

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.607 OF 2015

DISTRICT : MUMBAI

1. Miss Swapnali Y. Jagushte,)
Age : 29 years, Working as Staff Nurse in)
E.S.I.S. Hospital, R/at Janki Niwas,)
Bhandup (E), Mumbai – 78.)
2. Miss Rupali S. Malkar,)
Age : 27 years, Working as Staff Nurse in)
E.S.I.S. Hospital, Aurangabad.)
R/at Ganesh Bhavan Society,)
Kopar Khairane, Navi Mumbai.)
3. Miss Reshma B. Bhovad,)
Age : 30 years, Working as Staff Nurse in)
E.S.I.S. Hospital, Satpur, Nashik.)
R/at Worli Police Camp, Worli, Mum-30)
4. Miss Pradnya J. Bhogle,)
Age : 29 years, Working as Staff Nurse in)
E.S.I.S. Hospital, Mulund.)
R/at M.G.M. Hospital, Parel, Mum-12.)
5. Miss Manda Y. Kelkar,)
Age : 29 years, Working as Staff Nurse in)
E.S.I.S. Hospital, Aurangabad.)
R/at Kamgar Nagar, New Prabhadevi Rd.)
Prabhadevi, Mumbai 25.)
6. Miss Sneha M. Masurkar,)
Age : 28 years, Working as Staff Nurse in)
E.S.I.S. Hospital, R/at Harishchandra)
Tower, Manvelpada Road, Virar (E),)
Dist. Thane.)
7. Miss Swati Dhaku Tawte,)
Age : 30 years, Working as Staff Nurse in)
E.S.I.S. Hospital, Solapur.)
R/at Dindayal Nagar, Satyam Apt., Near)
Panch Pakhadi, Thane.)

8. Miss Monika T. Shinde,)
Age : 28 years, Working as Staff Nurse in)
E.S.I.S. Hospital at Mumbai,)
R/at Sunita Niwas, Vasind (E),)
Tal. Shahapur, Dist. Thane.)
9. Miss Varsha S. Kale,)
Age : 30 years, Working as Staff Nurse in)
E.S.I.S. Hospital, Thane.)
R/at Kale Sadan, Near Abivali Station,)
Mohane, Kalyan, Dist. Thane.)
10. Smt. Nanda P. Nagare,)
Age : 29 years, Working as Staff Nurse in)
E.S.I.S. Hospital, Nashik.)
R/at A/p Nandur Shingote, Tal. Sinnar,)
Dist.Nashik.)
11. Miss Neha S. Ambolkar,)
Age : 28 years, Working as Staff Nurse in)
E.S.I.S. Hospital, Thane.)
R/at Jaydeep Park, Majiwade, Thane.)
12. Miss Sadhana S. Shete,)
Age : 28 years, Working as Staff Nurse in)
E.S.I.S. Hospital, Nashik.)
R/at Soham Apt., Ajade Gaon, Dombivali)
(E), Dist. Thane.)
13. Miss Sandhya S. Chavan,)
Age : 29 years, Working as Staff Nurse in)
E.S.I.S. Hospital, R/at Shree Siddhi Build.)
No.3, Manvelpada Rd., Virar, Dist. Thane.)
14. Miss Shalaka S. Mhaske,)
Age : 27 years, Working as Staff Nurse in)
E.S.I.S. Hospital, Aurangabad.)
R/at Shivsena Nagari, Jerbai Wadia Rd.)
Sewri, Mumbai 15.)
15. Miss Sarika S. Sawant,)
Age : 29 years, Working as Staff Nurse in)
E.S.I.S. Hospital, Solapur.)
R/at Union Mansion Build., Dr.Ambedkar)
Road, Dadar (W), Mumbai – 14.)

16. Miss Siddhi S. Kelkar)
 Age : 30 years, Working as Staff Nurse in)
 E.S.I.S. Hospital, R/at Pragati Society,)
 Mahavir Nagar, Kandivali (W), Mumbai 67.)
17. Miss Sushma A. Sutkar,)
 Age : 30 years, Working as Staff Nurse in)
 E.S.I.S. Hospital, R/at Janhit Co-op. Hsg.)
 Soc., Ram Tekdi, Sewree, Mumbai -15.)
18. Miss Vadakkepurakkal Priya Rajendra,)
 Age : 28 years, Working as Staff Nurse in)
 E.S.I.S. Hospital, Mulund.)
 R/at Golibar Maidan Rd, Santacruz (E),)
 Mumbai.)
19. Miss Casiida Dominic Tuscano,)
 Age : 28 years, Working as Staff Nurse in)
 E.S.I.S. Hospital, R/at Gajure-Padai,)
 Satpala, Virar (W), Dist. Thane.)
20. Miss Rupali A. Sawant,)
 Age : 28 years, Working as Staff Nurse in)
 E.S.I.S. Hospital, R/at Khandoba Niwas)
 Bolinj, Virar (W), Dist. Thane.)
21. Miss Reshma B. Pawar,)
 Age : 28 years, Working as Staff Nurse in)
 E.S.I.S. Hospital, Solapur.)
 R/at Keerti Niwas, Tambhipada, Bhandup)
 (W), Mumbai – 78.)
22. Miss Netra N. Chavan,)
 Age : 28 years, Working as Staff Nurse in)
 E.S.I.S. Hospital, Nagpur.)
 R/at Prabhat Colony, Anand Nagar,)
 Santacruz, Mumbai 55.)
23. Miss Vijaya P. Sutar,)
 Age : 29 years, Working as Staff Nurse in)
 E.S.I.S. Hospital, Mulund.)
 R/at Chandrabai Rajput Chawl,)
 Tembhipada Pipe Line, Bhandup (W),)
 Mumbai – 78.)
-)...Applicants**

Versus

1. The Commissioner/ Director (Admn.))
Employees State Insurance Scheme,)
Having office at Panchdeep Bhawan,)
6th floor, N. M. Joshi Marg, Lower Parel,))
Mumbai 400 013.)
2. The State of Maharashtra, through)
Principal Secretary, Public Health Dept.)
O/at. Mantralaya, Mumbai 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 17.01.2020

JUDGMENT

1. The issue posed for consideration in the present O.A. is whether the Applicants are entitled to yearly increments and other consequential service benefits w.e.f.01.07.2013.

2. The Applicants claimed to have requisite qualification for appointment to the post of Staff Nurse. They have completed General Nursing and Midwifery Course conducted by Maharashtra Nursing Council, Mumbai and executed bond agreeing to work in any of the ESIS Hospital for 24 months. In the year 2009, they were appointed in various Hospitals of ESIS in the State of Maharashtra in order to fulfill the bond obligation for the period of two years, which came to an end on 03.12.2011. After completion of bond period, the Respondent No.1 terminated their services and rendered them jobless. They made

representations to Respondent No.1 to absorb them in service or to issue regular appointment orders, but in vain.

3. On the above background, the Applicants have filed O.A.No.311/2012 against the Respondents seeking relief of absorption on the post of Staff Nurse which was tagged with connected O.A.No.258/2014 with O.A.No.189/2016 with O.A.No.299/2016 with O.A.No.573/2016 with O.A.No.737/2016 with O.A.No.925/2016 with O.A.No.1024/2016 with O.A.No.1169/2016 with O.A.No.226/2017 with O.A.No.604/2017. In O.A, they have filed M.A.No.214/2012 seeking interim relief. In M.A.214/2012, the Tribunal passed following order on 11.05.2012.

“Heard Shri A.V. Bandiwadekar, learned Advocate for the applicants and Shri D.B. Khaire, learned Chief Presenting Officer for the Respondents.

By the above Misc. Application, the applicants are seeking a relief that the respondents should be directed to allow the applicants to work as a Staff Nurses purely on temporary basis till the vacancy is filled up on a regular or permanent basis.

Shri Bandiwadekar brought to our notice, paragraph – 4 of the affidavit-in-reply dated 11.5.2012, which reads as under:-

“4. With reference to paras 3 of M.A., I say that taking into account the large number of vacancies, these posts are required to be filled in by purely temporary appointments as E.S.I.S. Hospital run in equal share of 1:7 by Government of Maharashtra & E.S.I. Corporation. In view of the exigencies of services, appointment of Staff Nurses are required to be made on purely temporary basis till the posts of Staff Nurses, on regular basis are filled in by adopting the guidelines/G.R. as amended from time to time by Government of Maharashtra.”

Under the aforesaid facts and circumstances of the case, the Respondents are directed to allow the applicants to work as a purely on temporary basis till the vacancy in filled up on a regular or permanent basis.

Misc. Application stands disposed of accordingly. Hamdast.”

4. In pursuance of the interim order passed by the Tribunal on 11.05.2012, the Respondent No.1 – Commissioner, ESIS Hospital issued orders on 11.07.2012 appointing the Applicants in the various ESIS Hospitals in State of Maharashtra in pay scale of Rs.9300-34800 purely

on temporary basis subject to outcome of the decision of O.A.311/2012. The interim relief was granted basically in view of Affidavit filed by Respondent No.1 that there are large number of vacancies and posts are required to be filled-in by purely temporary appointments till the posts of Staff Nurse on regular basis are filled-in. As such, by virtue of appointment order dated 11.07.2012 which are issued in view of interim relief granted by the Tribunal, the Applicants were appointed on purely on temporary basis and continued to work. However, the Respondents did not extend the benefit of yearly increments, leave and other service benefits. The Applicants have, therefore, filed the present O.A. for grant of increments on the basis of Rule 36 of Maharashtra Civil Services (Pay) Rules, 1981 (hereinafter referred to as 'Pay Rules 1981' for brevity) and also claimed Medical Leave, Earner Leave and other consequential service benefits, during the pendency of main O.A.No.311/2012.

5. Subsequent development is that the main O.A.311/2012 and other O.A. which were filed by the Applicant for absorption was dismissed by the Tribunal on 28.03.2019 in view of the statement made by the learned Advocate that the Applicants are already reappointed on temporary basis. The Tribunal had passed the following order :-

“Learned Advocate Shri B.A. Bandiwadekar for the Applicants stats that most of the Applicants have been re-appointed on temporary basis, and ends of justice shall meet, if applicants are given liberty to represent for absorption and liberty to approach this Tribunal, if the decision is adverse.

In view of the foregoing, all the Original Applications are dismissed.”

6. The Respondents resisted the application by filing Affidavit-in-reply thereby denying the entitlement of the Applicants to the relief claimed. It is not in dispute that, initially, the Applicants were appointed as bonded candidates for 24 months and after completion of 24 months, their services were terminated. The Respondents contend that it is only on the basis of interim order passed by the Tribunal in M.A.242/2012 on 11.05.2012, the Respondent No.1 had issued purely temporary

appointment orders in favour of the Applicants and appointed them in various ESIS Hospitals in the State. Their appointments were made subject to final outcome of O.A.311/2012. Later, their temporary appointments were terminated by order dated 26.05.2015 and again then were reappointed by order dated 15.06.2015 purely on temporary basis for a period of 11 months. Thereafter again, with technical breaks, they were reappointed purely on temporary basis. The Respondents, therefore, contend that the Applicants' appointment being purely on temporary basis, that too, on the basis of interim order passed by this Tribunal, they were not entitled to yearly increments or any other services benefits and prayed to dismiss the O.A.

7. When the matter was taken up for hearing, the learned Advocate for the Applicant relinquished the relief claimed in Para No.9(b) of O.A. which pertains to grant of Maternity Leave and restricted his claim to the extent of relief claimed in Para No.9(a) of O.A. only, which are as follows:-

- “a]** By a suitable order, this Hon'ble Tribunal may be pleased to direct the Respondent No.1 to grant to the Petitioners the yearly increments with effect from 1.7.2013 in terms of Rule 36 of M.C.S. [Pay] Rules, 1981, after condoning intermittent artificial / technical breaks in the order of appointment as Staff Nurse by the Respondent No.1 vide order dated 26.05.2015 and accordingly, the Petitioners be granted all the consequential service benefits, within a period of 2 months of the order of the Hon'ble Tribuna.
- b]** By a suitable order, this Hon'ble Tribunal may be pleased to direct the Respondent No.1 to grant to the Petitioners the different types of leave such as earned leave, leave on medical ground, so also maternity leave admissible to them as per Rule 74 of the M.C.S. [Leave] Rules, 1981 read with G.Rs. dated 28.7.1995, 1.3.1997 and 24.8.2009 in the post of Staff Nurse and accordingly, the Petitioners be granted all the consequential service benefits, within a period of 2 months of the order of the Hon'ble Tribunal.”

8. In view of above, the question posed for consideration is whether the Applicants are entitled to yearly increments in terms of Rule 36 of 'Pay Rules 1981'.

9. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that though the appointment of the Applicants is purely temporary basis they were in continuous service from 2012 upto 2015 and thereafter only with some technical breaks, they were again reappointed on temporary basis. According to him, the act on the part of Respondents to give technical break is contrary to settle principles of law, and therefore, the Applicants deemed to have been continued in service without any break for service benefits. He referred to Rule 36 of 'Pay Rules 1981' to contend that there being no reason to withhold increments, the Applicants are entitled to yearly increment. In this behalf, he sought to place reliance on certain decisions which will be dealt with a little later.

10. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that basically, the appointment of the Applicants was in pursuance of interim relief granted by the Tribunal in M.A.214/2012 filed in O.A.311/2012 and later, O.A.311/2012 being dismissed by the Tribunal, the relief claimed by the Applicants in the present O.A. has become infructuous. He, therefore, submits that, indeed, the temporary appointment order itself came to an end in view of dismissal of O.A.311/2012. According to him, the Applicants have no legal vested right to substantive service benefits of regular appointment and O.A. is liable to be dismissed.

11. Thus, what transpires from the pleadings and the submissions advanced at the Bar that after completion of bond period, the Applicants were discharged from service. They have filed substantive proceeding in the form of O.A.No.311/2012 for absorption along with M.A.No.214/2012 for interim relief wherein the Tribunal has passed by order on 11.05.2012 on the basis of Affidavit filed by Respondent No.1. Thus, suffice to say, after the Applicants were discharged from service, there was no appointment order in their favour. It is only on the basis of interim relief granted by the Tribunal, the Respondent No.1 had issued

appointment order with specific stipulation that it is purely temporary appointment and will be subject to outcome of O.A.311/2012. Here, it would be apposite to reproduce relevant conditions from one of the appointment order dated 11.07.2012, which is as follows :-

“संदर्भ क्र. १ व २ च्या आदेशानुसार राज्य कामगार विमा योजनेअंतर्गत रिक्त असलेली परिचारीकांची पदे नियमित स्वरूपात परिचारीका उपलब्ध होईपर्यंत अगदी तात्पुरत्या स्वरूपात **कु.रूपाली शिवाजी माळकर** यांना रा.का.वि.यो. रुग्णालय **औरंगाबाद** येथे परिचारीका संवर्गातील रिक्त पदावर वेतन श्रेणी रु. ९३००-३४८०० अधिक नियमानुसार मिळणारे भत्ते याप्रमाणे पुढे दिलेल्या अटी व शर्तीच्या अधिन राहून आपली **निव्वळ ताप्पुरत्या** स्वरूपात नियुक्ती करण्यात येत आहे.

नियुक्तीच्या अटी व शर्ती:-

१. उमेदवाराची नियुक्ती ते कामावर रुजू झाल्याच्या दिनांकापासून करण्यात येत आहे.
२. **सदर नियुक्ती ही महाराष्ट्र प्रशासकीय न्यायधिकरण, मुंबई येथे कु. रूपाली शिवाजी माळकर व इतर विरुद्ध महाराष्ट्र शासन व इतर यांनी दाखल केलेल्या मूळ अर्ज क्र. ३११/१२ मधील निर्णयाच्या अधीन राहून करण्यात येत आहे.**
३. सदर नेमणूक ही शासन निर्णय सामान्य प्रशासन विभाग क्र. प्राणिम-२००७/प्र.क्र.४६/०७/१३/अ, दि.१९.१०.२००७ मधील शासन मार्गदर्शक तत्वानुसार नसल्याने मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई यांनी दिलेल्या आदेशानुसार सदर नेमणूक अगदी तात्पुरत्या स्वरूपातील असून नियमित उमदेवार उपलब्ध होताच त्यांची सेवा समाप्त केली जाईल.”

12. As state above, the O.A.311/2012 was dismissed by the Tribunal in view of statement made by the learned Advocate for the Applicant that the Applicants are already appointed and liberty was given to make representation for absorption with liberty to approach the Tribunal, if the decision on representation goes against them. As such, substantive proceeding in the form of O.A.311/2012 and others are already dismissed. It be noted that, initially, this O.A. was also tagged with O.A.311/2012 and others with observation made by this Tribunal in Para Nos.5 & 6 of order dated 20.01.2016, which are as follows :-

“5. I find that the appointment orders issued to the Applicants dated 11.7.2012 clearly mentions that their appointments are purely temporary in nature, till appointment of regular candidates and subject to final decision in O.A.No.311/2012 pending before this Tribunal. Admittedly, the Applicants are seeking regularization of their service in the aforesaid Original Application and the Original Application has not yet been finally decided. All the reliefs sought in the present Original Application are either expressly or consequentially sought in the aforesaid Original Application. The Applicants could have waited for finalization of the O.A.No.311/2012, rather than file multiple Original Applications seeking more or less the same relief.

6. Having regard to the aforesaid facts and circumstances of the case, this Original Application is ordered to be tagged along with O.A.No.311/2012 and it will be heard with the aforesaid Original Application.”

13. Now, the position emerges that O.A.311/2012 is already dismissed by the Tribunal, and therefore, this O.A. being separate O.A. is now required to be decided on its own merit in view of submissions advanced at the Bar.

14. Before going ahead, it would be apposite to reproduce Rule Nos.36 & 44 of 'Pay Rules 1981', which are relevant in the present matter :-

“36. Increment to be drawn as a matter of course :

An increment shall ordinarily be drawn as a matter of course unless it is withheld as a penalty under the relevant provisions of the Maharashtra Civil Services (Discipline and Appeals) Rules, 1979. In ordering the withholding of increment the withholding authority shall state-

- (i) the period for which it is withheld,
- (ii) whether the postponement shall have the effect of postponing further increments; and
- (iii) whether the period for which the increment has been withheld will be exclusive of any interval spent on leave before the period is completed.

44. Extent to which past non-continuous officiating or temporary service counts for increments :

If a person holding no substantive appointment under Government is appointed to officiate in a permanent post or to hold a temporary post on a time-scale of pay, he shall not be allowed to count for purposes of increment in the time-scale, past non-continuous officiating service in such permanent post or non-continuous service in such temporary post except to the extent indicated below :

Period of past continuous service	Number of increments which should be allowed in the time-scale of the post to which he is appointed
Less than 5 years	Nil
5 years and more but less than 7-1/2 years	1 increment

7-1/2 years and more but less than 10 years	2 increments
10 years and more	3 increments

15. Now the material question is whether on the above background the Applicants are entitled to yearly increments. True, as per Rule 36 of 'Pay Rules 1981' the increments shall ordinarily be drawn as a matter of course, unless it is withheld as a penalty under the relevant provisions of Maharashtra Civil Services (Discipline and Appeal) Rules 1979. However, in my considered opinion, Rule 36 of 'Pay Rules 1981' have no application in the present case as Rule 36 of 'Pay Rules 1981' presupposes appointment / substantive appointment of the concerned Government servant. It cannot be said applicable to temporary appointment particularly when it is with break in service.

16. In the present case, the Applicants were appointed purely on temporary basis that too in view of interim order passed by this Tribunal in M.A.No.214/ 2012 on 11.05.2012. Indeed, O.A.No.311/2012 in which the said M.A. was filed has been dismissed by the Tribunal. The appointment orders were issued to the Applicants with specific stipulation that those are subject to outcome of O.A.No.311/2012. This being the position, in view of dismissal of O.A.No.311/2012, the Applicants were required to establish their entitlement to the increments and to point out under what Rules they can be said entitled to increments. However, except Rule 36 of 'Pay Rules 1981' no other provision is pointed out.

17. Suffice to say Rule 36 of 'Pay Rules 1981' have no application to the present situation. Needless to mention that there has to be continuous uninterrupted service to earn increment. In present case, the Applicants services were terminated in 2015 and thereafter with some technical break they were again continued on the same post.

Thus, fact remains that from 2012 to 2015 for near about three years they were in continuous service and later they were given technical break and again continued till date. As such there is break in service which is indeed purely temporary service. The principle sought to be canvassed by learned Advocate for the Applicant that in case of regular vacancy the practice of giving break is contrary to service jurisprudence is not applicable in the present situation. The directions in M.A.No.214/2012 were issued to allow the Applicants to work as Staff Nurses purely on temporary basis till vacancy is filled up on regular or permanent basis. As such, in view of exigencies of services Respondents appointed them purely on temporary basis with clear stipulation that their appointment will be subject to final outcome of O.A.No.311/2012 which is dismissed by the Tribunal. This being the position, if the Applicants were terminated and again employed with some break, such break cannot be said technical break so as to condone it. Indeed, the appointments of the applicants being purely temporary the question of condonation of break does not survive. It is only in case of regular appointment break in service can be condoned to consider qualifying service subject to Rule 68 of Maharashtra Civil Services (Pension) Rules, 1982 have no application here.

18. In contract the present situation is squarely clearly covered by Rule 44 of M.C.S. Pay Rules 1981 reproduced above. It clearly spells that the person holding temporary posts is not entitled to yearly increments and the employees are entitled to increments as per table given in said Rule only. Therefore the applicants claim for yearly increment deserves to be rejected in view of Rule 44 of M.C.S. Pay Rules, 1981.

19. Learned Advocate for the Applicants sought to refer the decision rendered by this Tribunal in **O.A.No.542/2012 (Shri Nandkumar P. Jagtap V/s. The Medical Superintendent) dated 27.03.2014**. It was the matter of regular appointment wherein increment was earlier paid

but later withheld. It is in that context the O.A. was allowed on the basis of Rule 36 of M.C.S. Pay Rules 1981. Reference was also made to decision of Hon'ble High Court of Judicature at Bombay, Aurangabad Bench in **Writ Petition No.5898 of 2010 (Rajendra V. Kamble V/s. State of Maharashtra) decided on 28.03.2012** which relate to the principle that adhoc employee cannot be replaced by another adhoc employee. He further referred to the decision in **O.A.No.885/ 2014 (Dr. (Smt.) Snehal A. Trimbake V/s. The District Health Officer) decided on 26.08.2016** which relates to the issue of voluntary retirement of regular Government servant under Rule 66 of Maharashtra Civil Services (Pension) Rules, 1982, which is not relevant for the present controversy. He further referred to decision in **O.A.No.650/2012 & Ors. (Dr. Sanjay G. Surase V/s. State of Maharashtra dated 25.06.2014**, which relate to the condonation of break in temporary service rendered by them before they were selected by M.P.S.C., and of no use in the present context. Reference was also made to decision of Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **Writ Petition No.3484/2005 (The State of Maharashtra V/s. Dr. Sangita R. Phatale, decided on 27.11.2008**, which was case of appointment of Lecturer in Government Medical College on adhoc basis for 10 years. It is in that context that directions were issued to ignore artificial technical break by condoning the same or sanctioning leave in respect of such artificial technical break. Similarly, the decision rendered by this Tribunal in **O.A.No.293/2009 (Dr. (Ms.) Ashwini N. Galdhar Versus State of Maharashtra) dated 13.03.2009** and the decision in **O.A.No.442/2003 (Dr. Sanjay L. Sonawale V/s. State of Maharashtra & 2 Ors.) dated 13.07.2004** were also of no assistance to the applicants. Lastly, reference was to **O.A.No.227/1997 (Shri Kamlakar G. Randive V/s. The State of Maharashtra & Ors.) dated 20.04.2001**. In that case, the Applicant was appointed on adhoc basis in the year 1987 and the regular increments were paid till 1996, but thereafter no increments were paid. It is on that background he filed O.A.No.227/1997 which was allowed by the Tribunal. This decision is also of little assistance to the

applicant as admittedly in the present matter Applicants services were discontinued and with break again they were appointed. As such this is not the case of continuous appointment.

20. Needless to mention that the court should not place reliance on decision without discussing as to why the factual situation fits in that fact situation of the decision on which reliance is placed. The ratio of any decision must be understood in the background of facts of that case. It has been said long ago that a case is only the authority for what it actually decides and not what logical follows from it. It is well settled that little difference in fact or single additional fact may make a lot of difference in the presidential value of the decision. Having gone through the decision referred to by learned Advocate for the Applicant it cannot be deduced from it as exposition of law that in every situation temporary appointees are entitled to yearly increments.

21. On the other hand, learned P.O. for the Respondents referred the decision of Hon'ble Supreme Court in **Civil Appeal No.4990-4991/2011 (Arising Out of S.L.P. (C) Nos. 25200-25201 of 2010), Union Of India & Anr vs Arulmozhi Iniarasu & Ors decided on 6th July, 2011** and decision of Hon'ble High Court in **Writ Petition No.4953/2013 (Dr. Harshal M. Chandorilar V/s. State of Maharashtra decided on 09.10.2013.** The conspectus of these decisions are that the appointments made without following the due procedure of recruitments are not legal and appointee do not have legally vested right of continuation. The present O.A. is not for continuation or absorption. However, the fact remains that the Applicants were appointed purely on temporary basis in pursuance of interim order passed by the Tribunal in M.A.No.214/2012 filed in O.A.No.311/2012 which is already dismissed.

22. It is not the case of the Applicant that at the time of appointment or at any point of time a promise was held by Respondents to extend them benefit of yearly increments on par with regular employee. Indeed,

because of interim order Respondents were required to appoint them which was subject to decision in O.A.No.311/2012 which was already dismissed by this Tribunal. Resultantly the Applicants cannot ask for any benefit on the basis of interim relief earlier granted by this Tribunal.

23. The totality of aforesaid discussion leads me to conclude that the claim of increment cannot be granted in isolation in view of the dismissal of O.A.No.311/2012. Apart there is break in service. I have, therefore, no hesitation to sum up that the Applicants are not entitled to yearly increment in view of specific bar of Rule 44 of Maharashtra Civil Services Pay Rules, 1981 and O.A. deserves to be dismissed. However, it needs to be clarified that this decision will have no adverse effect on the continuation of temporary appointment of the applicants if Respondents want to continue their appointments.

O R D E R

Original Application is dismissed. No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 17.01.2020
Dictation taken by :
S.K. Wamanse.