

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.136 OF 2017**

**DISTRICT : PUNE**

1. Shri Chakradhar D. Panem. )  
Age : 32 Yrs, Working as Driver, )  
R/at Room No.9, Chawl No.32, )  
Mental Hospital Servant Quarters, )  
Yerwada, Pune - 411 006. )
2. Shri Gangaji R. Redekar. )  
Age : 39 Yrs, Working as Driver, )  
R/at Panchganga Building, 3/09, )  
N.M. Joshi Marg, Mumbai 400 013. )
3. Shri Shakeel G. Shaikh. )  
Age : 39 Yrs, Working as Driver, )  
R/at 38/92, House No.149, )  
Naikwadipura, Nashik - 422 001. )
4. Shri Vaibhav Dharma Tambe. )  
Age : 34 Yrs, Working as Driver, )  
R/at 1/19, Dr. Ambedkar Sadan, )  
S.B. Padewar Marg, Karo Road, )  
Mumbai 400 013. )
5. Shri Abhijeet Madan Salokhe. )  
Age : 34 Yrs, Working as Driver, )  
R/at 1389, B-Ward, Sangar Galli, )  
Mangalwar Peth, Kolhapur. )
6. Shri Shahid A.A.A. Shaikh. )  
Age : 38 Yrs, Working as Driver, )  
R/at 003, King Cola Apartment, )  
Kopal Compound, Gop Charanpada, )  
Virar East, Mumbai 400 005. )
7. Shri Vidyasagar S. Survase. )  
Age : 42 Yrs, Working as Driver, )  
R/at Balu Chitampalle Building, )  
Behind Rode Hospital, Near Shiv )  
Sai Mandir, Dighi, Pune - 411 015. )

8. Shri Sarfaraj S. Patel. )  
 Age : 29 Yrs, Working as Driver, )  
 R/at Shanta Society, Sagar Nagar, )  
 Upper Depo Pada, Vikhroli (W), )  
 Mumbai - 400 079. )...**Applicants**

**Versus**

1. The State of Maharashtra. )  
 Through Chief Secretary, )  
 Mantralaya, Mumbai – 400 032. )
2. The Principal Secretary, )  
 Public Health Department, )  
 G.T. Hospital, 10<sup>th</sup> Floor, )  
 Mumbai – 400 001. )
3. The Director of Health Services, )  
 Arogya Bhavan, St. George's )  
 Hospital, P.D'melo Road, )  
 Mumbai – 400 001. )
4. The Joint Director of Health Services,)  
 (Leprosy and T.B.), Arogya Bhavan, )  
 Oppo. Vishrantwadi Police Station, )  
 Yerwada, Pune – 411 006. )
5. The Joint Director of Health Services )  
 (Malaria, Filariasis and Water Borne )  
 Diseases) New Central Building, )  
 1<sup>st</sup> Floor, Pune – 411 001. )...**Respondents**

**Mrs. Punam Mahajan, Advocate for Applicants.**

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

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

**DATE : 12.10.2021**

**JUDGMENT**

1. The Applicants have filed the present Original Application for regularization of their services as Drivers and also to quash and set aside the Advertisements dated 10.02.2016 and 19.01.2016 issued by

Respondent Nos.4 and 5 whereby applications were called to fill-in the posts of Drivers on regular basis invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Following are the uncontroverted facts giving rise to this O.A.

(i) In pursuance of Advertisement inviting applications to fill-in the posts of Drivers under National Health Programme of Government of India and revised strategy of National Tuberculosis Control Programme purely on contract basis, the Applicants have applied and they were appointed purely on contract basis in between 1999 to 2015.

(ii) Though initially, the appointment was for six months on monthly consolidated salary of Rs.4,500/- p.m, they were continued in service (except Applicant No.6) till date in view of interim relief in their favour.

(iii) Since Applicants were continued in service for years together albeit on contract basis, they made representations to regularize their services but in vain. The Applicants, therefore, initially filed Writ Petition No.1980/2016 before Hon'ble High Court which was disposed of by order dated 06.01.2017 directing Applicants to approach this Tribunal to redress their grievances and interim relief was granted in their favour for six weeks which was later continued by this Tribunal after filing O.A.

(iv) On appointment, the Applicants have executed bond agreeing to their terms and conditions as set out in appointment order which are as follows :-

“कोल्हापूर महानगरपालिका, सुधारित राष्ट्रीय क्षयरोग नियंत्रण सोसायटी, कार्यक्रमांतर्गत आपली टि. बि. युनिटकडे वाहनचालक या पदावर कंत्राटी पद्धतीने तात्पुरत्या स्वरूपात हजर तारखेपासून ६ महिन्यांचे कालावधीसाठी मासिक एकत्रित पारिश्रमिक रु.४५००/- (अक्षरी रु. चार हजार पाचशे फक्त) व आपली खालील अटी व शर्तीच्या अधीन राहून सेवा घेणेत येत आहे.

१. आपण सेवेबाबत रु.१००/- चे स्टॅम्प पेपरवर सेवा नियमावलीतील विहित नमुन्यात लिहून दिलेला करारनामा मधील अटीचे पालन करणे बंधनकारक राहिल.
२. आपली सेवा तात्पुरत्या स्वरूपात असून करार पद्धतीने राहिल.
३. आपल्या सेवेचा सदर कालावधी संपल्यानंतर सेवा सातत्य बदल आपणास हक्क राहणार नाही.
४. महाराष्ट्र राज्य क्षयरोग नियंत्रण सोसायटी, म.रा. मुंबई व कोल्हापूर महानगरपालिका, सुधारित राष्ट्रीय क्षयरोग नियंत्रण कार्यक्रमांतर्गत सोसायटीचे सर्व नियम आपणास लागू राहतील.
५. आपल्या सेवा कालावधी संपण्यापूर्वीदेखील सेवा रद्द करण्याचा अधिकार अध्यक्ष तथा आयुक्त कोल्हापूर महानगरपालिका सुधारित राष्ट्रीय क्षयरोग नियंत्रण सोसायटी यांनी राखून ठेवला आहे.
६. आपली सेवा कालावधी संपण्यापूर्वी आपणास सेवा सोडावयाची असल्यास आपण एक महिना अगोदर लेखी नोटीस देणे आवश्यक राहिल. तशी नोटीस आपण न दिल्यास आपलेकडून एक महिन्याच्या पारिश्रमिका एवढी रक्कम वसूल करण्यात येईल.
७. सुधारित राष्ट्रीय क्षयरोग नियंत्रण कार्यक्रमांतर्गत कार्यक्रमाच्या अंमलबजावणीसंबंधी देण्यात येणारे कामकाज आणि कोल्हापूर महानगरपालिकेकडील कोणतेही कामकाज आपणास करावे लागेल.
८. हा आदेश मिळालेपासून आपण ७ दिवसात कोल्हापूर महानगरपालिका, सुधारित राष्ट्रीय क्षयरोग नियंत्रण सोसायटी, सावित्रीबाई फुले हॉस्पिटल, कु.कॅम्प नं.१, सुभाष रोड, कोल्हापूर यांचे कार्यालयात हजर होण्याचे आहे. या मुदतीत हजर न झाल्यास आपला या पदाचा हक्क संपुष्टात येईल याची नोंद घ्यावी.
९. उमेदवाराने त्यांचे शारिरीक पात्रतेसंबंधी विहित वैद्यकीय प्रमाणपत्र कामावर हजर झालेपासून १५ दिवसांच्या कालावधीत सादर करणेचे आहे.’’

3. On above admitted factual background, the Applicants have filed the present O.A. seeking the relief of regularization and to quash and set aside the Advertisements dated 10.02.2016 and 19.01.2016 whereby recruitment process has been initiated to fill-in the posts of Drivers on regular basis.

4. Mrs. Punam Mahajan, learned Advocate for the Applicants vehemently urged that even if Applicants were appointed on contract basis, they are continued for years together on meager wages which amount to exploitation of their services and in view of necessity of their services and vacancy of the Drivers, their services needs to be regularized. According to her, since Applicants fulfilled eligibility criteria at the time of their appointment on contract basis, they deserves to be regularized so that they could get all service benefits at par with regular Government servant. To bolster-up the contention, reliance is placed on **2014(2) Mah.L.J. 36 (Sachin A. Dawale & Ors. Vs. State of**

**Maharashtra & Anr.**), decision rendered by Hon'ble High Court in **Writ Petition No.10060/2017 (State of Maharashtra & Anr. Vs. Amol K. Kakade & Ors.) decided on 06.02.2018** in **Writ Petition No.3588/2008 (Haridas B. Wagh Vs. The Collector, Aurangabad & Ors.) decided on 22.01.2016**. Apart, reliance was also placed on the decision rendered by this Tribunal in **O.A.No.1105/2016 (Arvind C. Rane & Ors. Vs. The Government Pleader & Anr.) decided on 21.09.2021**. She has further pointed out that the Government by G.R. dated 08.05.2018 had constituted 3 Members Committee to consider the issue of regularization of various employees throughout Maharashtra appointed on contract basis under National Health Scheme but till date, no decision is taken in this behalf. On this line of submission, she submits that Applicants are entitled for regularization in service.

5. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer submits that the Applicants were appointed under special scheme purely on contract basis on consolidated salary of Rs.4,500/- with clear understanding and execution of bond agreeing to the terms and conditions that their appointment would be purely temporary and contractual basis and the appointee will not get any right of absorption in service. She has further pointed out that there is no creation of permanent posts, and therefore, the relief of absorption in absence of creation of permanent posts is untenable in law. In this behalf, she made reference to the decision of this Tribunal in **O.A.No.633/2015 (Dhanesh G. Pore & Ors. Vs. State of Maharashtra & Ors.) decided with connected O.As on 27.08.2019** and decision rendered by this Tribunal in **O.A.No.875/2017 (Suryakant Agawane Vs. Transport Commissioner, M.S, Mumbai & Ors.) decided on 14.12.2020** wherein in similar situation where Applicants therein were appointed purely on contract basis on consolidated salary, the O.A. for regularization of service has been dismissed.

6. In view of submissions advanced at the Bar, the issue posed for consideration is whether the Applicants are entitled to the relief of absorption in the post of Drivers and in my considered opinion, the answer is in emphatic negative for the reasons to follow.

7. At the very outset, material to note that by Advertisement, the applications were invited to fill-in the posts of Drivers temporarily, purely on contract basis on consolidated salary of Rs.4,500/- p.m. making it clear that the appointment would be purely temporary and on contractual basis. Thus, obviously, the policy decision was taken by the Government to fill-in the post of Drivers under National Health Scheme and revised strategy of National Tuberculosis Control Programme and there was no creation of permanent posts. Whether to create permanent post or to get the work done on contract basis exclusively fall within the domain of Government. As such, there is no denying that there is no creation or permanent post and posts were filled-in temporarily purely on contract basis. Suffice to say, this is not a case where posts were created and despite availability of vacancies, the services were exploited years together without rendering the benefit of permanency. Admittedly, the Applicants have executed bond agreeing terms and conditions as set out in the appointment order knowing that their appointment is purely temporary and on contract basis, and therefore, now they cannot be allowed to contend that they have been exploited by the Respondents. In such situation, in my considered opinion, the absorption would be in contravention of Service Recruitment Rules.

8. In so far as the decision in **Sachin Dawale's** case is concerned, in that matter, despite the creation of permanent posts and its availability, the Petitioners therein were appointed on contract basis for the period ranging from 3 years to 10 years, but they were not given permanency and other related service benefits. It is in that context, they filed Writ Petition wherein it was found that the sanctioned posts were kept vacant because of ban imposed upon recruitment by Finance Department since 1998 and it is because of said embargo, the appointments were not made

in Polytechnic Institutes. It was further transpired that those posts were regular and full time posts. As such, it was a case of appointment on sanctioned, regular and full time posts. It is in that context and in fact situation, the Hon'ble High Court allowed Writ Petition and directed to regularize the services of Petitioners who were completed three years' service with technical break. Indeed, in the said matter, the Hon'ble High Court later made clarification in view of Civil Application No.821/2017 filed by the Government for clarification wherein the Hon'ble High Court by order dated 27.04.2017 issued clarification as under :-

“We may also observe that, citing the said Judgment, some of the employees who are appointed on temporary or contractual basis and who are removed after putting in a year's or two years service are also seeking regularization. We may clarify that the said Judgment would not lay the ratio that, the persons who are appointed on purely contractual or temporary basis without following the due selection process as laid down by the Apex Court in the case of Umadevi, would also be entitled to regularization of their services.”

Suffice to say in **Sachin Dawale's** case itself which is heavily relied by the Applicant, the Hon'ble High Court made it clear that the said Judgment do not lay down the ratio that contractual employees are entitled to regularization.

9. Whereas in **Writ Petition No.10060/2017** (cited supra), the Applicants were appointed on sanctioned posts but appointments were made on contract basis to fill-in the posts of Stenographers. The perusal of Judgment reveals that in regular recruitment process, the Government was not getting the candidates for the post of Higher Grade Stenographers. It is in that context, in fact situation, the O.A. filed for regularization was allowed by the Tribunal and this Judgment was confirmed by Hon'ble High Court in **Writ Petition No.10060/2017**. Whereas, in the present case, there is no creation of posts. On the contrary, the posts were filled-in purely on temporary basis purely on

contractual basis without creating substantial posts. Therefore, this decision is also of no assistance to the Applicants.

10. In **Writ Petition No.3588/2008** (cited supra), it was a matter arising from decision rendered by Industrial Court whereby relief of permanency was declined by the Industrial Court. In Writ Petition, all that Hon'ble High Court had given direction to consider the issue of absorption of employee on the post of Driver. True, in terms of said decision, later Government had taken decision to absorb the Applicant Haridas Wagh on the post of Driver. As such, all that, directions were given to consider the regularization and later Government had taken decision in peculiar facts and circumstances of the said case. It was not a case of appointment on contractual basis without creation of posts like the present case. Therefore, in my considered opinion, this decision is of little assistance to the Applicants.

11. The learned Advocate for the Applicant further referred to G.R. dated 31.08.2018 issued by Social Justice and Special Assistance Department and G.R. dated 31.03.2016 issued by Higher and Technical Education Department whereby the Government has regularized the services in pursuance of decisions given by the Tribunal and Hon'ble High Court. In those matters, the judicial orders for absorption/regularization were issued by the Tribunal and the same were implemented by the Government by issuance of this G.R. Needless to mention that in absence of any such adjudication in the matter of Applicant, the said G.Rs. does not advance the Applicants' case a little bit.

12. The learned Advocate for the Applicant further referred to one G.R. issued by Agriculture, Animal Husbandry and Dairy Development on 24.07.2015 whereby policy decision was taken to regularize the services of certain daily wages workers by creating supernumerary posts. Thus, it was policy decision taken by Government and in pursuance of it, the



G.R. was issued. Whereas, in the present case, the issue of regularization of the Applicants seems to be only at the consideration before the Government before 3 Members Committee which has been constituted in pursuance of G.R. dated 08.05.2018. As per this G.R. issued by Public Health Department, 3 Members Committee was constituted to consider the issue of regularization of contractual employees. In this behalf, it seems that the said issue was discussed in the Committee in its meeting dated 11.02.2020. It was pointed out by the Committee that near about 32000 employees are working on contract basis under National Health Scheme and the issue was deliberated. Different opinion were expressed. However, no such decision or recommendation was made. Meeting was adjourned directing concerned Department to submit fresh proposal in consultation with Finance Department, and thereafter, only final decision will be taken. Admittedly, even till date, no such decision has been taken.

13. Needless to mention, the Government is at liberty to take appropriate decisions in this behalf, but in so far as regularization of the Applicants as claimed in the present O.A. is concerned, the claim is unsustainable in law. The Applicants' temporary contractual appointment is under particular scheme and it is coterminous. In other words, it is not perennial nor there is creation of posts which involved final implications.

14. Indeed, the controversy in the present case is fully covered by the decision of Hon'ble Supreme Court in latest Judgment **(2016) 8 SCC 293 (State of Maharashtra & Ors. Vs. Anita & Anr.)**. The facts of this case are quite similar. In that case, the State of Maharashtra had appointed 471 Legal Advisors, Law Officers, Law Instructors on contract basis pursuant to G.Rs. dated 21.08.2006 and 15.09.2006 which are alike the appointments in the present O.A. The candidates in Anita's case accepted the contractual appointment agreeing that the appointments are on purely contract basis creating no right, interest

or benefit of permanent service. It is in that context, when the issue of regularization arises, the Hon'ble Supreme Court held that they are not entitled to permanent service. In Para Nos.13 and 16, it has been held as follows :-

*“13. The intention of the State Government to fill up the posts of Legal Advisors, Law Officers and Law Instructors on contractual basis is manifest from the above clauses in Government Resolutions dated 21.08.2006 and 15.09.2006. While creating 471 posts vide Resolution dated 21.08.2006, the Government made it clear that the posts should be filled up on contractual basis as per terms and conditions prescribed by the Government. As per clause 'B' of the Government Resolution dated 15.09.2006, the initial contractual period of appointment is eleven months and there is a provision for extension of contract for further eleven 7months. Clause 'B' makes it clear that the appointment could be made maximum three times and extension of contract beyond the third term is not allowed. If the competent authority is of the opinion that the reappointment of such candidates is necessary then such candidates would again have to face the selection process.*

*16. The High Court did not keep in view the various clauses in the Government Resolutions dated 21.08.2006 and 15.09.2006 and also the terms of the agreement entered into by the respondents with the government. Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred but merely because the posts were created, they cannot be held to be permanent in nature. When the government has taken a policy decision to fill up 471 posts of Legal Advisors, Law Officers and Law Instructors on contractual basis, the Tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature.”*

The facts of present case are exactly identical to the facts of Anita's case wherein Hon'ble Supreme Court conclusively held that they are not entitled for absorption on regular basis. Needless to mention, it being recent law laid down by Hon'ble Apex Court, this Tribunal is bound to follow it as precedent.

15. In similar situation, the Tribunal has already rejected the claim of regularization of contractual appointee in **O.A.No.875/2017** (cited supra) and decision rendered in **O.A.633/2015** (cited supra) and I see no reason to deviate from it.

16. In so far as decision rendered by this Tribunal in **O.A.1105/2016** (cited supra) referred by the learned Advocate for the Applicant is concerned, in that matter, temporary appointments were made on clear vacant posts and Applicants were continued years together in the Office of Government Pleader, High Court, Bombay. Despite the recommendation by the said Office for regularization of their services, the Government rejected their claim. Therefore, in fact situation, the O.A. was allowed. Suffice to say, it is purely distinguishable.

17. Needless to mention that the ratio of any Judgment must be understood in the background of facts of that case. It has been said long time ago that the case is only authority for what it actually decides and not what logically follows from it. It is well settled that a little difference in fact or single additional fact may make a lot of difference in a precedential value of decision. One should avoid the temptation to decide the cases for matching the colour of one against the colour of another. In short, the brood resemblance to another case is not at all decisive. Each decision has to be understood in the background of the facts of that case. Suffice to say, the decisions referred to above relied by the learned Advocate for the Applicants are quite distinguishable arising from different facts, and therefore, those are of no help to the Applicants in the present case as a precedent.

18. In this O.A, the Applicants have also Prayed for setting aside the Advertisements dated 10.02.2016 and 19.01.2016 to the extent of their post. By these Advertisements, the recruitment process has been initiated to fill-in the posts. Indeed, by this time, the process of selection must have been completed. In this behalf, indeed, no submission was advanced neither anything is placed on record about the finality to the said recruitment process. Be that as it may, the Applicants have no right to challenge the said Advertisement in view of rejection of their claim for regularization.

19. The cumulative effect of aforesaid discussion thus leads me to conclude that the claim of absorption is totally unsustainable in law and O.A. deserves to be dismissed. Hence, the order.

**ORDER**

The Original Application stands dismissed with no order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 12.10.2021

Dictation taken by :

S.K. Wamanse.

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