

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 319 OF 2015

DISTRICT :MUMBAI

Smt. Veena Dubayya Shriram,)
Age: 43 years, Occ: Govt. service as)
Assistant Professor, B.J. Govt.)
Medical College, Pune.)
R/at 405, Prachit Residency,)
142, A/1 Somwar Peth,)
Near Trishand Ganapati Temple,)
Pune 411 011.)...**Applicant**

VERSUS

1. The State of Maharashtra)
Through the Principal Secretary,)
Medical Education Department,)
Mantralaya, Mumbai – 400 032.)
2. The Director of Medical Education)
& Research, M.S., Mumbai)
Dental College Building, near)
C.S.T., Mumbai 400 001.)....**Respondents**

Shri J.N. Kamble, learned Advocate for the Applicant.

Smt. N.G. Gohad, learned Presenting Officer for the Respondents.

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CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 2.05.2016.

ORDER

1. Heard Shri J.N. Kamble, learned Advocate for the Applicant and Smt. N.G. Gohad, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant seeking condonation of breaks in service during the period from 13.11.1997 to 27.9.2000 by granting leave due and admissible and also seeking grant of annual increments.
3. Learned Counsel for the Applicant argued that the Applicant was appointed as Assistant Lecturer on ad-hoc basis for a period of 29 days initially on 15.10.1997. Her appointment was continued upto 16.6.1998 by giving breaks of 1 to 3 days in various spells of service. From 18.6.1998, she was appointed as Lecturer on ad-hoc basis for 29 days. This appointment in the post of Lecturer was continued by giving breaks of 1 to 3 days upto 27.9.2000 when she was appointed as Lecturer on regular basis on the recommendations of the Maharashtra Public Service Commission. Learned Counsel for the Applicant contended that the Tribunal has granted relief of condonation of technical breaks and grant of increments during ad-hoc service before regularisation/regular appointment through

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M.P.S.C. in many cases in the past. Learned Counsel for the Applicant relied on the judgment of this Tribunal in O.A.No.1284 of 2009 & Others dated 4.3.2013.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant is seeking regularisation of service with effect from 15.10.1997, which will be evident from paragraph 3 of the O.A. The Applicant was working as Assistant Lecturer/ Lecturer on ad-hoc basis from 13.11.1997 to 27.9.2000. This appointment was not made as per recruitment rules and after following proper procedure. She was, therefore, a back door entrant and her ad-hoc service cannot be regularised in view of the judgment of Hon'ble S.C. in **Secretary, State of Karnataka & Others Vs. Umadevi (3) & Others reported in (2006) 4 SCC 1.** Learned P.O. for the Respondents argued that in the present O.A., Applicant is without any merit and may be dismissed.

5. It is seen from paragraph no.3 of the O.A., the Applicant is seeking 'regularisation of service' by condoning the breaks in service. However, in the relief clause, there is no such prayer of either 'regularisation' of ad-hoc service or 'continuation' of ad-hoc service. Prayer clause 10(b) seeks condonation of technical breaks in service during her ad-hoc appointment. Auragabad Bench of this Tribunal in O.A.No.149 of 2003 by order dated 26.8.2003 has observed as follows:-

“The effect of the technical breaks is that the person concerned cannot claim to be in continuous service for

a period of one year or more and cannot hence claim the benefit of increment. He is also deprived of the facility of leave which is otherwise permissible to such ad-hoc appointees in terms of the G.R.s holding the field.”

The Respondents were directed to condone the artificial technical breaks and the applicants were held to be entitled to annual increments and leave admissible as “ad-hoc appointees.” This judgment was upheld by Aurangabad Bench of Hon’ble Bombay High Court in a group of Writ Petition No.3484 of 2005 & others by order dated 27.11.2008. Hon’ble S.C. confirmed the judgment of Hon’ble High Court. Now, this judgment of Tribunal has referred to G.R.s in the field. As regards admissibility of earned leave to ad-hoc appointees the G.R. dated 1.3.1997 issued by the Finance Department, permits even irregularly appointed ad-hoc employees, who have been in service for more than 3 years, all benefits of leave under M.C.S. (Leave) Rules, 1981 available to regularly appointed temporary employees. This Tribunal in a number of cases, directed that technical breaks be condoned by granting admissible leave and increments can be released. Technical breaks were condoned on equity basis and not under any statutory Rules. However, the ad-hoc services cannot be regularised in view of the law laid down by Hon’ble Supreme Court in Umadevi’s case (supra). It has been held that a person appointed without following the due process of selection as envisaged by the constitutional scheme can not be absorbed in regular service. The Applicant is therefore not entitled for regularisation of

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her ad-hoc service nor that service be counted for any purpose like pension, seniority etc. after the Applicant was appointed on regular basis on recommendation of M.P.S.C. That appointment has to be treated as a fresh appointment. The Applicant, however is entitled to condonation of technical breaks in her ad-hoc service and resultant benefits of leave in terms of G.R. dated 1.3.1997 and also increments for ad-hoc service. This may be done within three months from the date of this order. However, those increments will not be counted for fixing her pay after her regular appointment.

6. This O.A. is allowed accordingly with no order as to costs.

Sd/-
(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 2.05.2016

Place : Mumbai

Dictation taken by : SBA

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