



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

WRIT PETITION NO.4139 OF 2021

Raosaheb s/o. Narayan Nandre,
Age : 59 years, Occ. Retirement,
r/o. At Post Sakri,
Tq. Sakri, Dist. Dhule

..Petitioner

Vs.

1. The State of Maharashtra,
Through Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai 400 032
2. The State of Maharashtra,
Through Secretary,
Public Works Department,
Mantralaya Mumbai 400 032
3. Executive Engineer,
PWD (EGS)
Dhule, Tq. And Dist. Dhule
4. The Collector,
Dhule
5. The Tahsildar,
Sakri, Dist. Dhule
6. Sub Divisional Officer,
Dhule
7. Indian Audit and Account Department,
Officer of the Accountant General,
Accounts and Entitlements-1
Pratistha Bhavan
101, Maharshi Karve Marg,
2nd Floor, Mumbai

Mr.P.M.Shinde and Mr.P.B.Jadhav, Advocates for petitioner
Ms.Kalpalata Patil - Bharaswadkar, AGP for respondent nos.1 to 6

**CORAM : R.G.AVACHAT AND
ABASAHEB D. SHINDE, JJ.
DATE : SEPTEMBER 04, 2025**

ORDER :-

Heard.

2. The petitioner was, initially, appointed as a 'Muster Assistant' on 18.10.1985. Thereafter, he joined the service as 'Talathi' on 01.12.2005. He superannuated on that post in the year 2019. He moved an application/representation to the Tahsildar for counting of his previous service as Muster Assistant. The Tahsildar, in turn, submitted a proposal dated 07.01.2019 to the Accountant General of the State. The Accountant General, in turn, vide letter dated 06.02.2019, communicated the Tahsildar with the following observations :-

"1) This office is unable to process the pension case for want of following:-

1. AS PER THE JUDGMENT DELIVERED UNDER WRIT PETITION NO.2946/1997 DTD.19.07.2012, YOU ARE REQUESTED TO OBTAIN SPECIAL CONCURRENCE FOR TREATMENT OF SERVICE RENDERED AS MUSTER ATTENDANT FOR QUALIFYING FOR PENSION FROM THE ADMINISTRATIVE DEPTT., GOVERNMENT OF MAHARASHTRA, MANTRAYALA

2. ORDERS MAY BE OBTAINED FROM REVENUE DEPARTMENT, MANTRAYALA, AND FURNISHED TO THIS OFFICE ON RECEIPT OF THE SAME FURTHER ACTION WILL BE TAKEN.

3. The petitioner, thereafter, approached this Court in Writ Petition. Since this Court found the petitioner to have an alternate remedy, he was directed to avail the same. The petitioner, thereafter, approached the Maharashtra Administration Tribunal (MAT) in Original Application (199 of 2014). The MAT, on hearing the petitioner and the respondent therein, declined him the relief prayed for. The petitioner is, therefore, before us.

4. Learned counsel for the petitioner would submit that the past service rendered by the petitioner as Muster Assistant should have been counted for the pensionary benefits and other ancillary reliefs as well. The prayers in the O.A. would indicate the petitioner to have had claimed even the time-bound promotional scale considering his service as Muster Assistant. Learned counsel for the petitioner relied on the judgment of this Court in the case of **The State of Maharashtra and others vs. Uttam s/o. Narayan Vendait (Writ Petition No.8468 of 2015 decided on 16.12.2015)**, to buttress his submissions. According to him, there was no delay in approaching the MAT. The MAT simply turned down the claim of the petitioner on the ground of delay. He submits that during pendency of the Writ Petition, the respondents started pension to the petitioner as per the order dated 07.07.2023 and in

that order, the date of appointment for pensionary benefits is considered as 1997 instead of 1985.

5. Learned AGP would submit that the petitioner joined on the post of Talathi on 01.12.2005. Considering his first appointment and that his services would not be pensionable, he availed the benefits of D.C.P.S. He submits that the petitioner would not be entitled for the pensionary benefits, that too, on the count of his previous service rendered as Muster Assistant. He, therefore, urged for dismissal of the petition.

6. We have considered the submissions advanced. The MAT refused to grant the petitioner relief, mainly on the ground of delay in approaching it. Admittedly, the petitioner retired on 31.01.2019. Within three years, he approached this Court for grant of pensionary benefits. As such, the petitioner could not be said to have approached the court of law belatedly and that too, beyond the prescribed period of limitation. Had the petitioner approached the Civil Court by filing a suit, same ought to have been filed within three years from the date of accrual of the cause of action. In our considered view, the MAT ought to have considered the petitioner's claim on merit. It could not have declined the relief on the ground of

limitation. The prayer of counting the past service period for granting actual monetary benefits may not be granted to the petitioner because he did not ask for the same immediately on joining of the service as Talathi and during the period of his continuous service. He approached the Court post retirement only. So far as counting the past service rendered as Muster Assistant is concerned, the issue is no longer res integra. This Court, vide order dated 16.12.2015 in Writ Petition No.8468 of 2015, referred to herein above, has considered the issue and observed thus:-

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.

The said findings are said to have attained finality since the S.L.P. preferred thereagainst has been dismissed in limine.

7. As such, in our opinion, since the petitioner is similarly placed, deserves to be granted the relief of counting of his past

service rendered on the post of 'Muster Assistant', only for the purpose of fixation of pension and granting connected relief. It is, however, made clear that the petitioner would not be paid any monetary benefits upto the period of three years next before filing of the Writ Petition. With these observations, the Writ Petition stands disposed of in terms of the following order:-

- (i) The Writ Petition is partly allowed.
- (ii) The service rendered by the petitioner as 'Muster Assistant' before joining the service as 'Talathi', be counted for grant of the pensionary benefits. Said service rendered by the petitioner be treated as continuous service.
- (iii) The petitioner would not be paid any monetary benefits upto the period of three years next before filing of the Writ Petition.
- (iv) This exercise shall be done within a period of eight months from the date of receipt of a copy of this order, lest the amount payable to the petitioner shall carry interest at the rate of 6% per annum, from the date it became payable to the date of actual payment.

(v) Any amount received by the petitioner under the DCPS, shall be given due set off while granting the petitioner actual monetary benefits.

[ABASAHEB D. SHINDE, J.]

[R.G. AVACHAT, J.]

KBP