

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.801 OF 2017

DISTRICT : MUMBAI

Mrs. Varsha Ghanashyam Gawai.)
Seeking appointment as Lecturer of Computer)
Science, Ismail Yusuf College, Jogeshwari,)
Mumbai – 400 060 and residing at B-196/7,)
Govt. Colony, Bandra (E), Mumbai - 400 051.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the **Secretary,**)
Higher and Technical Education Dept.,)
Mantralaya, Mumbai - 400 032.)
2. The Director of Vocational Training &)
Education, State of Maharashtra,)
3, Mahapalika Corporation Road,)
Post Box No.10036, Mumbai - 400 001.)
3. The Principal.)
Ismail Yusuf College, Jogeshwari,)
Mumbai - 400 060.)...**Respondents**

Mr. M.R. Patil, Advocate for Applicant.

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

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

DATE : 16.01.2019

JUDGMENT

1. The Applicant has approached this Tribunal against her discontinuation as a Lecturer and for declaration to continue her services till the Course/Scheme under which she was appointed continues invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as follows :

The Applicant is M.Sc. in Computer Science with B.Ed. By G.R. dated 29.06.2007, the Respondent No.1 (Government of Maharashtra) allowed some educational institutions to start bi-focal vocational educational courses from the year 2007-2008 on self-aided Scheme permanently. As per this Scheme, no aid or financial assistance would be given by the State and Institute will have to run the courses on self-financed basis and they will be responsible for service conditions and salary of the employees engaged for the said purpose. The Respondent No.3 is Ismail Yusuf College, which is Government College being run and controlled by Respondent No.1 through Higher and Technical Education Department (Respondent No.2). In pursuance of G.R. dated 29.06.2007, the Respondent No.3 was also allowed to start such education course in Electronics and Computer Science for one Division each subject to terms and conditions mentioned in G.R. dated 29.06.2007. Accordingly, in November, 2007, the Respondent No.3 had published an Advertisement inviting applications from eligible candidates to fill-in the post of Lecturer at Junior College on contract basis on payment of fixed salary for the subject of Electronics and Computer Science. The Applicant applied for the post and interviewed by Respondent No.3. Accordingly, she was appointed by order dated 29.11.2007 for the period of three months on fixed salary of Rs.6,000/-. As her performance was satisfactory, her service was continued for next two months by order dated 14.03.2008. In 2008-2009 also, she was asked to continue on the salary of Rs.8,000/- p.m. Then,

for the academic year 2008-2009 again, Advertisement was issued inviting the applications and in pursuance of it, the Applicant was appointed for the period from 21.07.2008 to 23.04.2009 on the salary of Rs.10,000/- vide order dated 21.07.2008. As her services were found satisfactory, she was continued by Respondent No.3 year-to-year issuing orders year-to-year stating that her appointment is on contractual basis. Each time she was appointed after inviting applications through Advertisement. Besides, her salary was also increased gradually. For last academic year i.e. 2016-2017, she was paid salary of Rs.20,000/- p.m. Each time, she furnished bond accepting the terms and conditions for her appointment. She contends that her performance was excellent to the satisfaction of Respondent No.3. Because of her contribution, the strength of students was also increased. As such, she was continued from 2007 to 30.04.2017.

3. For the academic year 2017-2018, the Respondent No.3 again published an Advertisement for walk-in interview. In pursuance of which, the Applicant applied on 19.06.2017. The interview was conducted on 19.06.2017 itself. The Interview Committee was consists of Principal and Professors from Physics and Chemistry Department. In interview, she was only asked about her letter dated 26.11.2016 whereby she had demanded hike in salary and it was made her clear that such demand was not liked by Respondent No.3. As such, she was discontinued from the service. The Respondent No.3 had not appointed any other Lecturer in her place, but allotted the subject of Computer Science to Ms. Snehal Kangne. The Applicant then made various representations, but the Respondents did not respond it. Ultimately, she has approached this Tribunal.

4. The Applicant contends that the bi-focal vocational education course as started in pursuance of G.R. dated 29.06.2007 is continued without any break and still Respondent No.3 is running the said course. As she was eligible and suitable for the post, her services were availed for 10 years. Therefore, her

discontinuation from academic year 2017-2018 is arbitrary and illegal. She also placed reliance on the Judgment of Hon'ble Supreme Court and Hon'ble High Court in support of contention that, her discontinuation is contrary to law. On these pleadings, she prayed for direction to continue her services so long as Scheme / Course is continued.

5. Respondent No.2 (Director of Vocational Training and Education) has filed Affidavit-in-reply resisting the application *inter-alia* denying the entitlement of the Applicant for continuation of the service (Affidavit-in-reply is at page 94 of the Paper Book). Respondent No.2 contends that as the Applicant is in service in the College of Respondents, he should not have been joined as Respondent in the Original Application. He further contends that the Applicant is not in Government service as her service as Lecturer in Computer Science was unaided division of the college and therefore the Tribunal has no jurisdiction to entertain this O.A. Rest of the pleadings made by the Applicant being not connected to him no comments are offered.

6. Whereas Respondent No.1 and 3 have resisted application by filing independent Affidavit-in-reply (at page 102 to 118 of the paper book) *inter-alia* denying the entitlement of the Applicant for the reliefs claimed. These Respondents also raised plea of jurisdiction contending that Applicant was working on the post of Lecturer in self-financed course without any financial assistance from the State Government that is purely on contract basis, and therefore, Tribunal has no jurisdiction to entertain such dispute.

7. It is not in dispute that Government by Resolution dated 29.06.2007 allowed some Educational Institution to start bi-focal vocational educational courses from the year 2007-2008 on self-aided scheme permanently. As per this scheme, no aid or financial assistance would be given by the State Government and Respondent No.3 will have to run the course on self-financed basis and they

will be responsible for the service conditions and salary of the employees engaged for the said purpose.

8. Admittedly, in pursuance of the said Government Resolution, Respondent No.3 started the course of Computer Science and after Advertisement (on display on the Notice Board) Applicant has applied for the post of Lecturer and accordingly she was appointed in the year 2007-2008. Initially, she was appointed for two months and then after break, she was continued in 2007-2008. Again in 2008-2009 notice was displayed about temporary vacancy on contract basis and Applicant was appointed on contract basis from 21.07.2008 to 30.04.2009 on fixed salary of Rs.10,000/- subject to terms and conditions in the interest of students as no other teacher was available. Thereafter, she was continued year to year. In the year 2015-2016, the advertisement was published in Hindustan Times. In response to it, the Applicant only appeared for interview and was appointed for another year purely on contract basis. Same exercise was carried out for the next academic year 2016-2017. She was interviewed on 18.06.2016. Though her performance in the interview was not up to the mark she was engaged for another year i.e. from 01.07.2016 to 30.04.2017 on temporary basis with fixed salary of Rs.20,000/- per month. She has accepted the terms and conditions mentioned in the appointment letter and also furnished undertaking. As such, there is no dispute that the Applicant worked as Lecturer in the Junior College from the academic year 2007-2008 to 2016-2017. For the academic year 2017-18, the interviews were conducted on 19.06.2017 and the performance of the Applicant was found poor. Another walk-in interview for the post of Lecturer in Computer Science was conducted on 14.07.2018 and the penal recommended the name of Ms. Snehal Kangne. Accordingly, she was appointed for academic year 2017-18 on fixed salary of Rs.14,000/- per month.

9. Thus, according to the Respondents, the Applicant was not selected because of her bad performance in the interview. Respondents further contend that the Applicant was appointed to teach subject of Computer Science purely on contract basis in self-financed Computer Course started by Respondent No.3. However the performance of the Applicant during the period of her service was not satisfactory and there are complaints of the students. The management was also not satisfied about her performance. As the Applicant has accepted services with the knowledge that if there is purely contract and temporary now, she cannot ask for continuation in the service purely when her performance was not satisfactory. The Respondent No.3 had, therefore, appointed Ms. Snehal Kangne to enhance the quality of education and standard of the College. The Respondent No.3 further contends that the Applicant is trying for absorption through back door entry which is not permissible in law. With these pleadings, the Respondent No.1 and 3 prayed to dismiss the Original Application.

10. The Applicant has also filed Affidavit-in-rejoinder (Page No.126 of P.B.) *inter-alia* reiterating the pleas raised in the O.A. and contends that the objection raised on the point of jurisdiction of the Tribunal to entertain the application is devoid of merit, as the Respondent No.3 is a Government College, and therefore, any questions relating to the acts and omission of the exercise undertaken by the College being relating to service matters of the employees appointed in the Government College squarely falls within the jurisdiction of the Tribunal. The Applicant admits that, she was appointed year to year on contract basis but denied that it is backdoor entry. She contends that every time, in pursuance of Advertisement, sometimes on Notice Board and sometimes on Newspaper, she had applied for the post and after interview by the Committee, she was selected. The Applicant further denied that the allegation made by Respondent Nos.1 and 3 that her performance was not satisfactory. She contends that, during her tenure, the results were excellent and that has been also appreciated by the

College. At no point of time, the College issued any Memo or sought any explanation for the alleged non-performance. Therefore, the theory of non-performance is after-thought and has been raised only to deny her continuation in the service. As regard her last interview for the appointment in academic year 2017-2018, she contends that she was interviewed on 19.06.2017 by the Committee, but it was mere farce and deliberately less marks were given to her only to discontinue from the post. The Respondent No.3, thereafter, appointed Ms. Snehal Kangne, who has no qualification in the Computer Science on the salary of Rs.14,000/-. The Applicant has been victimized because of her demand of hike in salary. In last academic year attended by her (2016-2017), she was even given hiking pay of Rs.20,000/- p.m. This itself falsify the contentions of the Respondents about her alleged non-performance. She, therefore, contends that, as the said course is still being run by the College, she is entitled to the continuous appointment so long as the course continues, may be on contractual basis.

11. The Respondents 1 and 3 again filed Sur-rejoinder (Page No.194 of P.B.) reiterating the pleas raised in their reply contending that the Applicant was appointed on purely temporary basis in self-financed course and though her performance was unsatisfactory, she was continued as a need of the Institute. However, in the last interview for the academic year 2017-2018, her performance was found much low, and therefore, the Committee did not find her suitable for the appointment. Accordingly, Ms. Snehal Kangne was selected for the post on the salary of Rs.14,000/- p.m. The Respondents further contend that, now financially it is not viable to run course on self-financed basis, but it is continued for the benefits of students. Thus, the Respondents sought to contend that, their decision to discontinue the Applicant is beyond the parameters of judicial review by the Tribunal on the ground of jurisdiction as well as on merit, and therefore, the application is liable to be dismissed.

12. Heard Shri M.R. Patil, learned Advocate for the Applicant. In addition to oral submission, he has also filed written notes of arguments. Heard Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

13. At the very outset, it would be apposite to set out certain admitted facts.

- (i) By G.R. dated 29th June, 2007, the Government of Maharashtra allowed some educational institutions to start bi-focal vocational education course from 2007-2008 on self-aided scheme permanently (Copy of G.R. is at Page No.25 of P.B.). The Respondent No.2 by its letter dated 3rd July, 2007 addressed to Respondent No.3 conveyed the said decision and granted permission for the said course, one batch each in Electronics and Computer Science (letter is at page No.30 of P.B.). As per letter dated 03.07.2007, it was the responsibility of Respondent No.3 to comply the service conditions and payment of salary to the employees to be engaged in the said course.
- (ii) In pursuance of above, the Respondent No.3 initially appointed the Applicant for the period of three months on the post of Lecturer in Computer Science by appointment letter dated 29.11.2007 on the fixed salary of Rs.6,000/- p.m. and appointment was continued for next two months (Page Nos.32 and 33 of P.B.).
- (iii) The appointment of the Applicant was again continued for next one month on salary of Rs.8,000/- p.m. by order dated 16th June, 2008 (Page No.34 of P.B.). By order dated 21st July, 2008, the Applicant was appointed for the academic year 2008-2009 on the salary of Rs.10,000/- p.m.
- (iv) Onward 2009-2010 upto 2016-2017, the Applicant was appointed year to year by issuing appointment orders each time with gradual

increase in salary vide appointment orders (Page Nos.37 to 44 of P.B.).

- (v) Her last month drawn salary in the academic year 2016-2017 was Rs.20,000/- p.m. (appointment order is at Page No.44 of P.B.).
- (vi) The course was started in terms of aforesaid G.R. by Respondent No.3 are still being run by Respondent No.3.

14. Thus, indisputably, the Applicant was appointed year to year on contractual basis on the gradual hike in salary. In all the appointment letters issued year to year, the conditions set out are as follows :

- “(१) सदर नेमणूक ही दि. ३० एप्रिल २०१७ पर्यंत असून ती नंतर आपोआप संपुष्टात येईल.
- (२) सदर पद हे अशासकीय शिक्षक म्हणून नेमण्यात येत आहे.
- (३) वरिष्ठ महाविद्यालयीन वेळापत्रकानुसार संबंधित विषयाचे तासिका आणि प्रात्यक्षिक घेणे बंधनकारक असेल तसेच महाविद्यालयाने दिलेली इतर कामेही करणे बंधनकारक असेल.
- (४) सदर पदावर नियुक्त केलेल्या कर्मचा-यास शासकीय कर्मचारी म्हणून समजता येणार नाही व त्यांना शासकीय कर्मचा-यांना मिळणा-या कोणत्याही सेवा व सवलती मिळणार नाहीत अथवा त्यासाठी ते कोणत्याही प्रकारचा हक्क सांगू शकणार नाहीत.
- (५) सदर पदावरील सेवा संपुष्टात येताच संबंधिताची सेवा बंद समजण्यात येईल व त्यांना त्यावर कोणताही हक्क सांगता येणार नाही.
- (६) सदरची सेवा पूर्णपणे करारनाम्यानुसार देण्यात येईल व करारनामा संपुष्टात येईल तेव्हा त्यांची सेवाही संपुष्टात येईल याची त्यांनी नोंद घ्यावी.
- (७) कार्यालयाचे आदेश प्राप्त होताच त्यांनी या कार्यालयीन आदेशातील सेवाशर्ती संबंधी रु.१००/- इतक्या स्टॅम्प पेपरवर करारनामा करावयाचा आहे. करारनामा केल्यानंतर नेमणूक पत्र देण्यात येईल.’’

15. For the academic year 2017-2018, the interview was conducted on 19.06.2017 wherein the Applicant allegedly failed to secure enough marks for appointment in the next year. Admittedly, in her place, the Respondent No.3 had appointed Ms. Snehal Kangne. As such, there is no denying that the Applicant though work for 10 years, be on contractual basis, she was discontinued from academic year 2017-2018 and in her place, another candidate has been appointed by Respondent No.3.

16. The Respondents sought to resist application mainly on two grounds. Firstly, want of jurisdiction of the Tribunal to entertain the application contending that the Applicant is not Government servant and secondly, the Applicant found not eligible and suitable for her continuation from academic year 2017-2018. The Applicant has approached this Tribunal invoking jurisdiction under Section 15 read with 19 of the Administrative Tribunals Act, 1985. Section 15(1)(a), (b) & (c) of the Administrative Tribunals Act, 1985 read as follows :

“15. Jurisdiction, powers and authority of State Administrative Tribunals.-

(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts-except the Supreme Court in relation to –

(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;

(b) all service matters concerning a person (not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of Section 14 appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation (or society) owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning, a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation (or society) or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.”

17. Whereas the “service matters” is defined in Section 3(q) of the Administrative Tribunals Act, 1985 which is as follows :

“3(q): “service matters” in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects.-

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever.”

18. Thus, what requires is the civil service of the State. In the present case, the Respondent No.3 is admittedly Government College being governed and controlled by the Government. Therefore, the employment in such College is certainly civil service and it does not cease to be civil service only because the State Government has not financed the said course. Financial assistance cannot be linked to it. What is material to consider as to whether it is civil service and in any such service, if there is dispute about the service matter as defined in Section 3(q), then definitely, it comes within the ambit of jurisdiction of this Tribunal. In other words, definition of civil matters under Section 3(q) of 'Act of 1985' include within its ambit, all matters pertaining to a person's service *inter-alia* in connection with the affairs of the Union or of any State. Needless to mention that the continuation or discontinuation of such civil service within its compass includes all such matters and absence of financial aid from the Government for rendering such services by the employees does not oust the jurisdiction of the Tribunal.

19. As stated above, the Respondent No.3 is the Government College under the full control of Respondent Nos.1 and 2. The Government itself granted permission to Respondent No.3 College to start bi-focal vocational education course on unaided basis and the liability of salary was of Respondent No.3. True, in appointment letter, one of the condition is that the Applicant cannot be treated as Government servant and would not be entitled to service benefits equal to Government servants. The Condition No.4 in this behalf is reproduced above. The learned P.O. harping on this Clause 4 sought to contend that the

Applicant having accepted the appointment with this understanding, she cannot be treated as Government servant. I find no merit in her submission. Only because the scheme was self-financed, without financial aid by the Government, that would not absolve the Government from its liabilities or obligation arising from the acts or omissions made by Respondent No.3 while conducting the said course. The course was started at the behest of Government by the Government College. One can understand that, if such permission was granted to private institutes where the employee appointed by such institute cannot be termed as Government servant. However, in the present case, the Respondent No.3 is the Government College fully run and controlled by the State Government. The Applicant was appointed in the course as permitted by the Government. As such, the functions performed by Respondent No.3 relate to the services to be treated as Government service for the purposes of this application. No doubt, the Applicant cannot claim for any absorption in service on the basis of such contractual appointment. However, at the same time, after rendering 10 years of service, her discontinuation cannot be said legal when the course is still being run by the Respondents through College. In other words, so long as this course is continued and vacancy is available, the services of the Applicant cannot be abruptly terminated in this manner. The allegations made by Respondent No.3 about failure in interview and non-performance will be dealt with a little later.

20. As regard jurisdiction of the Tribunal, the appointment is issued by the Principal of Government College in the course sanctioned by the Government. As such, the Applicant has rendered service in Government College though it is not financially assisted by the Government. The expenses on the salary of the Teachers appointed for the said course was to be borne out from the fees collected from the students, as it was unaided scheme. As such, the payment of salary and other expenses was from the funds of the College itself. This being the position, the Respondent Nos.1 and 2 cannot run away from their obligations arising from the functions or omissions on the part of Respondent No.3. I,

therefore, find no substance in the submission of learned P.O. on the point of jurisdiction. Resultantly, I hold that this Tribunal has jurisdiction to entertain the application.

21. Now, the next question comes whether the Applicant is entitled to the continuation on the said post of Lecturer. Incidentally, one also needs to consider whether the exercise / decision undertaken by Respondent No.3 to re-advertise the post of Lecturer afresh after lapse of 10 years' service of the Applicant though on contractual basis could be termed just and legal. In my considered opinion, the answer is in negative.

22. Now, let us see the manner in which the Applicant was appointed and continued in the service for 10 years. Though the Respondents sought to contend that it was backdoor entry without proper advertisement and recruitment process, it is not palatable. The documents placed on record, particularly, Page Nos.36, 145 and 146 reveals that for the academic year 2013-2014, 2014-2015 and 2015-2016, the Advertisement was issued for the appointment of Lecturer on contract basis. In fact, for the academic year 2015-2016, an Advertisement was issued in Hindustan Times as seen from Page No.36 of the P.B. Indeed, the Respondent Nos.1 to 3 in their reply have also come with the pleading that the notice was displaced on the College Notice Board whenever the vacancy arose. This being the position, it cannot be said that, it is a case of backdoor entry. The Respondent No.3 itself chooses to issue Advertisement in this manner and after taking interview of the Applicant, not only appointed her but continued her year to year for about 10 years. Admittedly, the Applicant was having requisite qualification for the said post. This being the position, the decision of Respondent No.3 to re-advertise the post after 10 years' service rendered by the Applicant is definitely contrary to the law. Otherwise, it would be amounting to replacing one ad-hoc appointee by another ad-hoc appointee.

23. In this behalf, a reference may be made to Judgment of Hon'ble Bombay High Court in **(2012) 4 ALL MR 293 (Rajendra kamble Vs. Government of Maharashtra)** wherein in Para No.13 it has been held as follows :

“13. Regarding Point No.3 : Ordinarily, in a Government establishment, when there exists a permanent post in a cadre, the Government is expected to fill up that post by appointing a permanent employee. Of course, this is subject to the condition that the Government decides to fill up the post and no mandamus can be issued to appoint a person, even a selected person, to the post unless the Government decides to fill it up. But when Government decides to fill up a post, it is ordinarily expected to appoint a permanent employee to that post. Appointing a permanent employee to a cadre post may require selection through a competitive examination and sometimes a selection through the Public Service Commission. This may entail time. In such a situation, an ad hoc or temporary appointment may become necessary on account of exigency of the administration. However, the ad hoc or temporary employee appointed to a permanent post should not be replaced by another ad hoc or temporary employee. He can be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority. We are fortified in our view by a decision of the Supreme Court in State of Haryana and others vs. Piara Singh and others (supra). The decision in Piara Singh's case was considered by a Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka and others vs. Umadevi and others, (2006) 4 SCC 1. In paragraph 26 (of SCC) of the decision (reported in SCC), the Constitution Bench has overruled the directions issued in paragraph 50 (of SCC) in the decision of State of Haryana and other vs. Piara Singh and others (supra), regarding regularization of ad hoc/temporary employees. However, the principle that one ad hoc employee appointed to a permanent post cannot be replaced by another ad hoc employee, laid down in (para 46 of SCC) Piara Singh's case has not been overruled in Secretary, State of Karnataka and others vs. Umadevi and others (supra).”

24. It would be further apposite to refer the Judgment of Hon'ble Supreme Court in **(2009) 6 SCC 611 (Mohd. Abdul Kadir and another Vs. Director General of Police)** as relied by the learned Advocate for the Applicant, wherein it has been held as follows :

“The Supreme Court has always frowned upon artificial breaks in service. When ad hoc appointment is under a Scheme and is in accordance with the selection process prescribed by the Scheme, there is no reason why those appointed under the Scheme should not be continued as long as the Scheme continues. Ad hoc appointments under the Scheme are normally coterminous with the Scheme

(subject to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of length of their ad hoc service or the scheme, they will not be entitled to regularisation, nor to the security of tenure and service benefits available to regular employees. In this background, particularly in view of continuing Scheme, ex-serviceman employed after undergoing selection process need not be subject to agony, anxiety, humiliation and vicissitude of annual termination and re-engagement, merely because their appointment is termed as ad hoc. The process of termination and re-appointment every year should be avoided and appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, coterminous with the Scheme. The Circular dated 17-3-1995 directing artificial breaks by annual termination followed by fresh appointment, being contrary to PIF Additional Scheme and contrary to principles of service jurisprudence, is liable to be quashed."

25. The learned Advocate for the Applicant also referred to the Judgment of Hon'ble Bombay High Court in ***Writ Petition No.9539/2012 (Ajay Ghatole and others Vs. State of Maharashtra & Ors.) decided on 12th March, 2014***, wherein after placing reliance on the Judgment in ***Rajendra Kamble's*** case (cited supra) and ***Mohd. Kadir's*** case (cited supra), the Hon'ble High Court in case of appointment of Data Entry Operators, who were appointed on contract basis quashed the decision of the Government to re-advertise the said post on which the Petitioners were already appointed. The Judgment of Hon'ble Supreme Court in ***Secretary, State of Karnataka and others vs. Umadevi and others, (2006) 4 SCC 1*** which has been relied by the learned P.O. in the present case, has also been discussed and held that it has no application where the employees were appointed on contract basis on clear vacancy. In the present case also, the Applicant has been appointed on contractual basis on clear vacancy and continued for 10 years. In ***Umadevi's*** case (cited supra), it was a case of backdoor entry and relief of absorption in the service was sought. It is in that context, the Hon'ble Supreme Court frowned upon such practice. Therefore, the decision in ***Umadevi's*** case is of little assistance to the Respondents in the present context.

26. Same issue was again before the consideration of Hon'ble Bombay High Court in ***Writ Petition No.2046/2010 (Sachin Dawale and others Vs. State of Maharashtra) decided on 19.10.2013*** wherein the question of permanency of the Lecturers appointed in Government Polytechnic Colleges for a period ranging from 3 to 10 years was in issue. It would be apposite to reproduce Para Nos.12 to 15 which are as follows :

“12. The contention of the State Government as to whether the posts should be filled on a regular basis or contractual basis is a policy matter and cannot be within the domain of the judicial review of this Court is without substance. The State Government is a “Model Employer” and is obliged to follow the Constitutional Scheme. It is not in dispute that after their selection, the petitioners have worked for a period between 3 years to 10 years. In this respect we may gainfully refer to the following observations of the Hon'ble Apex Court in case of Radha Dubey V/s. Govt. of NCT of Delhi and Ors. in the order dated 16th August, 2010 in Special Leave to Appeal (Civil) No.CC10388/2010 :

“We are prima facie of the view that appointment of a person on contract basis for an uninterrupted period of ten years amounts to exploitation. The State, as a model employer in a welfare State, is not expected to take advantage of its position and impose wholly unequitable and unreasonable condition of employment on the prospective employees, who do not have the choice but to accept the appointment on terms and conditions offered by the employer. This practice seems to be contrary to the ratio of the judgments of this Court in Central Inland Water Transport Corporation Ltd. And another versus Brojo Nath Ganguly and another [AIR 1986 SC 1571] and Delhi Transport Corporation versus D.T.C. Mazdoor Congress [AIR 1991 SC 101].”

It is to be noted that having observed this, the Hon'ble Apex court in the peculiar facts of the case had directed the respondents to take the petitioners back in service by an interim order. The facts of the present case are almost identical. The Government has extracted the work from the petitioners for years together after they were found eligible and suitable in the selection process, conducted by the Selection Committees, which are constituted in pursuance to the Government Resolution.

13. *Insofar as the contention of the respondents that the petitioners were aware that their appointment was for a limited period on contract basis and as such they are not entitled to claim regularization is concerned, the said submission is also without substance. It is not in dispute that during this period i.e. up to 2010 the appointments which were made, were made only through the process by which the petitioners were selected. It is not as if during the said period MPSC was also conducting the selection process simultaneously. It is not*

therefore as if the petitioners had choice to participate in the selection process through MPSC as well as through the Committees constituted under the said Government Resolution. The petitioners had no choice but to participate in the selection process conducted through the Committees constituted under the said Government Resolution. The Hon'ble Apex Court in case of **Central Inland Water Transport Corporation Ltd. V/s. Brojo Nath Ganguly (AIR 1986 SC 1571)** has observed as follows :

“.....Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power..... it will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them.”

It can, thus, be clearly seen that the Apex Court in the said case has held that Article 14 requires that the State action should be right and reasoned and intended to secure social and economic justice and to conform to the mandate of equality clause enshrined in Article 14 of the Constitution. It has been equally held that when an unfair or unreasonable condition is imposed by the State, the Court can very well strike it down. The Constitution Bench of the Apex Court in case of **Delhi Transport Corporation V/s. D.T.C. Mazdoor Congress and others** reported in **AIR 1991 SC 101(1)** has approved the principle laid down in the case of **Central Inland Water Transport Corporation Ltd. V/s. Brojo Nath Ganguly (supra)**. In that view of the matter, we are unable to accept the contention of the State, on account of whose inaction, the appointments could not be made for a period of more than a decade. The petitioners had no choice but to participate in the selection process as per the said Government Resolution to get the employment.

14. In the facts of the present case, the Government did not hold selection through MPSC for a period of more than 10 years and selected the Lecturers only through the selection process as provided under the said Government Resolution and the petitioners were duly selected through that process. The respondent – State has extracted the work from the petitioners for years together. Now, by efflux of time and on account of the respondent – State not holding the selection process for years together, many of the petitioners have become overaged and would not be in a position to participate in the selection process through MPSC. It could be clearly seen that the issue before the Apex Court in case of **Secretary, State of Karnataka & Ors. V/s. Umadevi & Ors. (supra)** was pertaining to the appointments which were made clandestinely and without advertisement and the persons were appointed without following due selection process. The facts of

*the present case are totally different. In the present case the petitioners have been appointed after the posts were advertised, they were selected in a selection process by Committee of Experts duly constituted as per the said Government Resolution. In that view of the matter, the law laid down by the Apex Court in the case of **Secretary, State of Karnataka & Ors. V/s. Umadevi & Ors.** (supra) would not be applicable to the facts of the present case.*

15. *The submission of the Government of Maharashtra that whether the posts should be filled in on regular basis or contractual basis is a matter of policy and falls within the domain of the Government of Maharashtra (employer), does not appeal to us. It being an admitted position that the posts, in which these employees have been appointed and continued for a considerable length of time, on contractual basis, are regular and full time posts; the appointments in these posts cannot be at the whims and fancies of the Government of Maharashtra. The State cannot adopt a policy of hire and fire or use and throw."*

27. With the aforesaid finding, the Hon'ble High Court allowed the Writ Petition and Respondents were directed to regularize the services of such Petitioners who were completed three years' service with technical break.

28. In the present case, the Applicant is seeking relief of her continuation in service so long as the said course continued. In view of the law laid down in the aforesaid Judgments, the relief sought definitely deserves acceptance.

29. The Respondents sought to justify discontinuation of the Applicant on the ground that her performance was not satisfactory during her tenure and secondly, she failed to qualify in interview held on 18.06.2016 for the academic year 2016-2017 as well as the last interview dated 19.06.2017 for the academic year 2017-2018. It is in comprehensible to say that the performance of the Applicant during tenure of service was not satisfactory. Had her performance was not satisfactory, then would not have been continued for 10 years. Her appointment from year to year, that too with hike in salary gradually, run counter to the theory of alleged poor performance. The Respondents' contention that in interview dated 18.06.2016, she failed to perform is incomprehensible. It does not stand to reason that even after failure in interview, the candidate would be appointed on the post.

30. It is material to note that, there is nothing to show that in point in time, the Respondent No.3 had issued any Memo to the Applicant or called her explanation for the alleged non-performance during the span of 10 years of her service. On the contrary, the material placed on record, clearly spells that during the period of 10 years, her performance was not only good but it was appreciated by Respondent No.3. In this behalf, it would be useful to refer experience and appreciation letter issued by Respondent No.3 on 22.04.2016 (Page No.168 of P.B.). In the said Certificate, the Applicant has been appreciated for her good qualities and knowledge of the subject. The Respondent No.3 had also issued one more letter of appreciation for her outstanding contribution during project exhibition and workshop held in October, 2015 (Page No.163 of P.B.). Besides, the statement of marks and the result of the College pertaining to said course (Page Nos. 164 to 180) reveals that, all students cleared the examination and some of them also secured distinction. As such, all these voluminous material demolishes the stand taken by the Respondent about the performance of the Applicant. Suffice to say, the contention of alleged non-performance is unbelievable, unworthy of credit and has to be rejected.

31. Now, it comes to the last interview dated 19.06.2017 wherein the Applicant allegedly failed to succeed. The Respondents have placed on record point scale of interview of candidates showing their performance which is at Page No. 121 of P.B. In the said Chart, the Applicant is shown to have secured 25 marks out of 60. In fact, after availing 10 years by the Applicant on year to year basis, this practice adopted by Respondent No.3 to re-interview her is contrary to law. The learned Advocate for the Applicant has rightly pointed out that, none of the Committee member was qualified in the subject of Computer Science. As such, none of the member was having requisite qualification in Computer Science. Therefore, the contention of the Applicant that it was mere farce and only to ouster from the College assumes significance. Such interview seems to have been shown conducted only to facilitate discontinuation of the Applicant

because of her demand for hike in salary. The Applicant has categorically stated that the Board was annoyed because of her demand for hike in salary and accepted it. No other question was put to her in the interview. Page No.49 of the P.B. is the letter dated 26.11.2016 addressed to the Principal for increase in the salary. That time, she was getting Rs.20,000/- p.m. and she claimed increase therein. Here, it is material to note that, one Ms. Snehal Kangne was appointed in her place for the year 2017-2018 on the salary of Rs.14,000/- p.m. This lends credence to the Applicant's contention that the College was not inclined to pay her more salary, and therefore, being annoyed by her demand for hike in salary, she was discontinued from the service making farce of non-performance on her part. Ms. Snehal Kangne was appointed as per interview conducted on 14.07.2017, that too, without any Advertisement. All these factors clearly indicate that the intention of Respondent No.3 was to discontinue her because of demand of hike in salary and there is no valid reason to discontinue her.

32. In fact, there was no need to take any interview on 19.06.2017 for the appointment on contractual basis, in view of the fact that the Applicant had already completed 10 years on the said post and has given satisfactory results. The Hon'ble Supreme Court in ***Mohd. Kadir's*** case frowned upon such practice with the categorical finding that the process of termination and re-employment every year should be avoided and the person should be continued so long as the scheme continues, but purely on ad hoc or temporary basis co-terminus with the scheme.

33. The decision of Hon'ble Supreme Court referred by the learned P.O. in ***1983 SCC (4) 582 (B.S. Minhas Vs. Indian Statistical Institute & Ors.)*** is of no assistance to her in the present context. It pertains to the challenge to the appointment of Director in Indian Statistical Institute. The Hon'ble Supreme Court in the said Judgment observed that "It is not for the Court to determine who is the superior of the two candidates and who should be selected and it is

for the authorities concerned to select from amongst the available candidates". Whereas, in the matter in hand, the issue is of discontinuation of the Applicant though rendered service for 10 years. Her discontinuation found unwarranted and contrary to the principles of law. The Applicant was, in fact, selected after interview, but after 10 years abruptly discontinued. Therefore, the Judgment of Hon'ble Supreme Court in the present situation is of no help to the learned P.O.

34. As such, the principles laid down by Hon'ble Supreme Court in **Mohd. Kadir's** case as well as principles laid down by Hon'ble Bombay High Court in **Ajay Ghatole's** case and **Sachin Dawale's** case (cited supra) are clearly attracted to the present set of facts. Admittedly, the said course is still being run by the Respondent No.3. Therefore, so long as course continues, the Applicant having rendered 10 years of service should not have been discontinued and her ouster is unjust and arbitrary. I have therefore no hesitation to sum-up that the Applicant is entitled to the relief claimed and the application deserves to be allowed. As the Respondent No.3 has appointed Ms. Snehal Kangne in place of Applicant for the current year, which is come to an end within 2/3 months, it would not be desirable to break her service abruptly and it would be appropriate that the continuation of the Applicant in service would be from academic year 2019-2020. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Applicant is declared entitled to continuation of service as Lecturer (Junior College) for the subject of Computer Science on the establishment of Respondent No.3 on unaided or self-financed scheme till such scheme continues.
- (C) The Respondents are directed to continue the services of the Applicant with academic year starting from 2019-2020 on the salary

which was given to her in her last academic session on contract basis.

(D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 16.01.2019

Dictation taken by :

S.K. Wamanse.

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