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

WRIT PETITION NO.741 OF 2023

The State of Maharashtra & Ors. Petitioners

Vs.

Bhaskar K. Narale Respondent

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

Mr. Y. B. Lengare a/w. Ms. Snehal Avhad for the Respondents

**CORAM: S.V.GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATED : MARCH 31, 2023

P.C.

1. Heard the learned AGP for the Petitioners and the learned Counsel for the Respondent.

2. The Respondent was working as Muster Assistant on daily wages since 1981. The Respondent was dismissed. He filed Reference bearing IDA No.43 of 1994 before the Industrial Court. The Labour Court set aside the termination and directed reinstatement with continuity and back wages from 28th March 1994.

3. The Respondent approached the Maharashtra Administrative Tribunal (for short "the Tribunal") challenging the communication

dated 15th February 2021 issued by the Dy. Executive Engineer cancelling the retiral benefits sanctioned to him. The Tribunal allowed the Original Application and the pension order dated 10th November 2020 is restored. The State has assailed the same.

4. The learned AGP submits that the Petitioner was absorbed in the year 2019, as such, has not completed the pensionable service prior to absorption. The Tribunal has erred in considering the said aspect in proper perspective.

5. Mr.Lengare, the learned Counsel for the Respondent submits that the Respondent was granted continuity w.e.f. 28th March 1994. As such, the Tribunal has rightly set aside the order cancelling the pension to the Respondent.

6. We have considered the submissions.

7. Though continuity was granted, permanency was not granted to the Respondent. The permanency is a different aspect altogether.

8. Be that, as it may, the issue of right of the present Respondent to get the pension or treat his services as pensionable need not detain us. The apex court, in the case of ***Shaikh Miya s/o. Shaikh Chand etc Vs. State of Maharashtra in Civil Appeal No.6534 of 2022*** under its order dated 7th September 2022 held that even if the

employees are absorbed on different dates after 1997, then the notional date ought to be considered as 31st March 1997 for the purpose of pension.

9. The Respondent was Muster Assistant. In view of the Government Resolution dated 1st December 1995 a policy decision was taken by the State to absorb all the Muster Assistants and the time period laid down was two years upto 31st March 1997. The said policy was accepted by the Supreme Court, however, the State could not absorb all the Muster Assistants upto 31st March 1997 and the absorption process continued for a long time.

10. In view of the aforesaid, the apex court stepped-in and vide order dated 7th September 2022 in the case of ***Shaikh Miya (supra)*** directed the notional date of absorption should be considered as 31st March 1997 and the same shall be taken into consideration for determining the pensionable service.

11. In light of that the order of the Tribunal cannot be said to be totally erroneous, however, instead of the year 1994 the pensionable service of the Respondent shall be counted from 31st March 1997.

12. The Petitioner shall process the pension proposal of the Respondent accordingly and shall pay the benefits.

13. The said exercise shall be done within a period of two months. All the retiral benefits shall also be paid to the Petitioner within two months.

14. The Writ Petition is accordingly disposed of. No costs.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)