

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

**ORIGINAL APPLICATION NOS. 379, 408, 536, 537, 538, 539,
550, 551 & 704 ALL OF 2018**
(Subject - Regularization / Continuation in Service)

1. ORIGINAL APPLICATION NO. 379 OF 2018

DISTRICT : LATUR

Dr. Kanchan d/o Tulshiram Bhorge,)
Age : 38 years, Occu. : Service (as Medical Officer),)
R/o. Sinhgad Society, Moti Nagar, Kanheri)
Road, Latur, Dist. Latur.)
.... **APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Secretary,)
Medical Education & Drugs Department,))
Mantralaya, Mumbai-32.)
- 2. The Director,**)
Medical Education and Research,)
St. George's Hospital Compound,)
Near C.S.T., Mumbai.)
- 3. The Dean,**)
Government Medical College & General)
Hospital, Latur.)
... **RESPONDENTS**

W I T H

2. ORIGINAL APPLICATION NO. 408 OF 2018

DISTRICT : LATUR

Dr. Anand s/o Narsingrao Bargale,)
Age : 39 years, Occu. : Service (as Medical Officer),)
R/o. Plot No. 10 & 11, Vishal Nagar East)
Latur, Dist. Latur.)
.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Medical Education & Drugs Department,))
Mantralaya, Mumbai-32.)
2. **The Director,**)
Medical Education and Research,)
St. George's Hospital Compound,)
Near C.S.T., Mumbai.)
3. **The Dean,**)
Government Medical College & General)
Hospital, Latur.)

... **RESPONDENTS**

W I T H

3. ORIGINAL APPLICATION NO. 536 OF 2018

DISTRICT : LATUR

Dr. Chandrakant s/o Shivarajappa Shendkar,)

Age : 41 years, Occu. : Service (as Medical Officer),)

R/o. "Shivteerth", Moti Nagar, Ring Road,)

Latur, Dist. Latur.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Medical Education & Drugs Department,))
Mantralaya, Mumbai-32.)
2. **The Director,**)
Medical Education and Research,)
St. George's Hospital Compound,)
Near C.S.T., Mumbai.)
3. **The Dean,**)
Government Medical College & General)
Hospital, Near Old Railway Station, Latur.)

... **RESPONDENTS**

W I T H**4. ORIGINAL APPLICATION NO. 537 OF 2018****DISTRICT : LATUR****Dr. Sumit s/o Shivajirao Waghmare,)**

Age : 34 years, Occu. : Service (as Medical Officer),)

R/o. "Shivaji Smruti", Vithalnagar, Near)

Masoba Mandir, Behind Bus Depot, Dist. Latur.)

.... **APPLICANT****V E R S U S**

1. The State of Maharashtra,)
 Through its Secretary,)
 Medical Education & Drugs Department,)
 Mantralaya, Mumbai-32.)

2. The Director,)
 Medical Education and Research,)
 St. George's Hospital Compound,)
 Near C.S.T., Mumbai.)

3. The Dean,)
 Government Medical College & General)
 Hospital, Near Old Railway Station, Latur.)

... **RESPONDENTS****W I T H****5. ORIGINAL APPLICATION NO. 538 OF 2018****DISTRICT : LATUR****Dr. Chandramohan s/o Baburao Harne,)**

Age : 39 years, Occu. : Service (as Medical Officer),)

R/o. Raigad Niwas, MGM College Road,)

Ahmedpur, Dist. Latur.)

.... **APPLICANT****V E R S U S**

1. The State of Maharashtra,)
 Through its Secretary,)
 Medical Education & Drugs Department,)
 Mantralaya, Mumbai-32.)

2. **The Director,**)
 Medical Education and Research,)
 St. George's Hospital Compound,)
 Near C.S.T., Mumbai.)

3. **The Dean,**)
 Government Medical College & General)
 Hospital, Near Old Railway Station, Latur.)

... **RESPONDENTS**

W I T H

6. ORIGINAL APPLICATION NO. 539 OF 2018

DISTRICT : LATUR

Dr. Nagorao s/o Abhishek Khupse,)
 Age : 29 years, Occu. : Service (as Medical Officer,)
 R/o. Room No. 410, GMC Boys Hostel,)
 Dist. Latur.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
 Through its Secretary,)
 Medical Education & Drugs Department,)
 Mantralaya, Mumbai-32.)

2. **The Director,**)
 Medical Education and Research,)
 St. George's Hospital Compound,)
 Near C.S.T., Mumbai.)

3. **The Dean,**)
 Government Medical College & General)
 Hospital, Near Old Railway Station, Latur.)

... **RESPONDENTS**

W I T H

7. ORIGINAL APPLICATION NO. 550 OF 2018

DISTRICT : LATUR

Dr. Kishor s/o Rajendra Jadhav,)
 Age : 41 years, Occu. : Service (as Medical Officer,)
 R/o. "Om Shree", Row Bunglow No. 8,)
 Shreenagar, Barshi Road, Latur, Dist. Latur.)....

APPLICANT

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Medical Education & Drugs Department,))
Mantralaya, Mumbai-32.)
2. **The Director,**)
Medical Education and Research,)
St. George's Hospital Compound,)
Near C.S.T., Mumbai.)
3. **The Dean,**)
Government Medical College & General)
Hospital, Near Old Railway Station, Latur.)

... **RESPONDENTS****W I T H****8. ORIGINAL APPLICATION NO. 551 OF 2018****DISTRICT : LATUR**

Dr. Satyakala d/o Bankatrao Garad,)
Age : 37 years, Occu. : Service (as Medical Officer,))
R/o. "Balakdham", Near Raigad Mangal)
Karyalaya, Sutmil Area, Sutmil Road, Dist. Latur.)

.... **APPLICANT****V E R S U S**

1. **The State of Maharashtra,**)
Through its Secretary,)
Medical Education & Drugs Department,))
Mantralaya, Mumbai-32.)
2. **The Director,**)
Medical Education and Research,)
St. George's Hospital Compound,)
Near C.S.T., Mumbai.)
3. **The Dean,**)
Government Medical College & General)
Hospital, Near Old Railway Station, Latur.)

... **RESPONDENTS**

W I T H**9. ORIGINAL APPLICATION NO. 704 OF 2018****DISTRICT : LATUR****Dr. Dayanand s/o Niwrutti Sonwane,**)

Age : 31 years, Occu. : Service (as Medical Officer,))

R/o. At Post : Devla, Tal. Ambejogai,)

Dist. Beed.)

.... **APPLICANT****V E R S U S****1. The State of Maharashtra,**)

Through its Secretary,)

Medical Education & Drugs Department,))

Mantralaya, Mumbai-32.)

2. The Director,)

Medical Education and Research,)

St. George's Hospital Compound,)

Near C.S.T., Mumbai.)

3. The Dean,)

Government Medical College & General)

Hospital, Near Old Railway Station, Latur.)

... **RESPONDENTS**

APPEARANCE : Ms. Preeti Wankhade, Advocate for the
Applicants in all these O.As.

: Shri V.R. Bhumkar, Presenting Officer for
Respondents in all these O.As.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).****DATE** : **18.08.2022.**

COMMON - ORDER

1. The cause of action pleaded in all the Original Applications and reliefs sought for thereof are of similar in nature and therefore, in order to avoid repetition, conveniently all these Original Applications can be disposed of by delivering this common judgment and order. Amongst all these Original Applications, O.A. No. 379/2018 is taken as a lead case being representative in nature.

2. The applicants in all these Original Applications have sought similar reliefs of direction against the respondent No. 1 to regularize their services on the post of Medical Officer, Group-A (Class-II) in Government Medical College and Hospital by conferring status of regular appointee upon them and to grant all consequential service benefits in view of such regularization of their respective services and to quash and set aside the impugned communication dated 15.01.2020 (Annexure A-14 in O.A. No. 379/2018) and other such impugned communications issued by the respondent No. 1, thereby rejecting the representation dated 19.05.2017 (Annexure A-10 in O.A. No. 379/2018) filed by the applicants through their Union.

3. In order to cut-short the facts in all these O.As., the necessary facts are being tabulated in following Table :-

Sr. No.	Name	O.A. No.	Category	Educational qualification	Date of Advertisement	Date of Initial Appointment	Impugned communication issued by R-1
1	2	3	4	5	6	7	8
1	Dr. Kanchan Bhorge	379/2018	Scheduled Caste	MBBS, Diploma in Gynecology & Obstetrics and diploma in Hospital Management	17.02.2011 (Annexure A-4)	18.05.2011	15.01.2020 (Annexure A-14)
2	Dr. Anand Bargale	408/2018	Open	Bachelor of Medicine & Bachelor of Surgery (MBBS) & Diploma in Child Health	17.02.2011 (Annexure A-4)	02.06.2011	15.01.2020 (Annexure A-14)
3	Dr. Chandrakant Shendkar	536/2018	Open	MBBS and Diploma in Anesthesia	17.02.2011 (Annexure A-3)	11.04.2011	15.01.2020 (Annexure A-12)
4	Dr. Kishor Jadhav	550/2018	Open	Bachelor of Medicine & Bachelor of Surgery (MBBS) & Diploma in Ophthalmology	22.11.2014 (Annexure A-5)	15.12.2014	15.01.2020 (Annexure A-15)
5	Dr. Dayanand Sonwane	704/2018	Scheduled Caste	Medicine & Bachelor of Surgery (MBBS)	22.11.2014 (Annexure A-3)	15.12.2014	15.01.2020 (Annexure A-13)
6	Dr. Sumit Waghmare	537/2018	Scheduled Caste	Bachelor of Medicine & Bachelor of Surgery (MBBS) & Diploma in Child Health and Diploma in Hospital Management	17.12.2011 (Annexure A-15)	18.10.2012	15.01.2020 (Annexure A-14)
7	Dr. Nagorao Khupse	539/2018	Scheduled Tribe	Bachelor of Medicine & Bachelor of Surgery (MBBS)	24.05.2019	09.06.2016 (Bond) & 07.06.2019 (Advertisement)	15.01.2020 (Annexure A-9)
8	Dr. Chandramohan Harne	538/2018	NT-B	Bachelor of Medicine & Bachelor of Surgery (MBBS) & Diploma in Child Health	Period in Feb or March 2014	15.03.2014	15.01.2020 (Annexure A-14)
9	Dr. Satyakala Garad	551/2018	Open	Bachelor of Medicine & Bachelor of Surgery (MBBS) & Diploma in Ophthalmic Medicine Surgery	Period in Feb or March 2014	16.03.2014	15.01.2020 (Annexure A-13)

4. The applicants belong to respective categories as mentioned in vertical column No. 4. They all possess the educational qualification as mentioned in vertical column No. 5. Undisputedly, the Medical Officers, Class II, who were working in the Government Medical Colleges and Hospitals, were the employees of the Public Health Department. The Public Health Department took a decision of repatriation of such Medical Officers to their own department. In view of such repatriation and to fill in the posts of Medical Officers under the Government Medical Colleges and Hospitals, the respondent No. 1 issued G.R. dated 01.07.2010 (Annexure A-1 in O.A. No. 379/2018) for filling up the said posts under Directorate of Medical Education and Research (DMER), Mumbai (respondent No. 2) on ad-hoc basis, till the finalization of policy of recruitment of permanent Medical Officers by the said authority.

5. Pursuant to the above-said G.R. dated 01.07.2010, immediately on the same day the respondent No. 2 i.e. the Director, DMER, Mumbai issued directives dated 01.07.2010 (Annexure A-2 in O.A. 379/2018) to all the Government Medical Colleges and Hospitals for appointments of Medical Officers, thereby it was specifically directed that the candidates appointed on the posts of Medical Officer should fulfill the criteria laid down

in the Recruitment Rules and procedure for such appointments should be adopted as mentioned in G.R. dated 10.08.2001 (Annexure A-5 in O.A. 379/2018) by constituting selection committee under the Chairmanship of Dean of the concerned Government Medical Colleges and Hospitals. Some of the applicants had worked initially on temporary basis as Junior Resident -I and are having experience certificates thereof.

6. Having acquired above-mentioned qualifications and experience, the applicants come across respective advertisements mentioned against their names in the table, which advertisements were issued by the respondent No. 3 i.e. the Dean, Government Medical College and Hospital, Latur from time to time. The said advertisements provided vertical reservation as applicable to the general recruitments. Minimum educational qualification prescribes is being MBBS, which was as per the Recruitment Rules for the post of Medical Officers. The upper age limit of 35 years with relaxation of five years for the backward class category candidates was also prescribed. The said advertisements specifically prescribed the pay scale of Rs. 15600-39100 (Grade Pay of Rs. 5400) attached to the usual post of Medical Officer. Pursuant to the said advertisements, the

respective applicants applied for the post of Medical Officer, as they fulfilled all the eligibility conditions prescribed therefor.

7. The respective applicants went through the entire selection process and participated in selection process / interviews. The respective Selection Committees duly prepared select lists and accordingly, the respondent No. 3 issued the order of appointments to the respective applicants on 18.05.2011 (Annexure A-6 in O.A. No. 379/2018) and other respective dates as mentioned in Vertical Column No. 7. As per the said letters, the appointments were given to the applicants for 120 days from time to time till the availability of a regular selectee of the MPSC. In view of the same, it is contended that the appointments given to the applicants were by due process consisting of constitution of selection committee of experts, issuance of an advertisement keeping in mind and giving due importance to the aspect of reservation, conduction of due selection process, consequential selection of meritorious candidates, preparation of a select list and finally the issuance of appointment order.

8. In view of above, the respective applicants duly reported at the Government Medical College and General Hospital, Latur and joined on the post of Medical Officer on respective dates and

started discharging duties attached to the said posts, on which they have continued till date. It is further submitted that their respective services were continued from time to time by giving technical break of one day. The experience certificates produced in respective O.As. would establish their continuation in service with technical breaks (Annexure A-7 collectively in O.A. No. 379/2018).

9. In view of above, it is contended that all these applicants have worked at par with the regular appointees. Apart from the regular duties, the Medical Officers are also required to shoulder the other administrative responsibilities, which are duly performed by all the applicants. They have worked even during the period of strike called by the regular Medical Officers, as can be seen from the documents produced at Annexure A-8 collectively in O.A. No. 379/2018.

10. It is further submitted that from the document dated 29/30.06.2016 (part of Annexure A-9 collectively at page No. 77 of paper book of O.A. No. 379/2018), it can be seen that 42 posts of Class-II Medical Officers were vacant on the establishment of respondent No. 3, on which posts the persons like the applicants were working on ad-hoc basis. Moreover, as per the G.R. dated

08.06.2017 (Annexure A-9 (ii) at page No. 78 of paper book of O.A. No. 379/2018), the respondent No. 1 regularized the services of the Assistant Professors and Associated Professors working in various Government Medical Colleges and Hospitals, who were working identically as that of the applicants. Similarly, the respondent No. 1 by another G.R. dated 15.06.2017 (Annexure A-9 (iii) at page No. 81 of paper book of O.A. No. 379/2018) regularized the services of Assistant Professors and Dental Surgeons from Government Dental Colleges.

11. It is submitted that the respondent No. 1 however, failed to extend the said benefits of regularization of services to the applicants, though placed in identical situation despite their prolonged period of service on ad-hoc basis. In view of the same, the respondent No. 1 has failed to act as a model employer. Therefore, the Union of Medical Officers, of which the present applicants are also Members submitted representation dated 19.05.2017 (Annexure A-10 in O.A. No. 379/2018) to the respondent No. 1 seeking continuation / regularization and permanency, but it, did not bear any fruits. It is further submitted that identically placed persons from Government Polytechnic Colleges had approached the Hon'ble High Court of Bombay Bench at Nagpur and filed W.P. No. 2046/2010 raising

the grievance that though they had been in the employment of the State Government in its Higher and Technical Education Department for the period from 3 years to 10 years, they were not given permanency and / or the benefits of permanent appointment. The said W.P. was decided by the Hon'ble High court by the judgment and order dated 19.10.2013 (Annexure A-11 in O.A. No. 379/2018) thereby, it was partly allowed and the petitioners therein, who were working on ad-hoc basis, that too on a fixed pay were granted benefits of permanency to those who had completed three years' service with technical breaks, but salary benefits were granted only from 01.11.2013 and continuity in service was granted for all other purposes except the monetary benefits from their respective first date of appointment.

12. It is further submitted that one Vaidya Mayur S/o Ramesh Deshmukh filed W.P. No. 8118/2015 before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad for seeking regularization of his services on the post of Assistant Professor in Government Ayurvedic College. The said W.P. was allowed by the Hon'ble High Court by judgment and order dated 25.02.2016 (Annexure A-12 in O.A. No. 379/2018). The petitioner therein had applied through advertisement and had undergone selection through the District Selection Board. He was appointed on ad-

hoc basis and was continued in service with technical breaks as like the applicants. The ratio in the above-said citation would be squarely applicable to the cases of the present applicants.

13. It is further submitted that during pendency of the present Original Applications, the respondent No. 1 belatedly decided their representation dated 19.05.2017 (Annexure A-10 in O.A. No. 379/2018) made through their Union and the respondent No. 1 rejected the same vide impugned order / communication dated 15.01.2020 (Annexure A-14 in O.A. No. 379/2018) without considering the contentions raised therein, thereby wrongly observing that the cases of the applicants are not squarely and totally covered by the judgment of the Hon'ble High Court dated 19.10.2013 in W.P. No. 2046/2010. Hence, the present Original Applications.

14. The respondent Nos. 1 to 3 have resisted all these Original Applications by filing respective affidavit in replies inter-alia raising the following contentions :-

- (i) The factual position as regards constitution of Selection Committees, issuance of advertisements with roster, conducting of interviews, issuance of appointment letters on ad-hoc basis for 120 days and continuation

thereof with technical breaks are admitted. However, according to the respondents all the appointments were purely on temporary basis. Those were by way of stop-gap arrangement to make temporary appointments locally, until suitable candidates are appointed on regular basis. It is not disputed that those temporary appointments were against the vacant posts. The instances of regularization of all Assistant Professors in the Government Colleges and Hospitals vide G.Rs. dated 08.06.2017 and 15.06.2017 are not applicable to the cases of the applicants in as much as, they were regularized and were given benefits of permanency only under very exceptional circumstances as special cases as mentioned in respective G.Rs., which exceptional circumstances are not applicable to the cases of the applicants. Moreover, there was no wide advertisement at State level for filling up the posts. Moreover, the facts of the Hon'ble High Court citation cases relied upon by the applicants were totally different than the facts of the cases of the applicants. So far as the cases of the applicants are concerned, the respective advertisements were published in local newspapers, which are not made through widely open competition and the applicants were appointed. Even first

preference is given to the bonded candidates for filling up the posts on temporary basis as per the G.R. dated 10.08.2001. Moreover, in the said advertisements, horizontal reservation i.e. reservation for women, physically disabled person, sportsmen etc. was not followed. The reservation policy by local body is not true reservation policy adopted by the State. The applicants are appointed purely on temporary basis till finalization of policy of recruitment of permanent Medical Officers. In order to fill up the vacancies of various posts, the policy of permanent recruitment is finalized in order to fulfill the norms of Medical Council of India by the Government in DMER vide G.R. dated 04.03.2014 (Exhibit R-1). Accordingly, sanction was given to establish two new departments i.e. Hospital Administration and Emergency Medicine in all the Government Medical Colleges and sanction is also accorded by the Finance Department taking into consideration the changed circumstances. Therefore, the claim of the temporary appointed Medical Officers of regularization of their service cannot be accepted as the policy of recruitment of permanent Medical Officers is already finalized. The posts of Medical Officers in Government

Medical Colleges fall in purview of Maharashtra Public Service Commission. The G.R. dated 25.08.2005 (Exhibit R-2) was issued by the State Government through General Administration Department taking into consideration the judgment and order of the Hon'ble Supreme Court in the case of A. Umarani Vs. Registrar, Co-Operative Societies, Tamilnadu and Ors. as per which norms, there is no scope for regularization of these applicants, as in the cases of the applicants, the selection of these applicants is not as per the norms of recruitment at State level. The administrative exigency as applicable to the Assistant Professors in Government Medical / Dental / Auyurvedic Colleges cannot be justified in case of the Medical Officers, as in those cases the interest of the students and patients are required to be taken. In these circumstances, according to these respondents the applicants are not entitled for regularization and consequential benefits as sought to be contended by them. The present Original Applications therefore, are devoid of merits and are liable to be dismissed.

15. In all the Original Applications the affidavit in rejoinder is filed by the respective applicants denying all the adverse contentions aside in the respective affidavit in replies.

16. I have heard the arguments advanced at length by Ms. Preeti Wankhade, learned Advocate for the applicants in all these Original Applications on one hand and Shri V.R. Bhumkar, learned Presenting Officer for the respondents in all these Original Applications on the other hand.

17. Perusal of the Original Applications would show that those are filed on 07.06.2018, 15.06.2018, 19.07.2018, 19.07.2018, 19.07.2018, 19.07.2018, 19.07.2018 & 11.09.2018 respectively. In order to substantiate the claim of regularization of the respective applicants, on the post of Medical Officer, Group-A (Class-II) in the Government Medical College and Hospital they have placed reliance on instances of regularization of similarly placed persons, ad-hoc Assistant Professors, who were regularized as per the G.R. dated 08.06.2017 (Annexure A-9 (ii) at page No. 78 of paper book of O.A. No. 379/2018) and Assistant Professors and Dental Surgeons by the G.R. dated 15.06.2017 (Annexure A-9 (iii) at page No. 81 of paper book of O.A. No. 379/2018). As per the

above-said G.R. dated 08.06.2017, the Assistant Professors, who had completed two years of service on ad-hoc basis on 30.07.2016 were regularized w.e.f. 24.10.2016 as a special case in exceptional circumstances. Thereby, the ad-hoc services of Assistant Professor (Class-II) and Dental Surgeons were regularized from the date of G.R. dated 15.06.2017 as a special case under exceptional circumstances without specifying the number of years putting by them on ad-hoc basis.

18. In this regard, the learned Advocate for the applicants has also placed reliance on the decision of the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in **W.P. No. 2046/2010** dated 19.10.2013 in the matter of **Sachin Ambadas Dawale & Ors. Vs. The State of Maharashtra and Anr.**, wherein the petitioners therein who had completed three years' services with technical breaks were regularized and permanency was conferred upon them from the date of appointment, but monetary relief of regular salary was granted from 01.11.2013.

19. Learned Advocate for the applicants has further placed reliance on the decision of the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **W.P. No. 8118/2015** in the

matter of **Vaidya Mayur S/o Ramesh Deshmukh Vs. The State of Maharashtra & Anr.** dated 25.02.2016, whereby the services of the petitioner therein on the post of Assistant Professor were regularized and was granted regular salary w.e.f. 01.03.2016. In the said case, the petitioner was appointed on ad-hoc basis from 31.01.2009 at Government Ayurved College, Osmanabad.

20. Learned Advocate for the applicant has further placed reliance on the citation of the Hon'ble Supreme Court of India reported in **AIR 2018 SC 233** in the matter of **Sheo Narain Nagar and Ors. Vs. State of Uttar Pradesh and Ors.** in **Civil Appeal No. 18510 of 2017 (Arising out of SLP (C) No. 6183 of 2015)** decided on 13.11.2017. In the said citation case, it is held as follows :-

“3. The appellants were initially engaged on daily- wage basis. Later on, they were appointed on contractual basis. Respondent 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 a direction issued by the High Court to consider them for regularization, but their services were not regularized. Single Judge ultimately dismissed the writ petition seeking regularisation. That order was affirmed by the Division Bench of the High Court. Services of the appellants were terminated. Hence, present appeal was filed by Appellants.

Held, while allowing the appeal :

(i) *There was a direction issued way back to consider the regularization of the Appellants. However, regularization was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees and by passing an order, the Appellants were also conferred temporary status with retrospective effect. As the respondents had themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by learned counsel for the respondent that posts were not available, is belied by their own action. (9)*

(ii) *Services of the Appellants be regularized and consequential benefits and the arrears of pay also to be paid to the Appellants within a period of three months. Impugned order terminating services of Appellants was quashed. (10) and (11)”*

In the said citation there was reference to the earlier case law of the Hon'ble Supreme Court in the matter of **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.** reported in **(2006) 4 SCC 1** and para No. 53 thereof reproduced, which is as under :-

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore vs. S.V. Narayanappa, (1967) 1 SCR 128, R.N. Nanjundappa Vs. T. Thimmiah, (1972) 1 SCC 409, and B.N. Nagarajan vs. State of Karnataka, (1979) 4 SCC 507, 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.”

As regards the above said judgment, which is observed in para No. 8 of the said judgment, which is 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 over looked 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).”

Thereafter, in para Nos. 9, 10 & 11 the observations are made as under :-

“9. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularization of the appellants. However, regularization was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2.10.2002. As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.

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.

11. Impugned judgment and order and also order terminating the services are hereby quashed. The appeal is, accordingly, allowed. Pending application, stands disposed of.”

21. In view of above-said citations, learned Advocate for the applicants strenuously urged before me that the applicants in the present Original Applications fulfill all the criteria laid down in the above-said citation of **Sheo Narain Nagar** (cited supra) about continuity of service with technical breaks. It was not the case of back door entry; and there were no Rules framed for offering such kind of appointment. In these circumstances, the learned Advocate for the applicants further submitted and pointed out that no recruitment Rules for appointment of Medical Officers in DMER are yet framed and therefore, no selection process of Medical Officers at State Level through MPSC has taken place. Moreover, in the past the State of Maharashtra has regularized the services of similarly placed employees and therefore, the

applicants would be entitled for regularization of services on the footing as laid down in the citation of the Hon'ble Supreme Court in **Sheo Narain Nagar** (cited supra) from the date of their initial appointment. In fact, the applicants have been granted regular pay scales at the entry level and therefore, they would be entitled for annual increments, which were not given to them and therefore, the same will not burden on it's exchequer on account of monetary benefits.

22. As against that, learned Presenting Officer strenuously urged before me that considering the contentions raised by the respondents in their affidavit in replies, it is evident that though the applicants were selected through the process of advertisements and selection board, the advertisements were published only in local newspaper and it was not widely published throughout the State and the selection committee was of the District Level Committee. Moreover, there were technical breaks in continuation of the services of the applicants and they were selected without broad level competition. Therefore, the applicants cannot be said to be the best candidates. In view of the same, according to the learned Presenting Officer ratio laid in the citation of the Hon'ble Supreme Court of India in the matter **of Secretary, State of Karnataka and Others Vs. Umadevi**

and Others in Appeal (Civil) No. 3595-3612 of 1999 decided on 10.04.2006 would be applicable, wherein in para No. 44 of the said judgment it is observed as follows :-

“44. 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.”

23. In view of the rival submissions as above, if the facts of the present cases are considered, it is seen that the applicants in all these Original Applications have been working on ad-hoc and temporary basis from the different dates, which are reflected in the Table reproduced while narrating the facts of the cases and all the applicants have worked in the range of 2 years to 7 years

as on the date of filing the respective O.As. and by now for about 6 to 11 years. The State Government has already regularized the services of the Assistant Professors by the G.R. dated 08.06.2017 (Annexure A-9 (ii) of O.A. No. 379/2018), who have completed two years of service on ad-hoc basis. The present applicants are getting initially entry level pay scale of Rs. 15600-39100 (Grade Pay of Rs. 5400). They have participated in the selection process as laid down by the respondents vide G.R. dated 01.07.2010 (Annexure A-1 in O.A. No. 379/2018), which is based on the G.R. dated 10.08.2001 (Annexure A-5 in O.A. No. 379/2018). The selection committee is at the level of Government Medical College and Hospital under the Chairmanship of respective Deans, which can be said to be District Level or more than one District Level. They all were selected through advertisements. There is nothing on record to infer those were not widely published advertisements. It is a fact that their services were to be continued till regular recruitment, which can be done only after enacting the Recruitment Rules. However, no Recruitment Rules are framed for the post of Medical Officers in DMER. For that lapse the applicant cannot be held responsible and cannot be made to suffer. None of the citations referred to by both the parties mention that only as a special case under exceptional

circumstances, the services of such Medical Officers can be regularized as mentioned in G.Rs. dated 08.06.2017 (Annexure A-9(ii) in O.A. No. 379/2018) and 15.06.2017(Annexure A-9(iii) in O.A. No. 379/2018). Contentions in that regard raised on behalf of respondents that only as a special case under exceptional circumstances, such regularization is not acceptable considering the ratio laid down in the citations relied on behalf of the applicants.

24. In view of above facts and circumstances, in my considered opinion the claim of regularization made by all these applicants by filing the present Original Applications is well covered the citation relied upon by the learned Advocate for the applicants and more particularly in the citation of **Sheo Narain Nagar** (cited supra), as the present applicants have completed more than two years ad-hoc services. Moreover, the State Government has already regularized the service of such similarly situated persons. Moreover, similarly such relief from the date of appointment is granted by the State Government by way of G.Rs. dated 08.06.2017 (Annexure A-9(ii) in O.A. No. 379/2018) and 15.06.2017(Annexure A-9(iii) in O.A. No. 379/2018). In view of the same, I hold that the applicants in all these Original Applications are entitled for the relief of regularization as prayed

for by them from their respective dates of initial appointments with consequential benefits of annual increments and other benefits for all other purposes.

25. Record shows that the applicants thought their Union had made representation dated 19.05.2017 (annexure A-10 in O.A. No. 379/2018) seeking regularization of their services. Their said representation is rejected by the respondent No. 1 vide impugned communication dated 15.01.2020 (Annexure A-14 in O.A. No. 379/2018). While deciding the said representation, the respondent No. 1 did not take into consideration all the legal aspects of the matters as discussed hereinabove. In view of the same, the said impugned communication dated 15.01.2020 is not legal and proper and the same is liable to be quashed and set aside. I therefore, proceed to pass the following order :-

ORDER

The Original Application Nos. 379, 408, 536, 537, 538, 539, 550, 551 & 704 all of 2018 are allowed in following terms :-

- (A) Impugned communication dated 15.01.2020 (challenged in all the O.As.) issued by the respondent No. 1 rejecting the representation dated 19.05.2017

made by the applicants through their Union is hereby quashed and set aside.

(B) The respondent No. 1 is directed to regularize the services of all the applicants on the post of Medical Officer, Group-A (Class-II) in Government Medical College and Hospital, Latur as regular appointees from the respective dates of their initial appointments and to extend all the consequential service benefits to all the applicants, to which they would become entitled in view of regularization of their services within the period of three months from the date of this order.

(C) There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 18.08.2022.

(V.D. DONGRE)

MEMBER (J)