

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.335 OF 2020
(Subject:-Continuation In Service)**

DISTRICT: - Aurangabad

Arjun s/o Nivrutti Pache,)
Age : 50 years, Occu. Service (as Peon))
R/o : At Post:- Avade Unchegaon,)
Taluka : Paithan,)
Dist : Aurangabad.)...**APPLICANT**

V E R S U S

- 1. State of Maharashtra,**)
Through its Secretary,)
Medical Education and)
Drugs Department,)
Mantralaya, 9th Floor,)
G.T. hospital, Mumbai-32.)
- 2. The Director,**)
Medical Education and Research,)
St. George's Hospital Compound,)
Near C.S.T., Mumbai.)
- 3. The Reader,**)
Health Training Squad, Paithan,)
Dist. Aurangabad.)...**RESPONDENTS**

APPEARANCE : Ms. Preeti Wankhade, learned
Advocate for the applicant.
: Shri B.S. Deokar, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **26.08.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed seeking regularization of services of the applicant on the post of Peon in Class-IV from the date of his initial appointment i.e. from 21.09.1996 under the respondent No.3 by conferring the status of regular appointee upon him and also seeking to challenge the impugned decision dated 06.08.2019 (page No.48 of P.B.) of the respondent No.1, thereby rejecting the proposal of regularizing applicant's services on the post of Peon in Class-IV category and seeking further direction to the respondent No.1 to extend to the applicant all the consequential service benefits to which he would become entitle in view of regularization of his services from 21.09.1996.

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The applicant belongs to NT-B category. He has acquired the qualification of Bachelor of Arts. He has passed the Marathi and English Typing Examinations in the years

2001 and 2002 respectively. He has also passed the MS-CIT Examination in the year 2011.

(ii) The applicant's grandfather namely Radhu Ramji Pache was project-affected person. The applicant and his father namely Nivrutti Radhu Pache were his dependents. Neither the grandfather nor father of the applicant nor anybody else on their behalf had taken benefit of being a project affected person. It was on 21.09.1996 for the first time the applicant was given appointment from the project affected category in Class-IV category on temporary/ad-hoc basis for 29 days by the respondent No.3 vide appointment order dated 21.09.1996 (part of Annex. 'A-1' collectively, page No.19 of P.B.). The applicant is still continued in service even after a period of 24 years and he is given appointment with a technical break after 29 days. Some of the orders dated 29.05.2020, 30.07.2020 and 28.08.2020 are produced on record as part of Annex. 'A-1' collectively).

(iii) It is further submitted that the applicant was making repeated requests to the respondent No.2 i.e. the Director, Medical Education and Research, Mumbai and to the respondent No.3 i.e. the Reader, Health Training Squad, Paithan, Dist. Aurangabad for absorbing him in service in

Class-III category by giving the benefit of requisite G.Rs. dated 21.08.1980 and 18.06.1990. The respondents, however, did not consider his request. The applicant, therefore, filed Original Application No.507/1997 before this Tribunal seeking direction against the respondents to issue appointment to him in Class-III category by giving the benefits of requisite G.Rs. dated 21.01.1980 and 18.06.1990 from the project affected category. The said Original Application came to be dismissed by order dated 25.08.2008. Being aggrieved by the said order, the applicant preferred Writ Petition No.7409/2008 before the Hon'ble High Court, Bench at Aurangabad. The said Writ Petition was allowed to be withdrawn by the applicant with further observations that the applicant may avail of the remedies under the Labour Laws, in case his services are terminated.

(iv) It is further submitted that in view of above, in the year 2011, the applicant approached the Ld. Industrial Court also seeking benefit of regular appointment in Class-III category by way of filing Complaint (ULP) No.113/2011. The said Complaint (ULP) was dismissed vide order dated 02.01.2018 but thereby the respondents were directed to consider his

proposal for permanency benefits in Class-IV employment. However, that benefit was also not materialized.

(v) It is further submitted that even during pendency of proceedings before the Ld. Industrial Court, the applicant made representations date 21.08.2014 and 22.03.2016 to the respondent No.2 and 23.01.2015 to the respondent No.3 (part of Annex. 'A-2' collectively). Subsequent to the decision of the Ld. Industrial Court, the applicant made requests even on the basis of passing observation made in the aforesaid order dated 02.01.2018 to the respondent No.4 on 26.03.2018 on 26.03.2018 , to the respondent No.2 on 31.07.2018 and also to the respondent No.1 on 03.09.2018 (part of Annex. 'A-2' collectively) for regularization of his services in Class-IV category.

(vi) It is further submitted that during pendency of the proceedings before the Ld. Industrial Court, the respondent No.3 sent proposal dated 02.02.2015 and 14.10.2015 along with chart showing vacancies to the respondent No.2 (part of Annex. 'A-3' collectively). Subsequent to the decision of ld. Industrial Court, the respondent No.3 sent proposal dated 25.04.2018 and a reminder proposal dated 02.08.2018 (part of Annex. 'A-3' collectively) to the respondent No.2 for

regularization of applicant's services. Thereafter, the respondent No.2 i.e. the Director, Medical Education and Research, Mumbai forwarded proposal dated 02.08.2018 under forwarding letter dated 27.08.2018 (Annex. 'A-4') to the respondent No.1 i.e. the State of Maharashtra, through its Secretary, Medical Education and Drugs Department, Mumbai. However, the respondent No.1 did not take any action on the said proposal for considerable period. Therefore, the applicant again made representation to the respondent No.3 on 05.04.2019 and hence the respondent No.3 again reiterated the request of implementing the decision of the Ld. Industrial Court dated 02.01.2018 before the respondent No.1 vide communications dated 07.01.2019 and 11.04.2019 (part of Annex. 'A-5' collectively. In that regard the applicant also made representation dated 05.04.2019 (part of Annex. 'A-5' collectively) to the respondent No.1.

(vii) It is further submitted that the respondent No.1 vide impugned order dated 06.08.2019 (Annex. 'A-6') rejected the proposal for regularization of services of the applicant in Class-IV category on the ground that passing observations made by the Ld. Industrial Court are not mandatory and

hence the applicant's services cannot be regularized. It is further submitted that after the above said decision of the respondent No.1 dated 06.08.2019, the respondent No.2 issued a communication dated 25.09.2019 (Annex. 'A-7') to the respondent No.3 and conveyed the decision of the respondent No.1 dated 06.08.2019 and it was directed to the respondent No.3 to convey the said decision to the applicant. The applicant received the said office communication dated 25.09.2019 on 07.10.2019.

(viii) In view of above, it is the contention of the applicant that he is entitled for regularization of his services in view of fact that during all these years after his appointment was made he has worked at par with the regular appointees. He has also worked during the period of strike. His work is appreciated and Appreciation Certificates (Annex. 'A-8') are issued to him by the respondent No.3. He is working on the sanctioned vacant post in the pay-scale of Rs.4440-7440 with Grade Pay of Rs.1300 which goes to show that he is already granted the pay scale of regular employee. Annexure 'A-9' are the copies of the pay slips of the recent years.

(ix) It is further submitted that after receipt of communication dated 25.09.2019 (Annex. 'A-7'), the applicant

made another representation dated 05.10.2019 (Annex. 'A-10') seeking regularization of his services having completed more than 10 years without court orders. The respondent No.1 subsequently to the impugned decision dated 06.08.2019 (Annex. 'A-6') was pleased to issue communication dated 05.12.2019 (Annex. 'A-11' collectively) to the respondent No.2 and call the papers of the Original Application No.507/1997 and Writ Petition No.7409/2008 and the orders therein. The respondent No.2 vide its letter dated 07.12.2019 (Annex. 'A-11' collectively) called for the respondent No.3 to submit the information and papers. The respondent No.3 in turn submitted the same to the respondent No.2 on 20.13.2019 (part of Annex. 'A-12' collectively) which was further put forth before the respondent No.1 on 06.01.2020 (part of Annex. 'A-12' collectively) by the respondent No.2.

(x) It is further submitted that, however, during all these years of continuous services of the applicant, no requisition was ever sent by the respondent No.1 or respondent No.2 muchless, any advertisement was issued nor any selection process had been undertaken for regular appointment which was mandatory on the part of the respondent No.1 as a model

employer. The respondent No.1 ought to have regularized the services of the applicant and conferred the benefits of permanency upon him. However, the said action was not taken by the respondent No.1 in favour of the applicant working under the respondent No.3 for 24 days.

(xi) It is further submitted that 12 persons who were working on temporary basis were regularized by the respondent No.1 by G.R. dated 17.12.2018 (Annex. 'A-13'). Moreover, there are various decisions of the Hon'ble High Court where the services of the employees appointed on temporary and ad-hoc basis were regularized in similar situation. In view of same, the impugned decision of the respondent No.2 dated 06.08.2019 (Annex. 'A-6') rejecting the proposal of the applicant for regularization of applicant's services on the post of Peon in Class-IV category is not legal and proper and is liable to be quashed and set aside and the applicant is entitled for the relief of regularization and monetary benefits since the date of his inception in service i.e. on 21.09.1996.

3. Affidavit-in-reply is filed on behalf of the respondent Nos.1 to 3 by one Dr. Seema Sharad Salve working as Dental Surgeon in the office of the respondent No.3 i.e. the Reader,

Rural Health Training Centre, Paithan, District Aurangabad, thereby adverse contentions raised in the Original Application are denied.

(i) It is, however, not disputed that the applicant was appointed initially on temporary basis for the period of 29 days and appointments were reissued but with technical breaks. However, thereby, the respondents never assured the applicant for regularization. In fact way back in the year 1997, the applicant filed Original Application No.507/1997 for regularization of his services. The said Original Application, however, was dismissed vide order dated 25.08.2008 (wrongly mentioned as 25.08.1997). Against the said order of dismissal dated 25.08.2008, the applicant preferred Writ Petition No. 7409/2008 before the Hon'ble High Court, Bench at Aurangabad. The applicant, however, withdraw the said Writ Petition himself. The applicant sought similar remedy which cannot be granted. In view of the same, present Original Application would not be maintainable.

(ii) It is further submitted that repeated appointment for 29 days were given to the applicant only in view of temporary relief given to him in the matters filed by him before the various judicial forums. The temporary/ad-hoc employee

who is appointed for 29 days also gets salary as per pay scale applicable to the said post. In fact, the applicant was appointed on temporary basis. He should have made efforts to get employment against regular available vacancy, which is not done by the applicant. No inaction can be attributed to the respondents in the case of the applicant. The applicant does not fulfill the criteria for getting regularization of the services as decided in Writ Petition No.2046/2010 relied upon by the applicant, where the facts were of different nature. In the circumstances, the application is liable to be dismissed.

4. The applicant filed affidavit-in-rejoinder and denied the adverse contentions. As regard the Original Application No.507/1997 filed by him, it is submitted that thereby he availed the regularization of services in Class-III category in project affected persons category, more particularly in view of G.R. dated 21.08.1980 and 18.06.1990 in Class-III category, though he was temporary appointed in Class-IV category. In the present Original Application, the applicant is seeking regularization in Class-IV category and therefore, the contentions raised in the affidavit-in-reply in this regard are misconceived. It is reiterated that the applicant is entitled for relief of regularization as he fulfills the criteria mentioned in

the various case laws referred to by him in the Original Application.

5. The applicant further filed additional affidavit (page Nos.126 to 130), thereby reiterating the contention that the applicant is still continued in service even after a period of 24 years and has been given appointment from time to time with a technical break after 29 days, but it is most relevant to state that he worked during this period of technical break also. It is further submitted that he is working on a sanctioned vacant post in the pay-scale of Rs.4440-7440 with Grade Pay of Rs.1300, which goes to show that he is already granted the pay scale of regular employee, but he is not getting salary for the days on which he was given a technical break in spite of working on the said days.

6. I have heard at length the arguments advanced by Ms. Preeti Wankhade, learned Advocate for the applicant on one hand and Shri B.S. Deokar, learned Presenting officer representing the respondent on other hand.

7. Learned Advocate for the applicant strenuously urged before me that the applicant satisfies all the criteria laid down by the Hon'ble Apex Court for regularization of services by the

employee who is appointed on temporary basis; such as the applicant was appointed on the vacant post on the post of Peon in Class-IV category; his services are continued with a technical break since last 24 years; the applicant is getting salary of regular pay scale of the post of Peon in Class-IV category. Further in these 24 years, no selection process is undertaken by the respondents to fill up the vacant posts of Class-IV category. The applicant is appointed from the Project Affected Persons Category. The applicant is having the suitable educational qualification for holding the post. The entry in service cannot be said to be back door entry. In view of all these factors, the applicant is entitled for regularization of his services in the cadre of Peon in Class-IV category.

8. To substantiate the said submissions, she heavily placed reliance on the citation of the Hon'ble Apex Court of India reported in AIR 2018 SC 233 **Civil Appeal No.18510 of 2017** decided on 13.11.2017 in the matter of **Sheo Narain Nagar and Ors. Vs. State of Uttar Pradesh and Ors.** He also placed reliance on the decision of the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in **Writ Petition No.2046/2010** decided on 19.10.2013 in the matter of

Sachin Ambadas Dawale & Ors. Vs. the State of Maharashtra & Ors. He also relied upon the decision of this Tribunal in **O.A.No.902/2019** decided on 23.12.2021 in the matter of **Shivaji Mahadu Thorat Vs. the State of Maharashtra & Ors.** and the decision of the principal bench of this Tribunal at Mumbai in O.A.No.199 of 2016 decided on 15.06.2017 in the matter of **Smt. Satyawati P. Ambare Vs. the State of Maharashtra & Ors.**

9. Learned Advocate for the applicant further submitted that so far as the criteria for continuation in service in view of the some interim relief in the litigations filed by the applicant is concerned, she submitted that the litigation filed by the applicant as regards his employment is by way of filing of the Original Application No.507/1997 before this Tribunal which came to be decided by order dated 25.08.2008 and thereafter filing of Writ Petition No.7409/2008 which came to be decided by order dated 26.07.2011.

10. As against that the learned P.O. par contra submitted that the cases of regularization of temporary Government servants are to be decided in view of law laid down by the Hon'ble Apex Court in the matter of the **Secretary, State of**

Karnataka & Ors. Vs. Umadevi & Ors., reported in 2006 AIR (SC) 1806 wherein the various criteria is laid down. The applicant does not fulfill the criteria mentioned therein. Moreover, the applicant has lost first round of litigation, where he sought regularization of his services by filing Original Application No.507/1997, which was dismissed by order dated 25.08.2008 and Writ Petition No.7409/2008 filed by the applicant challenging the said order of dismissal dated 25.08.2008, which was also disposed of as withdrawn by order dated 26.07.2011.

11. After having considered the rival submissions as above, it can be seen that there is one more facet to the case of the applicant of the fact that after disposal of Writ Petition No.7409/2008 by order dated 26.07.2011, the applicant filed Complaint (ULP) No.113/2011 before the Ld. Industrial Court seeking relief of regular appointment in Class-III category. Ld. Industrial Court dismissed the said Complaint (ULP) No.113/2011 by order dated 02.01.2018, but at the same time directing the respondents to consider his proposal for permanency benefit in Class-IV employment. Admittedly, in this regard, the respondent No.3 submitted proposal dated 11.04.2019 (page No.43 of P.B.) with respondent No.1 which

proposal is rejected by impugned order/noting dated 06.08.2019 by observing that there is no mandatory direction by the Ld. Industrial Court and therefore, such relief cannot be granted. The said order/noting is also challenged by the applicant in this Original Application. However, during the pendency of the said litigation, no order of interim relief was running.

12. In the facts and circumstances of this case, it would be just and proper to refer to Hon'ble Supreme Court case law in the matter of **Sheo Narain Nagar and Ors. Vs. State of Uttar Pradesh and Ors.** (cited supra) in which case there is reference to the law laid down by the Hon'ble Apex Court in the matter of **Secretary, State of Karnataka and Ors. Vs. Umadevi & Ors.** (cited supra). In the said citation case, the appellants therein were initially engaged on daily-wages. Later on, they were appointed on contractual basis. The respondents issued an order appointing them as regular employees on the minimum pay scale. By way of an order, they were conferred the status of temporary employees with retrospective effect. There was direction issued by the Hon'ble High Court to consider them for regularization, but their services were not regularized. The learned Single Judge

ultimately dismissed the Writ Petition seeking regularization. That order was affirmed by the Division Bench of the Hon'ble High Court and the services of the appellants were terminated. Hence, the appeal was filed by the appellants.

13. In paragraph No.4 of this citation, paragraph No. 53 (44) is referred and reproduced from the decision of the Hon'ble Apex Court in case of **Secretary, State of Karnataka and Ors. Vs. Umadevi & Ors.** which is reproduced as follows:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts

but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

Thereafter, in the said citation case in paragraph No.8 and 10 it is laid down as under:-

“8. When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms. This situation was not

envisaged by Uma Devi (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Uma Devi (supra) has been ignored and conveniently overlooked by various State Governments/ authorities. We regretfully make the observation that Uma Devi (supra) has not be implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, 16 read with Article 34 (1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India, AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc. There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Uma Devi (supra). Thus, the time has come to stop the

situation where Uma Devi (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Uma Devi (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in Uma Devi (supra).

10. The High Court dismissed the writ application relying on the decision in Uma Devi (supra). But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2.10.2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of Uma Devi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 2.10.2002, we direct

that the services of the appellants be regularized from the said date i.e. 2.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today.”

14. As stated earlier, learned Advocate for the applicant in this regard also placed reliance on the citation of the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in Writ Petition No.2046/2010 in the matter of **Sachin Ambadas Dawale & Ors. Vs. the State of Maharashtra & Anr.** decided on 19.10.2013. In the said case, the petitioners therein were Lecturers in different departments of Government Polytechnic in the State of Maharashtra. They were appointed as per policy of the Government of Maharashtra incorporated in the G.R. dated 25.07.2002 as modified by the Government Resolution dated 02.08.2003 and 03.10.2003. The grievance of the petitioners was that though they have been in the employment of the respondents for a period ranging from three years to ten years, they were not given permanency and the benefits of permanent appointment.

15. In paragraph Nos.18, 19, 22 and 23 it is observed and laid down as follows:-

“18. The submissions made by Shri Khapre, learned advocate for the petitioners, regarding the discrimination of the Lecturers working in the Government Polytechnics viz-a-viz Lecturers working in the Private Polytechnics is not without substance. The Lecturers who are appointed in the Private Polytechnic Institutions are selected by the School Committee which comprises of the Members of the Trust which administers the Private Polytechnic Institutions. The Committee which is constituted under the Government resolution dated 2nd August, 2003 is a broad based Committee comprising of Joint Director (Technical Education), two Subject Experts, representative of women, representative having technical knowledge, a member who belongs to backward classes and the Principal of the Polytechnic Institution concerned.

The Lecturers who are appointed in the Private Polytechnic Institutions after selection through the School Committee are appointed on contractual basis as "Shikshan Sevak" for the period of three years as per the policy of the Government of Maharashtra incorporated in the resolution dated 27th April, 2000. It is not in dispute that the selection process through which the petitioners are selected is much less stringent than the selection process of the 38 wp2046.10 Private Polytechnic. We see no reason as to why the petitioners, who are otherwise eligible and qualified for the posts and who are selected by a duly

constituted Selection Committee appointed by the Government of Maharashtra and who are appointed in sanctioned posts after the issuance of advertisement and following regular procedure of selection should not be treated at par with their counterparts in the Private Polytechnic Institutions. We are of the view that the petitioners cannot be discriminated viz-a-viz their counterparts working in the Private Polytechnic Institutions. We are conscious that the Lecturers working in the Government Institutions form a different class than the Lecturers working in the Private Institutions. However, when all other service conditions are similar, we are of the view that the petitioners are also entitled for the same benefits as their counterparts working in the Private Polytechnic Institutions are entitled as far as the conferment of regularization and permanency are concerned.

19. One more fact that needs to be taken into consideration is that even according to the respondent - State there are more than 5000 teaching posts which are still vacant and the advertisement issued by the MPSC is only 39 wp2046.10 for 400 posts. It can, thus, be clearly seen that even after the candidates who would be selected through the selection process conducted by the MPSC are available, more than 4500 posts will be vacant. It is, therefore, clear that the petitioners' absorption would in no way affect the candidates who would now be

selected through the MPSC. It is, thus, clear that the petitioners' continuation in service would not adversely affect the fundamental right guaranteed under Article 16 to the citizens. We are of the considered view that the respondent -State having extracted the work from the petitioners for years together, the petitioners cannot be deprived of the right of regular employment particularly when their entry can neither be termed as "illegal" nor "back door".

22. The respondents are directed to regularize the services of such of the petitioners and confer permanency on such petitioners who have completed 40 wp2046.10 three years' service with technical breaks. The respondents shall absorb the petitioners within a period of six weeks. Needless to state that the petitioners who are in continuous employment till 15.10.2013 shall be continued in service as regular employees.

However, in the facts and circumstances of the case, we direct that the petitioners shall be entitled to regular salary from 1st November, 2013 and would not be entitled to claim any monetary benefits for the past services rendered by them in spite of their regularization. Needless to state that since the petitioners' services are regularized, they shall be entitled to the continuity in service for all other purposes except monetary purposes from the date of their first appointment.

23. At this stage, Shri N.W. Sambre, learned Government Pleader, requests for stay to this judgment.

However, taking into consideration the facts and circumstances of the case and particularly the fact that most of the petitioners were in regular service till 15.10.2013, we are not inclined to consider the request as made.”

16. In the background of the above said case laws, if the facts of the present case are considered, it can be seen that initially in this case the applicant was appointed as per appointment order dated 21.09.1996 (page No.19 of P.B.) on the post of Peon in Class-IV category for the period of 29 days and such appointment was given to him on temporary basis being a person from Project Affected Persons Category and on the regular pay scale of Rs.650-940/. It is a case of the applicant that he belongs to NT-B category and was having the educational qualification of Bachelor of Arts and also passed Marathi and English Typing Examinations in the year 2001 and 2002 and he also passed the MS-CIT Examination in the year, 2011. In view of same, he filed the Original Application No.507/1997 before this Tribunal seeking regular appointment in Class-III category. However, the said Original

Application was rejected by order dated 25.08.2008. The applicant challenged the said order dated 25.08.2008 by filing Writ Petition No.7409/2008 which came to be disposed of by order dated 26.07.2011 as withdrawn.

17. It is the contention of the applicant that during pendency of the said litigation, his temporary appointment on the post of Peon in Class-IV category was protected by interim relief orders. However, after disposal of Writ Petition No.7409/2008 by order dated 26.07.2011, there was no order of any Court or Tribunal protecting temporary employment of the applicant. After decision in the Writ Petition, the respondents have continued the temporary services of the applicant by issuing appointment orders. Some of which appointment orders are produced by the applicant along with this Original Application (page Nos.20 to 22 of P.B.). Perusal of those appointment orders would show that the temporary appointment is continued from time to time for 29 days in the pay scale of Peon in the Pay Band of Rs. Rs.4440-7440 with Grade Pay of Rs.1300.

18. The applicant has also demonstrated with the help of the documents that the respondent No.3 under whom the

applicant was working submitted Proposal Dated 02.02.2015 (page No.33 of P.B.) to regularize the applicant on the vacant post stating that one post of Peon is vacant in his office under 5 percent quota for Project Affected Persons Category in which category the applicant was appointed on temporary basis. It is not disputed that the applicant was appointed on the vacant post, but on temporary basis. The only question remains as to whether his services can be regularized and if yes, from which date. Perusal of the said order dated 02.02.2015 would show that since last 24 years, no steps were taken to fill up the vacancies in the Class-IV category in the said office.

19. It is, however, a fact that the respondent No.3 submitted proposal dated 14.10.2015 (page No.36 of P.B.) to the respondent No.2 stating that the applicant has worked since 05.10.1996 in the said office serving for more than 240 days in year and has completed about 20 years of service till 31.12.2014.

20. So considering the facts of the present case being tasted in view of law laid down by the Hon'ble Apex Court in case of **Sheo Narain Nagar and Ors. Vs. State of Uttar Pradesh**

and Ors. (cited supra) and **Sachin Ambadas Dawale & Ors.**
Vs. the State of Maharashtra & Ors., it is evident that the applicant fulfills the criteria of continuation of services but being protected with the help of Court orders upto 26.07.2011 as the Writ Petition No.7409/2008 filed by the applicant came to be decided by order dated 26.07.2011. Moreover, the applicant's entry in service cannot be said to be back door entry in view of the fact that he has been appointed specifically from the category of project affected persons. Moreover, there is nothing on record to show that the respondents have undertaken selection process for filling up the Class-IV posts and more particularly, to fill up the post under project affected persons category. The applicant is drawing regular pay scale of Peon in Class-IV category. The applicant by filing the Original Application No.507/1997 before this Tribunal sought his regularization in Class-III category, unlike regularization in Class-IV category, which is sought in the present Original Application. In view of same, in my opinion, the previous litigation filed by the applicant does not come in the way of considering the present Original Application. In the circumstances, in my considered opinion, the ratio laid down in the citations relied upon by the learned

Advocate for the applicant would be applicable to this case to grant appropriate relief of regularization from 27.07.2011.

21. So far as another relief sought for by the applicant challenging the impugned order dated 06.08.2019 issued by the respondent No.1 is concerned, it is evident that the said order is arising out of the order dated 02.01.2018 passed by the Ld. Industrial Court in Complaint (ULP) No.113/2011 which petition was dismissed, but the respondents were directed to consider appointment of the applicant in Class-IV category. In the circumstances, the grievance raised in respect of said order would not fall within the purview of the proceedings lying before this Tribunal dealing with the service matters as contemplated under Section 19 of Administrative Tribunals Act, 1985 while dealing with the present application. I have already considered the relief of regularization in Class-IV category independently. I, therefore, proceed to pass the following order:-

ORDER

(A) The Original Application is partly allowed in following terms:-

(i) The respondents are directed to regularize the services of the applicant on the post of

Peon in Class-IV category with effect from 27.07.2011 with all consequential service benefits as a regular employee in accordance with law.

(ii) The respondents are directed to comply with the said order within the period of three months from the date of this order.

(B) The present Original Application is rejected in respect of the impugned order dated 06.08.2019 issued by the respondent No.1.

(C) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date :- 26.08.2022
SAS O.A.335/2020