

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 493 / 2017 (S.B.)**

1. Prakash S/o Bapurao Kahare,  
Aged about Major, Occupation:-Service,  
R/o Gramin Rugnalaya,  
Karanja, District Wardha.
2. Ramesh S/o Marotrao Shivarkar,  
Aged about Major, Occupation-Service,  
R/o Gramin Rugnalaya, Kuhu,  
District Nagpur.
3. Ashok Marotrao Lambat,  
Aged about Major, Occupation-Service,  
R/o Gramin Rugnalaya, Bhiwapur,  
Dist. Nagpur.
4. Vijay Laxmanrao Dhomne,  
Aged about Major, Occupation-Service,  
R/o Gramin Rugnalaya, Umrer,  
Dist. Nagpur.
5. Devendra S/o Laxmanrao Fulare,  
Aged about Major, Occupation-Service,  
R/o Sub District Hospital, Kamptee,  
District-Nagpur.

**Applicants.**

**Versus**

- 1) State of Maharashtra, through its Chief Secretary,  
Public Health Department,  
Mantralaya, Mumbai-32.
- 2) Director of Public Health Services,  
St. George Hospital Compound,  
C.S.T. Ford, Mumbai.

- 3) Deputy Director, Health Services,  
Nagpur Division, Mata Kacheri, Near Deeksha Bhumi,  
Nagpur.

**Respondents**

---

**Shri S.N.Gaikwad, Id. Advocate for the applicant.**

**Shri A.M.Ghogre, Id. P.O. for the respondent nos. 1 & 3.**

**Await service of respondent no. 2.**

---

**Coram :- Hon'ble Shri Shree Bhagwan,  
Member (A).**

---

**JUDGMENT**

**(Delivered on this 08<sup>th</sup> day of October, 2018)**

Heard Shri S.N.Gaikwad, the learned counsel for the applicant and Shri A.M.Ghogre, learned P.O. for the respondent nos. 1 & 3. Await service of respondent no. 2.

2. The respondent no. 3 has already filed his affidavit-in-reply. Whereas, the respondent no. 2 is not yet served. The Tribunal has already decided the issue involved in this matter by the O.A. Nos. 119 & 120/2014, order delivered on 02/08/2018, therefore, the issue has already been settled.

3. The applicants named Shri Prakash Bapurao Kahare, Shri Ramesh Marotrao Shivarkar, Shri Ashok Marotrao Lambat, Shri Vijay Laxmanrao Dhomne and Shri Devendra Laxmanrao Fulare in this O.As.

have claimed regularization of their services and extension of benefit of regularization for the post of X-Ray Technician from the date of their initial appointment. During the pendency of these O.As., they were regularized vide order no. I dkfu 2013@r#K@i z d z 343@l dk&5] dated 03/03/2016, 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 order no. , I vkj0gh&1099@i z d z 6@99@ckjk] dated 08/03/1999 and, therefore, they shall also be extended the said benefit w.e.f. 08/03/1999 i.e. as per the G.R.. They have also claimed release of all benefits such as time bound promotion by counting their past services.

4. In O.A. No. 119/2014, the applicant was appointed after following due process of selection to the post of X-Ray 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 05.06.1989 and vide letter dated 28.8.1989, his services were continued, since he was continuously serving.

5. In O.A. No. 120/2014, the applicant was initially appointed for three months as X-Ray Technician vide order dated 18.08.1989 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.

6. In O.A. No. 493/2017, the respondent no. 3 i.e. Dy. Director of Health Services, Nagpur has filed the affidavit-in-reply and in para no. 4 it is under:-

*It is submitted that, admittedly by the G.R. dated 08/03/1999 the respondent no. 1 has regularized the services of 3761 employees but the 29 employees proposal was not submitted for inclusion in the regularization list for want of information regarding whether they are temporary appointment was made by the Regional Secondary Selection Committee or District Level Selection Committee. The process of giving information regarding the regularization of the temporary working employees was started on 19/05/1990 but it found that, that time Regional Secondary Selection Committee was not authority to give sanction/ proposal for regularization. Thereafter the respondent no. 3 has submitted the proposal of regularization of 29 employees including the name of the Applicants vide letter dated 19/01/2002 to the Joint Director of Health Services, Pune and thereafter the updated proposal was again resubmitted on 13/02/2004.*

7. As already stated, in case of applicant's in O.A.Nos. 119 & 120/2014, 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.No. I dkfu 2013@r-K@i z d z 343@l dk&5] dated 03/03/2016 and regularization was done from date 03/03/2016 and not retrospectively and, therefore, it was the case of the applicants that, their previous service from 1988 should have been treated as continuous service.

8. 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. 08.03.1999 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. In case of applicant's of O.A.Nos. 119 & 120/2014, similar condition was existing and order dated 02/08/2018 of this Tribunal in those O.As. has taken stand of Justice and equality to similar kind of employees.

9. 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:-

"I u 1989&90 e/; s mi l pkyd] vkiK; I ok] ulxiij eMGlxr {A&fdj.A r=K o iz, lx' Akyk r=K inkdfjrk i kns' Ad fuoM eMGkdmu menokj mi yC/A u >KY; kusfofgr vgrk o 'AS' Af. Ad i k=rk /Akj .A dj. Ak&; k 15 {A fdj.A r=K o iz, lx' Akyk r=K ; kulk I ok; kst u dlk; ky; kekQr rKRi gR; k Lo: i kr fu; QR; k ns; kr vKY; k-

'AkI u fu. Az ] I kekU; iz AkI u foHAKx] fnukad 8-3-1999 ud kj e=ky; krhy fofo/A foHAKxkP; k iz AkI dh; fu; =. Ak [Akyh 3761 depk&; kR; k vfu; fer fu; QR; k , doGph ckc Eg. Au fu; fer dj. ; kr vKY; k R; koGh I njps15 {A fdj.A r=K o 13 iz, lx' Akyk r=K gs 'AkI u fu. Az ] I kekU; iz AkI u foHAKx] fnukad 8-3-1999 e/Any rjrnpuq kj I ok fu; fer dj. ; kl i k= gkrs i jarq ; k 28 depk&; kR; k I ok fu; fer dj. ; kl i Lrkokr varHAr dj. ; kr vkyk ukgh vkf. A i fj. Akeh R; kR; k I ok fu; fer gkm 'AdY; k ukghr- I nj 28 depk&; kR; k I ok fu; fer dj. ; kckcrpk i Lrko jkT; ef=eMGkl ekj I knj dj. ; kr vkyk- ef=eMGkus I nj depk&; kR; k I ok fu; fer dj. ; kR; k i Lrkokl ekU; rk fnyh vl w] R; k vuqAkusl nj depk&; kR; k I ok fu; fer dj. ; kph ckc fopkjk/Ahu gksh- "

10. 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, these applicants (applicants in this O.A. i.e. 493/2017) were part of these 28 employees and, therefore, it was decided to regularize the services of all these 28 employees including the present applicants. 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 No. oru&2005@i7dz257@l dk] 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 including applicants of O.A.Nos. 119 & 120/2014. 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.

11. In the counter-affidavit of the applicants, it is stated that they were appointed on the post of X-Ray 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 vide order no. I dkfu 2013@ra=K@i:dz:343@l dk&5 , dated 03/03/2016 is, therefore, not legal and proper and if it is so, then it will be a great injustice to the applicants.

12. After decision in O.A.Nos. 119 & 120/2014, clear Judgment was passed by this Tribunal and order no. I dkfu 2013@ra=K@i:dz:343@l dk&5, G.R. dated 30/03/2016 was quashed and set aside. In this situation, this Tribunal fails to understand, why same principle was not adopted by department in case of these applicants also. So, it requires to be made applicable to these applicants also and to all such employees on this post in said department. Hence, I proceed to pass the following order:-

### **ORDER**

(i) The O.A. Nos. 493 of 2017 is allowed.



(ii) The respondents are directed to extend the benefit of regularization to the applicants on the post of X-Ray Technicians from the date of their initial appointment or from the date of similarly situated employees i.e. order no. , I v/kj0gh&1099@i:dz6@99@ckjk] dated 08/03/1999, as per the G.R. dated 08.03.1999 (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 30.03.2016 issued by the respondents to the extent of granting benefit of regularization to the X-Ray Technicians from the date of G.R. dated 30.03.2016 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.

**(Shree Bhagwan)  
Member (A).**

**Dated:-08/10/2018.**

aps