure A-13) wherein it was held-

In view of above, I have no hesitation to sum-up that the Applicant's employment from 24.08.2002 to 10.09.2007 deserves to be treated as ad-hoc employment worth to consider for grant of benefit of ACPS and the technical break of Summer Vacation in between appointment order deserves to be condoned for the benefit of continuity of service except consequential monetary benefits in the form of payment of increment and pay fixation in the said period. Similarly, he is entitled for old pension scheme i.e. Maharashtra Civil Services (Pension) Rules, 1982 on par with Dr. Vishakha Saoji & 4 others. The O.A, therefore, deserves to be allowed partly.

11. The applicant has further relied on G.Rs. dated 23.11.2016 and 15.12.2020 relevant portions of which read as under-

शासन निर्णय -

महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवार श्री. किरण गंगाधर धांडोरे यांची ग्रंथालय संचालक, महाराष्ट्र शासन, ग्रंथालय सेवा गट अ या पदावर दि.०७/०७/२०१५ (म.पू.) पासून नियुक्ती करण्यात आली आहे. नियुक्तीपूर्वी श्री. किरण गंगाधर धांडोरे हे आर. पी. गोगटे कला य विज्ञान आणि आर. व्ही. जोगळेकर वाणिज्य महाविद्यालय, रत्नागिरी येथे दि.०५ सप्टेंबर, १९९७ पासून ग्रंथपाल म्हणून कार्यरत होते. त्यांच्या महाविद्यालयीन सेवेस शासन सेवेतील ग्रंथालय संचालक, महाराष्ट्र राज्य, मुंबई या पदाची दि.०७/०७/२०१५ (म.पू.) पासूनची शासकीय सेवा त्यांच्या सेवानिवृत्ती वेतनासाठी जोडून देण्यात येत आहे.

शासन निर्णय -

श्री. म.वि. मुंडे, यांची एल. एस. रहेजा स्कूल ऑफ आर्ट, वांद्रे, मुंबई या अशासकीय अनुदानित कला संस्थेतील, सहायक अधिव्याख्याता या पदावरील दि. ५ सप्टेंबर, १९९४ ते दि.५ नोव्हेंबर, २००१ या कालावधीतील सेवा, निवृत्तिवेतनार्ह सेवा म्हणून हिशोबात घेण्यास शासन मंजूरी देत आहे.

12. A conjoint consideration of facts of the case and Judgments relied upon by the applicant leads to the conclusion that the O.A. deserves to be allowed in terms of prayer Clauses A, B and C. It is accordingly allowed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 29/11/2024

rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 29/11/2024.

and pronounced on

Uploaded on : 29/11/2024.