

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1114 OF 2016

1. Miss. Bharati Mahadev Sonawane,)
Worked as Clerk-Typist in the office)
of below named Respondent No.1,)
R/o. B.I.T. Bldg No.3, Room No.7,)
Near Standhurst Road Station,)
Mumbai 9)

 2. Smt. Shalmali Sharad Kadam,)
Since before marriage,)
Kum. M.C. Gaikar, Aged 33 years,)
Worked as Clerk-Typist in the office)
of below named Respondent No.1,)
R/o. Laxmi Narayan C.H.S.,)
C/2106, Bhendi Bazaar, Mumbai 9)

 3. Smt. Swati Mahendra Thakare,)
Aged : 38 years, working as)
Clerk-typist in the office of below)
named Respondent No.1,)
R/o. B.I.T. Bldg No.3, 3/2/7,)
Room No.27, Dr. Malsheri Road,)
Office of Govt. Pleader & Public)
Prosecutor Bombay High Court,)
Appellate Side, Mumbai 32)
-APPLICANTS**

VERSUS

1. The Government Pleader and Public)
Prosecutor, Bombay High Court,)
Appellate Side, Mumbai 32)

 2. The State of Maharashtra,)
Through Principal Secretary,)
Law & Judiciary Department,)
Having office at Mantralaya,)
Mumbai 400 032)
- ...RESPONDENTS**

Mr. Bhushan A. Bandiwadekar, learned Counsel for the Applicants.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar, Chairperson**
Ms. Medha Gadgil, Member-A

RESERVED ON : **11.12.2023.**

PRONOUNCED ON : **11.01.2024**

J U D G M E N T

1. The three Applicants who were working as Clerk-cum-typist in the office of Government Pleader and Public Prosecutor, Bombay High Court, Appellate Side, Mumbai challenge the orders dated 14.10.2016 and 13.10.2016 by which the services of the Applicants No.1 and 2 were terminated and prayed for their reinstatement with all the consequential service benefits. The Applicants pray that they are to be regularized as they have put in a long service nearly 7 to 8 years in the office of Respondent No.1. By way of interim relief Applicant No.3 prays that the Respondent be restrained from terminating her service where she is presently working. Further, by way of interim relief Applicants No.1 and 2 prays that Respondent be directed that Applicants No.1 and 2 be immediately given temporary

appointments in the next available vacancies. O.A. is filed on 28.11.2016.

2. The Applicants No.1, 2 and 3 were appointed as Clerk-cum-typist on 24.11.2008, 02.07.2008 and 12.10.2007 respectively on temporary basis. Applicants No.1 and 2 were relieved by orders dated 14.10.2016 and 13.10.2016 respectively as they were not recruited through Maharashtra Public Service Commission (M.P.S.C.) Applicant No.3 was given appointment in continuation by order dated 28.09.2016. Subsequently her service was terminated on 08.06.2017.

3. Learned Counsel Mr. Bandiwadekar has submitted that the termination orders of all these three Applicants are bad in law and illegal. The Applicants were not appointed by adopting the back door entry method, but they were appointed through Employment Exchange and they have worked in the office of Respondent for nearly 8 years. The work of these Applicants as Clerk-typist was found satisfactory and therefore they were given further appointments from time to time. Learned Counsel has submitted that in the office of Government Pleader there is always a dearth of typist-cum-clerk and therefore Bombay High Court by its order dated 08.07.2005 in **Writ Petition No.8891/2004, Smt. S.D. Pujari Versus The State of Maharashtra & Ors.**, has directed the Secretary to fill up all the

sanctioned posts in the office of the Government Pleader with the eligible candidates from the Employment Exchange. Learned Counsel has submitted that in the years 2016 & 2017 when the services of the Applicants were terminated sufficient number of candidates for the posts of typists-cum-clerk were not found and therefore all the sanctioned vacancies were not filled-up and today also the posts of Clerk-cum-Typist are vacant. Thus, Applicants can be accommodated easily. The service record of the Applicants is admittedly excellent throughout. They were interviewed by the duly constituted Committee of the Respondent before they were appointed. Thus, initial appointment of the Applicants was not illegal. Learned Counsel has further submitted that the Applicants had given undertaking not to claim any right in respect of the said posts which was asked to them under pressing circumstances. The Applicants are in need of job. Learned Counsel has relied on the judgments of Hon'ble Supreme Court in the case of **Narender Chadha & Ors V/s. Union of India & Ors reported in 1986 AIR 638**, wherein the adhoc promotees were allowed to continue for long years without being reverted then they would be deemed to be regularized.

4. Learned Counsel has further submitted that in the office of the Government Pleader and Public Prosecutor, Bombay High Court, Original Side the posts of Clerk-cum-typist were also filled

in like present Applicants through Employment Exchange and their services are not terminated and they still continue to work in the office of the Government Pleader, Bombay High Court [Original Side] in view of the order dated 21.09.2021 passed by this Tribunal in O.A.No.1105/2016, Shri Arvind C. Rane & Ors. Versus The Government Pleader & Anr. Therefore, he prays for similar order otherwise it will amount to discriminatory treatment given to the present applicants. It is to be noted that Applicants No.2 and 3 have participated in the recruitment process conducted by M.P.S.C. for the post of Typist- cum-Clerk for more than 2 to 3 times after 2007. However, they failed. Applicant No.1 could not appear and participate in the recruitment process of M.P.S.C. because she was already age barred. Learned Counsel Mr. Bandiwadekar in support of his submissions decided by the Hon'ble Supreme Court has argued that paragraph 53 of **Secretary, State of Karnataka Versus Umadevi** reported in **(2006) 4 SCC 1**, is misused and thus all who are appointed, though are not through recruitment by M.P.S.C, cannot be labelled as back door entry.

5. Learned Presenting Officer has relied on the affidavit-in-reply dated 14.12.2016 filed on behalf of Respondent No.1 through Ms. Swati Vasant Patil, Establishment Officer in the office of the Government Pleader, High Court (Appellate Side), Mumbai. She has also relied on the affidavit-in-reply dated

14.12.2016 filed on behalf of Respondent No.2, through Mr. Akusing Narshi Vasave, Deputy Secretary, Law and Judiciary Department, Mantralaya. Further, she also relied on the sur-rejoinder dated 14.01.2017 filed on behalf of Respondent No.1, through Ms. Swati V. Patil, EO in the office of Govt. Pleader, H.C. (Appellate Side), Mumbai and affidavit-in-reply dated 29.11.2023 filed on behalf of Respondent Ms. Uma Savade, Establishment Officer. Learned P.O. has submitted that the orders of termination of these three applicants who were working as Clerk-cum-typist are legal and fully justified. They were appointed purely on temporary basis and hence provisions of M.C.S.R. Revised Rules of 2009 are not attracted to them. It is further submitted that there were vacancies for the post of Clerk-cum-typist, hence the office of Government Pleader has requested the Government to issue advertisement to fill up those vacancies from time to time after appointment of these candidates and some posts were filled up. She has submitted that the appointment of these applicants was just a stop gap arrangement made pursuant to the order of the Hon'ble High Court. Though the examinations were conducted by the M.P.S.C. in the year 2008 the selected candidates did not join and therefore the vacancies are continued and the applicants also continued to work. The office of Govt. Pleader has sent reminders to the G.A.D. to make available the candidates through M.P.S.C. for 7 posts of Clerk-cum-typist on 14.09.2010

and 18.03.2011. Thereafter, the G.A.D. forwarded the list of 8 M.P.S.C. candidates in May 2012. However, 4 candidates did not join the office of Govt. Pleader and the selected 3 candidates joined other Government Offices. Then, subsequently M.P.S.C. candidates were ultimately made available in October, 2016. No sanctioned posts of Clerk-cum-typist was available with the Respondent i.e. Govt. Pleader's office to accommodate the applicants and therefore the services of the Applicants No.1 and 2 were terminated.

6. In the present case the M.P.S.C. prior to 2016 has conducted the examination for the post of Clerk-cum-typist and the candidates were also sent to the Department. However, they did not accept the post and the applicants continued to work till 2016. Learned P.O. has argued that the time span and duration of temporary services does not confer the right of the Applicants for regularization in service. She has further submitted that the Respondent No.2 has received the representation of the employees including the present Applicants No.1, 2 and 3 for regularization of their services through the letter dated 16.02.2016 written by the learned Advocate General. However, the G.A.D. has rejected the proposal of regularization of the services of these employees and communicated it by letter dated 07.09.2016. Thereafter requisition was sent for the appointment of Clerk-cum-typist from M.P.S.C. Then, two M.P.S.C.

candidates were made available and so the services of Applicants No.1 and 2 are terminated.

7. It is necessary to point out in the order dated 15.12.2016 passed by this Tribunal in O.A.No.1105/2016 with O.A.No.1114/2016 by way of interim relief the Tribunal has stated that as the Applicants sense peril to their continuation the Applicants could not be left entirely unprotected and therefore the Tribunal directed to continue Applicants under same arrangement as they have been till date till further orders. However, Applicant No.3 in the present O.A. whose service was not terminated till then i.e., 08.06.2017 was allowed to continue till her order of termination was issued. O.A.No.1105/2016 of Shri Arvind C. Rane (supra) was decided finally on 21.09.2021. The Tribunal directed Respondent No.2 to regularize the service of the Applicants w.e.f. 01.10.2021. The issue in that O.A. was pertaining to the rejection of claim of the applicants for absorption to the post of Clerk-cum-typist. We are informed that the said order is stayed by the Hon'ble High Court. The difference in O.A.No.1105/2016 and in O.A.No.1114/2016 i.e., the present Applicants is that, those applicants were in service and the services of the Applicants No.1 and 2 in the present O.A. were terminated before they approached this Tribunal. At interim stage, no order was obtained by the Applicants No.1 and 2 about their reinstatement. Similarly, after termination of the

service of the Applicant No.3, she also could not continue. Moreover, the Tribunal in the interim relief did not grant order of reinstatement. Thus, there is no issue of parity.

8. The Hon'ble Supreme Court in the case of **Narender Chadha (supra)** has dealt with the issue of adhoc promoted employees and not pertaining to recruitment. It is true that the judgment **Umadevi (supra)** is not to be misunderstood and wrongly to be made applicable. However, the sum and substance in the ratio of **Umadevi (supra)** is to be kept in mind.

“merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.”

9. It is admitted fact that that the Applicants are appointed on temporary basis with the undertaking that as and when the candidates from the regular recruitment are made available the Applicants will have to demit the office. Respondents have further admitted that the applicants are eligible to be appointed as Clerk-cum-typist and they were appointed through Employment Exchange and continued in service since 2007 and 2008. We have gone through judgment dated 21.09.2021 passed by this Tribunal in O.A.No.1105/2016 wherein the applicants have challenged the communication dated

26.11.2015 rejecting the claim for absorption. However, the said judgment has been stayed by the Hon'ble High Court. Moreover, the Applicants cannot get the benefit of the judgment of the Hon'ble High Court in **Writ Petition No.2046/2010 (Sachin Ambadas Dawale V/s. State of Maharashtra & another) decided on 19.10.2023**, as the appointment process of present applicants was initiated pursuant to the order of the Hon'ble High Court in **Smt. S.D. Pujari (supra)**. The said order is the foundation of the appointment of the present applicants. Hence, relevant paragraph of the said order is required to be produced :

“(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.”

(emphasis placed)

10. On reading of this order it is very clear that the posts of Clerk-cum-typist are to be filled temporarily from the Employment Exchange till the M.P.S.C. selected candidates are available and such temporary appointed employees would not have any right/claim in respect of the said posts so the case of

the Applicants cannot be examined on the basis of any other judgment, but the said order in **Smt. S.D. Pujari (supra)**. The said order which is cause of their appointment also provides the reason as to why they should not be regularized. As on today the said order holds the field and therefore as and when the candidates from M.P.S.C. is made available for the posts of Clerk-cum-typist the services of the Applicants can be terminated. By the two orders which are under challenge the services of Applicants No.1 and 2 are terminated and the service of the Applicant No.3 was terminated subsequently on 08.06.2017. Thus, the action of the Respondents cannot be said bad in law and malafide.

11. Learned Counsel Mr. Bandiwadekar has highlighted number of administrative flaws on behalf of the Respondent-State and G.A.D. for not taking action for years together to regularize the services of Clerk-cum-typist and providing such employes to the office of Govt. Pleader in High Court though there was continuous demand from the office of Govt. Pleader to the State of Maharashtra. We failed to understand the office of Govt. Pleader which in fact renders the service of the State of Maharashtra in defending from the policy and decisions before the Hon'ble High Court. Why to face such inconvenience ? On account of lethargy and inert approach by the M.P.S.C. and Respondent-State the appointments were not made. However,

that cannot be the ground for regularization of these applicants. Moreover, though it was admitted that they were eligible in view of their qualification but it cannot be the ground to continue the appointment as those posts are required to be recruited through M.P.S.C. only. Thus, the applicants were required to participate in competitive examinations which were conducted in between 2007 to 2016 by the M.P.S.C. We are informed that Applicants No.2 and 3 did appear for the examination however both the applicants failed in all their attempts. Applicant No.1 was already age barred when she was appointed. Thus the eligibility and competency are two distinct factors which are put to the tests in such competitive examination, the candidates who cleared such examinations are declared eligible, recommended and entitled to get appointment.

12. Thus, in view of all these attaining circumstances, factual and legal position the applicants are not entitled to any legal claim of reinstatement in the said posts.

13. In view of above, Original Application stands dismissed.

Sd/-

(Medha Gadgil)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

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