

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO 76 OF 2015

DISTRICT : MUMBAI

Smt Shailaja Vilas Kasare,)
Shimpi [Tailor],)
St. Georges' Hospital, Near CST,)
Mumbai 400 001.)
R/o: B-210/5, Government Colony,)
Before Cinemax Theatre, Bandra [E],)
Mumbai 400 051.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Addl. Chief Secretary,)
Medical Education & Drugs Dept,)
Mantralaya, Mumbai 400 032.)
2. The Director,)
Medical Education & Research,)
Mumbai Near C.S.T,)
Mumbai 400 001.)

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3. The Superintendent,)
St. Georges' Hospital,)
Near C.S.T, Mumbai 400 001.)...**Respondents**

Shri J.N Kamble, learned advocate for the Applicant.

Shri N.K. Rajpurohit, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 11.04.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri J.N Kamble, learned advocate for the Applicant and Shri N.K. Rajpurohit, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking condonation of break in service from 4.11.1987 to 20.1.1991 and also grant of regular increments and further promotion to the post of Assistant Vastra Pal and Vastra Paol.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Ward-Attendant Group-D by order dated 4.11.1987 w.e.f 1.7.1987 on ad hoc basis. By order dated 10.11.1987, she was promoted from 10.11.1987 as Tailor. By order dated 30.1.1988, the services of the Applicant were terminated w.e.f 1.2.1988. By order dated 21.12.1989, the Applicant was appointed for 29 days on the Class-III post of Tailor. It appears that her appointment was extended from time to time for 29 days. A person came to be appointed on the post of Tailor in 1991 and by order dated 21.6.1991 the Applicant was appointed as Ward-Attendant from 1.7.1991. The Applicant was promoted as Tailor on 3.5.2002 and she has continued to work as such till now. Learned Counsel for the Applicant argued that the Applicant is entitled to be treated as regular appointee as Class-III Tailor from 10.11.1987 and is entitled to regular increments and pay difference from that date.

4. Learned Chief Presenting Officer (C.P.O) argued on behalf of the Respondents that the Applicant was appointed as Tailor by order dated 21.12.1989 for a period of 29 days. Her services as Tailor were continued for 29 days at a time and no appointment was given to her after 1.10.1990. She was given appointment by order dated 21.6.1991 as Ward Attendant on compassionate ground and she has continued on the post of Ward-Attendant, Group 'D'. The Applicant is apparently

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seeking Group 'C' status on the post of Tailor as she was appointed on that post on ad hoc basis from 21.12.1989 to 1.10.1990. However, her appointment as Tailor was not after following proper procedure. She is, therefore, not eligible to get regularization in the post of Tailor from 21.12.1989, though she is claiming such regularization from 4.11.1987. Learned C.P.O argued that the present Original Application is not maintainable.

5. The Applicant has sought the following reliefs in this Original Application, viz:

- “(a) That this Original Application may kindly be allowed;
- (b) That by a suitable order/direction this Hon'ble Tribunal be pleased to direct to the Respondent to condone the break given from 4.11.1987 to 20.1.1991;
- (c) That by a suitable order/direction this Hon'ble Tribunal may kindly direct the Respondent to grant regular increment and pay the different of salary with 12% interest;
- (d) That by a suitable order/direction the Respondents may be directed to give time bound promotion and further regular

promotion on the post of Assistant Vastra Pal (सहाय्यक वस्त्रपाल) & Vastra Pal (वस्त्रपाल) as per the rules;

The Applicant is seeking condonation of break from 4.11.1987 to 20.1.1991. From the Exhibits in the Original Application, it is seen that she was appointed as Ward-Attendant (Group -D) by order dated 4.11.1987. She was promoted by order dated 10.11.1987 as Tailor (Group-C) but her services were terminated by order dated 31.1.1988. By order dated 21.12.1989, she was appointed as Tailor and continued up to 1.10.1990, with intermittent breaks. She was then appointed as Ward Attendant on compassionate basis by order dated 21.6.1991. These conclusions are drawn from perusing the copies of orders produced by the Applicant from Exhibit 'A' to 'J' in the Original Application.

6. The Respondents have stated in para 3.3. and 3.4 of their affidavit in reply dated 11.7.2015 that:

“3.3 It is also submitted that applicant's stubbornness to appointment her on the post of Shimpi the Respondent No. 3 by order dated 21.12.1989 appointed the applicant on the said post of Shimpi purely temporary basis i.e. for 29 days and in the said order dated 21.12.1989 it was clearly mentioned that the said appointment for

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specific period from 02.12.1989 to 30.12.1989. In this view it is also submitted that the Respondent no. 3 by their letters dated 29.3.1990 and 17.5.1990 communicated to the applicant that her appointment on the post of Shimpi will be stopped as a candidate available from the Divisional Selection Board because there was order that the post of Shimpi could be filled up by DSB. It is also submitted that the present applicant was not selected in interview which was held on 26.9.1989 then she sat on fast for recruitment on said Shimpi post.

3.4 It is also submitted that the temporary service of the applicant on the post of Shimpi was stopped by the Respondent no. 3 then the applicant apply for the appointment on compassionate ground on date 6.10.1990. During that period the Government lift the ban on recruitment of Class-IV and Class-III post which was stopped due to zero budget. Hence applicant was direct appointed on the post of Desk Servant a Class-IV post on compassionate ground by order dated 1.7.1991 respectively.”

7. Let us now examine the circumstances of the appointment of the Applicant. She has not produced any letter of appointment before 4.11.1987. An order was

issued on 4.11.1987 by the Respondent no. 3. In this order, the subject is:

“ विषय:- चतुर्थ श्रेणीकर्मचारी सेवानिवृत्त झाल्याने त्यांच्या जागी मुलीला शासकीय सेवेत समावून घेण्याबाबत.”

G.R dated 14.1.1981 is quoted to justify appointment of the Applicant to Group 'D' post, as her father retired on 1.7.1986. Obviously the Applicant could not be appointed either on compassionate ground or by virtue of G.R dated 14.4.1981, on retirement of her father. It is not her case that she was appointed in a regular selection process. G.R dated 14.4.1981 is actually a circular which has caption as follows:-

“ शासनाच्या चतुर्थ श्रेणीतील निवृत्त कर्मचा-यांच्या मुलास/अविवाहित मुलीस शासनाच्या सेवेत नोकरीसाठी सेवा योजन कार्यालयाच्या शिफारशीसाठी अट रद्द करण्याबाबत.”

This circular only cancels the condition in certain cases, that for filling Class-III & Class-IV, recommendation from Employment Exchange was necessary. For the son/unmarried daughter of a retired/retiring Class-IV employee this condition has been waived. This Circular does not permit direct recruitment of such person. Even if it were to do so, such a stipulation will be violative of Article 16 of the Constitution, which provides for Equality of opportunity in matter of public employment. This

Circular only provides that a son/unmarried daughter of a retired Class-IV employees could be considered for employment without recommendation of Employment Exchange, along with others, whose names have been recommended by the Employment Exchange. This circular does not permit direct recruitment, which would amount to compassionate appointment. Relevant G.R of compassionate appointment dated 26.10.1994 provides for compassionate appointment [Rule 2(b)] in case the only those retired Government servants who retired on medical ground in case of serious disease like T.B, Cancer etc. That provision has also been withdrawn by subsequent G.R dated 22.8.2005. It is, therefore, clear that the Applicant was not eligible for direct recruitment under the provision of Circular dated 14.4.1981. She was definitely not entitled to be appointed on compassionate basis, as her father has retired from Government service and it was not a case of death while in service or premature or retirement on medical grounds in case he was suffering from any serious illness. It is clear that the initial appointment of the Applicant by order dated 4.11.1987 was not in accordance with proper procedure. She was obviously a back door entrant. All her subsequent appointment as Tailor by different orders starting from order dated 21.12.1989 were also not regular orders. She was given ad hoc appointment for 29 days at a time as Tailor. Last such order was issued on 25.9.1990 and she was appointed as Tailor from

3.9.1990 to 1.10.1990. The Applicant has not produced any order after 1.10.1990. She was appointed on compassionate basis in Group 'D' post of Ward Attendant by order dated 21.6.1991 (Exhibit-J on page 50 of the Paper Book). The Respondents have placed copy of her Service Book on record. There is following entry in the Service Book, certified by the Respondent no. 3, viz:

“ दिनांक १/७/१९९१ पासून कक्षसेवेक या पदावर कायम स्वरूपी कार्यालयीन आदेश क.आस्था/च.श्रेणी/ २२८५-९०/९१ दि.२१.६.१९९१ अन्वये नेमणूक करण्यात येत आहेत. (अनुकंपा तत्वावर)”.

Though, the Applicant was not eligible to be appointed on compassionate basis, as G.R dated 8.3.1985 which was applicable on the date she was appointed on compassionate basis, did not provide for compassionate appointment of the wards of retired employees. This G.R also provides for compassionate appointment to one heir of a Government servant who died while in service or who retired prematurely on medical grounds in case he/she was suffering from serious illness like T.B, Cancer etc. The Applicant's case was not covered by this G.R. The Applicant's father retired from Government service on 1.7.1986 as is seen from the order of the Respondent no. 3 dated 4.11.1987 (Exhibit 'A'). The Applicant has been working as Ward Attendant by virtue of order dated 21.6.1991 w.e.f 1.7.1991. She is claiming that her ad hoc and intermittent services from 4.11.1987 to 20.6.1991 (though in prayer clause 10(b), the date is 20.1.1991)

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may be counted for grant of increments etc. The Applicant's appointment by order dated 21.6.1991 is not issued after following proper procedure and in violation of rules regarding compassionate appointment. She is not eligible to count her ad hoc service for any purpose, when her appointment by order dated 21.6.1991 itself is not legal. The prayer to condone break in service from 4.11.1987 to 21.6.1991 cannot be granted. There is no question of granting regular increments for the said period.

8. It appears that by order dated 2.5.2002, the Respondent no. 3 has promoted the Applicant to the post of Tailor Group 'C' and she has been working as such since then. Hon'ble Supreme Court in the case of **STATE OF KARNATAKA & ORS Vs. M.L KESARI & ORS : (2010) 9 SCC 247** has held that:

"11. The objection behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than 10 years of continuous service without the protection of any interim orders of Courts or Tribunals, before the date of decision in Umadevi (3) was rendered are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities does not perpetuate the practice of employing persons on daily wage/ad

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hoc/casual basis for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the Constitutional or Statutory provisions relating to recruitment and appointment. The true effect of the decision is that all persons who have worked for more than ten years as on 10.4.2006 [the date of decision in Umadevi (3)] without the protection of any interim orders of any Court or Tribunal, in the vacant post, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi (3) as one time measure.”

The Applicant, if she was appointed in a sanctioned vacant post, and if she fulfilled the qualification for appointment to the post of Ward-Attendant, appears to be eligible to be considered for regularization, as she has worked for more than 10 years^{as} on 10.4.2006 as she was appointed w.e.f 1.7.1991 as Ward Attendant. There is nothing on record to suggest that she was continued in service due to any interim order of Court/Tribunal.

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8. The Applicant is granted the relief that the Respondents may consider her case for regularization of service from 1.7.1991 as discussed above, within a period of 3 months from the date of this order. On regularization of her services, her case for promotion / time bound promotion may be considered as per rules. This Original Application is disposed of accordingly with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 11.04.2016
Dictation taken by : A.K. Nair.