

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

WRIT PETITION NO. 3520 OF 2016

1. Shri A .K. Lad
2. Shri C.B. Kesarkar
(Since deceased through his legal heir)
- 2a. Swapnali Chandrakant Kesarkar
Age: 64, Occupation- Nil,
332b (3), Kankavali Nardave Road,
Kankavali Vishwa Bhavan Complex
(Shivaji Nagar), Kankavali, Sindhudurg,
Maharashtra – 416602.
Presently residing at,
C/o. Vivek Pandurang Masurkar,
1541, Bramhan Wadi, Oras Budruk,
Taluka- Kudal, District Sindhudurga
Maharashtra 416812
3. Shri. M.F.Kadri
4. Shri S.R.Joshi
All Godown Keepers
C/o. Shri. A.K. Lad
Tal: Post : Veral,
Dist : Sindhudurg 416608

... Petitioners

Versus

1. The Collector,
Sindhudurga District,
Sindhudurga.
2. The Commissioner (Supply)
Konkan Division,
Konkan Bhavan,
New Mumbai.

3. The Secretary,
Department of Food & Civil Supplies,
Mantralaya, Mumbai -32.
4. The State of Maharashtra,
The Respondent Nos. 2 to 4,,
To be served through the office of the
Government Pleader, Appellate Side,
High Court, Mumbai ... Respondents

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Mr.Neel G.Helekar with Mr.Akhilesh Adhav and Mr.Saurabh Oka
for the Petitioners.

Mr.N.K.Rajpurohit, AGP for the Respondent -State.

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**CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.**

DATE : 12 DECEMBER 2023

ORAL JUDGMENT : (*Nitin Jamdar, J.*)

Rule. Rule made returnable forthwith. The Respondents
waive service. Taken up for disposal.

2. The Petitioners along with two Applicants had filed Original Application No. 274 of 2014 which was disposed of by judgment and order dated 7 October 2015 passed by the Maharashtra Administrative Tribunal (the Tribunal). Two Applicants, that is, Shri B.S.Bhogale and Shri V.S.Dhuri were granted the benefits prayed for, but the relief was not granted to the Petitioners. Hence, they have filed the present Writ petition.

3. The Petitioners, along with Shri B.S.Bhogale and Shri V.S.Dhuri, filed Original Application No. 274 of 2014 seeking a direction that the Respondent –State to calculate the pensionable service of the Petitioners/Applicants from their original date of joining the services by condoning the breaks in service of the Applicants/Petitioners and for a direction to pay all the consequential benefits of regularization including the benefits of the pension scheme as applicable.

4. The Petitioners worked as seasonal godown keepers with the State Government under the Food and Civil Supplies Department since 1966. The Petitioners worked with breaks in service from time to time. On 24 January 2000, the State Government issued a Government Resolution regularizing the services of the seasonal godown keepers.

5. Writ Petition No. 3690 of 2005 (Shri Anant S.Tambde and Others V/s. The Collector, Ratnagiri District and Others) came to be filed in this Court by eight seasonal godown keepers seeking identical benefits as the Petitioners. The Division Bench by judgment and order dated 19 December 2006 allowed the Petition. The Division Bench noted that the Petitioners were regularized by way of a Government Resolution dated 24 January 2000, however, they were not granted retiral benefits. The question arose before the Court as from which date their retirement benefits should be

computed. The Division Bench relied upon Rule 30 of the Maharashtra Civil Service (Pension) Rules, 1982 and held that the entire period of service from the date of their joining would have to be counted for the purpose of computing their entitlement and quantum of pension. Accordingly, the Division Bench directed the Respondents to make payments to the Petitioners in accordance with their qualifying service within a period of six months from the date of the order.

6. The State challenged the judgment and order dated 19 December 2006 by filing a Special Leave to Appeal which was dismissed by the Hon'ble Supreme Court by order dated 3 August 2007. Another set of seasonal godown keepers approached this Court by filing a Writ Petition No. 7458 of 2010. The Division Bench allowed the Petition by order dated 19 July 2011 following the judgment and order dated 19 December 2006 passed in Writ Petition No. 3690 of 2005. The Division Bench noted that the Special Leave to Appeal filed against the judgment and order dated 19 December 2006 was dismissed.

7. When Original Application No. 274 of 2014 came up for consideration before the Tribunal, these orders passed by the Division Benches of this Court were placed before the Tribunal. The Tribunal followed the law therein, however, observed that as far as the present Petitioners are concerned, the record indicated that only

services of Shri B.S.Bhogale and Shri V.S.Dhuri were regularized, that is, Applicant No.1 and Applicant no. 5 before the Tribunal and they were nothing on record to show that the services of the present Petitioners have been regularized. Therefore the Tribunal granted relief only to Applicant No.1 and Applicant No.5 and rejected claim of the present Petitioners.

8. We have heard Mr. Neel Helekar, the learned Counsel for the Petitioners and Mr. N.K.Rajpurohit, the learned AGP for the Respondent -State.

9. The learned Counsel for the Petitioners states that the Petitioners were also regularized and there is no difference between the case of the Petitioners and the case of Applicant No.1 and Applicant No.5, that is, Shri B.S.Bhogale and Shri V.S.Dhuri. The learned Counsel contends that the service of Petitioner No.1- Shri A.K.Lad was regularized on 1 April 1995, the service of Petitioner No.2- Shri C.B.Kesarkar was regularized on 15 February 1982, the service of Petitioner No. 3- Shri M.F.Kadri was regularized on 21 October 1983 and the service of Petitioner No.4- Shri S.R.Joshi was regularized on 10 August 1981. In the reply affidavit, the dates given by the Petitioners have been accepted. The learned Counsel for the Petitioners states that though in the Original Application it was asserted that the services of all the Petitioners have been regularized, these details, which are now placed on record by way of a chart, were not placed before the Tribunal.

10. That being the position, we cannot find fault with the Tribunal in observing that no details regarding regularization of the Petitioners were placed before it. There was no reason for the Petitioners not to place this record. However, since this fact is no longer in dispute that the Petitioners' services were regularized, there is no reason why the distinction should be made between the case of the Petitioners and Applicant No.1 and Applicant No.5, that is, Shri B.S.Bhogale and Shri V.S.Dhuri.

11. In the reply, the State has sought to oppose the grant of regularization itself. However, as regards regularization is concerned, the benefit of regularization has been extended by way of a Government Resolution dated 24 January 2000. As regards computing the dates for calculation of the pensionable service are concerned, the above mentioned two decisions of the Division Benches of this Court hold the field, which is also accepted by the Tribunal while granting relief to Applicant No. 1 and Applicant No.5. As regards benefits to Applicant No.1 and Applicant No.5 are concerned, the State is not before us challenging these orders. Once it is now established on record that there is no difference between the case of the Petitioners and Applicant No.1 and Applicant No.5, there is no reason why the same benefit be not given to them.

12. Accordingly, the Writ Petition succeeds. The impugned order dated 7 October 2015 passed by the Tribunal is quashed and set

aside. The State will extend the same benefits as granted to Applicant No.1 and Applicant No.5, that is, Shri B.S.Bhogale and Shri V.S.Dhuri by the impugned order to the Petitioners as well within a period of six months from the date order is uploaded.

13. Rule is made absolute in above terms.

14. The Writ Petition is accordingly disposed of.

(MANJUSHA DESHPANDE, J.) (NITIN JAMDAR, J.)