

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8468 OF 2015

- 1) The State of Maharashtra
Through its Secretary,
Revenue & forest Department,
Mantralaya, Mumbai-32.
- 2) The State of Maharashtra,
Through : The Secretary,
Public Works Department,
Mantralaya, Mumbai - 32
- 3) The Chief Conservator of Forest,
Dhule Division, Dhule
- 4) The Divisional Forest Officer,
Dhule, Dist. Dhule.
- 5) The Executive Engineer,
P.W.D., Dhule.
- 6) The Sub Divisional Engineer,
P.W.D. Sakari, Tq. Sakri,
District Dhule.
- 7) The Accountant General (PM)
Principal Accountant General (A&E)-I
101, Maharshi Karve Marg,
Mumbai - 400 020.
- 8) The Accountant General
Civil Lines, Nagpur,
Dist. Nagpur.

- PETITIONERS

VERSUS

- . Uttam s/o Narayan Vendait
Age: 60 Yrs., occu. Retired
R/o Adarsh Nagar, Plot No.128
Sakri, Tq. Sakri, Dist.Dhule.

- RESPONDENT

Mr.Umakant Patil, Special Counsel with Mr.S.R.Yadav
Lonikar, AGP for Petitioners;
Mr.P.M.Shinde, Advocate for Respondent / Sole.

CORAM : S.S.SHINDE &
P.R.BORA, JJ.

DATE OF RESERVING JUDGMENT :19th Novembmer,2015.
DATE OF PRONOUNCING JUDGMENT:16th December,2015.

JUDGMENT (PER:-P.R.BORA,J.)

- 1) Heard learned Counsel for parties.
- 2) Order dated 18.2.2015 passed by Maharashtra Administrative Tribunal, Bench at Aurangabad, (for short, the Tribunal) is questioned by the State in the present petition. The respondent herein had filed the aforesaid Original Application seeking pensionary benefits by considering him to be in the employment w.e.f. 10.11.1982 till his date of superannuation on 30.5.2013.
- 3) The material on record reveal that the respondent was initially appointed as Muster Assistant in Public Works Department in the office of Sub-Divisional Engineer SGH (PWD) Sakri, District Dhule in the year 1982. He was terminated w.e.f. 31.7.1988 vide order passed by the Sub-Divisional Engineer, PWD, Sakri District Dhule on 28.7.1988.

Challenging the aforesaid order of termination, the respondent had filed Complaint (ULP) No.47/1989 in the Labour court at Dhule. The Complaint so filed by the respondent was allowed by the Labour court, vide judgment dated 26.8.1991 and accordingly, he was directed to be reinstated with continuity in service by giving benefit of continuity. The respondent worked as Muster Assistant till 30.09.2003 and thereafter was absorbed on the post of Forest Guard and he worked on the said post till the date of attaining the age of superannuation on 31.5.2013.

4) After his retirement, the proposal of the respondent was forwarded to the Accountant General at Mumbai for grant of pension and pensionary benefits. However, the request for pension came to be refused by the office of Accountant General, Mumbai on the ground that the period of service rendered by the respondent on the post of Forest Guard is less than ten years and as such, the respondent did not qualify the period of service for grant of pension. On receiving such decision from the office of Accountant General, the respondent filed the aforesaid Original Application before the Tribunal with the prayers as

mentioned herein before.

5) It was the contention of the respondent before the Tribunal that the period of service rendered by him as Muster Assistant deserves to be considered in continuity of the period of services rendered by him as Forest Guard and if it is so considered, he becomes entitled to be awarded the pension and pensionary benefits. The Original Application so filed by the respondent was opposed by the State. It was the contention of the State before the Tribunal that the services rendered by the petitioner on the post of Muster Assistant cannot be counted for the purpose of pension as the services rendered were on ad hoc basis as casual worker. It was also contended by the State that in view of Circular dated 1st December, 1995, the persons working as Muster Assistants were not to be considered as State employees. It was also contended that in view of Government Resolution dated 21.4.1999, the State Government had adopted a stand that the service conditions applicable to the Government employees would not be applicable to the Muster Assistants, who are absorbed in regular services. The

objections/contentions raised by the State were rejected by the Tribunal. The Tribunal held that the period of service rendered by the employee will have to be computed for the purpose of pension in addition to the period of service rendered by him on the post of Forest Guard. The Tribunal, therefore, directed the State to consider the case of the respondent for grant of pensionary benefits as may be admissible under the Rules. Being aggrieved by the said order the State is before this Court.

6) Shri Umakant Patil, learned Special Counsel appearing for the State assailed the judgment of the Tribunal on various grounds. Learned Counsel submitted that the Tribunal has grossly erred in holding the respondent to be a permanent employee on the basis of the order passed by the Labour court, Dhule in Complaint (ULP) No. 47/1989. Learned Special counsel further submitted that the Tribunal has wrongly relied upon the judgment of the Division Bench of this Court in the case of Ramchandra Kondiba Mahajan Vs. State of Maharashtra and ors. In Writ Petition No. 2946/1997. Learned Counsel submitted that in the case of Ramchandra Mahajan, the

Industrial Court had granted benefit of permanency in favour of the said petitioner and that was the reason that the Division Bench of this court held the said employee to be entitled for grant of pensionary benefits, holding the said employee to be in continuous employment of the State Government, even for the period, which he rendered on the post of Muster Assistant before his absorption in the services of the State Government. The learned Counsel further submitted that till date of appointment of the respondent, on the post of Forest Guard w.e.f. 21.11.2003, the respondent was a casual worker working on the post of Muster Assistant and since the Muster Assistants were not held to be the Government employees at any point of time, the period of service rendered by the respondent on the post of Muster Assistant, in any case, cannot be counted for the purpose of pension. Learned Counsel, therefore, prayed for setting aside the order of the Tribunal.

7) Shri P.M.Shinde, learned Counsel appearing for the respondent opposed the submissions advanced by learned Special Counsel appearing for the State. Learned Counsel supported the judgment of the

Tribunal. Learned Counsel submitted that the ratio laid down in the Judgment of Ramchandra Kondiba squarely applies to the case of the respondent. Learned Counsel submitted that pay scale was made applicable to the respondent on the post of Muster Assistant and regular increments were also granted to him. Learned Counsel submitted that the judgment of the Labour court at Dhule in Complaint (ULP) No. 47/1989 has not been challenged by the State and has thus attained finality. Learned Counsel submitted that vide the said judgment, the State was directed to reinstate the complainant with continuity of service by giving benefit of continuity. Learned Counsel submitted that merely because there is no specific order in favour of the petitioner for granting status of permanency and the benefits therefor, no such conclusion can be drawn that the period of services rendered by him on the post of Muster Assistant cannot be computed for the purpose of grant of pension.

8) After having heard the learned Counsel for the respective parties and after having gone through the impugned judgment and the documents filed on

record, we do not find that the Tribunal has committed any error in allowing the Original Application filed by the present respondent, thereby directing the State instrumentalities to hold the respondent employee as a permanent employee with effect from his entry in the service as Muster Assistant till the date of his superannuation i.e. 31.05.2013.

9) It is not in dispute that the petitioner entered into the services of the Public Works Department on 10.11.1982 as Muster Assistant. There is further no dispute that, the services of the respondent employee were terminated with effect from 31.07.1988, whereupon he filed the complaint ULP No.47/1989 before the Labour Court, Dhule, which came to be allowed and he was directed to be reinstated with continuity in service by giving the benefit of continuity in service. The order passed by the Labour Court was admittedly not challenged in any higher Court and was acted upon. There is further no dispute that, the respondent employee was absorbed on the post of Forest Guard with effect from 21.11.2003 and got retired from the said post on attaining the

age of superannuation on 31.05.2013.

10) As is revealing from the record, the respondent employee has been refused the benefit of pension on the ground that, he has not completed the qualifying service of ten years as a State Government employee on the post of Forest Guard. Thus, the services rendered by him as Muster Assistant have not been considered while computing his service period. Before the Tribunal, it was the specific case put forth by the respondent employee that, in view of the judgment rendered in the case of **Ramchandra Kondiba Mahajan Vs. State of Maharashtra and others**, the period of service rendered by him on the post of Muster Assistant was liable to be counted in addition to the period of services rendered by him on the post of Forest Guard, and if so done, he was entitled for benefit of pension. As has been mentioned earlier, the Tribunal accepted the contention of the respondent employee and allowed his application.

11) It has been argued by the learned Special Counsel for the State, that the ratio laid down in the case of **Ramchandra Kondiba Mahajan**, could not have been applied by the Tribunal to the case of the

respondent employee, since he was never treated as a permanent employee while he was working as a Muster Assistant and there was no order in his favour as was there in the case of **Ramchandra Kondiba Mahajan and others**, by the Industrial Court directing the relief of permanency in favour of the said employees. The learned Special Counsel has also contended that, though the Labour court had directed to reinstate the respondent employee, there is no order in his favour granting the relief of permanency, and his case therefore cannot be equated with the employees in whose favour there was a order by the Industrial Court granting them the relief of permanency.

12) We are, however, not convinced with the argument so made. Merely because, there is no formal order in favour of the respondent employee granting him permanency on the post of Muster Assistant, no such inference can be drawn that he was an ad hoc or casual employee on the post of Muster Assistant.

13) It is the specific contention of the respondent employee that, the pay scale was made applicable to him from the date of his entering into the services of the Public Works Department as Muster

Assistant. The Petitioner has filed on record the copy of his service book. On perusal of which, it is revealed that, he was paid salary in the pay scale of 750-940 and was also been regularly paid the due annual increments, which were then admissible to the post of Muster Assistant. If the facts involved in the case of **Ramchandra Kondiba Mahajan** (cited supra) are perused, the petitioners therein were also working from 01.09.1998 on the post of Muster Assistant and were drawing salary in the pay scale of 750-940, which was then admissible to the post of Muster Assistant. The facts of the said case further reveal that, on 01/09/1998 the Chief Executive Officer of the concerned Zilla Parishad released the said Muster Assistants from the said post and were ordered to be placed to the post of Parichar in the same pay scale of 750-940 and all the said workers continued to work as Parichar and were retired from the said post after attaining the age of superannuation. In the said case also an objection was raised; whether, the period of services rendered by the said employees on the post of Muster Assistant can be counted in addition to the services rendered by them after they were regularly appointed on the

post of Parichar, and though there was no specific prayer in the said petition, the Hon'ble High Court was pleased to direct that the petitioners in the said petition be treated as permanent employees with effect from 01.10.1988 i.e. from the day they started working on the post of Muster Assistant.

14) Having regard to the facts in the aforesaid case, there remains no that, the case of the respondent employee in the present case is as similar to the case of the petitioners in the aforesaid writ petition. The only difference which was much harped upon by the learned Special Counsel for the State is that, there was an order in favour of the petitioners in the said writ petition by Industrial Court granting benefit of permanency, and in the present case, there is an order of Labour Court granting reinstatement to the respondent employee with continuity of service. We have, however, clarified herein above that, though there was no formal order of granting permanency in favour of the respondent employee, he was all the while treated as a regular employee and not as an ad hoc or casual employee and was throughout paid the wages in

the regular pay scale applicable to the post of Muster Assistant and was also granted annual increments regularly.

15) For the reasons stated above, we do not find that the learned Tribunal has committed any error in directing the State, to count the period of service of the respondent employee with effect from his entry in the service as Muster Assistant till the date of his superannuation on 31.05.2013 from the post of Forest Guard, for the purpose of extending benefit of pension to him. The writ petition is, thus, devoid of any substance and is liable to be rejected. Hence, following order:

ORDER

- . Writ petition is rejected.
- . No order as to cost.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

S.P.Rane