

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.119/2014. (S.B.)

Kishor Madhavrao Kotambkar,
Aged about Major,
Occ-Service,
R/o Behind Priyadarshini College,
(North) Nalwadi, Tq. & Distt. Wardha.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Public Health,
Mantralaya, Mumbai-32.
2. The Director of Health Services,
Dental College Compound, Near C.S.T.,
(Erstwhile V.T.), Mumbai.
3. The Joint Director of Health Services,
Central Building, Pune.
4. The Deputy Director of Health Services,
Mata Kacheri, Shraddhanand Peth,
Nagpur Circle, Nagpur.

Respondents

ORIGINAL APPLICATION NO.120/2014.

Vijay Narayan Babhulkar,
Aged about 49 years,
Occ-Service,
R/o State Bank Colony, Pratapnagar,
Tq. & Distt. Wardha.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Public Health,
Mantralaya, Mumbai-32.
2. The Director of Health Services,
Dental College Compound, Near C.S.T.,
(Erstwhile V.T.), Mumbai.
3. The Joint Director of Health Services,
Central Building, Pune.
4. The Deputy Director of Health Services,
Mata Kacheri, Shraddhanand Peth,
Nagpur Circle, Nagpur.

Respondents

Shri V.B. Bhise, the Ld. Advocate for the applicants.
Shri A.M. Ghogre, the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J)

JUDGMENT

(Delivered on this 2nd day of August 2018.)

Heard Shri V.B. Bhise, the learned counsel for the applicants and Shri A.M. Ghogre, the learned P.O. for the respondents.

2. The applicants in these O.As have claimed regularization of their services and extension of benefit of

regularization for the post of Laboratory Technician from the date of their initial appointment. During the pendency of these O.As., they were regularized, but not from the date of their initial appointment and, therefore, the O.As were amended and the applicants claim that similarly situated employees like the applicants were granted the said benefit of regularization from 8.3.1999 and, therefore, they shall also be extended the said benefit w.e.f. 8.3.1999. They have also claimed release of all benefits such as time bound promotion by counting their past services.

3. In O.A. No. 119/2014, the applicant was appointed after following due process of selection to the post of Laboratory Technician on 17.11.1988 initially for six months and was sent for training. The second *ad hoc* appointment order was issued to the applicant on 5.6.1989 and vide letter dated 28.8.1989, his services were continued, since he was continuously serving.

4. In O.A. No. 120/2014, the applicant was initially appointed for three months as Laboratory Technician vide order dated 18.8.1989 and second *ad hoc* appointment order was issued to him on 28.11.1989 and he continued to be in continuous service vide orders dated 12.11.1990 and 18.7.1990.

5. Vide letters dated 24.4.2006 and 10.6.2009, cases of both the applicants were recommended for regularization.

6. As already stated, during the pendency of the O.As., the services of the applicants came to be absorbed / regularized vide G.R. dated 30.3.2016. However, the regularization was with effect from the date of issuance of the G.R. and not retrospectively and, therefore, it is the case of the applicants that, their previous service from 1988 should have been treated as continuous service.

7. The learned counsel for the applicants submits that earlier the services of similarly situated employees were regularized with effect from the date of G.R. i.e. 8.3.1999 and for no fault on the part of the applicants, their names were not recommended at that time or it was an administrative lapse. The Government cannot apply different scales for similarly situated employees.

8. Perused the G.R. dated 30.3.2016 vide which, services of the applicants have been regularized. Copy of the said G.R. is placed on record at page Nos. 60-A to 60-B (both inclusive). There is a reference of the G.R. dated 8.3.1999 in the G.R. dated 30.3.2016. Opening para of the said G.R. reads as under:-

“सन १९८९-९० मध्ये उपसंचालक, आरोग्य सेवा, नागपूर मंडळांतर्गत क्ष-किरण तंत्रज्ञ व प्रयोगशाळा तंत्रज्ञ पदाकरिता प्रादेशिक निवड मंडळांकडून उमेदवार उपलब्ध न झाल्याने विहित अर्हता व शैक्षणिक पात्रता धारण करणाऱ्या १५ क्ष किरण तंत्रज्ञ व प्रयोगशाळा तंत्रज्ञ यांना सेवायोजन कार्यालयामार्फत तात्पुरत्या स्वरूपात नियुक्त्या देण्यात आल्या.

शासन निर्णय, सामान्य प्रशासन विभाग, दिनांक ८.३.१९९९ नुसार मंत्रालयातील विविध विभागाच्या प्रशासकीय नियंत्रणाखाली ३७६१ कर्मचाऱ्यांच्या अनियमित नियुक्त्या एकवेळची बाब म्हणून नियमित करण्यात आल्या त्यावेळी सदरचे १५ क्ष किरण तंत्रज्ञ व १३ प्रयोगशाळा तंत्रज्ञ हे शासन निर्णय, सामान्य प्रशासन विभाग, दिनांक ८.३.१९९९ मधील तरतुदीनुसार सेवा नियमित करण्यास पात्र होते. परंतु या २८ कर्मचाऱ्यांच्या सेवा नियमित करण्याच्या प्रस्तावात अंतर्भूत करण्यात आला नाही आणि परिणामी त्यांच्या सेवा नियमित होऊ शकल्या नाहीत. सदर २८ कर्मचाऱ्यांच्या सेवा नियमित करण्याबाबतचा प्रस्ताव राज्य मंत्रिमंडळासमोर सादर करण्यात आला. मंत्रिमंडळाने सदर कर्मचाऱ्यांच्या सेवा नियमित करण्याच्या प्रस्तावास मान्यता दिली असून, त्या अनुषंगाने सदर कर्मचाऱ्यांच्या सेवा नियमित करण्याची बाब विचाराधीन होती.”

9. Thus, the G.R. dated 30.3.2016 clearly shows that the earlier services of the employees were regularized as per G.R. dated 8.3.1999. But 28 employees remained to be regularized and, therefore, it was decided to regularize the services of all these 28 employees including the present applicant. Material point is only that, the services are regularized. From the date of G.R. dated 30.3.2016. Other employees whose services have already been regularized, have been regularized w.e.f. 8.3.1999 and, therefore, there is no

reason as to why cases of the applicants were also not considered with retrospective effect i.e. from 8.3.1999. From the reply affidavit filed on behalf of respondent No.4 i.e. the Deputy Director of Health Services, Nagpur, it is clear that the names of the applicants were sent to the Government through the office of the Director of Health Services, Mumbai. However, vide communication dated 26.7.2011, the Government informed that the appointment of the applicants was made without following due procedure of recruitment and, therefore, they were not entitled for regularization. Now by issuing subsequent G.R. dated 30.3.2016, it is accepted fact that cases of the applicants have been considered. Not only that, their initial date of appointment has been accepted in the year 1988 and, therefore, there is absolutely no reason as to why services of the present applicants were also not regularized w.e.f. 8.3.1999 like other similarly situated employees. It is stated that there was some administrative lapse in not considering the names of the applicants. However, for such administrative lapses, the applicants cannot be called to be scapegoats. There is nothing on record to show that, the applicants entered into the service by back-door and, therefore, their names should have been included in the list of regularization of services of employees as per the G.R. dated 8.3.1999.

10. In the counter-affidavit of the applicants, it is stated that they were appointed on the post of Laboratory Technician in the year 1988 in clear vacant posts through a duly constituted Selection Committee and are continuously working from 1988. Therefore, the respondents cannot apply one scale of granting deemed date of regularization i.e. 8.3.1999 to some of the employees and from 30.3.2016 to the applicants. The applicants were very much eligible for regularization w.e.f. 8.3.1999 and therefore, the G.R. dated 8.3.1999 should have been made applicable to the applicants also. Regularization of services of the applicants w.e.f. the date of G.R. dated 30.3.2016 is, therefore, not legal and proper and if it is so, then it will be a great injustice to the applicants. Hence, I proceed to pass the following order:-

ORDER

- (i) The O.A. Nos. 119 & 120 of 2014 are allowed.
- (ii) The respondents are directed to extend the benefit of regularization to the applicants on the post of Laboratory Technician from the date of their initial appointment or from the date of similarly situated employees i.e. 8.3.1999 as per the G.R. dated 8.3.1999 (Exh.X).

- (iii) Their services from the date of their initial appointment shall be counted as continuous service and the respondents shall grant all consequential benefits of which the applicants will be entitled to, because of their regularization w.e.f. 8.3.1999.
- (iv) G.R. dated 30.3.2016 issued by the respondents to the extent of granting benefit of regularization to the Laboratory Technicians from the date of G.R. dated 30.3.2016 is quashed and set aside. The said G.R. shall be made applicable w.e.f. 8.3.1999.
- (v) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)
2.8.2018.