

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 34/2016.

Rajesaheb Dasrao Marodkar,
Aged about 41 years,
Occ-Service,
R/o Govt. Quarters, Bldg. No.2,
Type-4, Flat No.13, Ravinagar, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Higher & Technical Education,
Mantralaya, Mumbai-440 001.
- 2) The State of Maharashtra,
Through its Secretary,
Department of Finance,
Mantralaya, Mumbai-440 001.
- 3) The State of Maharashtra,
Through its Secretary,
Department of General Administration,
Mantralaya, Mumbai-440 001.
- 4) The Director of Higher Education,(M.S.,
Pune.
- 5) Vasantnao Naik Govt. Institute of Arts and
Social Science, Near Reserve Bank of India,
Nagpur, through its Director.

Respondents

Shri A.C. Dharmadhikari, Ld. Advocate for the applicant.

Shri A.M. Ghogre, learned P.O. for the respondents.

Coram:- Hon'ble Shri R.B. Malik, Member (J)

Dated: - 14th February 2017.

Oral order

The applicant, an Assistant Professor in Philosophy is aggrieved by non fixation of the pay and seeks all benefits from 26.2.2001 till the time and quantum as mentioned in prayer clause 7 (a) of the O.A.

2. I have perused the record and proceedings and heard Shri A.C. Dharmadhikari, learned Advocate for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

3. The applicant was appointed initially on an *ad hoc* basis as what is now called as Assistant Professor in Philosophy in respondent No.5 Institute. Respondent No.1 is the State of Maharashtra in the Department of Higher & Technical Education, Respondent No.2 is the State of Maharashtra in the Department of Finance, Respondent No.3 is the State of Maharashtra in the Department of General Administration and Respondent No.4 is the Director of Higher Education (M.S.), Pune. The order of appointment was dated 23.7.2001 and a copy thereof is annexed as Exh.A-1 (P.20 of P.B.). In is in Marathi. The order inter alia mentions that the applicant was appointed on *ad hoc* basis. The Marathi word which was used was "हंगामी". The said order also indicates that the applicant's appointment was made by a duly appointed Selection

Committee after interview. The duration of his appointment was for the academic session 2001-2002. But it was subject to availability, if any, of the appointees from M.P.S.C., in which event he would be in the manner of speaking terminated without any advance notice. It was also mentioned that the appointment was in accordance with the prevalent service rules. The process for regular appointment by M.P.S.C. was going on. The appointment would be terminated on completion of the academic session and the applicant would have no claim on the basis as such because he was an *ad hoc* employee. There were three other conditions which are not highly relevant herefor.

4. The applicant, pursuant to the said order dated 23.7.2001 joined on 26.7.2001. Be it repeated that he was not an MPSC appointed candidate. But his appointment was not from backdoor because of the facts hereinabove set out. In addition, it needs to be mentioned that these were the posts which as posts were regular and also were advertised and interviews were held. Though appointments through MPSC may have been under contemplation, but during the time relevant thereto, the actual advertisement was not issued.

5. The first term of the applicant as ad hoc Lecturer or Assistant Professor expired and another similar order was issued for the academic year 2003-2004. Thereafter the applicant joined several other similarly placed Professors and moved the Principal Bench of this Tribunal in Mumbai with ten O.As. The O.A. of the applicant was O.A. No. 274/2004. These ten O.As, first of which was O.A. No. 266/2004 came to be decided by the Division Bench of this Tribunal there in Mumbai by a judgment of 15.3.2004. The operative part of the said order needs to be fully reproduced herein below:

The applicants not to be replaced by appointing some other *ad hoc* Lecturers. The applicants to be continued till duly selected candidate from MPSC becomes available and their continuation shall be subject to their satisfactory performance.

The MPSC to expedite the procedure for selecting candidate.

While considering the age of the applicants the period for which they had worked as Lecturers to be excluded while considering, if they are eligible or otherwise as per the requirement of the MPSC.

With the above directions, the O.As stand disposed of with no order as to costs.+

The order being self explanatory and self evident, nothing further needs to be said about it.

6. At this stage, it may also be mentioned that in the ultimate analysis the applicant also came to be appointed by MPSC on 5th July 2013. There are facts which may become necessary to be discussed. But as for now, it must be mentioned as I did just now that he was regularly appointed by MPSC on 5.7.2013. From 26.7.2001 till 5.7.2013, he served regularly and continuously with only four days break from 15.6.2003 to 18.6.2003. Shri A.C. Dharmadhikari, learned Advocate for the applicant told me that in fact this small break needs to be condoned in the larger perspective. The MPSC advertised the posts in several disciplines including Philosophy on 10.5.2010. The applicant applied therefor. However, it was held by MPSC that the applicant having crossed 35 years, he was age barred. In the ultimate analysis the applicant brought the O.A. No. 789/2010 for relief. Neither party has placed on record any document pertaining thereto not even the final order. However, both the sides are *ad idem* that there was an interim order whereunder the applicant was interviewed and directions were issued by this Tribunal that his result should be kept in a sealed cover. That O.A. came to be dismissed by this Tribunal on 30.9.2011. The applicant moved the Hon^{ble} High Court

thereagainst by way of W.P. No. 5084/2011 (Dr. Rajesaheb Dasrao Maradkar V/s State of Maharashtra and three others). The Division Bench of the Honble Bombay High Court, Bench at Nagpur was pleased to decide the said writ petition on 7.8.2012. The Honble High Court was pleased to hold *inter alia* that no vice in the form of age bar was present against the applicant. Because in terms of condition No. 4.2 of the advertisement, age limit was liable to be relaxed in case of present applicant. The Honble High Court was further pleased to reject the contention that the said condition applied only to those candidates that were confirmed in Government service and were in regular service. The final order made by the Honble High Court needs to be fully quoted herein below:

The submission made on behalf of the respondents that condition No. 4.2 applies only to the candidates, who were confirmed in Govt. Service or were in the regular service is liable to be rejected as condition 4.2 does not stipulate so.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order passed by the M.A.T. on 30.9.2011 is quashed and set aside. The impugned order of the MPSC dated 26.10.2010 is also quashed and set aside. It is declared that the petitioner cannot be held to be ineligible for

appointment on the post of Assistant Professor in Philosophy on the ground that he was over age.

The respondents are directed to take further steps of selection and appointment of Lecturer in Philosophy as the petitioner was interviewed and in view of the interim orders passed by the M.A.T. and this Court, one post of Lecturer in the subject of Philosophy has been kept vacant. The respondents are further directed to make the appointment of Lecturer in Philosophy in pursuance of the process within a period of two months.

Rule is made absolute in the aforesaid terms.
No order as to costs.+

7. The MPSC challenged the above referred order of the Hon'ble High Court before the Hon'ble Apex Court by way of S.L.P. (Civil) No.13789/2012. That proceeding was dismissed by the Hon'ble Apex Court on 18.2.2013.

8. After such a prolonged legal battle, the decks were clear for the order of appointment to be made by the State of Maharashtra in Higher & Technical Education Department on 5.7.2013, a copy of which is at Exh. A-7 (P.50 of the P.B.). The applicant was appointed in the Institute, the fifth respondent. There are several stipulations therein. It was ritualistically mentioned that the

appointment by nomination was purely temporary. He was on regular pay scale with various allowances mentioned therein. Clause-3 thereof in Marathi needs to be reproduced:

श्री माराडकर यांच्या ज्युनियरिटीनंतरच्या वेतन निश्चिती, प्रथम वेतनवाढ, परावर्तना कालावधी तसेच यांना सर्वसाधारण भाषाय निवाह निधी योजना अथवा नवीन परभाषित अंशदान निवृत्तिवेतन योजना लागू करण्या संदर्भात यांच्या मागणीच्या अनुषंगाने सामान्य शासन विभाग व विविध विभाग यांच्या सहमतीने निष्पत्ती घेयात येत असून याबाबत अंतिम निष्पत्ती झाल्यानंतर वेगळे आदेश निगमित करयात येतील.”

9. It is common ground that, although it was stated in the above quote that separate orders will be issued with regard to various aspects of the service conditions, but that assurance has not been translate into reality so far and no such orders have been issued. Clauses 4, 5, 6 and 7 are not highly relevant for this purpose. Clause 8 (in Marathi) provided that pay of the applicant would be fixed in accordance with the Maharashtra Civil Services (Pay) Rules, 1981 (Pay Rules hereinafter).

10. Clauses 9, 11, 12 and 13 are not much relevant. Clause 10 was with regard to the pension aspect of the matter.

11. Almost soon after taking over, the applicant made a representation on 15.7.2013 and as the events were to unfold that was the first in a series of representations that were to follow. He pointed out therein that there was clear mention of the applicability of provisions of Pay Rules in his case. He laid particular emphasis on Rule 11 (b) thereof, in the other representations including the one on 28.2.2014 (A-9, P.66).

12. The above discussion must have made it quite clear as to the scope of this O.A. and nature of relief herein sought. I shall briefly mention the case of the respondents. But before I did that, I think at this stage itself, I may seek guidance from the judgment of the Division Bench of the Hon^{ble} Chief Justice in a fasciculus of writ petitions the leading one being **W.P. No. 9051/2013 (State of Maharashtra V/s Smt. Meena A. Kuwalekar)** and other writ petition which was dated 28.4.2016. Presiding over the Principal Bench in Mumbai and in deciding a group of O.As, the first one being **O.A. No. 732/2011 (Dr. Shankar B. Kasabe V/s State of Maharashtra in Public Health Department)** and other O.As by an order of 8.6.2016, I followed **Meena A. Kuwalekar** (supra) and allowed those O.As. The applicant herein has placed the copies of the above referred two judgments on record hereof. Those were the matters wherein the

service condition of time bound promotion was involved. However, Mr. A.C. Dharmadhikari, the learned Advocate for the applicant herein, in my view rightly contended that, by itself would not be a distinguishing feature because after-all the essence of the matter would be the regular appointment. Here, the applicant claims it from the year 2001 and in that behalf, the case of the respondents shall be presently examined. The issue in those cases was as to whether for the purpose of time bound promotion and Assured Career Progressive Scheme, time should be reckoned from the date of initial appointment or from the date on which the regular appointment was made. It was held that initial date of appointment in whichever capacity would be the governing one. Certain principles were culled out in para 18 of **Smt. Meena A. Kuwalekar** case (supra). The said para 18 needs to be duly reproduced herein below as well:

- (i) The appointments, though styled as temporary were made to permanent, clear, substantive and sanctioned vacancies;
- (ii) The names of the respondents-employees were sponsored by respective Employment Exchanges or other authorised agencies;
- (iii) The selection process was fair, transparent and above board.

- (iv) The respondents-employees fulfilled the qualifications prescribed in the recruitment rules as applicable
- (v) From the date of initial appointments, the respondents-employees were placed in the regular pay scale applicable to the posts to which they came to be appointed.
- (vi) The services of the respondents-employees, from the date of their initial appointments, have been taken into consideration for various service benefits, including increments, leave, transfer, opening of GPF account, opening of service book and pension etc.;
- (vii) The services of the respondents-employees, from the date of their initial appointments, however, do not appear to have been taken into consideration for purposes of seniority or functional promotion;
- (viii) It is not even the case of the State Government that the appointment of the respondents-employees were on daily wage basis or on work charged basis.

13. Mr. A.C. Dharmadhikari, the learned Advocate for the applicant told me that all the above referred conditions squarely apply in case of the applicant, regardless of whatever be the colour of his initial appointment. It seems to be his contention that the fact that the applicant was ultimately regularly appointed by MPSC on 5.7.2013, would not in any manner militate against the fact that he had been

working continuously barring those four days from 26.7.2001. Having perused the two judgments referred above, I place on record the fact that I entirely agree with the learned Advocate for the applicant's submission in that behalf.

14. I may now peruse the affidavit in reply filed on behalf of respondent No.1 by Dr. Anjali Milind Rahatgaonkar, Joint Rector, Higher Education, Nagpur. It is not necessary for me to repeat certain facts mentioned by her in initial paragraphs which I have already mentioned above and they have become too solidified to brook any dispute. She had referred to the G.R. dated 23.3.1994 and according to her, it clearly shows as to how pay fixation should be done of a Government servant. She has for some obscure reason harped on the appointment of the applicant being *ad hoc*. At this stage, it will be appropriate to mention that in rendering judgment in the fasciculus of the O.As above referred to in which the Principal Bench took guidance from **Smt. Meena A. Kuwalekar** case (supra), I had observed that the word *temporary* conveyed the only fact that the appointment was not from MPSC at that time. However, there are several observations in **Smt. Meena A. Kuwalekar** case (supra) which make it clear that no disadvantage could be visited upon the applicant in view of the nature of his initial appointment. Therefore,

the legal advice from the G.A.D. which is invoked in para 3 in affidavit in reply has to yield place to the findings in Smt. Meena A. Kuwalekar case. In para 4 of the affidavit in reply, it is submitted that as per the G.R. of 1994 and its rules 10 and 11 in the first appointment to the Government service, such an employee would draw minimum of the time scale attached to the post which he was appointed to unless higher starting pay was sanctioned. Now at this stage itself, it needs to be noted that the applicant has in all earnestness filed a detailed counter on 19.9.2016 to this affidavit in reply and on page 124 of the P.B. in para 7 of the said counter, he has pleaded that the applicant could not be placed on the pay scale which he was placed in 12 years ago and his last pay drawn would be what he was getting on 5.7.2013 and that needed to be protected by virtue of Rule 11 of the Pay Rules. In para 5 of the affidavit in reply, the deponent has submitted that the applicant's pay scale was fixed as per rules of U.G.C. and A.I.C.T.E. It is mentioned that the applicant was regularized from 5.7.2013 and, therefore, fixation of pay scale was absolutely correct. In para 8 (P.125) in the counter, this plea has been categorically denied. It is pleaded *inter alia* that the protection of pay has to be made in regard to the pay that he received in June 2013 and he was already entitled to further benefit which he was entitled to with regard to C.A.S. He has given the details of the salary structure.

No further plea is raised in the affidavit in reply. I am clearly of the view that the facts pleaded in the affidavit in reply are generally so speaking untenable, because they run into the teeth of findings and judicial mandate of the Honble High Court in Smt. Meena A. Kuwalekar case (supra) and also my own judgment at the Principal Bench. In my judgment, I relied upon the Honble High Court's judgment in para 12 in the context of 'regular service' and found that there was no warrant to hold that the past service should not be taken into consideration while determining the period of 12 years and 24 years which fact was relevant therein. But the application of the principles therein to this O.A.s would to my mind support the conclusion that I am inclined to draw.

15. There is a G.R. of 6th March 1999 with regard to the placement of the Professors Senior Grade / Junior Grade. It refers to the U.G.C. letter dated 24th December 1998. Clause 5 thereof quite pertinently mentions in Marathi that in the Government service, appointments of Professors were made by MPSC. But pending availability of MPSC appointees, generally the candidates who meet with the requirements of U.G.C. are appointed on *ad hoc* basis with allowances. Those appointments are in accordance with the recommendation of the Appointment Committees. In due course, such

appointees may also be regularly appointed and, therefore, it was necessary that the earlier service of such appointees be also taken into consideration. Useful sustenance should also be taken from the Finance Department's G.R. of 23rd March 1994, a copy of which is there at page 87 of the paper book. Clause 6 thereof *inter alia* mentions that upon fixation of pay, as made in accordance with the earlier rules, if the posts require probationary period, then in that event, the provisions of Rule 39 of the Pay Rules would apply. 8th clause prescribes that if there was a gap of more than 24 hours between earlier service and new one, then fixation would be done in accordance with Rule 14 of the Pay Rules. My attention was also invited to Rule 11 of the Pay Rules and according to the applicant, his case would be governed by Rule 11 (2) (b) & (c) of the Pay Rules.

16. The upshot is that regard being had to the principles herein discussed, the applicant is entitled to relief herein sought. There is no warrant to hold that his entitlement should be pegged from July 2013 because that would basically cause violence to the principle of law enunciated in **Smt. Meena A. Kuwalekar**'s case (supra) and even otherwise in view of the above discussion, that really should not be done and as far as condonation of delay of four days is concerned, the above discussion must also have made it quite clear that there is

no reason why in the context of the present case and in view of the contemporaneous facts and circumstances, this break should not be condoned.

17. The break from 15th June 2003 to 18th June 2003 insofar as the applicant is concerned, stands hereby condoned. The respondents are directed to fix pay of the applicant taking into consideration his service w.e.f. 26th July 2001 and work it out and grant him all the service benefits on that basis and make his pay fixation accordingly within a period of three of months from today. His other entitlement if any, be also worked out and for that if the applicant is expected or required to do anything in the matter, the applicant shall do so at the earliest. This O.A. is allowed in these terms with no order as to costs.

(R.B.Malik)
Member (J)

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