

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD.**

**ORIGINAL APPLICATION NO. 815 OF 2016**

**DIST.: AURANGABAD**

1. Shri Tukaram S/o Namdeo Satpute,  
Age: 54 Yrs., Occu: Service  
R/o : Rahul Niwas, College Road,  
New Shanti Nagar, Kannad,  
Tq. Kannad, Dist. Aurangabad.
2. Shri Atmaram S/o Laxmanrao Mahajan,  
Age: 52 Yrs., Occu: Service  
R/o : Kasliwal Taragan, D/2/11 Mitmita,  
Nashik Road, Aurangabad,  
Tq. & Dist. Aurangabad.
3. Shri Krishna S/o Raghunath Kose,  
Age: 55 Yrs., Occu: Service  
R/o : Hutatma Jagnath Colony,  
Vaijapur, Tq. Vaijapur, Dist. Aurangabad.
4. Shri Pravin S/o Sudhakar Inamdar,  
Age: 54 Yrs., Occu: Service  
R/o : A/p Shivajinagar, Ward No. 6,  
Shrirampur, Tq. Shrirampur,  
Dist. Ahmednagar.
5. Shri Sainath S/o Shamrao Bojware,  
Age: 54 Yrs., Occu: Service  
R/o : C-2, Ekta Residency, High Court Colony,  
Satara Parisar, Aurangabad,  
Tq. & Dist. Aurangabad.
6. Shri Bapu S/o Kacharu Jadhav,  
Age: 53 Yrs., Occu: Service  
R/o : Ladgaon Road, Vaijapur,  
Tq. Vaijapur, Dist. Aurangabad.

7. Shri Harishchandra Jairam Kunde,  
Age: 64 Yrs., Occu: Retired,  
R/o : House No. 33/3 M-2, N-9, CIDCO,  
Dnyaneshwar Nagar, Aurangabad,  
Tq. & Dist. Aurangabad.
8. Shri Eknath S/o Ganpat Wani,  
Age: 59 Yrs., Occu: Retired,  
R/o : Shivajinagar, Gangapur,  
Tq. Gangapur, Dist. Aurangabad.
9. Shri Changdeo S/o Dagdu Pathade,  
Age: 60 Yrs., Occu: Retired,  
R/o : Swami Samarth Colony,  
Ladgaon Road, Vaijapur,  
Tq. Vaijapur, Dist. Aurangabad.
10. Shri Bhagwan S/o Tarachand Ahire,  
Age: 63 Yrs., Occu: Retired,  
R/o : Patane Clasic, Nadanwan Colony,  
Plot No. 9, Vasantrya Colony, Aurangabad,  
Tq. & Dist. Aurangabad.
11. Shri Abdul Razzak Shaikh Ahmed,  
Age: 64 Yrs., Occu: Retired,  
R/o : Bada Bangala, Kannad,  
Tq. Kannad, Dist. Aurangabad.
12. Shri Subhash S/o Pandurang Jadhav,  
Age: 59 Yrs., Occu: Retired,  
R/o : A/p. Wakala, Tq. Vaijapur,  
Dist. Aurangabad.
13. Shri Shaikh Shaukat Shaikh Narulla,  
Age: 59 Yrs., Occu: Retired,  
R/o : Police Station Road, Vaijapur,  
Tq. Vaijapur, Dist. Aurangabad.

14. Shri Satish S/o Manohar Kulkarni,  
Age: 59 Yrs., Occu: Retired,  
R/o : Niwara Nagari,  
Ladgaon Road, Vaijapur,  
Tq. Vaijapur, Dist. Aurangabad.

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**APPLICANTS****VERSUS**

1. The State of Maharashtra,  
Through its Principal Secretary (Revenue),  
Revenue & Forest Department,  
Having Office at Mantralaya, Mumbai-400 032.
2. The State of Maharashtra,  
Through its Principal Secretary,  
General Administration Department,  
Having Office at Mantralaya, Mumbai-32.
3. The District Collector,  
Aurangabad.
4. The Sub Divisional Officer,  
Vaijapur, Tq. & Dist. Aurangabad.

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**RESPONDENTS**

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APPEARANCE : Shri S.K. Mathpati, Learned Advocate  
for the Applicants.

: Smt. Priya R. Bharaswadkar, Learned  
Presenting Officer for the Respondents.

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**CORAM: HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)  
AND  
HON'BLE SHRI B.P. PATIL, MEMBER (J)**

**DATE : 04.08.2017.**

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**ORDER**

[Per- Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)]

1. Heard Learned Advocate Shri S.K. Mathpati, for the Applicants and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicants, who were appointed as Talathis by the Respondents No. 4 in the year 1983 and whose were terminated by the Respondent No. 3 by order dated 15.11.1983. The Applicants are claiming that they are eligible for regularization of their services.

3. Learned Counsel for the Applicants argued that the Respondent No. 4 issued order dated 1.9.1983 appointing the Applicant No. 1 as Talathi on temporary basis. Similar orders were issued in respect of other Applicants in August/September 1983 by the Respondent No. 4. The Respondent No. 3 issued order dated 15.11.1983 terminating the services of the Applicants. The applicants challenged the orders of termination by filing W.P. Nos. 710/1983 etc. before the Aurangabad Bench of Bombay

High Court. The order dated 15.11.1983 was stayed and by judgment dated 28.02.1989, Hon'ble High Court held that though the Applicants had no legal right to continue in service, the Government may consider their cases for absorption in regular service. After this order was passed by Hon'ble High Court, the Respondent No. 3 sent a proposal to the Government on 24.05.1994 to regularize the services of the Applicants. However, no decision is taken by the Government. The Applicants had continued to remain in service and some of them have since retired. Out of 17 persons, whose cases were recommended by the Respondent No. 3 for regularization of service, 15 continued in service and 14 have filed this O.A.

4. Learned Counsel for the Applicants argued that they are eligible for regularization of their service in view of the law laid down by Hon'ble Supreme Court in the case of State of Karnataka & Others Vs. M.L. Kesari & Others : (2010) 9 SCC 299 and other cases. The applicants were fully eligible to be appointed as Talathis and they were appointed in clear vacancies. After 10 years of working as Talathis,

their appointment can be said to be irregular and they had completed 10 years before the date of judgment of Hon'ble Supreme Court in The State of Karnataka & Others Vs. Umadevi & Others, AIR 2006 SC 1806. As such they are clearly eligible to be regularized. Learned counsel for the Applicants cited judgments of Mumbai Bench of this Tribunal dated 18.07.2016 in O.A. No. 242/2015. In that O.A., the Applicants were appointed as Talathis in Pune District in December 1983 and June 1985 without following due procedure. This Tribunal relying on M.L. Kesari's & Others judgments has ordered to regularize the services of the Applicants therein.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicants are back door entrants in service as they were illegally appointed by the Respondent No. 4 without following due procedure. Their services were terminated by the Respondent No. 3 by order dated 15.11.1983. The aforesaid order of the Respondent No. 3 has in effect has been upheld by Hon'ble High Court, who only directed the State Government to consider the

case of the Applicants for regularization. The State Government has not considered them eligible for regularization. As such, the Applicants have no case for regularization of their services. As the Applicants have continued in service due to intervention of the Hon'ble High Court, they are not eligible for regularization of their services in view of the law laid down by Hon'ble Supreme Court in Umadevi's case.

6. We find that the Applicants were appointed by the Respondent No. 4 in the year 1983 in clear vacancies. However, the appointment of the Applicants were not done following due procedure. Hon'ble High Court in judgment dated 28.02.1989 in a group of W.P. No. 710/1983 etc. has held that :-

*“We, therefore, feel that even though the petitioners have no legal right and their appointments are made by the Sub-Divisional Officer, without following the proper procedure, in view of these circumstances, in this case also, we think it proper to recommend to the Government to consider their cases for absorption in the Department on regular basis. We hope that the*

*case of the Petitioners will be considered on a sympathetic basis.”*

7. From this judgment, it is absolutely clear that the Applicants remained in service due to Court intervention till 28.2.1989. After the date of judgment viz. 28.02.1989 the Applicants continued in service though their initial appointment was held to be illegal by Hon'ble High Court. The State Government neither took action to discontinue the illegal appointments of the Applicants nor considered their case for regularization as recommended by Hon'ble High Court. The Applicants cannot be said to have continued in service due to Court's intervention after 28.02.1989. The Applicants have continued in service and some of them are still in service, while some have retired. Hon'ble Supreme Court in Umadevi's case has held that those employees who have continued in service due to Court's intervention would not be eligible for regularization of their services. In the present case, the Applicants have not been continued in service by Court's order after 28.02.1989. In M.L. Kesari's case, Hon'ble Supreme Court has held that



if an employee fulfills qualification for appointment, after 10 years of service in a substantive vacancy, his service will be irregular, and it can be regularized, if he completes 10 years before 2005. In the present case, all the Applicants completed 10 years on 28.02.1999, even if the earlier service due to Court's intervention is ignored. The Applicants are fully eligible for regularization of their services. In O.A. No. 242/2015, Mumbai Bench of this Tribunal by judgment dated 18.07.2016 has held that Talathis appointed in Pune District from 1983 to 1985 were eligible to be regularized. That judgment has been upheld by Hon'ble Bombay High Court. In the present case also, we are bound to take a similar view.

8. The Respondents are directed to regularize the services of the Applicants and absorb them in their present posts within a period of six weeks from today and then let them continue in service as regular employees. Those who have retired from service, shall be entitled to get regular pensionary and post retiral benefits, if not already given. It is, however, made clear that the

Applicants shall be entitled to the regular salary, henceforth as regular employees, but will not be entitled to any back wages. The Applicants shall be entitled to continuity in service except back wages. This Original Application is allowed in these terms with no order as to costs.

**MEMBER (J)**

Kpb/DB OA No 815 of 2016 RA 2017

**VICE CHAIRMAN (A)**