

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.43 OF 2018

DISTRICT : KOLHAPUR

Dr. Babasaheb D. Bhosale.)
Assistant Professor (Chemistry), Rajaram)
College, Kolhapur and residing at 101,)
Hira Apartment, Rajaram Puri, Ambai)
Defence, Kolhapur – 416 008.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Higher Education & Technical Dept.,)
Mantralaya, Mumbai – 400 032.)
2. Director of Higher Education.)
Having office at Central Building,)
Pune.)
3. Principal.)
Rajaram College, Kolhapur 416 004.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

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

DATE : 06.03.2020

JUDGMENT

1. The Applicant is seeking declaration that the services rendered by him during contractual appointment from 24.08.2002 to 10.09.2007 be treated as ad-hoc appointment for consideration of grant of benefit of

Assured Career Progression Scheme (ACPS) and entitlement of pension under the provisions of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity) invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Uncontroverted facts giving rise to this application are as under:-

(i) The Applicant is M.Sc. with SET and Ph.D. In pursuance of Advertisement dated 01.06.2002 (Page No.105 of Paper Book), he applied for the post of Assistant Professor and was appointed on contract basis by order dated 22nd August, 2002 on consolidated salary of Rs.8000/-.

(ii) The Applicant accordingly joined as Assistant Professor at Rajaram College, Kolhapur on 24.08.2002. Thereafter, he was continued in service on contractual basis with technical break of Summer Vacation till 30.04.2007 in view of fresh orders of appointment issued from time to time.

(iii) The Applicant later got selected by communication through MPSC by order dated 10.09.2007 in regular pay scale of Rs.8000-275-13500 and was continued at Rajaram College, Kolhapur. He accordingly joined regular services w.e.f.11.09.2007. Since then, he is in regular service.

(iv) The Government by order dated 14.05.2012 regularized the services of similarly situated Assistant Professors viz. Dr. Vishakha Saoji, Dr. Mamta Upgade, Smt. Chhaya C. Patil, Smt. Anita M. Malge and Shri Bhimrao M. Patil in regular pay scale of Rs.15600-39400.

(v) The Government vide G.R. dated 23.03.2016 regularized the services of above named Assistant Professors w.e.f. initial date of

appointment which was in 2002 and were held entitled for regular pension scheme existing in 2002.

(vi) The Applicant made representation to extend the same benefit to him for regularizing his service from initial date of appointment with consequential service benefits, but the same was not responded by the Government.

3. Though the Applicant has claimed various reliefs in O.A, during the course of submission, Shri M.D. Lonkar, learned Advocate for the Applicant restricted his claim to the following prayers as mentioned in Clause Nos.15(c), (d) and (e), which are as follows :-

(c) This Hon'ble Tribunal be pleased to hold and declare that the services rendered by the Petitioner during contractual employment i.e. from 24.08.2002 to 10.09.2007 deserves to be treated as ad-hoc employment and the same is also to be considered for grant of benefit under Career Advancement Scheme with consequential benefits.

(d) This Hon'ble Tribunal further be pleased to hold and declare that the Petitioner is entitled to claim condonation of breaks in service i.e. Sumer Vacation, which were of technical nature and beyond the control of the present Petitioner during the contractual employment i.e. from 24.08.2002 to 10.09.2007.

(e) This Hon'ble Tribunal further be pleased to hold and declare that the old pension scheme is applicable to the Petitioner in consonance with the provisions of Maharashtra Civil Services (Pension) Rules of 1982 as has been made applicable to those who were initially appointed like the present Petitioner on contractual basis and subsequently treated as ad-hoc and then regularly absorbed.”

4. The Respondents resisted the claim by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant to the relief claimed. The

Respondents contend that the Applicant was appointed purely on contract basis on consolidated salary for the period from 24.08.2002 to 10.09.2007 with break in service, and therefore, he is not entitled to the relief claimed. He was appointed on regular basis through MPSC by order dated 10.09.2007, and therefore, the question of considering past service which was of purely contract basis cannot be considered for service benefits claimed in O.A. In respect of regularization of services of Smt. Chhaya C. Patil & Ors, the Respondents contend that the G.R. dated 14.05.2012 and 23.03.2016 do not enure for the benefit of the Applicant, as the same are restricted to the employees named in G.Rs. only.

5. Shri M.D. Lonkar, learned Advocate for the Applicant submits that even if the nomenclature of the appointment order of the Applicant is on contract basis, admittedly, the appointment was made by issuance of Advertisement inviting the applications and it cannot be termed as 'backdoor entry'. He further submits that only because the Applicant was later appointed through MPSC, it cannot work to his disadvantage in view of regularization of services of Smt. Chhaya Patil & Ors, who were initially appointed purely on contract basis. Thus, according to him, the denial of service benefits now claimed by the Applicant is amount to discrimination, violative of Article 14 of the Constitution, and therefore, prayed to allow the O.A. in terms of reliefs reproduced above.

6. Per contra, Ms. N.G. Gohad, learned P.O. submits that the Applicant having accepted the appointment on contract basis knowing terms and conditions, now he cannot ask for regularization of the services rendered purely on contract basis. According to her, since the Applicant is appointed on regular basis through MPSC, by order dated 10.09.2007, he is not entitled to the benefit of earlier period.

7. In view of the submissions advanced, the question posed whether the Applicant is entitled to the relief claimed.

8. Indisputably, the Applicant had applied for the post of Assistant Professor in terms of Advertisement dated 01.06.2002 (Page No.105 of P.B.). Material to note that as per Advertisement, the posts were to be filled in on *ad-hoc* basis and it does not have any reference of appointment on contract basis. Further, material to note that those posts were to be filled-in on *ad-hoc* basis to fill in the then vacant posts which were also subject to change. Suffice to say, the post for which applications were invited on *ad-hoc* basis were vacant posts. Indeed, the learned P.O. made a statement that because of ban on recruitment, the posts were required to be filled in on *ad-hoc* basis. Thus, the appointment of the Applicant was against the clear vacancy. There is no denying that the Applicant possesses all required requisite qualification.

9. In pursuance of said Advertisement, the Applicant participated in the process and was appointed by order dated 01.06.2002 on contract basis instead of ad-hoc employee. Here, pertinent to note that as per appointment order dated 22.08.2002 (Page No.50-A of P.B.), the appointment was made in pursuance of selection by Selection Committee. Thus, it was not backdoor entry and due process was followed to fill-in the posts. All that, difference is that instead of issuing appointment on *ad-hoc* basis, the Applicant was appointed on contract basis by order dated 22.08.2002. Thereafter, for five years, fresh appointment orders were issued subject to same terms and conditions on contract basis excluding Summer Vacation period. Subsequent development is that the Applicant got selected through M.P.S.C. on regular basis by order dated 10.09.2007 (Page No.43 of P.B.) and since then, he is in continuous service.

10. The Applicant's case is based on the treatment given by the Respondents to similarly situated persons viz. Dr. Vishakha S. Saoji, Dr. Mamta D. Upgade, Smt. Chhaya C. Patil, Smt. Anita Malge and Shri Bhimrao Patil. These persons were also appointed in pursuance of same Advertisement dated 01.06.2002. However, their services were

regularized by the Government at its own by G.R. dated 14.05.2012 (Page No.54 of P.B.). Preface of order dated 14.05.2012 is material, which is as follows :-

“उच्च शिक्षण संचालनालयांतर्गत शासकीय महाविद्यालये/ संस्था यातील नियमित स्वरूपाची अध्यापकांची रिक्त पदे महाराष्ट्र लोकसेवा आयोगातर्फे भरली जाईपर्यंत विद्यार्थ्यांचे नुकसान होऊ नये म्हणून जाहीरात देऊन तात्पुरत्या कालावधीसाठी हंगामी पध्दतीने भरण्याच पदधत दि.२५.०७.२००२ पूर्वी अस्तित्वात होती. या पदधतीस अनुसरून दि. ०१.०६.२००२ रोजी उच्च शिक्षण संचालनालयातर्फे देण्यात आलेल्या हंगामी/तात्पुरत्या स्वरूपातील अधिव्याख्याता पदाच्या भरतीसाठी दिलेल्या जाहिरातीस इतर उमेदवारांबरोबर प्रतिसाद देऊन डॉ. विशाखा सुभाष सावजी, डॉ. ममता दत्तात्रय उपगडे, श्रीमती छाया चंद्रकांत पाटील, श्रीमती अनिता मोतीरामजी मालगे व श्री. भिमराव महादेव पाटील या ५ उमेदवारांनी अर्ज केले. सदर जाहिरातीच्या अनुषंगाने ज्या अधिव्याख्यात्यांच्या नियुक्त्या केल्या गेल्या त्या अधिव्याख्यात्यांना हंगामी संबोधून नियमित वेतनश्रेणी देण्यात आली. तसेच न्यायालयीन आदेशास अनुसरून त्यांना दि.२९.०८.२००१ च्या शासन निर्णयान्वये वार्षिक वेतनवाढीही सामान्य प्रशासन विभाग व वित्त विभागाच्या सहमतीने देण्यात आल्या आहेत. तथापि, प्रस्तुत ५ उमेदवारांची, नियुक्ती प्रक्रिया हंगामी नियुक्त्यांप्रमाणे केल्यानंतर तात्पुरत्या स्वरूपात भरावयाची अधिव्याख्यात्यांची पदे कंत्राटी पध्दतीने भरण्याचा दि.२५.०७.२००२ चा शासन निर्णय अस्तित्वात आल्याने त्यांना हंगामी स्वरूपात नियमित वेतनश्रेणीवर नियुक्ती न देता रु.८०००/- एवढ्या ठोक वेतनावर कंत्राटी स्वरूपात नियुक्ती देण्यात आली. सदर त्रुटी दुर करण्याची बाब शासनाच्या विचाराधीन होती.”

On the above background, the Government by G.R. dated 14.05.2012 regularized the services of the Applicant in pay scale of Rs.15600-39400 subject to clarification that they will not be entitled for arrears of pay scale.

11. After issuance of G.R. dated 14.05.2012, those employees have filed **Writ Petition No.526/2015** before the Hon'ble High Court, Bench at Nagpur for permanency as by G.R. dated 14.05.2012, their appointment was subject to until further orders and on availability of regular candidate from MPSC it was came to an end. In **Writ Petition No.586/2015**, they claimed direction to regularize their services from the date of their initial appointment along with consequential benefits. The said Writ Petition was allowed by Hon'ble High Court on 03.09.2015. The observation and finding recorded by Hon'ble High Court is as follows:-

“The petitioners were appointed by the respondents in the year 2002 and the petitioners are serving till date. It is stated on behalf of the petitioners that in similar set of facts where the appointments of lecturers were made in the departments of the Government Polytechnic in the State of Maharashtra, the services of the lecturers were protected in view of the judgment dated 19.10.2013 in Writ Petition No.2046/2010. It is stated that the facts involved in the decided cases are similar to the facts involved in

this case and the petitioners would also be entitled to the regularization of their services.”

“On hearing the learned Counsel for the parties and on a perusal of the petition, it appears that the case of the petitioners herein stands squarely covered by the judgment dated 19.10.2013 in Writ Petition No.2046/2010 and the petitioners would also be entitled to the regularization of their services. The statement made by the learned Assistant Government Pleader that since there is a condition in the appointment order of the petitioners that the appointment of the petitioners is subject to the availability of the candidates from the M.P.S.C. the case would not be covered by the aforesaid judgment, is not well founded and is liable to be rejected. Merely because there is a condition in the appointment order, the case of the petitioners cannot be distinguished. The said fact could not be relevant for deciding the issue involved in this case, as the same stands decided by the judgment dated 19.10.2013 in Writ Petition No.2046/2010.”

“Hence, for the reasons aforesaid, the writ petition is partly allowed. The respondents are directed to regularize the services of the petitioners and confer permanency. The respondents are directed to absorb the petitioners in service within a period of six weeks, on parity with the petitioners in Writ Petition No.2046/2010. Since the petitioners are in continuous employment, the petitioners should be continued in service as the regular employees. We direct the respondents to pay the regular salary to the petitioners from 1.9.2015. Though the petitioners would be entitled to continuity in service, the said continuity would be for purposes other than monetary purposes. Order accordingly.”

12. Material to note that the decision in **Writ Petition No.526/2015** was accepted and implemented by the Government by issuing G.R. dated 23rd March, 2016 (Page No.56 of P.B.). There is a reference of decision in **Writ Petition No.526/2015** in G.R. dated 23rd March, 2016. In the said G.R. dated 23.03.2016, there are also reference of various other decisions whereby the services of employees were regularized and the benefit of permanency was conferred. In so far as Dr. Vishakha S. Saoji and 4 others who are similarly situated persons are concerned, their services were regularized w.e.f. their initial appointment in 2002. There is specific stipulation in G.R. dated 23.03.2016 that they will be entitled to pension scheme existing on the date of regularization of their service. Thus, in view of regularization of service w.e.f. 2002 (date of initial appointment on ad-hoc basis in pursuance of same Advertisement), the services of Dr. Vishakha Saoji and 4 others were regularized and the

benefit of permanency as well as pension scheme existing in 2002 i.e. regular pension scheme was granted.

13. Thus, the Applicant is similarly situated person who was appointed in pursuance of same Advertisement but left out from G.R. dated 23.03.2016 because of his selection through MPSC in 2007. He made representation to extend the same benefit to him. Only difference is that the Applicant was appointed by giving nomenclature on contract basis whereas, Dr. Vishakha S. Saoji & 4 others were appointed another nomenclature of *ad-hoc* basis. They were also on consolidated salary alike the Applicant. As such, one should not be influenced by the nomenclature as to whether it is on contract basis or on ad-hoc basis. The essence of the matter is that the Applicant being exactly similarly situated person entitled to same relief. Therefore, such distinction made in appointment order hardly matters to deny the Applicant the relief granted to Dr. Vishakha S. Saoji & 4 others. Suffice to say, the submission advanced by the learned P.O. that the Applicant being appointed on contract basis, he is not entitled to the benefit at par with Dr. Vishakha Saoji & 4 others is totally unjust, arbitrary and unsustainable.

14. Thus, what transpires from the record that the services of Dr. Vishakha Saoji & 4 others were regularized and all benefit of permanency were granted to them, but the Applicant is left out only because he was appointed through MPSC on regular basis in 2007. If the fact of selection of the Applicant through MPSC in 2007 is considered as a ground for denying relief claimed by him, then it amounts to subjecting the Applicant to disadvantage position as if he has committed mistake by participating in selection process of MPSC in 2007. Had he not selected through MPSC in 2007 and was sailing in the same boat alike Dr. Vishakha Saoji & 4 others, his case being not different he would have been conferred with the relief of regularization in the same manner as done by the Government vide G.R. dated 14.05.2012. Indeed, the

Applicant is on better footing, as he was selected through MPSC on merit in 2007, and therefore, this aspect cannot be taken as shelter by the Government so as to deny him the benefits which are conferred on Dr. Vishakha Saoji & 4 others, who are exactly similarly situated employees.

15. Later, by G.R. dated 23.03.2016, the Government had conferred the benefit of permanency to Dr. Vishakha Saoji and others on the basis of decision in **Writ Petition No.526/2015 dated 03.09.2015**. As the Applicant was already appointed through MPSC in 2007, there was no need for him to join those Petitioners in **Writ Petition No.526/2015**. However, the fact remains that the Applicant and Dr. Vishakha Saoji & 4 others are similarly situated employees, and therefore, the benefit of decision of Hon'ble High Court rendered in **Writ Petition No.526/2015** deserves to be granted to the Applicant, particularly when the decision in **Writ Petition No.526/2015** has been implemented by the Government by issuance of G.R. dated 23.03.2016. This being the position, the denial of service benefits to the Applicant on par with Dr. Vishakha Saoji & 4 others would be definitely violative of Article 14 of the Constitution. The Government cannot adopt pick and choose approach and being model employer is bound to confer some benefits on other similarly situated employees, as held by Hon'ble Supreme Court in **State of Uttar Pradesh and others Vs. Arvind Kumar Shrivastava : (2015) 1 SCC 347** wherein the Hon'ble Supreme Court laid down the following legal principles in the matter of service jurisprudence.

“The most question that requires determination is as to whether the approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled out from the judgments cited both by the appellants as well as the respondents, can be summed up as under :

- (i) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from

time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(ii) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(iii) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India(supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

16. As such, the claim of the Applicant for the relief claimed on par with Dr. Vishakha Saoji & 4 others can hardly be questioned. The issue of consideration of past service for the benefit of Time Bound Promotion is no more *res-integra* in view of settled legal position. In this behalf, the decision of Hon’ble High Court in **Writ Petition No.9051/2013 (State of Maharashtra Vs. Meena Kuwalekar with other connected Writ Petitions)** is material having bearing over the present issue. In the said Judgment, the Hon’ble High Court heavily came down upon the approach of the Government of picks and choose policy and discrimination meted out to the employees for refusal to consider their initial service before regular appointment. In Para No.29 of the Judgment, the Hon’ble High Court held as follows :-

“29. In fact, the record indicates that the State Government has adopted a ‘pick and choose’ approach in such matters. As per the statistics

*provided by the respondent – employees, the State Government has extended the benefit under TBPS and/or ACPS to several of its employees by taking into consideration services from the date of their initial appointment. Such statistics have not been disputed by the State Government, despite opportunity. At a belated stage the State Government has placed on record a letter addressed to Mr. Kumbhakoni to suggest that the benefits were extended only in compliance with the orders made by the MAT or this Court. The information furnished neither appears to be complete nor candid. In any case, even if this position is to be accepted, it is quite clear the State Government has again adopted a 'pick and choose' approach in the matter of challenges to the decisions of the MAT in favour of the employees. In some cases, the State Government has challenged the decisions of the MAT before this Court but in others, the decisions have been implemented without demur. Similarly, even after the challenge to the decisions of this Court in the case of **Nanda Chavan** (supra) and connected matters failed before the Hon'ble Supreme Court, though the issues of law raised in the special leave petitions were kept open, the State Government did not challenge the subsequent decision in the case of **Sushma Kumar Arya** (supra), thereby extending the benefit of TBPS and/or ACPS to the said employee, placed in a situation similar to the respondent – employees in the present case. Similarly, there is no record of the State Government questioning the decision of this Court in the case of **Pushpalata Sonawale** (writ petition no. 4455 of 2009), who was again, an employee placed in a similar situation to the respondent – employees in the present case. In the light of such 'pick and choose' approach on the part of the State Government, we do not feel that this is a fit case to interfere with the impugned orders, particularly as interference might result in discrimination between a uniform class of employees, in the matter of extension of benefits under TBPS and/or ACPS. The record indicates that such benefit has been extended by the State Government to hundreds of its employees by taking into consideration service from the date of initial appointment.”*

17. The learned Advocate for the Applicant has further referred to the decision rendered by this Tribunal in **O.A.No.34/2016 (Rajasaheb Marotkar Vs. State of Maharashtra) decided on 14.02.2017**, wherein the benefit of regularization was granted considering initial period of appointment. In that case, the Applicant Rajasaheb Marotkar was appointed on *ad-hoc* basis in 2001 and continued upto 2013 i.e. till he was appointed through MPSC. The Tribunal referred the decision of Hon'ble High Court in **Writ Petition No. 9051/2013 in Meena Kuwalekar's** case (cited supra) and granted the relief. In that case, there was break of four days in service, which was also condoned.

18. As regard condonation of break in the matter of Applicant, the break was of Summer Vacation. He was appointed in 2002 and continued on contract basis upto 2007 except Summer break. As per the Chart (Page Nos.73 & 74 of P.B.), the total period of break is 177 days and it does not exceed one year. Indeed, in the matter of Dr. Vishakha Saoji & 4 others, who were similarly situated employees, the Hon'ble High Court in **Writ Petition No.526/2015** granted the benefit of continuity in service. The Applicant being similarly situated person, I have seen no reason to deny the said benefit to him.

19. In view of above, I have no hesitation to sum-up that the Applicant's employment from 24.08.2002 to 10.09.2007 deserves to be treated as *ad-hoc* employment worth to consider for grant of benefit of ACPS and the technical break of Summer Vacation in between appointment order deserves to be condoned for the benefit of continuity of service except consequential monetary benefits in the form of payment of increment and pay fixation in the said period. Similarly, he is entitled for old pension scheme i.e. Maharashtra Civil Services (Pension) Rules, 1982 on par with Dr. Vishakha Saoji & 4 others. The O.A, therefore, deserves to be allowed partly. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) It is hereby declared that the period of employment of the Applicant from 24.08.2002 to 10.09.2007 be treated as *ad-hoc* employee for consideration of the benefit of Time Bound Promotion.
- (C) The Applicant's break in service of Summer Vacation being of technical nature and beyond the control of Applicant deserves to be condoned for the purpose of continuity in service except for monetary benefits in the form of payment of yearly increment and pay fixation.

- (D) The Applicant is held entitled for old pension scheme i.e. M.C.S. (Pension) Rules, 1982.
- (E) No order as to costs.

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

Mumbai
Date : 06.03.2020
Dictation taken by :
S.K. Wamanse.

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