

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1105 OF 2016

DISTRICT : MUMBAI

1. Shri Arvind C. Rane.)
Age : 40 Yrs., Occu.: Working as)
Clerk-Typist in the office of below)
named Respondent No.1 and)
R/o. 5/91, Vitthal Sadan, D.L.)
Road, Chinchpokali (E),)
Mumbai – 400 012.)

2. Shri Rajesh P. Deshmukh.)
Age : 45 Yrs., Occu.: Working as)
Clerk-Typist in the office of below)
named Respondent No.1 and)
R/o. J.J. Hospital Quarters,)
1st Floor, Room No.7, Behind)
Ladies Hostel, Byculla,)
Mumbai – 400 008.)

3. Shri Rajendra M. Mohite.)
Age : 39 Yrs., Occu.: Working as)
Clerk-Typist in the office of below)
named Respondent No.1 and)
R/o. 10/40, Lokmanya Nagar,)
Thane (W).)

4. Shri Rajesh Y. Sawant.)
Age : 44 Yrs., Occu.: Working as)
Clerk-Typist in the office of below)
named Respondent No.1 and)
R/o. D-205, Siddhi Vinayak Annex,)
Sitaram Jadhav Marg, Lower Parel,)
Mumbai – 400 013.)...**Applicants**

Versus

1. The Government Pleader,)
Bombay High Court [Original Side],)
Mumbai – 400 032.)

2. The State of Maharashtra.)
 Through Principal Secretary,)
 Law & Judiciary Department, Mantralaya,)
 Mumbai – 400 032.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 21.09.2021

JUDGMENT

1. The Applicants have challenged the communication dated 26.11.2015 whereby Respondent No.2 rejected their claim for absorption on the post of Clerk-cum-Typist and prayed for absorption on the said post in the Office of Respondent No.1 invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Undisputed facts giving rise to this O.A. and necessary for the adjudication of the claim made by the Applicants are as under :-

- (i) Hon'ble High Court in Writ Petition No.8891/2004 (Smt. S.D. Pujari Vs. State of Maharashtra & Ors.) passed following order :-

“Heard the learned Government Pleader (Public Prosecutor’s Office) and Government Pleader (Writ Cell). The Secretary Finance Department is also present. The Secretary has assured the Court that the State Government will comply with the following within 8 weeks;

- (i) to fill up all the sanctioned posts in the office of the Government Pleader (Public Prosecutor’s Office) and to make appointment to those posts from the eligible candidates from the Employment Exchange till the MPSC candidates are available, subject to their giving written undertaking not to claim any right in respect of the said posts.
- (ii) to sanction 8 additional posts of peon for the office of the Government Pleader (Writ Cell) and fill up the said posts as

well as sanctioned posts from the eligible persons from the Employment Exchange till the MPSC/duly selected candidates are available, subject to their giving written undertaking not to claim any right in respect of the said posts.

- (iii) to look into the request made by the office of the Associate Advocate General and to take appropriate decision in that behalf.
- (iv) The order dated 15.06.2005 to stand modified to the above extent.

S.O. to 12.09.2005.”

(ii) In pursuance of the aforesaid direction, the Respondent No.1 by letter dated 29.03.2007 requested Employment Exchange Office to furnish information to fill-in 5 vacant posts of Clerk-cum-Typist.

(iii) The Office of Employment Exchange accordingly furnished information giving details of Age, Qualification, Eligibility, etc. of the Applicants for their appointment on the post of Clerk-cum-Typist.

(iv) The Office of Respondent No.1 accordingly conducted screening test and having passed therein, the Applicants were called for interview on 01.11.2007.

(v) The Applicants found eligible for the post of Clerk-cum-Typist having gone through screening tests as well as interview, they came to be appointed temporarily initially for the period of three months by orders dated 12.11.2007 and accordingly, the Applicants joined the post carrying pay scale 3050-75-30950-80-4590.

(vi) Even though, the initial appointment was for 3 months, the Applicants were continued in the service on the post of Clerk-cum-Typist in the Office of Respondent No.1 and till date, they are in service.

(vii) On 29.05.2014, the Applicants made representation to the Office of Respondent No.1 for absorption in service *inter-alia* contending that they are continuously in service from 2007 and requested to regularize their services since they are already working on duly sanctioned vacant post.

(viii) The Respondent No.1 by letter dated 09.01.2015 recommended the Respondent No.2 to consider the claim of the Applicants for absorption sympathetically stating that their performance is very good and they can be accommodated/absorbed on 4 sanctioned posts which were lying vacant.

(ix) The Respondent No.1 again made representation to Respondent No.2 for absorption of the Applicants by their communication dated 16.09.2015.

(x) However, Respondent No.2 rejected the proposal by communication dated 26.11.2015 solely on the ground that the post of Clerk-cum-Typist cannot be regularized in view of G.R. dated 01.12.1994 which *inter-alia* states that the post should be filled-in through MPSC.

3. It is on the above background, the Applicants have filed the present O.A. challenging the communication dated 26.11.2015 whereby Respondent No.2 rejected the claim for absorption of the Applicants.

4. Shri A.V. Bandiwadkar, learned Advocate for the Applicants advertng to the aforesaid admitted facts vehemently urged that the Applicants were appointed having found eligible after undergoing screening test and interview on duly sanctioned vacant posts, and therefore, it cannot be termed as a backdoor entry or illegal appointment. He has further pointed out that the Applicants were enrolled with the Employment Exchange Officer and it recommended their names to

Respondent No.1 in pursuance of their requisition. He has further emphasized that admittedly, till date, no appointments through MPSC are made and the Applicants are continued in service for more than 13/14 years. According to him, even if the initial appointment is under the garb of temporary employment in view of appointment on duly sanctioned posts in pay scale in terms of 5th Pay Commission, now denial of relief of absorption would amount to exploitation. He, therefore, prayed that this is a fit case for direction to the Respondents to absorb the Applicants on the vacant posts on which they are already working for last 14 years.

5. The learned Advocate for the Applicants has placed reliance on the following decisions :-

- (a) Decision of Hon'ble High Court in **Writ Petition No.2046/2010 (Sachin Dawale Vs. State of Maharashtra & Ors.) decided on 19.10.2013.**
- (b) **2019(3) SLR 644 (Madhukar & Ors. Vs. State of Maharashtra & Ors.).**

6. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer in reference to the stand taken in Affidavit-in-reply filed by Respondents submits that it is in pursuance of direction of Hon'ble High Court in **Writ Petition No.8891/2004 (Smt. S.D. Pujari Vs. State of Maharashtra)**, the Applicants came to be appointed purely on temporary basis till the availability of MPSC candidates. Their appointment was not by issuing Advertisement, and therefore, it cannot be treated as regular appointment. She further states that the posts on which the Applicants were temporarily appointed were required to be filled-in through MPSC in view of G.R. dated 01.12.1994 which *inter-alia* provides for filling the said posts through MPSC. She, therefore, submits that even if Applicants are in service for a long time, they are not entitled to absorption. According to her, the Applicants' appointment being not in accordance to law in view of decision of Hon'ble Supreme Court in **(2006) 4 SCC 1 (State of**

Karnataka Vs. Umadevi), they cannot claim relief of absorption/regularization in service. In this behalf, reference is also made to the decision rendered by this Tribunal in O.A.633/2015 decided with connected O.As on 27.08.2019 wherein the claim of absorption was dismissed in the matter of contractual appointment.

7. In view of submissions advanced at the Bar, the issue posed for consideration is whether Applicants' appointment can be termed illegal appointment as observed by Hon'ble Supreme Court in **Umadevi's** case (cited supra) or are they entitled for absorption in service.

8. Indisputably, material to note that all these Applicants were subjected to screening test, interview and having found fulfilled all eligibility criteria in terms of qualification, age, etc., they were appointed on duly sanctioned vacant posts. It is explicit from the order of Hon'ble High Court in **Writ Petition No.8891/2004** (referred to above), several sanctioned posts in the Office of Government Pleader (Respondent No.1) were lying vacant and due to non-filling in the posts, the Respondent No.1 was facing much hardship in day to day work, and therefore, in that situation, directions were issued by Hon'ble High Court to make appointment from the eligible candidates by calling recommendations from Employment Exchange Office till the MPSC candidates are available. Accordingly, Applicants came to be appointed in 2007 and with the technical break of one day, they are continued in service till date. As such, the availability of sanctioned vacant posts as well as necessity of the services is manifest.

9. True, the Applicants came to be appointed temporarily as per the directions given by the Hon'ble High Court, but the fact remains that there was availability of posts as well as work. The Applicants were also subjected to screening test as well as interview and having found eligible in all respect, they came to be appointed. As such, it cannot be treated

as a backdoor entry or illegal appointment without due process of law. This aspect have much bearing over the matter in issue.

10. Apart, admittedly, till date, there is no recommendation from MPSC to fill-in these 4 posts occupied by the Applicants as Clerk-Typists. Indeed, Respondent No.1 by communication dated 09.01.2015 had recommended the Government to absorb the Applicants on the posts on which they are already working stating that they are very sincere and performance is up to the mark.

11. Now turning to the impugned order dated 26.11.2015 curiously, the request of regularization of the Applicants was turned down solely on the ground that in terms of G.R. dated 01.12.1994, the said posts were required to be filled-in through MPSC. In this behalf, it is explicit from the record that for a long time, no efforts were made to fill-in these posts through MPSC which had severely affected the work of office of Respondent No.1, which impelled the Hon'ble High Court to issue direction in Writ Petition No.8891/2004 to fill-in the said posts. Consequent to said directions, the Applicants' names were sponsored by Employment Exchange Office and after interview, having found fully eligible and qualified, they came to be appointed in pay scale of 3050-75-3950-80-4590. What is striking to note that till date, no efforts were made to have the candidates through MPSC to fill-in these four posts occupied by the Applicants.

12. In this behalf, it would be apposite to refer the pleadings in O.A. as well as reply of the Respondent No.1 about the necessity of the appointment of Applicants and failure of the Government to replace these Applicants by providing MPSC sponsored candidates. In Para No.6.4, the Applicants pleading is as under :-

“6.4 The Petitioners state that it appears that for long time, the permanent, substantive, clear and sanctioned vacancies of Clerk-Typists, Lower Grade Stenographers, so also that of Office Peon, in the office of

the Respondent No.1 were not filled up, which seriously affected day to day functioning of the said office. That in such circumstances, the Respondent No.1 forwarded requisition on 29.03.2007 to the Deputy Regional Employment Office, Mumbai alongwith details of the posts, followed by similar requisition dated 1.8.2007 to the other Employment Office in Mumbai. That accordingly, the said offices forwarded on 12.9.2007, the list of 16 eligible candidates to the office of the Respondent No.1.”

Whereas, Respondent No.1 while giving reply to it, in Para No.7 of Affidavit-in-reply stated as under :-

“7. With reference to Para 6.4, I say that it is true that as contended in this para there are vacancy of Clerk cum Typist, Lower Grade Stenographers and Peon in the office of the Government Pleader Officer, Original Side, High Court, Bombay and also the same is effecting day to day function of the said office. The requisition for providing the additional staff is made to the government time to time. The contention in the said para is correct.”

13. It is thus explicit that till date, no substitutes through MPSC were provided to Respondent No.1. Indeed, after the Applicants' appointment in 2007 and failure of the Government to provide MPSC sponsored candidates, the Respondent No.1 by letter dated 09.01.2015 (Page No.125 of Paper Book) had recommended to Respondent No.2 to absorb the Applicants on the posts on which they were already working. Later, Respondent No.1 by letter dated 05.02.2015 (Page No.69 of P.B.) again requested Respondent No.2 to provide MPSC sponsored candidates, but no further steps were taken in this behalf by Respondent No.2. The Respondent No.1, therefore, again by letter dated 16.09.2015 (Page No.76 of P.B.) recommended Respondent No.2 to absorb the Applicants in regular service stating that out of 30 posts of Clerk-cum-Typists, 9 posts are vacant and 4 posts occupied by the Applicants can be regularized by absorption of the Applicants. However, no further steps were taken by Respondent No.2 to provide MPSC sponsored candidates so as to replace the Applicants in a span of 13 to 14 years. Their services are however extracted as temporary employees without giving them the benefit of absorption, which is nothing but exploitation. Therefore, only because the said posts were required to be filled-in through MPSC, that itself

cannot be the ground to reject the relief of absorption, particularly when Respondent No.2 failed to replace the Applicants by providing MPSC sponsored candidates to Respondent No.1.

14. The law relating to subject of regularization has been subject matter of several decisions of Hon'ble High Court and Hon'ble Supreme Court. In this behalf, in **Sachin Dawale's** matter (cited supra), the Petitioners were appointed on contractual basis after issuance of advertisement and conducting interview by duly constituted Selection Committee till the availability of candidates through regular selection process. They worked for a period of 3 to 10 years, but were not given regular pay scale and their services were exploited by branding them as temporary employees. The Hon'ble High Court turned down the defence raised by the Government that it is backdoor entry and issued direction for absorption on regular pay scale granting relief of continuity in service from initial appointment except monetary benefits. The Petitioners therein were appointed on duly sanctioned vacant posts. The said decision has been upheld by Hon'ble Supreme Court and has attained finality. The Hon'ble High Court considered the effect of Judgment of Hon'ble Supreme Court in **Umadevi's** case. Para Nos.15 & 17 of Judgment in **Sachin Dawale's** case is material here, which is as follows:-

“15. The submission of the Government of Maharashtra that whether the posts should be filled in on regular basis or contractual basis is a matter of policy and falls within the domain of the Government of Maharashtra (employer), does not appeal to us. It being an admitted position that the posts, in which 33 wp2046.10 these employees have been appointed and continued for a considerable length of time, on contractual basis, are regular and full time posts; the appointments in these posts cannot be at the whims and fancies of the Government of Maharashtra. The State cannot adopt a policy of hire and fire or use and throw.

17. The submission on behalf of the respondents relying on the judgment of Secretary, State of Karnataka & Ors. V/s. Umadevi & Ors. (supra) cannot be accepted in the facts of the present case. In above case, the Hon'ble Supreme Court has observed in paragraph 3 of the judgment that the States have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper

appointment procedure through the Public Service Commission "or otherwise as per the rules adopted" and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to 35 wp2046.10 compete for the post. The Hon'ble Supreme Court has observed that Courts should desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. In the present case though the petitioners are not selected through MPSC, it is undisputed that the petitioners are selected after the procedure for selection is followed and through the duly constituted Selection Committee as constituted by the Government of Maharashtra. The advertisement was issued before the petitioners were selected and all interested candidates had applied for the posts for which the petitioners are selected. Thus, it cannot be said that the petitioners have got the employment through back door entry. It cannot be said that the candidates qualified for the posts were deprived of the opportunity to compete for the selection for the posts in which the petitioners are working.

15. Same issue of absorption and regularization of temporary employees has been also subject matter of decision in **2019(3) SLR 644 [Madhukar & Ors. Vs. State of Maharashtra]** (cited supra). The facts of this Writ Petition and the present case in hand are identical. In that case, the Petitioners were appointed as a Member of Teaching and Non-teaching Staff in Government Ashram School after calling their names from Employment Exchange Office and interview alike in the present case. They were appointed purely on temporary basis on meager honorarium and continued for more than 10 years. Significant to note, in that case, Undertaking was also taken from the Petitioners that they will not claim any right on the post they were appointed. The Hon'ble High Court having found that they were appointed on clear vacant sanctioned posts and availability of work granted relief of absorption and frowned upon the practice of exploitation of the employees. The Hon'ble High Court referred to the decisions **AIR 2018 SC 233 [Sheo Narian Nagar & Ors. Vs. State of Uttar Pradesh & Ors.]**, **State of Karnataka & Ors. Vs. Umadevi (2006) 4 SCC 1, (2018) 8 SCC 238 [Narendra Kumar Tiwari & Ors. Vs. The State of Jharkhand]** and granted relief of absorption. In Para Nos.13, 14, 15, 16 and 17, the Hon'ble High Court held as under:-

13. *In case of Sheo Narain Nagar and ors. vs. State of Uttar Pradesh and ors. (supra), the Apex Court has observed that employment cannot be on exploitative terms. The employees therein were conferred temporary status in the year 2006 work load was available and posts were also available, the order of regularization was held to be proper. In case of Secretary, State of Karnataka and others vs. Umadevi and others (supra) the Apex Court observed thus:*

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a onetime measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub-judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

14. *In the present case majority of the persons have been appointed prior to ten years and during the pendency of the writ petition some of them have completed ten years. They are regularly working on the said posts on meagre honorarium. The government is expected to be a model litigant.*

15. *One needs to keep in mind that these petitioners were appointed as the respondents were not getting Assistant Teachers so also Class-III and Class-IV employees to officiate in the government tribal ashram school run under the Tribal Development Department in the remote tribal areas. The respondents also did not conduct the selection process for all these years. Keeping the petitioners for a long period on honorarium would certainly amount to their exploitation.*

16. *Exceptional circumstances exist to consider the case of the petitioners for regularization of at least those who have completed ten years of service as laid down in the case of Secretary, State of Karnataka and others vs. Umadevi and others (supra).*

17. *The following circumstances persuade us to consider the case of the petitioners for regularization of those who have completed ten years in service:*

- (1) *The posts on which the petitioners are appointed are sanctioned posts.*
- (2) *The work load is available.*
- (3) *The petitioners have agreed to officiate at the time when the respondents were not getting the necessary teaching and non-teaching staff to work in remote tribal areas and more particularly when the means of communication and transportation were scarce.*
- (4) *The respondents have not undertaken selection process for all these years to fill in the posts held by the petitioners.*
- (5) *The petitioners are working continuously for ten years or more on meagre honorarium.*
- (6) *Asking the petitioners to continue to work on meagre honorarium for such a long period would tantamount to their exploitation not expected from the welfare State. The State is expected to be a model litigant.”*

16. Again the issue of absorption and regularization came before the Hon’ble Supreme Court in **SLP No.15775/2016 [State of Karnataka & Ors. Vs. M.L. Kesari & Ors.]** which was a case of appointment of daily wages workers of Zilla Parishad and they were continued in service for more than 15 years without protection of order of Court. The Hon’ble Apex Court referred to the decision in **Umadevi’s** case wherein directions were given to regularize the employees who fulfilled the criteria laid down therein as one time measure and issued direction to State of Karnataka to regularize the services of these Z.P. employees who fulfilled the criteria laid down in Para No.53 of the Judgment in **Umadevi’s** case.

17. It would be apposite to refer the decision of Hon’ble Supreme Court in **(2013)14 SCC 65 [Nihal Singh & Ors. Vs. State of Punjab & Ors.]** which pertains to the appointment of Special Police Officers of State of Punjab in 1980 in view of large scale disturbance in the State of Punjab and inability of the Government to handle law and order situation with

the available Police Personnel. It is in that context, the State of Punjab appointed some Special Police Officers resorting to recruitment under Rule 17(1) of Police Act, 1961. The Hon'ble Supreme Court observed that **Umadevi's** Judgment cannot become license for exploitation by the State and its instrumentalities. The Hon'ble Apex Court gave direction to the State of Punjab for regularizing the services of the Police Personnel therein by creating necessary posts within three months. Para Nos.35 & 36 of the Judgment have bearing over the present issue, which are as follows :-

“35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the Legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is – the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities.”

18. The principles expounded in the aforesaid Judgments are squarely attracted in the case in hand in the light of factual aspects adverted to above. As stated earlier, the Applicants' names were called from

Employment Exchange Office and after interview being found fully eligible, they were appointed on clear sanctioned vacant posts. As such, it cannot be termed as illegal appointment or backdoor entry. The appointments were made with some process but they were appointed as temporary appointees and continued on the said post for last 14 years without absorbing them despite the recommendation made by Respondent No.1 to absorb them in regular service. This is nothing but exploitation of the employees which is not expected from State which is supposed to act as a model employer.

19. In service jurisprudence, it is well settled principle of law that when particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefits and not doing so, would amount to discrimination and would be violative of Article 14 of the Constitution of India. In this behalf, a reference may be made to the Judgment of Hon'ble Supreme Court in **(2015) 1 SCC 347 (State of Uttar Pradesh Vs. Arvind Kumar Srivastava & Ors.)** wherein the Hon'ble Supreme Court emphasized that in service jurisprudence evolved by the Courts from time to time postulates that, all similarly situated persons should be treated similarly. However, this principle is of-course subject to certain well recognized exception in the form of latches, delays as well as acquiescence. In so far as the present matter is concerned, there is no question of latches, delay or acquiescence. This being the well settled legal principle, in my considered opinion, it would be travesty of justice if the relief claimed by the Applicant is denied to them.

20. Indeed, it is a matter of regret that Respondent No.2 though under obligation to follow the law of land has arbitrarily rejected the claim of absorption after exploiting Applicants' services for 13 to 14 years, as if it is adversarial litigation. Be that as it may, the claim of Applicants for absorption in view of aforesaid discussion is infeasible.

21. In so far as decision rendered by this Tribunal in O.A.633/2015 decided with connected O.As. on 27.08.2019 is concerned, in that matter, the Applicants therein were appointed purely on contractual basis on consolidated salary of Rs.15,000/- per month for starting additional shifts in Government Industrial Training Institutes on the basis of G.R. dated 23.08.2010 whereby policy decision was taken to hire employees purely on contractual basis for the said purpose. It is in that context, they being found appointed for specific purpose on contractual basis on consolidated salary, the claim of regularization has been dismissed by the Tribunal. Whereas, in the present case, the Applicants are appointed on duly sanctioned vacant posts in specific pay scale applicable to the Clerk-cum-Typists, and therefore, the decision rendered by the learned P.O. is clearly distinguishable and is of no assistance to her.

22. In view of aforesaid discussion and law and facts, the following circumstances impels me to grant the relief of absorption.

- (a) The post on which the Applicants were appointed are duly sanctioned posts and availability of work is obvious.
- (b) The Applicants were appointed by calling their names from Employment Exchange Officer and after interview having found them eligible for the appointment.
- (c) The Respondents have not undertaken selection process through MPSC to fill-in the posts occupied by the Applicants and to substitute them in last 13 to 14 years.
- (d) The Applicants are continuously working with technical break of one day for more than 13 to 14 years under the nomenclature of temporary appointment which is nothing but exploitation by the Respondents.

23. The totality of aforesaid discussion, therefore, leads me to conclude that the impugned order rejecting the claim of absorption is totally arbitrary, unjust and unsustainable in law. The Applicants are consequently entitled for absorption on the posts occupied by them. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 26.11.2015 is quashed and set aside.
- (C) The Respondent No.2 is directed to regularize the services of the Applicants in pay scale applicable to them w.e.f.01.10.2021 and to issue necessary orders within two months from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 21.09.2021

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2021\September, 2021\O.A.1105.16.w.9.2021.Regularization in Service.doc

Uploaded on