

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO 52 OF 2012

DISTRICT : WARDHA

Shri Laxman Namdeorao Borade,)
Occ : Nil, R/o: Misad Layout,)
Plot No. 16, Sudarshan Nagar,)
PO : Manas Mandir, Wardha.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Secretary,)
Social Welfare, Cultural)
Affairs and Sports Department,)
Mantralaya, Mumbai.)
2. District Woman & Child)
Development Officer,)
Arti Chowk, Wardha.)
3. Govt. Juvenile Home for Boys)
Through its Superintendent)
Ganesh Nagar, Borgaon,)
[Meghe], Wardha, Maharashtra)
4. Director,)

- Women, Child and Handicapped)
Development, Pune.)
[Maharashtra],)
5. Commissioner,)
Women & Child Development,)
Pune, (Maharashtra))
6. Divisional Control Officer and)
Chief Development Project)
Officer, Civil-1, Nagpur)...**Respondents**

Shri D.N Mathur, learned advocate for the Applicant.

Shri P.N Warjurkar, learned Presenting Officer for the Respondents no 1 to 6.

CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)
Shri J.D Kulkarni (Vice-Chairman) (J)

DATE : 07.07.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri D.N Mathur, learned advocate for the Applicant and Shri P.N Warjurkar, learned Presenting Officer for the Respondents no 1 to 5.

2. The Applicant is challenging the communication dated 3.1.2007 issued by the Respondent no. 5 refusing to reinstate the Applicant in service as Junior Caretaker in Juvenile Home, Wardha.

3. The Applicant claims that he was an orphan and was admitted to Government Juvenile Home for Boys at Wardha, where he completed education up to S.S.C. He was given appointment in Group 'D' post of Junior Caretaker by the Respondent no. 6 by order dated 1.4.1999 for 29 days. The Applicant, however, continued in that post at Juvenile Home for Boys at Wardha in a clear vacancy. He continued in service till 10.12.2006. He was not continued in service thereafter. He made a representation to the Respondent no. 5, who rejected it on 3.1.2007. The Applicant filed O.A no 569/2006 seeking regularization of his service. He withdrew the aforesaid Original Application and filed ULP no. 02/2007 in Labour Court, Wardha, seeking regularization of his service. By order dated 25.11.2011, the ULP was dismissed. It was held that Juvenile Home established under the Juvenile Justice Act, 1986 and 2000 is not an industry under Bombay Labour Relations Act. The Applicant has now filed the Original Application seeking regularization of his service.

4. Learned Counsel for the Applicant claimed that the services of the Applicant were terminated

without giving him any notice, in violation of the principles of natural justice. The Applicant was appointed in pursuance of Government Policy to rehabilitate the orphan children who were maintained and educated in Juvenile Homes and who have successfully completed their education in Juvenile Homes. Learned Counsel for the Applicant contended that there are five vacancies to the post of Junior Caretaker, where the Applicant could be accommodated. Several judgments were cited in support of the case of the Applicant.

5. Learned Presenting Officer argued on behalf of the Respondents that the Applicant had earlier filed O.A 569/2006 before this Tribunal seeking the same remedy. He voluntarily withdrew the same by filing pursis on 18.12.2006, which is on page 61 of the Paper Book. In the present case, he has challenged order of the Respondent no. 5 dated 3.1.2007. However, by that order, no new cause of action has arisen and this Original Application is not maintainable as it is in the nature of res-judicata. The Applicant had filed ULP no. 02/2007 before the Labour Court, Wardha. By judgment dated 25.11.2011, Learned Judge, Labour Court, Wardha dismissed the complaint, holding clearly that the Applicant was not entitled to be regularized in service as his appointment was made in violation of the Rules. Learned Presenting Officer argued that the present Original Application is in the nature of an appeal against

the aforesaid order, while the Tribunal is not the right forum for that.

6. Coming to the merits, learned Presenting Officer contended that the Applicant was not appointed by following due procedure prescribed in law. There is no Government policy to give direct appointment to those educated in Government Juvenile Homes. The Applicant was a back door entrant. He was fully aware that his services were purely temporary and he was liable to be discharged whenever a regularly selected candidate was available. When Shri Nikalje was transferred from Akola to Wardha as Junior Caretaker, services of the Applicant was dispensed with. Learned Presenting Officer argued that in the case of **STATE OF KARNATAKA Vs. UMADEVI (3) : (2006) 4 SCC 1**, Hon'ble Supreme Court has clearly held that those employee who were illegally appointed cannot be regularized.

7. As regards regularization of other employees, learned Presenting Officer stated that Government has taken a policy decision to regularize services of some ad hoc employees by G.R dated 9.3.1999. However, those employees were appointed during the period from 20.2.1982 to 8.8.1998 and the Applicant's case is not covered by the same. After the judgment of Hon'ble Supreme Court in the case of **A. UMARANI Vs. REGISTRAR, COOPERATIVE SOCIETIES, TAMILNADU**

& ORS : (2004) 7 SCC 112, Government has issued circular dated 25.8.2005 and services of employees who are not appointed in accordance with the Recruitment Rules cannot be regularized.

8. We find that the Applicant is, in effect, seeking regularization of his services. He had earlier filed O.A no 569/2006 before this Tribunal, which he withdrew on 18.12.2006 to seek remedy before the Labour Court. Learned Judge of the Labour Court, Wardha in U.L.P no 02/2007 vide judgment dated 25.11.2011, rejected the ULP not only on the ground of lack of jurisdiction, but also held that the Applicant was not entitled to get his services regularized. In para 7 of the judgment, it is observed by Learned Judge that:-

"7. The respondent is a government department and every appointment in the government service must be according to law. This aspect is also required to be considered while deciding the reinstatement in service. On this count also the complainant is not entitled for reinstatement in service."

9. The following issues were framed and findings on these are given below:-

Sr No	Issues	Findings
2.	Does the complainant prove that he has been illegally and orally terminated w.e.f 8.12.2006 by the respondents indulging in any unfair labour practices attracting item no. 1 of Schedule IV of MRTU & PULP Act	Not proved
3.	Does complainant prove that the termination of his services amounts to illegal change	Not proved
4.	Does complainant prove that he is entitled to relief of reinstatement with continuity in service and back wages.	Not proved

Once the Labour Court had given findings on reliefs sought by the Applicant, he should have filed appeal before a proper Forum, if he was aggrieved. This Tribunal is not the forum for challenging findings of the Labour Court. The Applicant had already approached this Tribunal and withdrawn his Original Application. He is barred from approaching this Tribunal seeking the same remedy.

10. Coming to the merits of the case, it is seen that the Applicant claims that he was appointed in a clear vacancy in terms of Government policy to rehabilitate inmates of Government Juvenile Homes. The Applicant has not placed any policy document like G.R/Circular to show that Government policy extends to

giving appointment to inmates of Juvenile Homes without open competition. In fact, any such policy would be against the right of equal opportunity for employment under the State enshrined in the Constitution of India. Clearly, the initial appointment of the Applicant as Junior Caretaker by order dated 1.4.1999 is not issued as per the proper procedure. The Applicant has not placed a copy of order of appointment on record. He, however, admits that he was appointed for a period of 29 days and continued without any break. Whether there were breaks in service or not cannot be ascertained.

11. From Annexure A-8 (Page 24), it appears that the appointment letter dated 1.4.1999 had the following reference, viz:

"1/2 ek- flo; I gk; d] e-h] I ekt dY; k.k o efgyk cky dY; k.k vlf.k ekth I sud dY; k.k] egkjk"V" kkl u] ecbz; kps i = dekd e-hel -dz@e-c-ck-d-@ek-I sd-@7344@98] fnukd 22@12@1998 vll; s
mijkDr ifjf'k"Vkr uem i=k; k I mHkklo; s I njph fu; Drh dsh vl Y; kps fnl u ; ss foHkxh; dk; ky; kr I ca/kr depk& kph uLrhp xgkG vl Y; kus ; k i=kph iR; {k i kg.kh djrk vkyh ukgh- r l p ; kl ca/kps fVi .kph i kg.kh djrk vkyh ukgh."

The original file is reported to be missing in which the appointment papers of the Applicant were kept. However, the Applicant must be having copies of all those documents including initial appointment letter, which he

had failed to produce. The Applicant is clearly not selected by following proper procedure and is clearly a back door entrant. His services cannot be regularized in terms of judgment of Hon'ble Supreme Court in UMADEVI's case (supra).

12. The Applicant claims that his services were terminated by oral orders. This contention has been rejected by the Labour Court, as has been mentioned in para 9 above and there is no reason as to why this Tribunal can take a different view. It appears that the services of the Applicant were terminated when the period for which he was appointed came to an end. There was no need to give any notice to him in the circumstances.

13. Applicant has relied on a number of judgments in support of his claim that he was entitled to regularization of his services. We have gone through those judgments, but in our considered view the judgment of Hon'ble Supreme Court in UMADEVI's case (supra) will apply in this case.

14. The Applicant is claiming that he is entitled to get his services regularized in terms of G.R dated 9.3.1999 (Annexure A-5). However, that G.R is applicable to those appointed between 20.2.1982 to 8.8.1988. The Applicant was appointed first time on 1.4.1999 and his

case is clearly not covered by that G.R. In any case, after judgment of Hon'ble Supreme Court in UMADEVI's case (supra), regularization of services of backdoor entrants is not permissible.

15. We do not find any merit in this Original Application and accordingly this Original Application is dismissed with no order as to costs.

(J.D Kulkarni)
Vice-Chairman (J)

(Rajiv Agarwal)
Vice-Chairman (A)

Place : Nagpur
Date : 07.07.2017
Dictation taken by : A.K. Nair.