

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**COMMON ORDER IN O.A. NO. 324/2021, O.A. NO. 4/2022 AND O.A.**  
**NO. 5/2022**

(1) **ORIGINAL APPLICATION NO. 324/2021**

**District : Beed**

Shri Sharad Dattatraya Kothawale, )  
Age : 39 years, Occu. Service )  
(as Law Officer), SDPO Office, )  
Kej, Dist. Beed. )  
(R/o Flat No. 5, Mohiniraj Residency, )  
Shivaji Dhande Nagar, Beed.) )

-- **Applicant**

*V E R S U S*

**1. The State of Maharashtra )**  
Through its Additional Chief )  
Secretary, Home Department, )  
M.S., Mantralaya, Mumbai - 32. )

**2. The Director General of Police,)**   
Maharashtra State, Police HQ, )  
Old Council Hall, )  
Shaheed Bhagat Singh Marg, )  
Mumbai - 01. )

**3. The Special Inspector General )**  
**of Police, Aurangabad Range, )**  
Near Baba Petrol Pump, )  
Aurangabad. )

**4. The Sub Divisional Police Officer)**   
Kej, Main Road, Kej, Dist. Beed.)

-- **Respondents**

**AND**

(2) **ORIGINAL APPLICATION NO. 04/2022**

**District : Ahmednagar and  
Beed**

(1) **Shaikh Jarjaribaksh Gafoor, )**  
Age. 42 years, Occu. Advocate )  
R/o Pimplegaon, Ujjani, )  
Tq. & Dist. Ahmednagar. )

- (2) **Aziz Gafoorbhai Maniyar,** )  
Age. 38 years, Occu. As above )  
R/o H. No. 2187, Ghulewadi, )  
Sangamner, Dist. Ahmednagar.)
- (3) **Bhagyashri Shankarrao Kunjar,**)  
Age. 35 years, Occu. As above )  
H. No. 58, Prashant Nagar, )  
Savedi, Ahmednagar. )
- (4) **Sunil Sattarsingh Walvi,** )  
Age. 39 years, Occu. As above )  
R/o at post Dhanora, )  
Tq. & Dist. Ahmednagar. )
- (5) **Sunil Laxman Zorwar,** )  
Age. 40 years, Occu. As above )  
R/o Samsherpur, Tq. Akole, )  
Dist. Ahmednagar. )
- (6) **Vaijanath Baburao Giri,** )  
Age. 39 years, Occu. As above )  
R/o Parwati Niwas, Someshwar )  
Temple, Someshwar Galli, )  
Ghatnandur, Tq. Ambajogai, )  
Dist. Beed. )

-- **Applicants***V E R S U S*

1. **The State of Maharashtra** )  
Through its Additional Chief )  
Secretary, Home Department, )  
M.S., Mantralaya, Mumbai - 32. )
2. **The Director General of Police,**)  
Maharashtra State, Police HQ, )  
Old Council Hall, )  
Shaheed Bhagat Singh Marg, )  
Mumbai - 01. )
3. **The Special Inspector General**  
**of Police,** Nashik Range, )  
Dakshata Building, )  
Gadkari Chowk, Nashik - 02. )

-- **Respondents****AND**

**(3) ORIGINAL APPLICATION NO. 05/2022****District : Aurangabad and  
Jalna**

- (1) Nitin Abasaheb Bhapkar, )**  
Age. 36 years, Occu. Advocate )  
R/o Flat No. 11, Sai Labh Apts, )  
Oppo. Benchmark, )  
Near Deshmukh School, )  
Paithan Road, Nakshtrawadi, )  
Aurangabad. )
- (2) Suresh Ankushrao Sable, )**  
Age. 35 years, Occu. As above )  
R/o Plot No. 15, New Shivrai, )  
Waluj, Tal. Gangapur, )  
Dist. Aurangabad. )
- (3) Sumitra Ramkisan Jadhav, )**  
Age. 35 years, Occu. As above )  
R/o Flat No. 3, Navkar Yas )  
Housing Society, Padegaon, )  
Police Colony, Aurangabad. )
- (4) Vandana Kaduba Jadhav, )**  
Age. 39 years, Occu. As above )  
R/o Sanjay Nagar, Galli No.C/3 )  
Smashan Maruti Road, )  
Baijipura, Aurangabad. )
- (5) Sarita Narayanrao Gajre, )**  
Age. 39 years, Occu. As above )  
R/o Yogesh Nagar, )  
Near Goldi Lawns, Ambad Road,)  
Jalna. )
- (6) Sachin Krishnarao Deshmukh )**  
Age. 35 years, Occu. As above )  
R/o Balaji Nagar, Bhokardan, )  
Dist. Jalna. )

**-- Applicants***V E R S U S*

- 1. The State of Maharashtra )**  
Through its Additional Chief )  
Secretary, Home Department, )  
M.S., Mantralaya, Mumbai - 32. )

**2. The Director General of Police,)**

Maharashtra State, Police HQ, )  
 Old Council Hall, )  
 Shaheed Bhagat Singh Marg, )  
 Mumbai – 01. )

**3. The Special Inspector General)**

**of Police**, Aurangabad Range, )  
 Near Baba Petrol Pump, )  
 Aurangabad. )

-- **Respondents**

-----  
 Appearance :- Shri Avinash S. Deshmukh, learned Counsel  
 for the applicants in all these matters.

: S/shri M.S. Mahajan & I.S. Thorat, learned  
 Chief Presenting Officer & learned Presenting  
 Officer for the respondents in respective  
 matters.

-----  
**CORAM** : **Hon'ble Justice Shri P.R. Bora, Vice Chairman**  
**AND**  
**Hon'ble Shri Bijay Kumar, Member (A)**

**DATE** : **20.7.2022**  
 -----

**ORAL ORDER**

Heard Shri Avinash S. Deshmukh, learned counsel for the  
 applicants in all these matters and Shri M.S. Mahajan & I.S. Thorat,  
 learned Chief Presenting Officer & learned Presenting Officer for the  
 respondent authorities in all these matters.

2. Since the issue involved in all these Original Applications is same and since identical relief is sought in these applications, we have heard all these applications together and deem it appropriate to decide these applications by a common reasoning.

3. At the outset it has to be stated that the facts in the present matters are not in dispute. All the applicants were given appointment on the post of Law Officer in pursuance of G.R. dated 15.9.2006. Admittedly the appointment so issued in favour of these applicants was a contractual appointment. The terms & conditions of the appointments as were issued in favour of these applicants were formulated as per G.R. dated 15.9.2006. Clause 03 of G.R. dated 21.8.2006, as well as, conditions (a), (b) & (ka) of G.R. dated 15.9.2006 are relevant for deciding the issues raised in the present applications, which read thus :-

clause 3 of G.R. dated 21.8.2006

“३. सदरहू पदे नियमित स्वरूपात न भरता रिक्त ठेवून ती करार तत्वावर शासनाद्वारे विहित करण्यात येणा-या अटी व शर्तीनुसार किंवा सेवाप्रवेश नियम तयार करून त्यामधील तरतुदीनुसार भरण्यात यावीत.”

conditions (a) (b) & (ka) of G.R. dated 15.9.2006

“(अ) सदर पदांची नेमणूक ही पूर्णतः कंत्राटी पध्दतीने असेल. या अधिकारी / कर्मचा-यांना शासकीय कर्मचारी म्हणून गणले जाणार नाही.

(ब) सदर नेमणुंका या करार पध्दतीने प्रथमतः ११ महिन्यांसाठी करण्यात याव्यात. ११ महिन्यांनंतर आवश्यक असल्यास करारनाम्याची मुदत वेळोवेळी वाढविता येईल. तथापि, अशी मुदत वाढवितांना एकावेळी ही मुदत ११ महिन्यांपेक्षा अधिक असणार नाही याची काळजी नियुक्ती प्राधिकारी घेईल. अशा प्रकारे जास्तीत जास्त ३ वेळा नियुक्ती करता येईल. त्यानंतर

अशा उमेदवाराची पुनश्च नियुक्ती करणे आवश्यक आहे असे सक्षम प्राधिका-याचे मत झाल्यास त्या उमेदवारास पुनश्च निवड प्रक्रियेत सामोरे जावे लागेल.

(क) संबंधित नियुक्ती प्राधिकारी शासनाच्यावतीने नियुक्तीचे वेळी संबंधिताबरोबर विहित प्रपत्रात करार करतील. कराराचे विहित प्रपत्र परिशिष्ट 'ब' मध्ये देण्यात आले आहे. कराराची सर्व कागदपत्रे जतन करून ठेवणे ही त्या संबंधित कार्यालयाची जबाबदारी असेल.”

4. It is not in dispute that the applicants in the present matters were given consecutive appointments, every time for the period of 11 months and after completing the said period their services were put to an end. The present applications came to be filed when the respondents decided to issue a fresh advertisement for filling in the posts. It is the common contention of all these applicants that if the fresh appointments to be made by the State were also temporary appointments on contract basis, there was no reason for the Government to discontinue the present applicants. The principle of law is canvassed that 'an ad-hoc employee cannot be replaced with another ad-hoc employee'. The applicants therefore have prayed for the following reliefs :-

*“(A) This Original Application may kindly be allowed there by directing the Respondents in general and the Resp. No. 3 in particular to continue the services of the applicant as Law Officer on contract basis till availability of regularly selected candidate.*

*(A-1) This Original Application may kindly be allowed thereby directing the respondents in general and the Resp. No. 3 in particular to give re-appointments to the applicant as Law Officers on the posts previously held by him and then to continue him on those posts till availability of regularly selected candidates.*

*(B) Costs of this Original Application may kindly be awarded to the Applicant.*

*(C) Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted."*

5. Shri Deshmukh the learned counsel appearing for the applicants submitted that some of the Law Officers appointed alike the present applicants had approached this Tribunal by filing O.A. Nos. 91 & 106 of 2010, wherein the clauses in the G.R. dated 15.9.2006 were challenged by the said applicants. This Tribunal vide its judgment dated 6.5.2010 struck down the said clauses more particularly clause 3 in the G.R. dated 21.8.2006 and conditions (a), (b) & (ka) in G.R. dated 15.9.2006. The learned counsel submitted that the aforesaid decision of the Tribunal was challenged by the Government, as well as, the applicants before the Aurangabad Bench of Hon'ble Bombay High Court. Total 05 Writ Petitions bearing Nos. 5898, 7764, 9050, 9145, 9160 all of 2010 respectively were filed and the Hon'ble High Court decided all the said Writ Petitions by a common judgment delivered on 28.3.2012. The Hon'ble High Court dismissed all the Writ Petitions filed by the State, as well as, the Law Officers. The said decision of the Hon'ble High Court was then challenged before the Hon'ble Supreme Court by the State by filing **Civil Appeal Nos. 6132-33 of 2016 (State of Maharashtra & Ors. Vs. Anita & Anr. etc.)**. The Hon'ble Supreme Court set aside the judgment & order passed by the Hon'ble Bombay High Court in the aforesaid Writ Petitions holding that the M.A.T. & High Court ought not have interfered with the policy decision taken by the Government and should not have held that the appointments of Law Officers are

permanent in nature. Copies of all these judgments are placed on record.

6. Learned counsel pointed out that after passing of the judgment by the Hon'ble Supreme Court as above, the State vide its Circular dated 9.2.2018 issued directions to all the departments of the State for incorporation of unified terms & conditions whenever contractual appointments would be issued by the concerned department. The said terms & conditions were appended to the said Circular in Appendix 'A'. The terms & conditions to be incorporated in the contract while issuing contractual appointments were also annexed with the said Circular as Appended 'B'. Learned counsel further pointed out that by another circular issued by the State on 7.3.2018 the Government stayed the instructions or guidelines issued vide its earlier circular dated 9.2.2018. The learned counsel pointed out that the State has thereafter not issued the revised terms & conditions or guidelines. It is further brought to our notice that meanwhile **W.P. No. 5831/2018 (Mahesh S/o. Suresh Mahamuni Vs. State of Maharashtra and Ors.)** was filed before the Nagpur Bench of Hon'ble Bombay High Court, wherein the issue as about review into the issue of termination of services of contractual Law Officers as mentioned in Circular dated 7.3.2018 was raised. The Nagpur Bench of Hon'ble Bombay High Court disposed of the said W.P. with a direction that review process be undertaken and completed by the State as expeditiously as possible and it was further clarified that continuation of the petitioner in the said writ petition in service on



contractual basis shall be subject to final decision to be taken in the matter by the State.

7. It has been vehemently argued by the learned counsel that the applicants had accepted the appointments of Law Officers with a great hope that they will be continued in service even thereafter i.e. after the contract period is over. It has been argued that after having put in three years' period as Law Officer the applicants find it difficult to return to the practice. It has been further argued that when the scheme of appointing Law Officers is still in existence it would be in the best interest of the Government to take benefit of experienced Law Officers like the applicants who have successfully worked with the department for 3 terms every time of 11 months. Learned counsel also sought to contend that the Government being a model employer shall rethink of its policy to continue Law Officers only for 3 terms and instead should formulate a policy which may provide employment security to the Law Officer who would opt for the said post. Learned counsel submitted that though the Government has given stay to the instructions and guidelines issued in the Circular issued by it on 9.2.2018 and has also decided to take review of the said terms & conditions, till date no such process of review has been completed. In the circumstances, according to the learned counsel, the applicants have certainly made out a case for their continuation as Law Officers at least till the policy is reviewed by the Government and a new policy comes in force. It has also argued that the Government being model

employer shall take care that no contractual appointments are made for the posts which are permanently created and which are treated to be permanent post.

8. Learned counsel pointed out that 471 posts are created and resolution by which the said posts are created cannot be interpreted to mean that the posts are created for temporary period. In the circumstances, according to learned counsel the decision of the Government to fill said posts afresh on contractual basis deserves to be reviewed by the State. The applicants have therefore prayed for their continuation on the said posts till the policy is reviewed by the State. Learned counsel pointed out that though the applicants have been relieved from their respective posts after completing the period of contract there may not be any difficulty in reappointing them on the same conditions till the policy is reviewed by the State.

9. Learned Chief Presenting Officer & learned Presenting Officer have opposed the submissions advanced on behalf of the applicants. Learned C.P.O. submitted that when the applicants accepted the appointments on the posts of Law Officers everyone of them was fully aware that he is being appointed on contractual basis and every time he will be issued appointment for 11 months for 3 consecutive terms and thereafter, fresh process of appointment would be carried out by the department. Learned C.P.O. submitted that though Hon'ble High Court in its judgment in W.P. Nos. 5898, 7764, 9050, 9145, 9160 all of 2010

has held some of the provisions in the G.R. unconstitutional, the Hon'ble Supreme Court in the judgment in Civil Appeal Nos. 6132-33 of 2016 has set aside the said judgment with the observation that the Tribunal, as well as, the High Court ought not have interfered with the policy decision taken by the Government and should not have held that the appointments of Law Officers are permanent in nature. Learned C.P.O. submitted that the issuance of Circular on 9.2.2018 and subsequent Circular dated 7.3.2018 in a sense do not have any bearing on the prayers made by the applicants in the present applications. He submitted that in none of the said Circular it has been indicated by the Government that the nature of appointment is likely to change from contractual to permanent. In the circumstances, whether or not said conditions are maintained will not have any effect on the original decision taken by the Government vide G.R. dated 15.9.2006. The learned C.P.O., in the circumstance, prayed for dismissal of these applications.

10. We have carefully considered the submissions advanced by the learned counsel appearing for the applicants in all these matters and the learned C.P.O. and P.O. appearing for the respective respondents in respective matters. It is not in dispute that the applicants were appointed as Law Officers in pursuance of G.R. dated 15.9.2006. It is further not in dispute that none of the applicant while accepting employment has raised any objection about terms & conditions incorporated in the said G.R. It is further not in dispute that as

provided in said G.R. dated 15.9.2006 each of the applicant was given consecutive 3 appointments, every time for the period of 11 months and after the period of contract was over the applicants were relieved from their respective posts. In view of the judgment of Hon'ble Supreme Court in Civil Appeal Nos. 6132-33 of 2016 and more particularly the observations made by the Hon'ble Supreme Court in paragraph nos. 13, 14 & 16 of the said judgment there has remained no doubt that G.R. dated 15.9.2006 had remained undisturbed. On the contrary, the Hon'ble Supreme Court while summing up the said judgment has recorded that the Tribunal and the High Court ought not have interfered with the policy decision taken by the State and should not have held that the appointments are permanent in nature.

11. After having considered the facts as aforesaid it does not appear to us that any case is made out by the applicants so as to accept their prayers made in the present applications. The applicants had knowingly and consciously accepted the initial appointment without raising any objection as about the terms & conditions incorporated in their appointment orders. In G.R. dated 15.9.2006 also the terms were specifically mentioned. While accepting the appointments no grievance was made against the said G.R. As such, the applicants are now estopped from raising any such objection.

12. In Civil Appeal Nos. 6132-33 of 2016 before the Hon'ble Supreme Court it was argued that clause 3 in G.R. dated 21.8.2006 and clauses

(A), (B) & (C) in G.R. dated 15.9.2006 are arbitrary and unreasonable and were rightly struck down by the Tribunal as violative of Articles 14 & 16 of Constitution of India. It was further contended that even though the appointees had entered into a contract with the Government accepting clause (3) of G.R. dated 21.8.2006 and clauses (A), (B) & (C) in G.R. dated 15.9.2006 the same will not operate as estoppels. However, the Hon'ble Supreme Court rejected the aforesaid contentions. We deem it appropriate to reproduce herein below the observations made and the conclusions recorded by the Hon'ble Supreme Court in paragraph Nos. 12 to 17 of the said judgment, which read thus: -

*"12. In the Government Resolution dated 21.08.2006 while creating 471 posts in various cadres including Legal Advisors, Law Officers and Law Instructors in clause (3) of the said Resolution, it was made clear that the posts created ought to be filled up on contractual basis. Clause (3) reads as under:-*

*The said posts instead of being filled in the regular manner should be kept vacant and should be filled on the contract basis as per the terms and conditions prescribed by the government or having prepared the Recruitment Rules should be filled as per the provisions therein.*

*13. Subsequently, the said Resolution was modified by Government Resolution dated 15.09.2006. In the said Resolution, the column specifying Pay Scale was substituted with column Combined Permissible Monthly Pay + Telephone & Travel Expenses. However, there was no change in the decision of the government on filling up the posts on contractual basis. Government Resolution dated 15.09.2006 stipulates the terms and conditions of the contractual appointments. Clauses 'A', 'B', 'C' and 'D' read as under:-*

*A) The appointment of the said posts would be completely on contractual basis. These*

*officers/employees would not be counted as government employees.*

*B) The said appointments should be made on contract basis firstly for 11 months. After 11 months the term of the agreement could be increased from time to time if necessary. Whereas, the appointing authority would take the precaution while extending the terms in this manner that, at one time this term should not be more than 11 months. The appointment in this way could be made maximum three times. Thereafter, if the competent authority is of the opinion that the reappointment of such candidate is necessary then such candidate would have to again face the selection process.*

*C) The concerned appointing authority at the time of the appointment would execute an agreement with the concerned candidate in the prescribed format. The prescribed format of the agreement is given in Appendix 'B'. It would be the responsibility of the concerned office to preserve all the documents of the agreement.*

*D) Except for the combined pay and permissible telephone and travel expenses (more than the above mentioned limit) any other allowances would not be admissible for the officers/employees being appointed on contract basis.*

*14. The intention of the State Government to fill up the posts of Legal Advisors, Law Officers and Law Instructors on contractual basis is manifest from the above clauses in Government Resolutions dated 21.08.2006 and 15.09.2006. While creating 471 posts vide Resolution dated 21.08.2006, the Government made it clear that the posts should be filled up on contractual basis as per terms and conditions prescribed by the Government. As per clause 'B' of the Government Resolution dated 15.09.2006, the initial contractual period of appointment is eleven months and there is a provision for extension of contract for further eleven months. Clause 'B' makes it clear that the appointment could be made maximum three times and extension of contract beyond the third term is not allowed. If the competent authority is of the opinion that the reappointment of such candidates is necessary then such candidates would again have to face the selection process.*

15. It is relevant to note that the respondents at the time of appointment have accepted an agreement in accordance with Appendix 'B' attached to Government Resolution dated 15.09.2006. The terms of the agreement specifically lay down that the appointment is purely contractual and that the respondents will not be entitled to claim any rights, interest and benefits whatsoever of the permanent service in the government. We may usefully refer to the relevant clauses in the format of the agreement which read as under:-

1. The First Party hereby agrees to appoint Shri/Smt. \_\_\_\_\_ (Party No. II) as a \_\_\_\_\_ on contract basis for a period of 11 months commencing from \_\_\_\_\_ to \_\_\_\_\_ (mention date) on consolidated remuneration of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) per month, and said remuneration will be payable at the end of each calendar month according to British Calendar. It is agreed that II nd party shall not be entitled for separate T.A. and D.A. during the contract period.

2. ....

3. ....

4. ....

5. Assignment of 11 months contract is renewable for a further two terms of 11 months (i.e. total 3 terms), subject to the satisfaction of Competent Authority, and on its recommendations.

6. The Party No. II will not be entitled to claim any rights, interest, benefits whatsoever of the permanent service in the Government.

16. The above terms of the agreement further reiterate the stand of the State that the appointments were purely contractual and that the respondents shall not be entitled to claim any right or interest of permanent service in the government. The appointments of respondents were made initially for eleven months but were renewed twice and after serving the maximum contractual period, the services of the respondents came to an end and the Government initiated a fresh process of selection. Conditions of respondents engagement is governed by the terms of agreement. After

*having accepted contractual appointment, the respondents are estopped from challenging the terms of their appointment. Furthermore, respondents are not precluded from applying for the said posts afresh subject to the satisfaction of other eligibility criteria.*

*17. The High Court did not keep in view the various clauses in the Government Resolutions dated 21.08.2006 and 15.09.2006 and also the terms of the agreement entered into by the respondents with the government. Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred but merely because the posts were created, they cannot be held to be permanent in nature. When the government has taken a policy decision to fill up 471 posts of Legal Advisors, Law Officers and Law Instructors on contractual basis, the tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature.”*

13. In view of the observations made and findings recorded by the Hon'ble Supreme Court reproduced hereinabove the contentions raised by the applicants in the present OAs and the reliefs sought by them have to be rejected and are accordingly rejected. We reiterate that it may not be within the domain of this Tribunal to cause interference in the policy decision taken by the Government. More so, when the Hon'ble Supreme Court has rejected the objections against G.Rs. dated 21.8.2006 and 15.9.2006 that they are arbitrary and unreasonable.

14. The learned counsel for the applicants has brought to our notice the contents in paragraph No. 4 of the judgment delivered by the Division Bench of Hon'ble Bombay High Court Bench at Nagpur in W.P. No. 5831/2018 (cited supra) which reveal that the issue of termination of services of the contractual Law Officers is under review of the State.



We clarify that in review if the Government ultimately decides to make the posts of the Law Officers permanent, the rejection of the present O.A. shall not come in way of the applicants in claiming continuation on the post of Law Officer on permanent basis on their own merits and the past experience at their credit.

**MEMBER (A)**

**VICE CHAIRMAN**

ARJ O.A. NO. 324-2021 AND O.A. NO. 4 AND 5 OF 2022