

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATIONS NO 117 WITH 201 OF 2015

DISTRICT : MUMBAI

1) ORIGINAL APPLICATION NO 117 OF 2015

1. Krishnakant Laxmanrao Pulkundwar)
Occ : Service, R/o: C-203,)
Sector-3, Khargar,)
Navi Mumbai 410 210)
2. Aashish Sudarshan Vilekar)
Occ : Service, R/o: 603, A,)
Sai Aasha Daya Society,)
Neelam Nagar Phase-II,)
Mulund [E], Mumbai 400 081.)
3. Sanjay Haribhau Kurwade,)
Occ : Service, R/o: A/8/04,)
Government Colony, Bandra [E],)
4. Tushar Balkrishna Chikhale)
Occ : Service, R/o: Rh No. A-16,)
G.No 43, Shrirang City,)
Near Ryna International School,)
Itkheda, Aurangabad.)...**Applicants**

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Versus

1. The State of Maharashtra)
Through its Secretary,)
Higher & Technical Education,)
Department, Mantralaya,)
Mumbai.)
2. The Director of Art,)
Art Directorate, Maharashtra State,)
Mumbai.)
3. Sir J.J Institute of Applied Art,)
Mumbai, through its Dean,)
4. Government School of Art,)
Aurangabad, Through its Dean.)...**Respondents**

2) ORIGINAL APPLICATION NO 201 OF 2015

1. Rajendra Anandrao Patil)
Occ : Service, R/o: C/o Sir J.J)
School of Arts, Dr D.N Road,)
Mumbai.)
2. Madhu78kar K. Wanjari)
Occ : Service, R/o: C/o Sir J.J)
School of Arts, Dr D.N Road,)
Mumbai.)
3. Shashikant Bhaskarrao Gorkhe,)
Occ : Service, R/o: A-404,)

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- Gayatri Sankul, Plot no. 38,)
Sector-20, Kharghar,)
Navi Mumbai 410 210.)
4. Vijay Gopal Sakpal,)
Occ : Service, R/o: 201,)
Kumars, Plot No. 151, Sector-21,)
Nerul, Navi Mumbai 400 706.)
5. Ganesh Lalchandra Tartare)
Occ : Service, R/o: 604/B,)
DSK Project, Kalayan Nagari CHS Ltd)
Sangalewadi, Kalyan -West 421 301)
6. Nitin Narayan Mestry,)
Occ : Service, R/o: 003, United)
Tenant Society, Sahar Road,)
Parsiwada, Behind Surya Hotel,)
Vile Parle [E],)
Mumbai 400 099.)
7. Maruti Baburao Shelke)
Occ : Service, R/o: Rector's)
Quarter, Ladies Hostel,)
Govt. Chitrakala Mahavidyalaya,)
Laxmi Nagar, Nagpur 440 022.)
8. Vikas Madhukar Joshi)
Occ : Service, R/o: 22, Mukta Apts)
New Varma Layout, Ambazari,)
Nagpur 440 033.)

9. Abdul Gaffar Abdul Sattar)
 Occ : Service,)
 R/o: Sobani Manzil, 3rd floor,)
 Gawalipura Road, Sadar,)
 Nagpur 440 001.)...**Applicants**

Versus

1. The State of Maharashtra)
 Through its Secretary,)
 Higher & Technical Education,)
 Department, Mantralaya,)
 Mumbai.)
2. The Director of Art,)
 Art Directorate, Maharashtra State,)
 Mumbai.)
3. Sir J.J Institute of Applied Art,)
 Dr D.N. Road, Maharashtra State,)
 Mumbai, through its Dean,)
4. Government Chitrakala)
 Mahavidyalaya, Nagpur,)
 Through its Dean.)...**Respondents**

Shri A.V Patil (Indrale) learned advocate for the Applicants.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

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CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 02.05.2016

ORDER

1. Heard Shri A.V Patil (Indrale) learned advocate for the Applicants and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are identical.

3. Learned Counsel for the Applicants argued that the Applicants are seeking relief of regularization of services as they are similarly situated persons as the Petitioners in Writ Petition no. 2046/2010, decided by Nagpur Bench of Hon'ble Bombay High Court on 19.10.2013. This judgment has been confirmed by Hon'ble Supreme Court by order dated 6.1.2015 in Special Leave Petition (Civil) No. 39014 of 2013. The Applicants have been working in Government Arts Colleges for last 18 to 23 years. Hon'ble High Court has held that Lecturers working in Government Polytechnics for more than 3 years were eligible to be regularized. Learned Counsel for the Applicants stated that the only ground on which the regularization of the Applicants is

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denied by the Respondents is that the Applicants are stated to be 'back door entrants'. This is not correct as the appointment of the Applicants was made through an advertisement dated 28.7.1977 and by a duly constituted Selection Committee. The Selection was approved by the Government.

4. Learned Counsel for the Applicants stated that the claim of the Respondents that the Applicants continued in service because of intervention by Courts is merely an eyewash. Hon'ble High Court only directed that the services of the Applicants could not be replaced by other ad hoc employees and would continue till candidates selected through M.P.S.C were in place. The Applicants continued in service as the State Government did not take action to fill the posts through M.P.S.C.

5. Learned Counsel for the Applicants argued that their regularization cannot be denied on the ground that such action will impose heavy financial burden on the State exchequer as the Applicants will become eligible for pensionary benefits. Learned Counsel for the Applicants argued that the judgment of Hon'ble Supreme Court in the case of UMADEVI is not applicable. As per recent judgment of Hon'ble Supreme Court in the case of **STATE OF JARKHAND & ORS Vs. KAMAL PRASAD : 2014 (7) SCC 223** and **NIHAL SINGH & ORS Vs. STATE OF PUNJAB & ORS : 2013 AIR (SCW) 4919**, the

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Applicants are entitled to be regularized. Learned Counsel for the Applicants argued that even if it is assumed that UMADEVI's judgment is applicable, they are entitled to be regularized as they have been working in permanent and vacant post and are qualified to hold the posts they are occupying.

6. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicants were appointed as Lecturers in different Art Colleges in the State on ad hoc basis. Their appointment was not in accordance with the Recruitment Rules. The Applicants approached Hon'ble High Court by filing Writ Petition no. 1825 to 1829/1998 and 3603/1998. Hon'ble High Court directed that the services of the Applicants will not be terminated till the candidates selected through M.P.S.C were appointed. Accordingly by G.R dated 14.8.1988, services of the Applicants were continued. Now the State Government has sent a requisition to fill 64 posts and after the candidates are recommended by MPSC, the Applicants have no legal claim to continue as Lecturers. Learned Presenting Officer argued that Hon'ble Supreme Court in the case of **SECRETARY, STATE OF KARNATAKA Vs. UMADEVI (3) & ORS** reported in **(2006) 4 SCC 1**, has clearly held that unless the appointment of a Government servant is in terms of relevant rules and after a proper competition among qualified persons, the same would not confer any right on

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the appointee. It is also held that merely because an employee has continued under the cover of an order of the Court, he would not be entitled to any right to be absorbed. It is held that an ad hoc employee accepts the employment with open eyes. Merely because a person has worked for considerable length of time, he would not be entitled to regularization. Such a person is aware of consequence of his appointment being temporary. Any regular appointment made on a post under the State or Union without issuing advertisement from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution. Learned Presenting Officer argued that the Applicants were selected by local level Committee for a particular academic year. All eligible candidates did not compete in the selection process and the Applicants continued in service by virtue of orders of Hon'ble High Court. As such, the Applicants are not eligible to be regularized. Learned Presenting Officer stated that there are significant difference in the present case, as regards facts and circumstances as compared to the Writ Petition no 2046/2010. The other cases cited by the Applicants are also distinguishable.

7. It is seen that the Applicants are seeking regularization in the post of Lecturer in Arts colleges in the State. They claim that their appointment was



pursuant to the advertisement issued by the Director of Arts in 1997 in newspapers, by a duly constituted Selection Committee. They claim that their case is covered by the judgment of Hon'ble High Court in Writ Petition no 2045/2010. Petitioners in W.P no 2046/2010 had applied for appointment pursuant to the G.R dated 25.7.2002 as modified by G.Rs dated 2.8.2003 and 3.10.2003. Selection Committee were constituted by Government by these G.Rs and advertisements were issued to fill up the posts on contractual basis. It is clear that a Government Resolution was issued to fill up the post and Government had constituted the Selection Committees in the G.R itself. In the present case, it is seen that the advertisement was issued by the Director of Arts to fill up post only for the academic year 1997-98. There was no G.R issued constituting the Selection Committee. G.R dated 4.9.1997 came to be issued by Government appointing 21 persons as Lecturer on ad hoc basis for one academic session or till candidates selected by M.P.S.C were available, whichever is earlier. It can definitely not be said that all eligible candidates were given opportunity to compete in this selection process. It is also seen that there is nothing to indicate that proper Selection Committees were constituted by the Government by issuing G.R. In the letter dated 24.11.2010, from Director of Arts to the State Government, it is mentioned that:-

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“ संचालकांनी स्थानिक सेवायोजन कार्यालयाकडून उमेदवारांची यादी मागवून सनाच्या शासन क्र.एड१आर - १०९७ / ६२६१/(६०) ६०५ दि.४.९.१९९७ अन्वये केवळ हंगामी स्वरूपात खालील अध्यापकांच्या अभ्यासक्रमनिदाय तात्पुरत्या नियुक्त्या कला संचालनालयाच्या स्तरावर केल्या असून, त्याचा तपशील खालील प्रमाणे देण्यात येत आहे.” (emphasis supplied).

It is clear that the Applicants were not selected by following proper procedure where opportunity was given to all the eligible candidates to compete. The appointment of the Applicants was for one academic year and their services were terminated on expiry of the academic year. The selection was made at the level of Director of Arts. The advertisement was for appointment for one academic year. However, from G.R dated 14.8.1998, it is obvious that some of the Applicants had approached Hon'ble Bombay High Court by filing Writ Petition nos 1825 to 1829 of 198 and 3603/1998 and they were continued in service due to orders of Hon'ble High Court. The Applicants' claim that they were not continued in service due to orders of Hon'ble High Court, which had only directed the State not to replace one ad hoc appointee by another ad hoc appointee. This does not amount to order continuing the Applicants' services. The State could have filled the post by appointing candidates recommended by M.P.S.C. This contention of the Applicants flies in the face of the facts on record. Hon'ble High Court by judgment dated 24.6.1998 in W.P no 1825 to 1829 of 1998 has directed as follows:-

“(iii) Ad hoc appointees like the Petitioners will not be replaced by other ad hoc appointees, nor will the Petitioners’ services be terminated on the event of the summer vacation with a view to depriving them of the benefits which accrue to them normally.”

It is quite clear, that the State was prevented from terminating the services of the Applicants unless candidates selected through M.P.S.C were available. The Applicants were clearly continued in service through the orders of the Court.

8. In the light of the above findings, it is clear that the Applicants are not eligible for regularization of their services in view of the judgment of Hon’ble Supreme Court in **UMADEVI (3)’s** case supra. In para 38 of the judgment of Hon’ble Supreme Court has observed that:-

“Any regular appointment made on a post under the State of Union without advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.”

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Here selection process was not proper and fair opportunity was not given to all eligible candidates to compete.

In para 43 of **UMADEV(3)**'s JUDGMENT, Hon'ble Supreme Court has held that:-

“Therefore consistent with the scheme of public employment, this Court while laying down the law, has necessarily to be held that unless the appointment is in terms of the relevant rules after a proper competition among qualified persons, the same would not confer any right on the appointee.”

In this case, the appointment was not as per rules, nor was there a proper competition.

In the same Para, Hon'ble Supreme Court has held that:

“Merely because an employee had continued under cover of an order of the court, which we have described as ‘litigious employment’ in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service.”

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The Applicants were fully aware that their services were purely temporary and they continued in service by virtue of orders of the Court.

9. There are significant difference of facts between the present case and the case before Hon'ble High Court in Writ Petition no 2046/2010. Hon'ble High Court has noted that Government has enunciated a policy in G.R dated 25.7.2002. No such G.R was issued in the present case. By G.R dated 2.8.2003, in that case (W.P no 2046/2010) Government had constituted Selection Committee of highly experienced and technical persons. In the present case, no such Committees were constituted by the Government and Committees were constituted locally. Most significantly, the present Applicants have continued in their posts as 'litigious employees'. The case is clearly distinguishable. Judgment of this Tribunal dated 22.6.2015 in O.A no 308/2012 is also clearly distinguishable as the Applicant was continued in service from 1985 onwards and he appears to be eligible for regularization even under UMADEVI's case. He was not continued by virtue of any Court's order

10. In the case of **STATE OF JARKHAND** (supra), Hon'ble Supreme Court held that the employees had worked for 29 years and termination of their services was held to be arbitrary. It was found that the contention of

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the State Government of Jharkhand and Bihar that the respondents' services were continued due to Court's order could not be substantiated as no court order was produced. The Respondents were held to be eligible to get their services regularized as they have continuously worked for more than 10 years. Here the Applicants had approached Court barely after a year of their ad hoc appointment and had continued in service due to Court's intervention. The case is clearly distinguishable.

11. In the case of **NIHAL SINGH** (supra) the appellants were denied regularization as it was claimed by the State that there were no sanctioned post/cadre against which they were appointed. Hon'ble Supreme Court also held that the initial appointment of the appellants could not be categorized as an irregular appointment as it was made in accordance with the statutory procedure contemplated under the Act. In the present case, statutory procedure was never followed. The case is clearly distinguishable.

12. The Applicants have not been able to establish that they are not back door entrants. In fact, there is enough material on record to conclude that they in fact are back door entrants. They are not entitled for regularization of service, even under para 53 of UMADEVI(3)'s judgment as they have worked for more than 10 years due to intervention of orders of the Courts.

13. Having regard to the aforesaid facts and circumstances of the case, these Original Applications are dismissed with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 02.05.2016

Dictation taken by : A.K. Nair.

H:\Anil Nair\Judgments\2016\1 April 2016\O.A 117.15 with O.A 201.15 Regularization challenged. SB.0416.doc