

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 683 OF 2019

DISTRICT: - PARBHANI.

Shivaji Madhavrao Ghantewad,

Age-40 years, Occu. : Service,
R/o. Datta Nagar, Near Sathe Chowk,
Near Khandoba Mandir, Nanded.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra,

Through : Secretary,
Social Justice & Special Assistant
Department, Mantralaya,
Mumbai – 32.

2. The Commissioner,

Social Welfare Commissionrate,
Maharashtra State,
Charchpath, Pune-411001.

3. The Regional Dy. Commissioner,

Social Welfare Department,
Aurangabad.

4. The Assistant Commissioner,

Social Welfare Department,
Parbhani, Dr. Babasaheb Ambedkar
Samajik, Nya Bhavan, Jayakwadi Vasahat,
Parbhani.

5. The Special Social Welfare Officer,

Parbhani, Administrative Building,
1st floor, Parbhani.

6. The Warden/Gruhpal,

Boys Govt. Hostel, Manwat,
Dist. Parbhani.

.. RESPONDENT.

APPEARANCE : Shri Kakasaheb B. Jadhav, learned
Advocate for the applicant.

: Smt. M.S. Patni – learned Presenting
Officer for the respondents.

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

DATE : **23.12.2021**

ORDER

By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed seeking regularization of the service of his post of Watchman and grant of consequential benefits and also challenging the impugned order dated 1.8.2018 (Annexure 'A-6') issued by the respondent No. 4, the Assistant Commissioner, Social Welfare Department, Parbhani deleting the condition No. 3 in his fresh appointment order / letter dated 18.3.2011 (Annexure 'A-2', page-18) out of 5 conditions mentioned therein. The condition No. 3 therein was relevant and was to the effect that only after completion of 5 years' service of the applicant on the post of Watchman, he will be entitled for regular pay scale of the post of Watchman/ Peon.

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

(i) The applicant belongs to NT-B category. He is having educational qualification of HSC. Respondent No. 5 i.e. the Special Social Welfare Officer, Parbhani, issued an advertisement in the newspaper for filling various posts on contract basis. Pursuant to the said advertisement the applicant applied for the post of Watchman. He was selected on that post. He got an appointment as Watchman by an order dated 29.6.2010 (part of annexure 'A-1' collectively) issued by the respondent No. 5 on contract basis for 29 days. The applicant was accordingly posted as Watchman at Selu, District Parbhani. He joined there on 1.7.2010, as per joining letter dated 1.7.2010 (part of annexure 'A-1' collectively, page-17).

(ii) The applicant was working on that post continuously. Respondent No. 5 thereafter issued a fresh appointment order dated 18.3.2011 (Annexure 'A-2') to the applicant on the post of Watchman on the fixed salary of Rs. 3,000/- per month.

(iii) After working for 5 years after issuance of the fresh appointment order / letter dated 18.3.2011 (Annexure 'A-2'), the applicant submitted

representation dated 22.7.2015 (part of Annexure 'A-4' collectively) through respondent No. 6, the Warden/Gruhpal, Boys Government Hostel, Manwat, Dist. Parbhani, to the respondent No. 4, the Assistant Commissioner, Social Welfare Department, Parbhani, requesting for the regular salary for the post of Watchman/Peon as per order dated 18.3.2011 (Annexure 'A-2') contending that he is entitled for the same as he has successfully completed continuous service of 5 years on contract basis. Respondent No. 6 in turn on 22.7.2015 itself by another letter (part of Annexure 'A-4' collectively) recommended the case of the applicant for grant of pay scale of Wachman/Peon to the res. No. 4. Upon that the respondent No. 4 sent letter dated 1.8.2018 (Annexure 'A-5') to the respondent No. 2 i.e. the Commissioner, Social Welfare Commissionrate, M.S. Charchpath, Pune, seeking guidance on the subject. Surprisingly, respondent No. 4 issued order dated 1.8.2018 (Annexure 'A-6', page-25) deleting condition No. 3 of his fresh appointment order/letter dated 18.3.2011 (Annexure 'A-2'), whereby it was stated that after completion of 5 years' service as a Watchman, the applicant would be entitled for regular pay scale of Watchman/Peon.

(iv) Earlier respondent No. 6 had issued certificates dated 20.4.2011 & 22.6.2013 (Annexure

'A-7' collectively) regarding his good conduct and character while working on the post of Watchman on contract basis. In the circumstances, as above it is the contention of the applicant that he is working with the respondents continuously without any break. He is working as a Watchman on contract basis throughout satisfactorily. His conduct and character is good. He has completed unbreakable service for more than 5 years on that post. He, therefore, made another representation dated 19.7.2019 (Annexure 'A-8) seeking regularization of his service as a Watchman and grant of regular pay scale of that post. It is further submitted that without giving any opportunity the respondent No. 4 has deleted condition No. 3 of appointment letter/order dated 18.3.2011 by issuing impugned order dated 1.8.2018 (Annexure 'A-6', page-25). The above-said representations made by the applicant are not rejected and are still pending. The State Government has absorbed and regularized the services of the temporary employee as reflected in G.R. dated 31.8.2018 (Annexure 'A-9') issued by respondent No. 1 on the post of Higher Grade Stenographer. In such circumstances, the applicant seeks the reliefs as discussed above.

3. Affidavit in reply on behalf of respondent Nos. 2 to 6 has filed by Shri Sachin Krishna Kavale, Assistant Commissioner, Social Welfare Department, Parbhani, District Parbhani, thereby he has denied the adverse contentions raised in the O.A. It is not in dispute that the applicant is working as Watchman on contract basis on fixed salary of Rs. 3000/- per month since July, 2010 continuously. It is also not disputed that the appointment order / letter dated 18.3.2011 (Annexure 'A-2', page-18) was issued by the respondent No. 5 i.e. the Special Social Welfare Officer, Parbhani. However, condition No. 3 in question was inserted in the said letter wrongly by the respondent No. 5 stating that after completion of 5 years continuous service on the post of Watchman on contract basis, the pay scale of Watchman will be entitled to the applicant. There was no base for inserting the said condition. It was not based upon any Government Resolution. The said condition was wrongly mentioned therein in the order dated 18.3.2011 without following norms prescribed in the Government Resolution dated 28.6.2007 (Annexure -1, page-40 of paper book of O.A.). After order dated 18.3.2011 the

office of respondent No. 5 had not issued any further order of continuation of the applicant and, therefore, the applicant has no *locus standi* to file the present Original Application. The said condition No. 3 contained in the order dated 18.3.2011 was wrongly mentioned without any permission from higher authority. The post of Watchman held by the applicant is not sanctioned by the Government, as well as, Finance Department as a permanent post. There is no any provision to regularize the applicant's contractual post of Watchman. The case of the post of Higher Grade Stenographer relied upon by the applicant is not applicable to the case of the applicant as in the present of Higher Grade Stenographer that was sanctioned post. In view of the same, the present Original Application is liable to be dismissed.

4. The applicant has filed affidavit in rejoinder reiterating the contentions raised in the Original Application. Thereby he has placed reliance on the decision of the Hon'ble High Court of Bombay Bench at Nagpur dated 19.10.2013 in **W.P. No. 2046/2010 in the matter of SACHIN AMBADAS DAWALE & ORS. VS. STATE OF MAHARASHTRA & ANR.** In the said case, according to the applicant, the petitioners

therein, who were working as Lecturers in different departments of Government Polytechnic in the State of Maharashtra on contract basis for more than 3 years, their services were regularized, who had completed 3 years with technical breaks and were ordered to be absorbed in the Government service. The applicant has placed reliance on the decision of the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad dated **6.2.2018 in W.P. No. 10060/2017** in the matter of **THE STATE OF MAHARASHTRA AND ANOTHER VS. AMOL KANTRAO KAKADE AND OTHERS**, which confirmed the decision of M.A.T. Aurangabad Bench dated 15.12.2016 passed in O.A. No. 539/2016 along with M.A. No. 301/2016. As per the said decision Higher Grade Stenographers working on the establishment of Social Justice and Special Assistance Department of Government of Maharashtra, who were working on contractual basis were regularized from the specific date of 15.12.2016.

5. I have heard the arguments advanced by Shri Kakasaheb B. Jadhav, learned Advocate for the applicant and

Smt. M.S. Patni, learned Presenting Officer on behalf of the respondents.

6. Learned Advocate for the applicant has argued the matter on the basis of case law cited and referred to in the affidavit in rejoinder filed on behalf of the applicant. Per contra, learned Presenting Officer opposed the submissions raised on behalf of the applicant stating that the case law relied upon by the applicant would not be applicable to the present case as the facts of that case are different and more particularly the applicants therein were appointed on sanctioned post, which is not the case here.

7. In the case in hand, it is pertinent to note that the Government Resolution dated 28.6.2007 (Annexure-1, page-40 produced by the respondents along with affidavit in reply) was issued by the respondent No. 1 creating 100 posts each in the cadre of Warden (Non-gazetted), Junior Clerk, Peon but Watchman and Sweeper on contract basis for maintaining 100 hostels to be created on Tq. & District level. Similarly, 28 posts each in the category of Warden (Gazetted), Head Clerk, Junior Clerk, Peon but Watchman & Sweeper on contract basis at hostels on divisional level. In view of the same, the

appointment of the applicant on the post of Watchman on contract basis is having source in above-said G.R. dated 28.6.2007. It is not in dispute that the applicant is working on the post of Watchman on contract basis since 1.7.2010 till date without any break in service, thereby he is getting fixed contractual salary of Rs. 3000/- per month.

8. The applicant in order to seek relief in the present matter has placed reliance on condition No. 3 in his fresh appointment letter/order dated 18.3.2011 (Annexure 'A-2', page 18 of paper book of O.A.), which is as follows: -

“३) कंत्राटी पहारेकरी म्हणुन पाच वर्ष सेवा पूर्ण झाल्यानंतरच पहारेकरी/शिपाई पदासाठी असलेली वेतनश्रेणी त्यांना लागू होईल.”

9. The said letter was issued by the respondent No. 5, the Special Social Welfare Officer, Parbhani. Admittedly, by order dated 1.8.2018 (Annexure 'A-6') he cancelled the said condition No. 3, as the said condition is not incorporated in Government Resolution dated 28.6.2007. In view of the same, it cannot be said that the said condition was inserted therein in fresh appointment letter / order dated 18.3.2011 (Annexure 'A-2') by way of any policy decision of respondent No. 1, who issued G.R. dated 28.6.2007 in that respect. No

doubt, upon reading the said condition No. 3, *prima facie*, it appears that right is conferred upon the applicant for regularization of his service on contractual basis on completion of 5 years of service, but the said decision taken by the respondent No. 5 cannot be said to be having statutory force, as the same is not issued as per direction of his any higher authority including the respondent No. 1. In the facts and circumstances of the present case, it can be said that the said condition is inserted by respondent No. 5 without having any legal authority and the same is withdrawn by him subsequently by creating his wrong exercise of power. In the circumstances, no case is made out to quash and set aside the said impugned order dated 1.8.2018 (Annexure 'A-6').

10. But that apart that the learned Advocate for the applicant has relied upon the decision of the Hon'ble High Court Bench at Nagpur in W.P. No. 2046/2010 (*supra*). In the said decision the petitioners therein were working as Lecturers in different departments of Government Polytechnic in the State of Maharashtra. They were also appointed as per the policy of the Government of Maharashtra incorporated in the Government Resolution dated 25.7.2002 as modified by

the Government Resolutions dated 2.8.2003 and 3.10.2003. They were working for the period ranging from 3 years to 10 years and still they were not given permanency and benefits of permanent appointee. In the said cited case, the petitioners thereof demonstrated that the Government of Maharashtra had regularized the services of the various employees working in different categories such as (i) Shikshan Sevak working in the private schools appointed on contractual basis; (ii) Gram Sevak appointed on contractual basis; (iii) 3761 employees appointed in the various departments of Mantralaya, who were not selected through the procedure of Selection Board; (iv) Lecturers working in the Government Medical Colleges and Government Dental Colleges, who were appointed on contractual basis; and (v) Assistant Engineers Class-II in the Maharashtra Engineering Services Group B. After having taken into consideration the said instances, it is observed in this citation in paragraph No. 18 as follows: -

“18. -- -- -- -- -- -- -- --
 -- -- -- -- *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 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.”

11. Learned Advocate for the applicant has further relied upon the decision of M.A.T. Mumbai Bench at Aurangabad dated 15.12.2016 in O.A. No. 539/2016 with M.A. No. 301/2016 in the matter of **AMOL KANTARAO KAKDE & OTHERS VS. STATE OF MAHARASHTRA THROUGH THE SECRETARY, SOCIAL JUSTICE AND SPECIAL**

ASSISTANCE DEPARTMENT, MANTRALAYA, MUMBAI & ANOTHER. In the said case the applicants were appointed on the post of Higher Grade Stenographers on contractual basis pursuant to their selection that took place as per the advertisement issued for the said posts in the year 2009. They worked till 2014. They made representation in the year 2014 for their regularization. Their representation was rejected by the respondent No. 1. Their services were terminated by the respondent No. 2 vide order dated 22.6.2016. They challenged their said termination order by filing the said O.A. In the said decision, the applicant relied upon the decision of the Hon'ble High Court of Judicature at Bombay Bench at Nagpur in W.P. No. 2046/2010. The observations in paragraph No.10 of the said judgment are reproduced in paragraph No. 6 of this decision, which is as follows: -

“6. The issue before us is whether the present applicants are covered by the judgment of Hon'ble High Court in W.P. No.2046/2010. In para 10 of the judgment, Hon'ble High Court has observed as under :-

“10. We have considered the submissions on behalf of the petitioners and the respondents. It is undisputed that the appointments of the

petitioners are as per policy incorporated in the Government resolution dated 25th of July, 2002 in which it is laid down that the appointments will be on contractual basis and till the availability of the candidates appointed through regular selection process. However, it is important to consider that the petitioners are appointed after following the procedure of issuance of advertisement and conducting interviews by a duly constituted Selection Committee. The Selection Committee constituted as per the Government resolution dated 2nd August, 2003 comprises of highly experienced and technical persons like :

- (i) Joint Director, Technical Education Department,
- (ii) representative of women,
- (iii) Principal of the concerned institution,
- (iv) Representative of backward class, and
- (v) two Experts of concerned subject.”

In view of the above facts, it cannot be said that the appointments of the petitioners are back door or illegal. It cannot be said that the petitioners are appointed arbitrarily or haphazardly or clandestinely without issuing advertisement and without giving an opportunity to all the eligible candidates to participate in the selection process. From the record it clearly appears to be an undisputed position that in

response to the advertisement several candidates had participated in the selection process and it is the petitioners who were found eligible and suitable for the posts and as such were selected and appointed. It is not the case of the respondents that any illegalities took place during the selection process.”

Relying upon the said ratio it was held that the applicants were eligible to be regularized in service and the respondents were directed to regularize their pay scale from 15.12.2016. The respondent State challenged the said decision of M.A.T. Bench at Aurangabad dated 15.12.2016 before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad by filing W.P. No. 10060/2017. By order dated 6.2.2018 the said W.P. was dismissed confirming the order of the M.A.T. Bench at Aurangabad regularizing the services of the Higher Grade Stenographers.

12. The applicant has produced on record a copy of G.R. dated 31.8.2018 (Annexure 'A-9', page-29 of paper book of O.A.), which shows that the services of the applicants in O.A. No. 539/2016 and one more applicant who filed O.A. No. 100/2017 before the M.A.T. Bench at Aurangabad, which

were decided on 25.4.2018 and their services were regularized from the date of their contractual appointment.

13. In the case in hand the appointment of the applicant was pursuant to the advertisement issued for that purpose his selection was done on the post of Watchman on contractual basis by following usual procedure followed by the selection committee. That is reflected in his first appointment letter/order dated 29.6.2010 (part of Annexure 'A-1' collectively) as well as fresh appointment order dated 18.3.2011 (Annexure 'A-2'). Moreover, it is reflected in G.R. dated 28.6.2007 (page-40 of paper book of O.A.) that post of Watchman was on contractual basis and other posts were created subject to sanction of the Government. It is not demonstrated by the respondents that sanction for creation of such posts is not given by the respondent Government. In view of the same, it cannot be said that entry into service as Watchman on contractual basis of the applicant was backdoor entry. The applicant has worked from July, 2010 onwards till date. The applicant is working for more than 3 years period on the post of Watchman on contractual basis. In the case of **SACHIN AMBADAS DAWALE & OTHERS VS.**

STATE OF MAHARASHTRA & ANOTHER (SUPRA), the benefit of permanency was given to those, who had already completed minimum 3 years of service with technical breaks. In the case of **AMOL KANTARAO KAKDE & OTHERS VS. STATE OF MAHARASHTRA THROUGH THE SECRETARY, SOCIAL JUSTICE AND SPECIAL ASSISTANCE DEPARTMENT, MANTRALAYA, MUMBAI & ANOTHER (SUPRA)**, the benefit to the contractual Higher Grade Stenographers were given from the date of their appointment in the year 2009 in terms of G.R. dated 31.8.2018 (Annexure 'A-9') and monetary benefits from the date of order in O.A. In view of the same, ratio laid down in both these citations would be applicable in the case in hand as the facts in those cases are of similar nature. In the circumstances, I hold that the applicant shall be entitled for the benefit of regularization of service of the post of Watchman from the date of his joining on 1.7.2010 pursuant to appointment order dated 29.6.2010 with consequential benefits of regular pay scale of the post of Watchman as a Government servant from the date of this order i.e. 23.12.2021. I, therefore, proceed to pass the following order: -

ORDER

The present Original Application is partly allowed in the following terms: -

(i) The respondents are directed to regularize the services of the applicant on the post of Watchman from the date of his joining on 1.7.2010 pursuant to appointment letter/order dated 29.6.2010 (Annexure 'A1'). The applicant however, shall be entitled for monetary benefits such as pay scale and other benefits of the said post from the date of this order i.e. 23.12.2021. The respondents are directed to comply with the order within the period of 3 months from the date of this order.

(ii) The present Original Application is rejected in respect of prayer 11 (D), whereby the applicant has sought to quash and set aside the impugned order / letter dated 1.8.2018 (Annexure 'A-6', page-25 of paper book of O.A.) issued by the respondent No. 4, thereby deleting the condition No. 3 of the appointment order dated 18.3.2011.

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

MEMBER (J)

PLACE : AURANGABAD.

DATE : 23.12.2021

