

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.787 of 2020
WITH CIVIL APPLICATION No.82 of 2024 (SB)

1. Bhojendra Sotiram Bopche,
Aged about 44 years, Occ.: Lab. Supervisor,
R/o. Shahid Mishra Ward, Tiroda,
Tah. Tirora, Distt.: Gondia.
2. Pawankumar Jairam Wasnik,
Aged about 35 years, Occ.: Lab. Supervisor,
R/o. Gandhi Ward, Tiroda,
Tah.: Tirora, Distt.: Gondia.
3. Amit Kartikchand Mandal,
Aged about 38 years, Occ.: Lab. Technician,
R/o. Kamtha (Near PHC),
Tah. Gondia, Distt.: Gondia.
4. Ramchand Gajlal Lilhare,
Aged about 42 years, Occ.: Lab. Supervisor,
R/o. Khedepar, P.O. Sonpuri,
Tah. Salekasa, Distt.: Gondia.
5. Dinesh Chandrabhan Dongarwar,
Aged about 48 years, Occ.: Lab. Technician,
R/o. at P.O. Katangi (Kala), Balaghat Road,
Tah. & Dist. Gondia.
6. Ritesh Anandrao Datir,
Aged about 42 years, Occ.: Sr. Treatment Supervisor,
R/o. Plot No. 10, Swarnamaya Nagari, Near Petrol Pump,
Godhani, Tah. & Distt.: Nagpur.
7. Sanjay Hariram Raiwatkar,
Aged about 34 years, Occ.: Lab. Supervisor,
R/o. Gankahaira, Tah.: Goregaon, Distt.: Gondia.

Applicants.

Versus

1. The Principal Secretary,
Public Health Department, Mantralaya,
Mumbai-32.

2. The Directorate of Health Services
Maharashtra State,
Arogya Bhavan, St. George's, Hospital Compound,
M. D'Mello Road, Mumbai: 400 001.
3. The Joint Director,
Health Services (T.B. & Leprosy),
Naidu Hospital Compound, Pune - 1.

Respondents.

Shri J.R. Kidilay, Advocate for applicants.

Shri M.I. Khan, learned P.O. for respondents.

**Coram :- Hon'ble Shri M.A. Lovekar,
Member (J).**

Date of Reserving for Judgment : 28th February,2024.

Date of Pronouncement of Judgment : 20th March,2024.

JUDGMENT

(Delivered on this 20th day of March,2024)

Heard Shri J.R. Kidilay, learned counsel for the applicants and Shri M.I. Khan, learned P.O. for the respondents.

2. The advertisement dated 18/10/2008 (Annex-A-1) was issued to fill posts of Laboratory Supervisor, Laboratory Technician and Senior Treatment Supervisor. The applicants possessed requisite qualification and submitted applications. They underwent an elaborate selection process. They were appointed on contract basis on consolidated monthly salary of Rs.6,000/- and their tenure was extended from time to time after assessing their performance (Annex-A-2 to A-8). Their services were, however, not regularized. To

ventilate this grievance their Union filed Writ Petition No.9881/2010. It was disposed of by order dated 14/08/2012 (Annex-A-9). The Hon'ble Bombay High Court, Bench at Aurangabad directed respondent no.3 to take appropriate decision on the representation within four months from the date of the order. However, no decision was taken as directed by order dated 14/08/2012.

3 By G.R. dated 05/06/2017 (Annex-A-10) Committee was constituted to consider the issue of regularization of services of contractual employees, like the applicants, working under National Health Mission. After issuing the Corrigendum dated 01/07/2017 (Annex-A-11), by G.R. dated 08/05/2018 (Annex-A-12), Committee was constituted afresh. The applicants then filed Writ Petition No.6632/2019. They withdrew it after seeking permission to approach this Tribunal. Permission as sought was granted and the Writ Petition was disposed of by order dated 30/09/2019 (Annex-A-13). Hence, this O.A. seeking directions to the respondents to decide claim of the applicants expeditiously as per order dated 14/08/2012 passed in Writ Petition No.9881/2010. The applicants are, in the alternative, seeking directions that the Committee constituted by G.R. dated 08/05/2018 should be directed to decide their claim expeditiously.

4. The applicants have relied on the common Judgment dated 20/06/2022 passed by the Hon'ble Bombay High Court, Bench

at Aurangabad in a batch of Writ Petitions. In this Judgment it is observed –

*“4. We, therefore, find that, neither can we direct their regularization, nor could any such order be passed, for continuing them in service, in the light of the judgment in **Secretary, State of Karnataka and others v/s Umadevi (3) and others, (2006) 4 Supreme Court Cases 1.***

5. Since this Court observed in paragraph No.11 in it's aforesaid order dated 24/11/2021, the petitioners may approach the State Government with a request for regularization and the State Government would consider, whether their grievance could be redressed. The petitioners pray that this Court should also issue a similar order.

6. We find that the Hon'ble Apex Court has observed in Secretary, State of Karnataka V/s Umadevi (supra), that the appropriate authority may consider as a one time measure of granting regularization to such employees, who have completed more than 10 years. It calls for no debate that these petitioners cannot continue on contractual basis for their entire lifetime. Security of employment and pensionary and retiral benefits are inherently vital and decisive aspects, which enable a human being to live a life with dignity and respect. It is undisputed that the project under which they were appointed on contractual basis still continues and is executed through the Zilla Parishads in this State and funded by the Union of India under the National Health Mission.

7. In the aforesaid backdrop, these petitions are disposed off, with a direction to the Union of India and the State Government, to prepare a data of all such petitioners/employees, including those who have not approached the High Court or the Industrial Court, across the State of Maharashtra, and consider whether the Union of India and the State Government can introduce a measure for considering the absorption of such employees, in the light of the view expressed by

the Hon'ble Apex Court in Secretary, State of Karnataka V/s Umadevi (supra).

8. We make it clear that, we have not expressed any opinion on the merits of the claim of these petitioners and it is left to the Union of India and the State Government to take a decision, keeping in view that the petitioners are approaching the Courts for seeking relief after having worked for more than 10 years on contractual basis. We expect the Union of India and the State Government to collect such data, on or before 20/10/2022 and take a policy decision as they may deem fit and appropriate, on or before 31/03/2023.”

5. The applicants have further relied on a common Judgment and order dated 26/09/2023 passed by the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition Nos.3502/2019 and 2920/2019 wherein it is observed –

*“ **RULE.** Rule made returnable forthwith and heard the learned counsel for the parties.*

*2. The petitioners claim to be working as Health Workers-Male/Female with Zilla Parishad, Yavatmal and Akola. It is their case that having worked for a period of fifteen years, they are entitled to have their services regularized. The petitioners seek a direction to be issued to the State Government to consider their cases for regularization on the posts on which they are working or on any other post which the State Government finds fit. In support of the prayer for issuance of such direction, reliance is placed on the judgment dated 24.11.2021 in Sunita Suresh Mandole & Others Versus The State of Maharashtra & Others [**Writ Petition No. 5252 of 2020 with connected writ petitions**] decided at the Aurangabad Bench. In paragraphs 11 and 12 thereof it has been observed as under :-*

"11. In the light of that, we direct the State Government to consider the cases of the petitioners for regularization either on the posts they are working under the RCH or some other posts under the State Government considering the length of service. The State Government can also fix the cut off date viz. that the persons working for a minimum period of particular years may be considered for regularization.

12. The State Government may take decision upon the aforesaid aspect i.e. the regularization of the services of the petitioners as discussed above on its own merits, expeditiously and preferably within a period of six (06) months from today. Depending upon the decision taken by the State Government, the parties may take appropriate steps."

3. Since the petitioners seek a limited direction for consideration of their cases for regularization we are inclined to issue a similar direction that has been issued in the aforesaid writ petition. Accordingly, by following the aforesaid decision, the respondent no.1-Rural Development Department, Mantralaya, Mumbai is directed to consider the cases of the petitioners for regularization on the posts on which they are working under the National Rural Health Mission or on any other post under the State Government. The directions issued in the aforesaid order shall also be taken into consideration. Such decision be taken within a period of six months from today. In case the services of the petitioners are regularized the respective Zilla Parishad shall take necessary steps in the matter of refund of the fees which the petitioners have paid in view of Advertisement No.1/2023.

4. Rule is disposed of in aforesaid terms. No costs. Pending civil applications also stand disposed of."

6. According to the respondents, the applicants are relying the judgment dated 14.08.2012 passed by the Hon'ble High Court, Aurangabad in the W.P.No.9881/2010. In this order the Hon'ble High

Court was considering the submission of petitioner i.e. "the petitioner's claims that the arrangement is going on without any break since 1993" but in case of the present applicants they are appointed on purely temporary / contract basis for specific period i.e. 11 months under the Scheme of National Rural Health Mission at different times and hence Judgment dated 14.08.2012 is not applicable."

7. The respondents have further relied on a common Judgment dated 08/04/2022 (Annex-R-2) of Principal Bench of this Tribunal in O.A. Nos. 1000/2018 and 1231/2019. Opening para of this Judgment reads as under –

"1. In these Original Applications, the Applicants sought direction to absorb them in service on the post of Tuberculosis Laboratory Supervisors, Lab Technicians, Tuberculosis, Health Visitors, etc. invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. Since common issues are involved, these two Original Applications are decided by common order."

The Principal Bench of this Tribunal then observed and held –

"Needless to mention, it is the prerogative of Government whether to create posts or to avail the services on contractual basis and in absence of creation of posts, the Tribunal cannot issue any such direction for absorption/regularization. As per settled proposition of law, the regularization can be only as per regularization policy declared by the Government and nobody can claim regularization as a matter of right dehors the regularization policy or creation of posts."

21. Now turning to the alternative submissions advanced by the learned Advocate for the Applicant for direction to the Respondents to consider the issue of absorption/regularization is concerned, indeed, this issue is already under consideration before the Government, as seen from Affidavit-in-reply filed by the Respondents. On going through the latest Affidavit-in-reply on behalf of Government affirmed by Joint Secretary, Public Health Department on 25.03.2022, it reveals that 3 Member Committee of Ministers were appointed to examine the issue and to make recommendation to the Government in respect of contractual employees working in National Health Mission Scheme. The Committee in its meeting dated 19.12.2018 as well as on 28.06.2019 made following recommendations.

(a) That the contractual employees of NHM could be given additional 3% of the total marks score in the examination per year of experience subject to maximum limit up to 30% marks. The candidates could be given the additional marks, in addition to the marks obtained in the written examination.

b) The age limit for such contractual employees of NHM should be relaxed for such period for which the concerned contractual employees have worked in NHM.

c) 40% posts should be reserved for contractual employees of NHM in the groups of class 'C' and class 'D' posts of Public Health Department and Public Health related posts under Rural Development Department.

It is to be noted that these are only recommendations and Government could not accept this as policy unless sanctioned by Hon'ble Chief Minister.

22. Thus, the issue is still under consideration and no such final decision is taken. Be that as it may, it is for the Government to take appropriate decision in the matter. This being the position, there is no point to again issue direction to the Government, as sought by

the learned Advocate for the Applicant on the basis of decision of Hon'ble High Court in Writ Petition No.2777/2021 [Chhaya Chikte & Ors. State of Maharashtra] decided on 24.11.2021. In that case, the Petitioners were appointed as Health Workers under the program of re-production and Child Health Project and they are paid consolidated amount of salary. Hon'ble High Court disposed of Writ Petition by giving direction to the Government to consider the cases of Petitioners therein for regularization either on the post they are working or some other post under the State Government considering the length of service. As stated above, in the present matter, the issue is already under consideration before the Government, and therefore, the question of issuing further direction does not survive.

23. The totality of aforesaid discussion leads me to conclude that Applicants' claim for absorption/regularization is de hors the law and O.A. is liable to be dismissed. However, it is made clear that State Government is at liberty to take appropriate decision in the issue which is already under consideration independently without being influenced by this order. Hence, the order.

ORDER

Both the Original Applications stand dismissed with no order as to costs.”

8. According to the respondents, applicants nos.1 to 5 and 7 are employees of Zilla Parishad, applicant no.6 is employee of Municipal Corporation and hence, this Tribunal has no jurisdiction to entertain this O.A. In support of this submission reliance is placed on the following observations made by the Principal Bench of this Tribunal in Judgment dated 28/07/2022 in O.A.No.419/2017 –

“7. At this juncture, it would be apposite to reproduce Section 15 of Administrative Tribunals Act, 1985 which deals with jurisdiction, powers and authority of the Tribunal.

"15. Jurisdiction, powers and authority of State Administrative Tribunals (1) Save as otherwise expressly provide in this Act the Administrative Tribunal for a State shall exercise on and from the appointed day all the jurisdiction powers and authority exercisable immediately before that day by all Courts-except the Supreme Court in relation to -

(a) recruitment and matters concerning recruitment to any civil service of the State or to any civil post under the State;

(b) all service matters concerning a person (not being a person referred to in clause (c) of this sub-section or a member person or civilian referred to in clause (b) of sub-section(1) of Section 14 appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation [or society owned or controlled by the State Government,

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b) being a person whose services have been placed by any such local or other authority or corporation (or society) or other body as is controlled or owned by the State Government at the disposal of the State Government for such appointment.

(2) The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities and corporations (or societies) controlled or owned by the State Government.

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes

of, or different categories under any class of local or other authorities or corporations (or societies).

(3) Save as otherwise expressly provided in this Act the Administrative Tribunal for a State shall also exercise on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation for society all the jurisdiction powers and authority exercisably immediately before that date by all Courts except the Supreme Court in relation to-

(a) recruitment and matters concerning recruitment to any service or post in connection with the affairs of such local or other authority or corporation (or society) and

(b) all service matters concerning a person (other than a person referred to in clause (b) of sub-section (1) of this section or a member person or civilian referred to in clause (b) of sub-section (1) of Section 14) appointed to any service or post in connection with the affairs of such local or other authority or corporation (or society) and pertaining to the service of such person in connection with such affairs.

(4) For the removal of doubts it is hereby declared that the jurisdiction powers and authority of the Administrative Tribunal for a State shall not extend to or be exercisable in relation to any matter in relation to which the jurisdiction powers and authority of the Central Administrative Tribunal extends or is exercisable."

8. Turning to the facts of the present case, admittedly, Applicant was appointed by Chief Executive Officer, Z.P, Thane and he rendered entire service as an Z.P. employee. This being so, his service conditions are governed by Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961. Now let us see, Applicant could be treated as a Government servant and he is amenable to the Tribunal of this Tribunal.

9. Rule 2 (b) of 'Rules of 1979' defines 'Government servant as follows:-

"2(b) "Government servant" means any person appointed to any civil service or post in connection with the affairs of the State of Maharashtra, and includes a Government servant whose services are placed at the disposal of a company; corporation, organization, local authority or any other Government, notwithstanding that his salary is drawn from sources other than from the Consolidated Fund of the State."

10. Thus, Government servant has to be a person appointed to civil service in connection with the affairs of the State. In the present case, admittedly, the Applicant is not appointed by State Government nor he is placed under the disposal of Z.P. by State Government. This being the clear position, the Applicant cannot be said to fall in the category of Government servant, so as to raise the grievance before this Tribunal under the provisions of Administrative Tribunals Act, 1985."

These observations apply to the facts of instant O.A.

9. As observed in Judgment of the Principal Bench of this Tribunal dated 08/04/2022 the issue of regularization of services of employees like the applicants is under consideration by the State Government.

10. Today learned counsel for the applicants has placed on record G.R. dated 14/03/2024. Heading of the G.R. is as follows –

“राष्ट्रीय आरोग्य अभियानांतर्गत कार्यरत कंत्राटी कर्मचा-यांपैकी १० वर्ष व त्यापेक्षा जास्त सेवा झालेल्या कर्मचा-यांच्या सेवा समायोजनासाठी सार्वजनिक आरोग्य विभागातील मंजूर समकक्ष पदांचे सेवाप्रवेश नियम सुधारित करून

त्यामध्ये रिक्त होणा-या समकक्ष पदांवर सरळ सेवेने ७० टक्के व समावेशनाने ३० टक्के याप्रमाणे भरती करण्याबाबत सेवाप्रवेश नियमात सुधारणा करण्याबाबत.”

11. It is made clear that the applicants shall be at liberty to rely on G.R. dated 14/03/2024 to get their services regularised. The O.A. and C.A. are disposed of in these terms with no order as to costs.

(M.A.Lovekar)
Member (J).

Dated :- 20/03/2024.

*dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 20/03/2024.