

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 793 of 2016 (S.B.)

Ajay Suresh Bhagat (**death**),
Aged about 45 years, Occ. Govt. Servant,
R/o Late M.S. Betharia Chawl, Empress Mill Road No.1,
Santra Market, Nagpur.

(deceased applicant)

(Legal heirs)

- (1) Nirmala Suresh Bhagat, aged 74 years, Occ. Nil,
 - (2) Sangita Suresh Bhagat, aged 47 years, Occ. Nil,
- R/o Late M.S. Betharia Chawl, Empress Mill Road No.1,
Santra Market, Nagpur.

Applicants.

Versus

- 1) State of Maharashtra,
through its Principal Secretary, Higher and Technical
Education Department, Mantralaya, Mumbai-32.
- 2) Director of Technical Education,
State of Maharashtra, Municipal Corporation Road,
Post Box No.1967,
near Cama Hospital, Mumbai-400 001.
- 3) Joint Director of Technical Education, Nagpur Region,
Govt. Polytechnic Campus, Sadar, Mangalwari,
Nagpur.
- 4) Principal, Govt. Polytechnic College, Sadar, Nagpur.

Respondents.

Shri R.V. Shiralkar, Advocate for the applicants.
Shri S.A. Sainis, learned P.O. for respondents.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Date of Reserving for Judgment : 14th July,2022.

Date of Pronouncement of Judgment : 3rd August,2022

JUDGMENT

(Delivered on this 3rd day of August,2022)

Heard Shri R.V. Shiralkar, learned counsel for the applicants and Shri S.A. Sainis, learned P.O. for the respondents.

2. The case of the applicants in short is as under –

The deceased applicant had passed B.E. (Mechanical), and was eligible candidate to be appointed on the post of Lecturer (Packaging Technology) in Polytechnic College. The deceased applicant was appointed in the Polytechnic College, Nagpur after following due procedure on ad-hoc basis on 14/11/1995. The deceased applicant joined the said posting on 27/11/1995. In the year 2000, when the deceased applicant apprehended that his appointment will not be continued, he approached the Hon'ble High Court by filing Writ Petition No. 4034/2000. The Hon'ble High Court passed the order dated 18/01/2001 directing the respondents not to substitute the services of the ad-hoc employees. It was directed to continue the services of the deceased applicant till regularly selected candidate from Maharashtra Public Service Commission (in short "MPSC") was appointed against his post. The respondents had advertised for the said post. The appointment order of the deceased applicant on

contract basis was issued on 23/10/2003. The deceased applicant was continued in service till 08/01/2004. The service of the deceased applicant was terminated on 09/01/2004. As the post of the deceased applicant was vacant, one Mr. S.G. Deshpande was transferred on the post of deceased applicant. Mr. S.G. Deshpande was not selected and appointed by MPSC and was not eligible to replace the deceased applicant. The respondents have continued the services of the deceased applicant and other employees on contract basis by giving technical breaks. Some of the similarly situated employees filed Writ Petition No. 2046/2010 before the Hon'ble Bombay High Court, Bench at Nagpur. The Hon'ble High Court decided the said Writ Petition on 19/10/2013 directing the respondents as under –

“22. The respondents are directed to regularize the services of such of the petitioners and confer permanency on such petitioners who have completed three years' service with technical breaks. The respondents shall absorb the petitioners within a period of six weeks. Needless to state that the petitioners who are in continuous employment till 15.10.2013 shall be continued in service as regular employees.

However, in the facts and circumstances of the case, we direct that the petitioners shall be entitled to regular salary from 1st November, 2013 and would not be entitled to claim any monetary benefits for the past services rendered by them in spite of their regularization. Needless to state that since the petitioners' services are regularized, they shall be entitled to the continuity in service for all other purposes except monetary purposes from the date of their first appointment.”

3. After the Judgment of Hon. Bombay High Court in Writ Petition No. 2046/2010, the Government issued the Govt. G.R. 13/3/2015. As per this G.R., the services of 317 Lecturers who were on ad-hoc basis were regularised on following conditions –

शासन निर्णय :-

शासकीय तंत्रनिकेतनात हंगामी व कंत्राटी स्वरूपात कार्यरत असलेल्या व दि.३१/०१/२०१५ रोजी ज्यांची सेवा ३ वर्षापेक्षा जास्त झाली आहे अशा सोबत जोडलेल्या विवरणपत्रात नमुद ३१७ अध्यापकांच्या सेवा पुढील अटी व शर्तीनुसार नियमित करण्यात येत आहेत.

- १) या ३१७ हंगामी व कंत्राटी अध्यापकांच्या, त्यांच्या हंगामी / कंत्राटी स्वरूपातील प्रथम नियुक्तीच्या दिनांका पासून सेवा नियमित करण्यात येत आहेत.
- २) या ३१७ अध्यापकांच्या सेवा नियमित करण्याबाबत केलेली कार्यवाही भविष्यात पूर्वोधारण ठरणार नाही.
- ३) त्यांच्या सेवा नियमित केलेल्या दिनांकापासून सर्व सेवा विषयक लाभ मंजूर करण्यात येत आहेत.
- ४) सेवा नियमित केल्यामुळे संबंधितांच्या पूर्वीच्या सेवा कालावधीतील कोणत्याही प्रकारची Monetary Benefits अनुज्ञेय रहाणार नाहीत.
- ५) दि. ०१/०२/२०१५ पासून त्यांना ज्या पदावर नियमित करण्यात आले आहे त्या पदाचे नियमित वेतन नियमानुसार अनुज्ञेय असलेले भत्ते देय रहातील.
- ६) या ३१७ अध्यापकांना परिविक्षा कालावधी लागू राहणार नाही.
- ७) या सर्व अध्यापकांना नवीन राष्ट्रीय निवृत्ती वेतन योजना लागू राहिल.
- ८) सरळसेवेने शासकीय सेवेत नियुक्तीवेळीच्या वैद्यकीय चाचणी, चारित्र्य पडताळणी अहवाल, संगणक हाताळणी वापराचे ज्ञान (एमएससीआयटी) तसेच मराठी व हिंदी भाषा परीक्षा उत्तीर्ण याबाबतच्या संदर्भात जे शासन आदेश आहेत ते सर्व शासन आदेश या सर्व अध्यापकांना लागू रहातील.
- ९) या ३१७ अध्यापकांपैकी जे अध्यापक मागासवर्गीय प्रवर्गातील असतील त्यांना ६ महिन्यांच्या आंत त्यांचे जात वैधता प्रमाणपत्र सादर करणे आवश्यक राहिल.
०२. सदरच्या ३१७ अध्यापकांच्या पदस्थापनेचे आदेश स्वतंत्रपणे निर्गमित करण्यात येतील.
०३. सदर शासन निर्णय मंत्रिमंडळाच्या दि.०३/०३/२०१५ रोजीच्या बैठकीत घेण्यात आलेल्या निर्णयानुसार व वित्त विभागाच्या अनौपचारिक संदर्भ क्रमांक ८५/१५ दि. १८/०२/२०१५ च्यानुसार दिलेल्या मान्यतेअंती निर्गमित करण्यात येत आहे.

4. It is submitted that the services of the deceased applicant was continued from 27/10/2003. The deceased applicant had filed O.A. 462/2014. In the O.A. direction was given to the respondent no.1 the State of Maharashtra to consider the representations of deceased applicant dated 25/3/2015 and 29/4/2015 within a period of six months. The said representation was decided on 17/2/2016. The respondents have decided that the deceased applicant was out of the employment from 10/1/2004 to 3/12/2007 and therefore his service was wrongly continued from 27/10/2003. Hence, it was decided that the services of the deceased applicant was continued from 04/12/2007 instead of 27/10/2003.

5. The O.A. is strongly opposed by the respondents. It is submitted that the deceased applicant was appointed on purely ad-hoc basis from the year 1995. His service was contractual and therefore his service was terminated from time to time. From the year 2004 to 2007, the deceased applicant was not in service and therefore his service is continued from 2007. At last submitted that the Judgment relied by the learned counsel for applicants is not applicable to the present case.

6. Heard learned counsel for the applicants Shri R.V. Shiralkar. He has pointed out the G.R. dated 13/3/2015. He has pointed out the Condition no.1. As per his submission, the service of

deceased applicant was to be regularised from the date of his initial appointment on contract basis. The learned counsel for applicants has submitted that the subsequent order of the respondents continuing the service of deceased applicant from 2007 is illegal. At last submitted that as per the G.R. dated 13/03/2015, the deceased applicant is entitled for continuation of his service from the date of his initial appointment, i.e., from 27/11/1995.

7. Heard learned P.O. Shri S.A. Sainis. He has pointed out the order of Hon'ble Bombay High Court, Bench at Nagpur passed in Civil Application. As per this order of Hon'ble High Court in Civil Application No.2599/2017 in Writ Petition No.2046/2010, dated 21/11/2017 it is clear that "only such employees who were in continuous employment on 15/10/2013 are only entitled to be continued in service as regular employees."

8. The learned P.O. has submitted that the respondents have rightly decided the claim of the deceased applicant, hence, the O.A. is liable to be dismissed.

9. There is no dispute that the deceased applicant was appointed on contract basis on the post of Lecturer in Govt. Polytechnic College, Nagpur till 31/5/1996. The deceased applicant joined on the said post on 27/11/1995. Thereafter service of the

deceased applicant was discontinued. Again he was appointed on contract basis, therefore, the deceased applicant and other employees filed Writ Petition Nos. 4034, 4031, 3956 & 4035 of 2000 before the Hon'ble Bombay High Court, Bench at Nagpur. As per the order dated 18/01/2001 the respondents were directed to protect the services of the deceased applicant and other employees till the regularly selected candidates from the MPSC are made available. It was also directed as under –

“ We direct the respondents not to substitute, the petitioners by another set of ad-hoc employee and continue their services till regularly selected candidates from M.P.S.C. are appointed against their posts. He make it clear that in case there is no work load, it will be in the discretion of the respondents to discontinue their services.”

10. Thereafter, the respondents tried to fill the posts through MPSC, but did not fill the posts. In the meantime, similarly situated employees filed Writ Petition No.2046/2010 before the Hon'ble Bombay High Court, Bench at Nagpur. On 19/10/2013, the said Writ Petition was decided and following direction was given –

“22. The respondents are directed to regularize the services of such of the petitioners and confer permanency on such petitioners who have completed three years' service with technical breaks. The respondents shall absorb the petitioners within a period of six weeks. Needless to state that the petitioners who are in continuous employment till 15.10.2013 shall be continued in service as regular employees.

However, in the facts and circumstances of the case, we direct that the petitioners shall be entitled to regular salary from 1st November, 2013 and would not be entitled to claim any monetary benefits for the past

services rendered by them in spite of their regularization. Needless to state that since the petitioners' services are regularized, they shall be entitled to the continuity in service for all other purposes except monetary purposes from the date of their first appointment."

11. To comply the decision of Hon'ble High Court in Writ Petition No. 2046/2010, the respondents issued G.R. dated 13/03/2015 and regularised the services of the concerned employees from the date of their initial appointment on contract basis. The name of deceased applicant is shown in the list at Sr.no.25, but his initial date of appointment is shown as 27/10/2003.

12. The documents filed on record i.e. the first appointment order dated 14/11/1995 show that the deceased applicant was appointed on contract basis till 31/5/1996. As per this appointment order, the deceased applicant joined the said posting on 27/11/1995. In the Writ Petition No. 2046/2010, the Hon'ble High Court has specifically directed that "the respondents to regularise the services of the petitioners and confer permanency on such petitioners who have completed three years service with technical breaks. The respondents shall absorb the petitioners within a period of six weeks. Needless to say that the petitioners who are in continuous employment till 15/10/2013 shall be continued in service as regular employees. However, in the facts and circumstances of the case, we direct that the petitioner shall be entitled to regular salary from 01/11/2013 and would not be entitled to claim any monetary benefits for the past

services rendered by them in spite of their regularisation. Needless to state that since the petitioners' services are regularised, they shall be entitled to continuity in service for all other purposes except monetary purposes from the date of their first appointment."

13. After the specific direction of Hon'ble Bombay High Court, the respondents have issued G.R. dated 13/03/2015. The Condition no.1 of the said G.R. is as under –

“(१) या ३१७ हंगामी व कंत्राटी अध्यापकांच्या, त्यांच्या हंगामी / कंत्राटी स्वरूपातील प्रथम नियुक्तीच्या दिनांका पासून सेवा नियमित करण्यात येत आहेत.”

14. It is clear from the Condition no.1 of the said G.R., the services of the ad-hoc employees on contract basis were to be regularised from the date of their initial appointment. The initial appointment of the deceased applicant was 27/11/1995 as per order dated 14/11/1995. Hence, the respondents should have regularised the service of the deceased applicant from 27/11/1995, but they have regularised the service of the deceased applicant from 2003 and again it was revised and regularised the service of the deceased applicant from 2007. Both the decisions of the respondents are against the Condition no.1 of the G.R. dated 13/03/2015. Hence, the deceased applicant is entitled for continuation of his service from the date of his initial appointment, i.e., from 27/11/1995.

15. The applicants have prayed to direct the respondents to pay the difference of arrears of salary etc. and regularise the services of the deceased applicant which were discontinued from time to time.

16. The decision of the Hon'ble High Court is very clear. It is specifically directed to the respondents to regularise the services of the petitioners who were in continuous employment till 15/10/2013. The deceased applicant was in continuous service till 15/10/2013, therefore, the deceased applicant is entitled for regularisation his service from the date of his initial appointment as per Condition no.1 of the G.R. dated 13/03/2015. The Hon'ble High Court has specifically held that the petitioners shall be entitled to regular salary from 01/11/2013 and would not be entitled to claim any monetary benefits for the past services rendered by them in spite of their regularisation. Needless to say that since the petitioners' services are regularised, they shall be entitled to continuity in service for all other purposes except monetary purposes from the date of their first appointment.

17. In view of the specific directions, the deceased applicant is not entitled for difference of salary etc. Hence, the following order –

ORDER

(i) The O.A. is partly allowed.

(ii) The impugned communication / order dated 10/12/2019 and regularisation of deceased applicant from 27/10/2003 are hereby quashed and set aside.

(iii) The respondents are directed to regularise the service of the deceased applicant from the date of his initial appointment on contract basis, i.e., from 27/11/1995 as per the G.R. dated 13/03/2015 (Condition no.1).

(iv) The deceased applicant / LRs. are entitled for benefits as per the G.R. dated 13/03/2015.

(v) No order as to costs.

Dated :- 03/08/2022.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 03/08/2022.

Uploaded on : 03/08/2022.