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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8141 OF 2022

Rajvilas Raosaheb More ...Petitioner

V/s.

The State of Maharashtra
through Dy. Secretary,
Home Department & Ors. ...Respondents

Mr. Nikhil N. Pawar for the petitioner.

Mr. B. V. Samant, AGP for the State.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: JULY 13, 2022

P.C.:

1. The petitioner takes exception to the order dated 3rd August 2015 of the Maharashtra Administrative Tribunal (hereafter 'the Tribunal', for short), whereby his original application (O.A. No. 920 of 2012) was dismissed.

2. This writ petition has been instituted on 25th April 2022, i.e., seven (7) years after the Tribunal dismissed the original application. Explanation for the delayed approach to this Court has been furnished in paragraph 10 of the writ petition. Having accepted the explanation, we proceeded to hear the parties on the merits of the petitioner's claim.

3. The petitioner was appointed on purely ad-hoc basis as a

Laboratory Assistant by the respondent no.3 on 21st December 1987. Such appointment was for a period of three (3) months. He was further appointed on ad-hoc basis for three months each with breaks of a few days in between 29th September 1989 and 17th September 1992. The petitioner admittedly was not in service from 18th September 1992 onwards. He was again given ad-hoc appointments with technical breaks for short periods. Ultimately, the service of the petitioner was regularized by an order dated 11th September 2000. He was appointed as Senior Laboratory Assistant from 18th September 2000 on probation for a period of two (2) years. Such order made it clear that the petitioner's seniority would be counted from 8th March 1999 in terms of the Government Resolution of the same date and that the breaks in service from 8th March 1999 to 10th July 2000 were condoned for seniority purposes. The petitioner finally retired on attaining the age of superannuation on 31st August 2008.

4. Claiming pensionary benefits, the petitioner approached the Tribunal. As noted above, he failed there. The Tribunal recorded a finding that the petitioner having not put in qualifying service of twenty (20) years, which is the pre-condition for entitlement to pensionary benefits, he was not entitled to any relief. According to the petitioner, the period of service rendered by him from 31st December 1987 ought to have been counted. The Tribunal did not accept such a contention and rightly so. The period of minimum qualifying service must be on a substantive basis and any service rendered on ad-hoc basis cannot be counted, unless the rules so permit. It has not been shown to us that the rules permit

considering ad-hoc service.

5. Mr. Pawar, learned advocate appearing for the petitioner has placed reliance on an order dated 18th February 2022 passed by the Supreme Court in Special Leave Petition (C) No. 1109 of 2022 (**The State of Gujarat & Ors v Talsibhai Dhanjibhai Patel**) to contend that the Supreme Court had not interfered with the order under challenge directing grant of pensionary benefits to the respondent who had retired after rendering more than thirty (30) years of service on ad-hoc basis.

6. The decision in **Talsibhai Patel** (supra) was not rendered on a civil appeal and, therefore, no law can be said to have been laid down therein which would operate as a binding precedent under Article 141 of the Constitution of India. That apart, the facts here are entirely different inasmuch as the petitioner was granted regularization of service which, he accepted without raising any demur that the period of service rendered by him from 21st December 1987 ought to be counted for the purpose of entitlement to pensionary benefits.

7. We find no reason to take a view different from the one taken by the Tribunal in the impugned order. The writ petition stands dismissed. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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