

C.A. No.470/2017 in O.A. No. 561/2017. (Dr. Ajaya D. Yerne V/s State & 2 Ors.)

and

C.A. No.471/2017 in O.A. No. 562/2017. (Dr.Yogita K. Shriwas V /s State & 2 Ors.)

Coram: Shri J.D. Kulkarni,

Vice-Chairman (J).

Dated : 26th September 2017.

Oral order

Heard Shri Sachin Khandekar, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

2. The learned counsel for the applicants submits that this Tribunal in O.A. No. 17/2015 was pleased to dismiss the relief of regularization to similarly situated applicants, which statement may not be correct. However, he submits that such judgment has been challenged before the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in W.P. No.2157/2017. In the said case, the Hon'ble High Court on 7.4.2017 was pleased to grant ad interim relief of continuation of the applicants therein. The learned counsel for the applicant, therefore, submits that since the matter of regularization is pending before the Hon'ble High Court, matter may not be heard on merits and only point of interim relief may be considered. In fact, yesterday both the parties have requested that the matter be heard on merit. In any case in view of the submission made by the learned counsel for the applicant, matter is being heard on the point of interim relief only.

2-A. In both these applications, the respective applicants are claiming regularization of their services as Professor in Govt. Ayurved College with all consequential benefits. The applicant in O.A. No. 561/2017 Dr. Ajaya D. Yerne and the applicant in O.A. No. 562/2017 (Dr. Yogita K. Shriwas) are appointed as

Professor in respondent No.3 Govt. Ayurved College, Nagpur. In fact, they have been appointed from time to time on *ad hoc* basis and purely as temporary employees. The first appointment in respect of the applicant in O.A. No. 561/2017 is dated 22.8.2014 and her subsequent appointments are dated 27.8.2015 and 28.9.2016 whereas the appointments in respect of the applicant in O.A. No. 562/2017 are dated 27.8.2013, 24.9.2014, 28.9.2015 and 28.9.2016. It is an admitted fact that those appointments were on *ad hoc* basis and purely temporary in nature and on certain terms and conditions and it was specifically stated that they will not have any right to claim regularization. In fact, on most of the occasions, when the applicants were appointed, they were appointed for a period of 364 days only. Sometimes after giving technical break, they were continued. But on most of the occasions, every time advertisement was issued again for temporary *ad hoc* appointment and the applicants participated in the selection process and were again selected and were given *ad hoc* appointment from time to time as already stated.

3. According to the applicants, their appointments have been done in view of the same policy decision taken by the respondent/State on 7.9.2011. As the State Government failed to conduct selection process at regular intervals, there was huge backlog of vacancies and, therefore, on 7.9.2011, the Government has taken a decision to appoint candidates on contract basis by following the due procedure such as advertisement, interview etc. The applicants being duly eligible and qualified, participated in the selection process and were selected.

4. According to the applicants, similarly situated candidates like the applicants who were working in Government Polytechnic Colleges on contract

basis, approached the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur and filed W.P. No. 2046/2010. On 19.10.2010, the Hon'ble High Court allowed the writ petition and deprecated the practice of appointing the candidates on contract basis and observed that the State shall act like a model employer. In view of the said judgment, the State Government has regularized the services of hundreds of candidates working on contract basis in Govt. Polytechnics.

5. The applicants were expecting that their services would be regularized, applying the same analogy. However, they were shocked when they noticed that instead of regularizing their services, respondent No.2 issued impugned communication dated 13.6.2017, wherein it was mentioned that those candidates who have completed the age of 62 years, shall only be appointed on contract basis and that hereinafter the candidates below the age of 62 years, shall not be appointed on contract basis. Result of the said communication will be that the applicants may not be able to participate in the process of selection nor they will be considered for appointment on contract basis and, therefore, these applications. The applicants are also claiming that the impugned communication dated 13.6.2017 issued by respondent No.2 be quashed. The applicants also claimed the following interim relief in their respective applications:-

During the pendency of the present O.A., the applicants pray that this Hon'ble Tribunal be pleased to direct the respondents not to discontinue their services during the pendency of the O.A. to meet the ends of justice.

6. This Tribunal was not pleased to grant *ad interim* relief and insisted for affidavit in reply to be filed by the respondents. Being aggrieved by the said non grant of interim relief, the applicants approached the Hon'ble High Court

of Judicature at Bombay, Bench at Nagpur and filed W.P. Nos. 6181 and 6182 of 2017 before the Hon'ble High Court at Nagpur. In the said writ petitions on 21.9.2017, the Hon'ble High Court was pleased to allow the writ petitions by quashing and setting aside the order passed by this Tribunal and directed this Tribunal to consider the prayer of the petitioners for grant of interim relief on or before 26th September 2017. The petitioners had undertaken to appear before this Tribunal on 25th September 2017, so that the matter could be heard on interim relief, if it is convenient to this Tribunal to hear it on the same day.

7. On 25th September 2017, parties appeared before this Tribunal. The respondents have filed affidavit in reply on behalf of respondent Nos. 1 to 3 in both the O.As. In fact, said affidavit is dated 22nd September 2017, but it was filed in this Tribunal on 25th September 2017,

8. This Tribunal was ready to hear the application on interim relief on 25th September 2017. But the learned counsel for the applicants as well as the learned P.O. stated that the matter be heard on merit itself on the next date i.e. on 26th September 2017 and, therefore, matter was kept for final hearing on today's board i.e. on 26th September 2017.

9. The learned counsel for the applicants, before advancing the argument on final hearing stated that in the earlier O.A. of similar nature, this Tribunal in the group of O.As i.e. O.A. Nos. 17/2015 with O.A. No. 164/2015 and 107/2016, has passed the order on 5th April 2017 and was pleased to reject the claim of regularization of similarly situated employees. The learned counsel for the applicants submits that the said order passed by this Tribunal has been assailed in W.P. No. 2157/2017 before the Hon'ble High Court of Judicature at

Bombay, Bench at Nagpur wherein ad interim relief in terms of prayer clause 4.A was granted and the petitioners therein were allowed to be continued in service till the decision of writ petition on merit. The learned counsel for the applicants, therefore, submits that the question of interim relief shall only be considered and not that of regularization.

10. It is material to note that, admittedly the present applicants have been appointed temporarily and on *ad hoc* basis with a clear understanding that they will not be entitled to claim any regularization. It is an admitted fact that, the contractual appointments have been made in view of the policy decision taken by the Government as per G.R. dated 7th September 2011 (Annexure A-1). That G.R. clearly shows that, the appointments were temporary in nature and on contract basis till the persons are appointed regularly through MPSC or Establishment Board or till completion of 364 days whichever falls earlier. It is specifically stated that, there shall be a technical break even if the applicants are appointed after the tenure and most important clause-10 shows that the applicants shall not have any right to claim regularization. That clause-10 reads as under:-

करार पधतीवरल जयुत उमेदवारांना जयुत जयुतीसाठ कोणताह हक राहणार नाह तसेच करार पधतीवरल काम केलेला कालावधी सेवाजवृत्तीया लाभासाठ वचारात घेता येणार नाह+

Similar terms and conditions are incorporated in each and every appointment order issued in favour of the applicants. In the appointment orders, it is clearly mentioned that the applicants will be appointed only if they accept the terms and conditions mentioned in the appointment order and the applicants have accepted those terms and conditions. The learned P.O. placed

reliance on **(2016) 2 SCC (L&S) 384 in case of State of Maharashtra and others V/s Anita and others**, wherein the Hon'ble Apex Court has observed that where the appointments have been accepted in accordance with the agreement and the terms of agreement specifically laid down that the appointment is purely contractual and that the temporary employees in such cases will not be entitled to claim any right, interests and benefits whatsoever of permanent service in the Government, such petitioner will not be entitled to claim any right.

11. Since the learned counsel for the applicants has stated that the point of regularization shall be kept open and only case of interim relief shall be considered, it is necessary to consider that point only. The last appointment of the applicants in both the O.As is dated 28th September 2016. The said appointment clearly shows that both the applicants were appointed on contract basis temporarily for only 364 days and that earlier also they were appointed by similar fashion and their appointment came to an end on 25th August 2016. The appointment order further gives the terms and conditions of appointment, which shows that the applicants were to get Rs. 50,000/- p.m. as honorarium and that their appointment will be purely temporary for a period of 364 days and it will come to an end on completion of 364 days automatically and that the applicants will not be entitled to claim regularization. Admittedly, the appointment order comes to an end tomorrow i.e. 27th September 2017 and, therefore, in such circumstances, there is absolutely no reason to grant any ad-interim stay for one day in this case. From the record, it seems that earlier also whenever the appointment period was over, the applicants were out of service. Thereafter every time barring few, the Government issued an advertisement and every time the applicants participated in

the fresh selection process of appointment and were duly selected for a particular period again on the same terms and conditions.

12. The learned counsel for the applicants submits that he has filed C.A. No. 470/2017 in O.A. No. 561/2017 and C.A. No. 471/2017 in O.A. No. 562/2017, claiming stay to the advertisement for the similar post dated 15th September 2017 issued by respondent No.3 i.e. the Dean, Govt. Ayurved College, Nagpur. From the perusal of the said advertisement, it seems that the respondents have called the candidates for walk in interview for the similar post on the same terms and conditions on 4th October 2017. The learned counsel for the applicants submits that the said advertisement shall be stayed, as the ad hoc employees will be replaced by another ad hoc employees, if the process is allowed to be continued. It is material to note that, earlier procedure shows that whenever the applicants were appointed, for example, vide order dated 22nd August 2014, 27th August 2015 and 28th September 2016 in respect of the applicant in O.A. No. 561/2017 and the order dated 27th August 2013, 24th September 2014, 28th September 2015 and 28th September 2016 in O.A. No. 562/2017, the respondents issued similar advertisement and every time the applicants participated in the said process and, therefore, there is absolutely no reason as to why at this particular time, said advertisement shall be stayed. Both the C.As therefore, stand dismissed, since they have no merits.

13. The learned P.O. submits that, even for argument sake, it is accepted that new persons are being appointed by issuing a fresh advertisement on temporary basis, such action can be taken by the respondents. The learned P.O. has placed reliance on the judgment of the Hon^{ble} High Court of Judicature

at Bombay, Bench at Nagpur reported in **2013 (4) Mh. L.J. 255 in case of Aman Shah Hussain Shah and others V/s Chief Officer, Municipal Council, Karanja Lad and others**. In the said case, the petitioners were working on clock hour basis and were not employees on permanent basis in a school run by the Municipal Council and claimed that they may not be substituted by another set of *ad hoc* employees and they be continued in service till regularly selected candidates report for work. It was held that the petitioners can claim preference in employment because of past experience whenever regular recruitment process to fill up any permanent vacancy is undertaken. The learned P.O. also placed reliance on **(2016) 8 SCC 293 in case of State of Maharashtra and others V/s Anita and another**, wherein it has been held that, having duly accepted contractual appointment, the respondents are estopped from challenging the terms of their appointment and it was further held that when the Government had taken a policy decision to fill up the posts on contractual basis, the Tribunal and the High Court ought not to have interfered with it to hold that the appointments were permanent in nature.

14. The learned counsel for the applicants has invited my attention to the impugned letter dated 13.6.2017 issued by respondent No.2 whereby he has called information from the concerned Deans of the Ayurved Colleges as to how many Professors were appointed who were below the age of 62 years. It seems that the respondent No.2 has interpreted the Government policy dated 7th September 2011 and he was of the opinion that as per the said policy, the candidates who are below the age of 62 years, should not have been appointed and that such candidates who are below the age of 62 years, shall not be appointed on ad hoc basis hereinafter. The learned P.O. submits that the said

communication is internal communication and has not been implemented. Even otherwise said interpretation of the Government policy dated 7th September 2011 , *prima facie* does not seem to be correct. At the most, it can be said that the respondents can be restrained from not appointing the applicants only on the basis of a letter dated 13th June 2017.

15. Even the advertisement which has been issued by respondent No.3 on 15th September 2017 (Annexure-A) filed alongwith the C.A., also does not state in clear terms that the candidates below the age of 62 years, cannot appear for interview. The applicants, therefore, will be very much eligible for appearing for fresh interview as per the advertisement dated 15th September 2017, as they have appeared earlier on earlier so many occasions whenever their tenure was completed.

16. The learned counsel for the applicants has placed reliance on (i) **Sachin Ambadas Dawale and others V/s State of Maharashtra and others reported in 2014 (2) Mh.L.J. 36,** (ii) **judgment of this Tribunal in O.A. No.17/2015 in Prafulla Kachre and others V/s State of Maharashtra and other delivered on 5.4.2017** (iii) **Rajendra Vitthalrao Kamble V/s Govt. of Maharashtra and others reported in 2012 (4) Mh.L.J. 505.** Since the applicants have not pressed the claim of regularization on merit at this juncture, the said judgments are not applicable to the present set of facts. I have gone through the said judgments and they are not applicable to the present set of facts.

17. In view of discussion in foregoing paras, since the applicants tenure of post is to be completed tomorrow only, no interim relief can be granted in favour of the applicants.

In the C.A. Nos. 470 & 471 of 2017, the applicants have also claimed that by way of interim relief, the respondents be restrained from appointing any other temporary / *ad hoc* / contractual candidate. For the reasons already stated, no such interim relief can be granted. Hence, I proceed to pass the following order.

ORDER

- (i) Applicants prayer for grant of interim relief that during the pendency of the present O.As, the respondents be directed to continue their services in the O.A. is rejected.
- (ii) Similarly, the applicants prayer for stay to the advertisement dated 15.9.2017 issued by R.3 and prayer for restraining the respondents from issuing any appointment order to any other candidate either temporary / *ad hoc* / contractual basis is also rejected.
- (iii) It is, however, made clear that in case the applicants appear for walk-in-interview as per the advertisement dated 15.9.2017, the respondents shall not restrain the applicants from participating in the interview and shall not reject the applicants claim for appointment only because they are below the age of 62 years as per communication dated 13.6.2017, if they are otherwise found suitable on merits.
- (iv) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)

O.A. Nos. 561 & 562 of 2017.

Order on Interim relief is passed on C.As and the O.As be placed for final hearing after **six weeks.**

(J.D.Kulkarni)
Vice-Chairman(J)

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