

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON ORDER IN O.A. NO. 444/2014 AND O.A. NO.
119/2015

1) ORIGINAL APPLICATION NO. 444 OF 2014

DIST. : NANDED

- (1) Shaikh Tajoddin Shaikh Manikji Kasar)
Age. 48 years, Occu. : Badli Kamgar,)
R/o at Post Malakoli, Tq. Loha,)
Dist. Nanded.)
- (2) Shivaji Sheshrao Kamble,)
Age. 44 years, Occu. : Badli Kamgar,)
R/o at Sawaleshwar, Post Chikhali,)
Tq. Kandhar, Dist. Nanded.)
- (3) Shrinivas Laxmanrao Kalaskar,)
Age. 46 years, Occu. : Badli Kamgar,)
R/o Madai Tekdi, Nanded.)
- (4) Devidas Govindrao Pawar,)
Age. 46 years, Occu. : Badli Kamgar,)
R/o Dhanegaon, Nanded.)
- (5) Shaikh Anwar Shaikh Mannu,)
Age. 46 years, Occu. : Badli Kamgar,)
R/o Labour Colony, Nanded.)
- (6) Shaikh Ismile Shaikh Meera,)
Age. 43 years, Occu. : Badli Kamgar,)
R/o Khadakpura, Nanded.)
- (7) Govind Rangnathrao Gudsurkar,)
Age. 45 years, Occu. : Badli Kamgar,)
R/o Wadhone (Bk), Tq. Udgir,)
Dist. Nanded.)
- (8) Mohd. Shakil Mohd. Irshad,)
Age. 35 years, Occu. : Badli Kamgar,)
R/o Mill Area, Nanded.)

- (9) Uttam Nagorao Waghmare,)
Age. 36 years, Occu. : Badli Kamgar,)
R/o Siddharth Nagar, Karbhala Road,)
Nanded.).. **APPLICANTS**

VERSUS

- (1) State of Maharashtra,)
Through Secretary, Director Medical)
Education & Research Department,)
Government Dental College & Hospital,)
4th floor, Sent Jorg Hospital Area,)
P. Demelo Road, Fort, Mumbai – 01.)
- (2) The Dean,)
Dr. Shankarrao Chavan Govt. Medical)
College and Hospital, Nanded.).. **RESPONDENTS**

AND**2) ORIGINAL APPLICATION NO. 119 OF 2015**

DIST. : NANDED

- (1) Mohanchandra s/o Jalbhaji Panjol,)
Age. 47 years, Occu. : Service,)
R/o Sidhanathpuri Bhogalli,)
Near Hatjodimandira, Nanded,)
Dist. Nanded.)
- (2) Govind s/o Eknath Jogdand,)
Age. 41 years, Occu. : Service,)
R/o N.D. 41/B/23/3, Sambhaji Chowk,))
CIDCO, Nanded, Dist. Nanded.)
- (3) Dyanoba s/o Tukaram Mundhe,)
Age. 38 years, Occu. : Service,)
R/o Wakradwadi, Post Bor (Bk),)
Tq. Kandhar, Dist. Nanded.)
- (4) Mohan s/o Sahebrao Jadhav,)
Age. 38 years, Occu. : Service,)
R/o At Mohala, Post Kondka,)
Tq. Sonpeth, Dist. Parbhani.)

- (5) Nogorao s/o Vithoba More,)
Age. 50 years, Occu. : Service,)
R/o Panshevdi, Tq. Kandhar,)
Dist. Nanded.)
- (6) Madhav Brahmaji Deshmukhe,)
Age. 44 years, Occu. : Service,)
R/o Pandurang Nagar, Nanded,)
Dist. Nanded.)
- (7) Dashrath s/o Govind Raswant,)
Age. 44 years, Occu. : Service,)
R/o Phulwad, Tq. Kandhar,)
Dist. Nanded.)
- (8) Yashwant s/o Datta Malzkar,)
Age. 38 years, Occu. : Service,)
R/o At post Savargaon (Mal),)
Tq. Hadgaon, Dist. Nanded.)
- (9) Narsingh s/o Laxman Bhosale,)
Age. 45 years, Occu. : Service,)
R/o Markhel, Tq. Deglur, Dist. Nanded.)..

APPLICANTSVERSUS

- (1) State of Maharashtra,)
Through Secretary, Director Medical)
Education & Research Department,)
Government Dental College & Hospital,)
4th floor, Sent Jorg Hospital Area,)
P. Demelo Road, Fort, Mumbai – 01.)
- (2) The Dean,)
Dr. Shankarrao Chavan Govt. Medical)
College and Hospital, Nanded.)..

RESPONDENTS

APPEARANCE :- Shri S.P. Salgar, learned Advocate holding
for Shri S.S. Gangakhedkar, learned
Advocate for the applicants in both the
cases.

: Smt. Sanjivani Deshmukh Ghate, learned
Presenting Officer for the respondents in
both the cases.

Coram : **Hon'ble Shri B.P. Patil, Acting Chairman**
and
Hon'ble Shri P.N. Dixit, Vice Chairman (A)
Reserved on : **16th November, 2019**
Pronounced on : **27th November, 2019**

ORDER

1. Facts and the issues involved in both the Original Applications are similar and identical therefore we have decided both the Original Applications by the common order.

2. By filing the present Original Applications the applicants have challenged the tender notice dtd. 23.7.2014 and the Government Resolution dtd. 3.1.2014 issued by the respondent no. 1 and prayed to quash and set aside the same and also to direct the respondent nos. 1 & 2 to act strictly in consonance with the directions given by this Tribunal in O.A. no. 138/2003 dtd. 18.6.2004.

3. Applicants in both these matters are casual appointees in Class-IV appointed in leave or similar casual vacancies for one or more spell/s of 29 days each on the establishment of the respondent no. 2 the Dean, Government Medical College & Hospital, Nanded. It is their contention that this Tribunal and the principal seat of this Tribunal at Mumbai directed the respondents

not to fill up the vacancies by appointing fresh appointees on the post of present applicants until utilization of the list of seniority prepared under the orders of this Tribunal. But the respondent no. 1 has issued an advertisement in the news paper and also published the same on its website on 23.7.2014 thereby inviting tenders to fill up the posts of the applicants and similarly situated persons, who are working on the establishment of res. nos. 1 & 2 as Ward Servants, Sweepers, Watchman and Peons etc. on contract. By issuing the tender notice dtd. 23.7.2014 the res. no. 1 has conveniently made an attempt to bypass the orders passed by this Tribunal with specific directions that no further appointments should be made on the post occupied by the applicants until utilization / exhausting the seniority list prepared as regards the applicants and similarly situated candidates. It is their contention that in furtherance of the directions given by this Tribunal two separate seniority lists were prepared in category 'A' and 'B' of those class-IV candidates who were working as 'Safaikamgar' on the establishment of respondent nos. 1 & 2. It is their contention that the seniority list of all the 'badli' kamgars / class-IV employees working on the establishment of respondent no. 2 was prepared strictly in consonance with the orders passed by this Tribunal. Therefore, the respondents have to regularize the services of the applicants and similarly situated employees on

the vacant posts strictly as per their seniority maintained in the list. The Government has prepared the seniority list of 'Badli' Kamgars (Class-IV) and it has been informed that the process of regularization of services of Safaikamgars (casual leave vacancy appointees) is under process and under consideration of the Government. Lastly on 15.7.2014 the res. no. 1 prepared the seniority list of all those class-IV employees including the applicants. It is their contention that this Tribunal has directed the respondents not to appoint fresh appointees on the post which would be vacant due to casual / leave or any other temporarily reason until utilization or exhausting of the seniority list of the candidates, but the respondents with mala-fide intentions and to bypass the orders of this Tribunal are planning to fill in the post by outsourcing the agency under the garb of the impugned tender notice. Therefore they approached this Tribunal by filing the present Original Applications and prayed to quash the G.R. dtd. 3.1.2014 issued by the res. no. 1 and the tender notice dtd. 23.7.2014 issued by the res. no. 2.

4. Respondent nos. 1 & 2 have filed their affidavit in reply and additional affidavit in reply in respective Original Applications and resisted the contentions of the applicants. It is their contention that in the tender notice dtd. 23.7.2014 published by the

respondent no. 1 nowhere it is mentioned regarding filling in the posts on which the applicants and similarly situated employees are working, but it was issued to outsource the agency for cleaning related services in the Government Medical Colleges & Hospitals. It is their contention that no posts of Ward servants, Aaya etc. are advertised. The said tender is not for filling in the posts on which the applicants are working, but it was issued for outsourcing the services for sweeping. It is their contention that the res. no. 2 had already implemented the order passed by this Tribunal in O.A. no. 138/2003 dtd. 18.6.2004 and both the seniority lists have been prepared and the same would be operated while appointing the 'Badli' Workers. It is their contention that it is not their intention to bypass the order of the Tribunal in O.A. no. 138/2003 dtd. 18.6.2004 and discontinue the services of the applicants. In the G.R. dtd. 3.1.2014 issued by the Medical Education & Drugs Department, Mantralaya, Mumbai it has been specifically mentioned that Safaikamgars, who are working regularly will not be displaced from their job and they will be absorbed in the service and proposal in that regard is under consideration of the Government. It is their contention that the present Original Applications have been filed without any reasonable apprehension.

5. It is their contention that before October, 2015 the establishment of res. no. 2 was functioning on 11 acres land with 41,000 sq. mtr. Constructions thereon, having 143 toilets and bathrooms, 8 operation theatres and 17 wards and the strength of class-IV posts was in proportion to 200 beds. However, Since October, 2015 establishment of res. no. 2 including the college and the attached hospital started functioning on the land admeasuring 112 acres at Vishnupuri, Nanded having construction of 1,50,000 sq. mts. thereon with total 720 beds (525 beds for M.C.I.), having 435 toilets and bathrooms, 16 operation theatres and 29 (now 35) wards. The number of sanctioned class-IV posts need to be proportionately increased and therefore there was need to create 325 additional posts in class-IV to take care of the patients and cleanliness environment in the hospital. Accordingly the respondent no. 2 communicated the said fact to the res. no. 1 by the letter dtd. 4.11.2015. Respondent no. 1 by the Circular dtd. 19.10.2016 instructed the res. no. 2 to carry out the tender process at the level of institution to outsource the work of cleaning related services as per the guidelines given by the Finance Department on 2.8.2016. The res. no. 2 formed a committee for outsourcing the cleanliness related service and accordingly action was taken as per the decision taken by the committee.

6. It is their further contention that the order passed by this Tribunal in O.A. no. 138/2003 dtd. 18.6.2004 is implemented by the res. nos. 1 & 2. Seniority lists of 'badli' kamgars have been prepared in accordance with the said order and the same are operational at the establishment of res. no. 2. There are no contractual appointments of class-IV workers on fixed monthly payment on the regular establishment. Posts of class-IV employees are vacant and posts where leave vacancies are created paves way for seeking services of irregular temporary appointees (29 days 'badli' karmacharis). It is their contention that the applicants will not lose their job in case tender process is implemented and therefore they prayed to reject the Original Applications.

7. We have heard the arguments advanced by Shri S.P. Salgar, learned Advocate holding for Shri S.S. Gangakhedkar, learned Advocate for the applicants in both these cases and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the respondents in both the cases. We have also gone through the documents placed on record.

8. Admittedly the applicants in both these matters are casual appointees in Class-IV appointed in leave or similar casual

vacancies for one or more spell/s of 29 days each on the establishment of the respondent no. 2. Admittedly similarly situated persons filed O.A. no. 138/2003 before this Tribunal. That O.A. was decided by the Tribunal on 18.6.2004 and this Tribunal had given directions to the respondents to prepare the list of the said employees, maintain their seniority and also directed the respondents to fill up the vacancies arose on the regular temporary establishment from the said list strictly as per their seniority. No appointment of fresher shall be made either in leave or similar casual on the regular temporary establishment unless and until the seniority list of 'badli karmacharis' exhausts. Admittedly the res. no. 2 issued the tender notice dtd. 23.7.2014 on the basis of G.R. dtd. 3.1.2014 to outsource the cleaning related services in the Government Medical Colleges & Hospitals.

9. Learned Advocate for the applicants has submitted that the rights of the applicants have been protected by the order of this Tribunal in O.A. no. 138/2003 dtd. 18.6.2004. He has submitted that the Government has prepared two separate lists of the 'badli karmacharis' and directed to absorb them on regular temporary establishment as and when the vacancies arise. It is his contention that some of the similarly situated employees have been absorbed, but the applicants have not been yet absorbed and

they are still working in the casual / leave vacancies. He has submitted that the respondent nos. 1 & 2 without implementing the order of this Tribunal in O.A. no. 138/2003 dtd. 18.6.2004 issued G.R. dtd. 3.1.2014 and permitted the Government Medical Colleges & Hospitals in the State of Maharashtra to outsource the agency for doing the work of cleaning in the Government Medical Colleges & Hospitals. On the basis of the said G.R. the res. no. 2 issued an advertisement inviting the tender from the concerned agencies for doing the work of cleaning in the hospital and it has been published on 23.7.2014. He has submitted that the very act on the part of the res. nos. 1 & 2 creates apprehension in the mind of the applicants that they may be displaced from their work and therefore they approached this Tribunal by filing the present O.As. He has submitted that the G.R. dated 3.1.2014 and the tender notice dated 23.7.2014 are against the directions of the Tribunal in O.A. no. 138/2003 and therefore he prayed to allow the O.As.

10. Learned Presenting Officer submits that the res. nos. 1 & 2 never intend to bypass the order of the Tribunal in O.A. no. 138/2003 dtd. 18.6.2004 and on the contrary they are implementing the said order. Accordingly, two seniority lists of 'badli karmacharis' have been prepared and they are going to

absorb the employees as per their seniority. She has submitted that before October, 2015 the establishment of res. no. 2 was functioning on 11 acres land having construction of 41,000 sq. mtr. & having 143 toilets and bathrooms, 8 operation theatres and 17 wards and the strength of class-IV posts was in proportion to 200 beds. But in October, 2015 the Government started Medical College & Hospital at Vishnupuri, Nanded on the land admeasuring 112 acres having construction of 1,50,000 sq. mts. thereon with total 720 beds (525 beds for M.C.I.) and 435 toilets and bathrooms, 16 operation theatres and 29 (now 35) wards. Prior to October, 2015 the Hospital was having 200 beds only. Because of the establishment of medical college & hospital there was need to increase the strength of class-IV posts by creating additional 325 posts for maintaining the cleanliness and good environment in the hospital. She submits that new establishment of res. no. 2 has to manage class-IV services with a less number i.e. 382 sanctioned class-IV posts. Out of 382 sanctioned posts, 136 posts belong to the college and 246 posts to the hospital establishment and only 264 posts are filled in with regular permanent appointees (92 for college and 172 for hospital). At present 118 posts (44 for college and 74 for hospital) of class-IV are vacant for want of regular permanent employees. The said 118 posts are utilized for giving 29 days temporary / casual

appointments with technical break. The problem of inadequate staff of class-IV category has to be solved and therefore the res. no. 1 decided to outsource the work of sweeping in the hospital through the private agency and accordingly the G.R. dtd. 3.1.2014 has been issued and on the basis of the said G.R. the res. no. 2 constituted a Committee for outsourcing the cleanliness related service by calling the tenders. She has submitted that there was no intention of the res. nos. 1 & 2 to end the services of the applicants or to displace them. She has submitted that in the G.R. dtd. 3.1.2014 it has been mentioned that the employees presently doing the work on regular basis will not be disturbed and will be absorbed in the hospital / college. Not only this, it has been mentioned therein that heirs of the said employees will be absorbed in case of death of those employees. She has submitted that the said G.R. dtd. 3.1.2014 and the tender notice dtd. 23.7.2014 has been issued in order to main the cleanliness in the hospital, which is necessary for good environment and for taking care of the patients and therefore there is no illegality. She has submitted that the respondents never flouted the directions given by the Tribunal in O.A. no. 138/2003. Apprehension of the applicants is not just and reasonable and therefore she has prayed to dismiss the O.As.

11. On perusal of the record we find that this Tribunal had issued some directions in O.A. no. 138/2003 dtd. 18.6.2004 regarding absorption of the 'badli karmacharis' working on the establishment of res. no. 2. As per the said directions the respondents has to maintain the list of the employees and to absorb them on the regular temporary establishment whenever vacancies arise. In view of the said directions the Government had issued G.R. and maintained two separate seniority lists of the badly karmacharies. The Government never intended to displace the applicants and other similarly situated employees who are not yet absorbed in the regular temporary establishment. There is no dispute about the fact that the res. no. 2 was running the hospital on the area of 11 acres of land having construction of 41,000 sq. mtr., having 143 toilets and bathrooms, 8 operation theatres and 17 wards prior to October, 2015. In October, 2015 the Government started Medical College & Hospital at Vishnupuri, Nanded on the area admeasuring 112 acres of land. Previously the hospital was functioning on 11 acres land with construction of 41,000 sq. mtr. thereon having 143 toilets and bathrooms, 8 operation theatres and 17 wards and the strength of class-IV posts was in proportion to 200 beds. Since October, 2015 it started functioning on the land of 112 acres having constructed premises of 1,50,000 sq. mts., having 720 beds (525 beds for

MCI), 435 toilets and bathrooms, 16 operation theatres and 29 (now 35) wards. As compared to earlier hospital the strength of class-IV employees in the newly constructed hospital has not been increased. As 118 posts of class-IV are vacant it affected the work of cleanliness in the hospital. In order to maintain the good environment and cleanliness in the hospital the Government has decided to outsource the cleaning related work through the private agency and therefore G.R. dtd. 3.1.2014 has been issued by the res. no. 1. It has been specifically mentioned therein that the sweepers working in the hospital on the regular basis will be absorbed in the hospital or in the college. It has been mentioned in the said G.R. that if some of the employees are died, then their legal heirs will be absorbed in their place. The relevant portion of the said G.R. is reproduced herein under :-

“राज्यातील शासकीय वैद्यकीय रुग्णालयांशी संलग्नित (१) सेंट जॉर्ज रुग्णालय, मुंबई, (२) ससुन सर्वोपचार रुग्णालय, पुणे, (३) शासकीय वैद्यकीय रुग्णालय व अतिविशेषोपचार रुग्णालय, नागपुर, (४) इंदिरा गांधी शासकीय वैद्यकीय रुग्णालय, नागपुर, (५) सर्वोपचार रुग्णालय, अकोला, (६) सर्वोपचार रुग्णालय, लातूर, (७) छत्रपती प्रमिलाराजे सर्वोपचार रुग्णालय, कोल्हापूर (८) डॉ. शंकरराव चव्हाण शासकीय रुग्णालय, नांदेड या ८ शासकीय वैद्यकीय रुग्णालयांमधील स्वच्छता विषयक कामे बाह्यस्त्रोताद्वारे (Through Out Sourcing) करण्यासंदर्भात निर्णय घेण्यात आला आहे. सध्या या ८ शासकीय वैद्यकीय रुग्णालयात नियमित स्वरूपात सफाईगार या पदावर कार्यरत असणा-या संबंधीत रुग्णालय / महाविद्यालय रिक्त असलेल्या गट - ड च्या रिक्त पदावर सामावून घेण्याच्या कार्यवाही संदर्भात स्वतंत्रपणे आदेश निर्गमित करण्यात येतील. संबंधीत रुग्णालय / महाविद्यालयात “ड” संवर्गात पुरेशी रिक्त पदे

उपलब्ध नसल्यास नजिकच्या रुग्णालयात / महाविद्यालयातील ग-ड संवर्गातील रिक्त पदांवर सामावून घेण्याची कार्यवाही करण्यांत येईल. सध्या ८ शासकीय रुग्णालयांमध्ये जे कर्मचारी सफाईगार या पदावर कार्यरत आहेत त्यांना गड-ड च्या अन्य पदावर सामावून घेतले तरी त्यांच्या निवृत्ती / मृत्यू / स्वेच्छानिवृत्ती / वैद्यकीयदृष्ट्या अपात्र ठिदविल्यानंतर सामाजिक न्याय विभाग आणि सामान्य प्रशासन विभागाच्या परिपत्रकातील एकत्रित तरतुदीनुसार त्यांच्या जागी वारसा हक्काने नियुक्ती देण्यात येईल.”

12. In pursuance of the said G.R. the res. no. 2 issued advertisement inviting tenders for outsourcing the work of sweeping and therefore tender notice dtd. 23.7.2014 has been issued. Neither the G.R. dtd. 3.1.2014 nor the tender notice dtd. 23.7.2014 discloses that the said advertisement has been issued in order to fill up the posts of class-IV employees on which the applicants are discharging the work. Therefore apprehension expressed by the applicants does not seem to be reasonable that they will be losing their job because of outsourcing of the work of cleaning by private agency. On the contrary the G.R. dtd. 3.1.2014 shows that it was not the intention of the respondents to remove the applicants from their present post. On the contrary it gives assurance to them that they will be absorbed in the hospital in due course.

13. Since the res. no. 2 has been established on the larger area and constructed big hospital for providing medical facilities to the public at large, it is incumbent on the part of the res. no. 2 to

maintain cleanliness in the hospital in the interest of public at large and health of patients and therefore the impugned G.R. dtd. 3.1.2014 has been issued by the res. no. 1 and accordingly tenders have been invited for outsourcing the work of sweeping. Therefore, we do not find any illegality in the G.R. dtd. 3.1.2014 and the tender notice dtd. 23.7.2014. It is not in contravention with the directions issued by this Tribunal in O.A. no. 138/2003 dtd. 18.6.2004. Therefore, no interference in the said G.R. & tender notice at the hands of this Tribunal is called for. There is no merit in the O.As. Consequently the same deserve to be dismissed.

14. In view of the discussion in foregoing paragraphs, Original Application Nos. 444/2014 and 119/2015 stand dismissed. There shall be no order as to costs.

(P.N. DIXIT)
VICE CHAIRMAN (A)

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 27.11.2019