

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.808 OF 2018

(Subject : Continuation in service)

DISTRICT : PUNE

1. Shri Arun Sanjay Gaikwad,)
Working as Scientific Officer,)
Address : Flat No.102, Tanmay Residency,)
Ambegaon, Pune)
2. Shri Chaitanya Raghvendra Medhekar,)
Working as Scientific Officer,)
Address : Flat No.4, Block No.A-4,)
New SKF Society, Chinchwad 411 033.)

....Applicants.

Versus

1. The State of Maharashtra,)
Through Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032.)
2. The Director General (Judicial and Technical),)
The Directorate of Forensic Science,)
Vidyanagari, Santacruz (East),)
Mumbai 400 098.)
3. The Director,)
Directorate of Forensic Science,)
Vidhyanagari, Hans Bhugara Marg,)
Santacruz (East), Mumbai 400 098.)

...Respondents.

Shri C.T. Chandratre, the learned Advocate for the Applicants.

Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

RESERVED ON : 28.11.2018.

PRONOUNCED ON : 14.12.2018

J U D G M E N T

1. Heard Shri C.T. Chandratre, the learned Advocate for the Applicants and Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.

2. Perused the record. Facts of present O.A. are replica of the facts as in O.A.No.736 of 2018 and O.A.No.793 of 2018.

3. Heard both sides. Perused the record annexed to Original Application and the documents and charts tendered at bar during the course of hearing.

4. This O.A. pertains to claim by the Applicants who were appointed as Scientific Officers (Tape Authentication and Speaker Identification).

5. M.A.No.581 of 2018 was taken up for hearing. During hearing of M.A., it had transpired that immediate hearing of Original Application would be possible as well would be more expedient. Both sides agreed for immediate hearing of Original Application. Therefore, all Original Application in present group are taken up for final disposal.

6. Prayers of the Applicants in present O.A. are as follows :-

"a] The Hon'ble Tribunal be pleased to hold and declare that the applicants are, being similarly situated person, entitled to the benefit of the decision of Hon'ble High Court, Bombay, bench of Nagpur rendered in W.P.No.2046 of 2010 decided on 19.10.2013 and confirmed by the Hon'ble Supreme Court, are entitled for regularizing / absorption of their services in the post of Scientific Officer from their initial date of appointment and further be pleased to direct the respondents to pass suitable orders of absorption by condoning the Technical breaks and conferring permanent status within reasonable time from the date of order of this Hon'ble Tribunal.

b] The Hon'ble Tribunal be pleased to direct the Respondents, to submit the proposal of regularization / absorption of services of the applicants to the Committee constituted under G.R. dated 8.5.2018, with proper perspective and to issue the orders of absorption / regularization immediately.

c] In the alternative the Hon'ble Tribunal, without prejudice to other prayers, be pleased to direct to take a policy decision as one time measure in respect of applicants to regularize the services of the applicant from the date of initial appointment by condoning technical breaks in service.

d] The cost be provided for.

e] The Hon. Tribunal be pleased to grant any other and further relief which this Hon. Tribunal may deem fit and proper in the facts and circumstances of the case."

(Quoted from page 9 of the paper book of O.A.)

7. In support of prayers as averred in O.A. Applicants has averred certain facts and grounds. Gist of the pleadings and grounds is summarized as follows :-

- (a) Applicants are duly selected.
- (b) They have served for period which is more than two to three years and by ignoring artificial breaks, they must be absorbed.
- (c) Applicants have secured experience while working as temporary and on contract basis with the government, and Applicants' services would be more useful as compared to freshers.
- (d) Freshers who have been invited and who may be eventually selected do not have experience of work in forensic laboratory and appointment of such candidates will not serve interest of State and the investigation.
- (e) Appointment / continuation of applicants barely for fixed period of 12 or 11 months, despite creation of posts by Government Resolution 10.02.2017 is arbitrary and malafide.
- (f) The terms on which applicants are appointed had to be accepted by them as they had no option, hence Government cannot put strong or much less fervent reliance on terms of appointment.
- (g) By ignoring terms by which Applicants were appointed, their services deserve to be continued and absorbed by following the dictum as laid down in the judgment of Hon'ble High Court Nagpur in case of Sachin Dawle's case, decided by the Nagpur Bench of Hon'ble High Court Writ Petition No.2046 of 2010 which is upheld by the Hon'ble Supreme Court.
- (h) Applicants who are not back door entrants but are duly selected candidates, deserve to be absorbed.
- (i) The conduct of the Government ought to be fair as the model employer and the employees who have been continued for years together deserve to be absorbed permanently. The conduct of the Government is in violation of Article 14 of the Constitution of India and applicant has made out the case for grant of relief sought for.
- (j) The ratio as laid down in Sachin Dawle's case has been followed in many cases, even thereafter.
- (k) Similarly situated employees from various other departments have been regularized while applicants are not conferred permanency and absorption and they have been discriminated.
- (l) Government is half way ahead in the process of absorption of applicants in Government service as is evident from Government decision dated 08.05.2018 (copy whereof is at Exhibit J, page 204) annexed to O.A.No.517 of 2018.

- (m) Government has absorbed about 18 Assistant Professors and Dental Surgeons serving in Government Dental Colleges and Applicants shall be given the same treatment.

8. Summary of applicants' pleadings narrated in foregoing paragraph is answered by the State in the affidavit in reply, summary thereof is as follows :-

- (a) There was increase in workload which had to be met by temporary increase in the strength and therefore as a device of mitigation, by following reasonable and fair procedure recruitment of applicants and others was done on contract basis and for fixed duration.
- (b) In view of pressure of work, posts had to be filled in on adhoc basis by adopting reasonable and fair procedure and on contract basis. Therefore, for selecting the class III posts of Scientific Officers, walk in interviews were held. Hence, by adopting reasonable and fair procedure, posts are being filled in.
- (c) The "form" of appointment i.e. contract for fixed period, be adopted is the prerogative of the Government.
- (d) Now in view that regular recruitment is undertaken, applicants cannot be absorbed.
- (e) Ratio laid down in Sachin Dawle's case and cases decided after following Sachin Dawle's case do not govern present O.A., for want of parity.
- (f) Absorption of adhoc/ temporary employees in other department does not have parity whatsoever with that of Applicants.
- (g) Introductory part of G.R. dated 15.06.2017, (page 115 of O.A.No.517 of 2018) evidences the reasons and documents which had laid to absorption of Assistant Professor and Dental Surgeons. Thus absorption had become necessary because selection on those posts was being inordinately delayed and it was going to adversely effect intake capacity of number of students, as well as serving to the patients. Therefore, the said absorption cannot be relied upon by the Applicants on parity.
- (h) Perusal of the Government decision dated 08.5.2018 (Exhibit X, page 228 of O.A.No.734 of 2018), reveals that it relates to the proposal of absorption of 326 Instructors appointed in ITI on contract basis and for that purpose the Committee is appointed by the Government. This document does not evidence, that the question of absorption of the Scientific Officers is under consideration of the Government at any point of time.

9. The case proceeds on following admitted background :-

- (a) It is evident from latest Government decision dated 10.02.2017 that while in all 133 posts have been created for Cyber Crime, Tape Authentication and Speaker Identification Department, only 46 posts are created as permanent posts. There is no other document suggesting that Additional posts were created.

- (b) All earlier Government Resolution had created posts on year to year basis.
- (c) The main thrust of claim of applicants is based on Sachin Dawle's case and the plea of discrimination.
- (d) Therefore this Tribunal has to examine applicant's case by using Sachin Dawle's case as a precedent and a measuring unit or device/ parameter.
- (e) Various Applicants were appointed from time to time by different orders which are as follows :-

Sr. No.	Order dated	No. of officers appointed
1	21.06.2014	14
2	15.05.2015	81
3	30.09.2016	81
4	03.10.2017	75

- (f) Present group of these Applicants are amongst those whose appointments are governed by the order referred to in foregoing paragraphs.
- (g) 54 posts are created for one year on 23.08.2017 for which appointments were made by order dated 12.04.2018 which will come to end on 15.03.2019, and these officers are actually working.
- (h) The Government of Maharashtra has framed recruitment rules of the post of Scientific Officers by notification dated 25.09.2014.
- (i) All appointment orders described in paragraph No.10 spell out that :-
- (i) Appointments are on contract basis.
 - (ii) These are for fixed duration specified therein i.e. 12 or 11 months, and are made against posts created for fixed period of one year.
 - (iii) Appointments are to come to end automatically upon receipt of duly selected candidates, which ever be earlier.
 - (iv) These appointments are on lumpsum Salary specified therein.
- (j) At present total 60 posts of Scientific Officers (Tape Authentication and Speaker Identification) are created on the permanent establishment of Government. These 60 posts consists of 42 posts created through Government decision dated 10.02.2017 (Exhibit – D, page 51 of the paper book of O.A.). As per the Recruitment rules the quota divided for nomination and promotion is 75 : 25. Due to the breakup of quota only 45 posts of Scientific Officers (TASI) on establishment are available for direct recruitment.
- (k) During pendency of O.A., advertisement for inviting applications for 43 posts of Scientific Officers (TASI), which number can increase, has been issued.

- (l) Applicants in present O.A. and many other candidates have applied for selection and appointment as Scientific Officers furtherance to the advertisement dated 24.3.2017.
- (m) During the hearing the State has tendered copy of note put up by it for demonstrating that in order to meet certain increasing workload, Department wanted additional posts on temporary basis. However, the Government has refused to accord the sanction for creation of additional posts.
- (n) Applicants have orally urged on the basis of admitted fact there exists work load and for that purpose the Director has demanded creation of temporary posts for one year for present, however Government has refused to create/ grant sanction of additional posts.

10. In view of the foregoing discussion it is necessary to advert to facts of present case. Those are referred in brief in paragraphs to follow.

11. This Tribunal has perused the judgment in case of Sachin Dawle (supra). It is evident from judgment in Sachin Dawle's case that certain facts therein were patent and glaring, which need advertence. Relevant facts in Sachin Dawle's case are culled and listed as below :-

- (a) Writ Petitioners before Hon'ble High Court in Sachin Dawle's case were in service for more than 10 years.
- (b) Petitioners therein were duly qualified for the post as per the recruitment rules.
- (c) Those petitioners were selected by observing due selection process.
- (d) Though temporarily appointed, petitioners therein are not 'back door entrants' as was the case of State of Karnataka Vs Umadevi.
- (e) The petitioners were given leave facilities since 18.02.2016.
- (f) For temporary appointment, the post of lectures in polytechnic colleges were taken out of purview of M.P.S.C. by Government's communication dated 29.03.2008.
- (g) There exist 5000 vacancies of teaching staff in Government Polytechnic colleges in the State however, the advertisement issued by Government was only for 400 posts, and even if 400 posts are filled in, more than 4500 will remain vacant.
- (h) Absorption of Petitioner therein in employment would not adversely affect candidates who would be selected in furtherance to advertisement.
- (i) Lecturers in private polytechnic colleges, who are similarly situated have been made permanent and the Petitioners claimed same/similar treatment.

12. The points of facts which are listed in foregoing paragraphs, are extracted / segregation from the judgments of Hon'ble High Court in Sachin Dawle's case and *inter alia* from paragraphs 15 & 17 to 19 thereof.

13. The facts which have led to the judgment of the Hon'ble High Court in Sachin Dawle's case are to be considered, by arranging in juxtaposition, either in actual or notional. For this exercise, facts of applicants' case have to be compared with the facts of case of Sachin Dawle's case.

14. Therefore, at the costs of repetition facts in present Original Applications which need advertance are summarized for easy comparison as herein below:-

- (a) Applicants have been appointed on contract basis for fixed period against the post which were created only for one year at one time.
- (b) These newly created posts on year to year basis were not permanent posts rather created on year to year basis and for fixed duration.
- (c) Applicants had participated in the process of selection in the form of walk in interview, and definitely like Sachin Dawle's case, applicants too are not back door entrants.
- (d) While, the posts held by Applicants were created on year to year basis, 46 posts have been created on permanent basis in 2017 for which before filing of present O.A. requisition was sent during the pendency of present O.A. advertisement has been issued by M.P.S.C..
- (e) 15 out of 60 sanctioned posts have been marked for promotional channel as provided in the recruitment rules.
- (f) Government has refused to sanction additional posts (over and above sanctioned permanent posts).
- (g) Total tenure of applicants in present O.A. is as below:-

(i)	Applicant No.1	3 years 11 months.
(ii)	Applicant No.2	2 years 11 months

15. If the points of similarity and dissimilarity in facts of present O.A. and Sachin Dawle's case when are cross matched, the points of lack of parity, are patent. It is evident that, by no permutation and combination applicants' can be equated and held to be a match or stand on parity with that of the petitioners in Sachin Dawle's case.

16. It is evident that Applicant No.1 has served for the period more than 3 years whereas Applicant No.2 has served for the period less than 3 years and both have served on fixed tenure and on contract basis.

17. During the hearing the State has tendered copy of note put up by it for demonstrating that in order to meet certain increasing workload, Department wanted additional posts on temporary basis. However, the Government has refused to accord the sanction for creation of additional posts. State has absolute power to decide as to number of posts, and this matter is beyond judicial reach.

18. In so far as pleadings of discrimination which are narrated in O.A., are concerned, these pleadings are aimed to compare with instances of absorption as regards:-

- (a) Lecturers in Medical Colleges;
- (b) Assistant Engineers;
- (c) Shikshan Sevaks;
- (d) Lecturers in Government Polytechnic Colleges.
- (e) Associate Professors and Dental Surgeons in Government Dental Colleges.

19. Applicants have not described and pleaded as to how facts of applicants' case are comparable to foregoing illustrations.

20. Applicants have failed to plead as to on what basis applicants belong to the class of lecturers in Medical colleges, on the ground of parity.

21. In absence of pleadings any discussion about comparability or parity with Assistant Engineers in Class-II and discussion cannot be done.

22. The post of Shikshan-sevaks is a class apart. Shikshan-Sevaks are all employees of private schools and it is a common knowledge that the Government is not the employer of the Shikshan-sevaks. All Shikshan-Sevaks were appointed as Shikshan Sevaks on adhoc basis furtherance to a comprehensive scheme to appoint and to absorb them after fixed tenure. Therefore the class of Shikshan-Sevaks is not fit to be cited for demand of equal treatment or for parity

23. Pleadings as regards discrimination are too scant to take cognizance of plea of discrimination as to all classes cited in the O.A..

24. As discussed, Sachin Dawle's case about 317 lecturers in Government Polytechnic Colleges, is not at all comparable with the case of the applicants on whatsoever ground or count and parity. Rather dissimilarity is patent.

25. Learned Advocate Shri A.V. Bandiwadekar for the Applicant in O.A.No.734 of 2018 has argued that the Government is half way ahead in the process of absorption of applicants in Government service by placing reliance on Government decision dated 08.05.2018 (copy whereof is at Exhibit X, page 228 annexed to O.A.No.734 of 2018) and that on parity applicants would need to be absorbed. Perusal of the decision date 08.05.2018, reveals that it relates to the proposal of absorption of 326 Instructors appointed in ITI on contract basis and for that purpose the Committee is appointed by the Government. This document does not evidence, decision even qua instructors in I.T.I., much less, even suggest that the question of absorption of the Scientific Officers was under consideration of the Government at any point of time. The said proposal which is under consideration of the Government is totally irrelevant as far as the present O.A. is concerned.

26. Learned Advocate Shri M.A. Choudhari for the Applicants in connected O.A.No.517 of 2018 has placed reliance on absorption of service of Dental Surgeon done by Government through G.R. dated 15.06.2017 (copy whereof is at page 115 of the paper book of O.A.). Perusal of text of Government decision dated 15.06.2017 reveals that proposal for absorption of Assistant Professors, Dental Surgeon had become necessary in view of the circumstances that the delay in filling in the posts was likely to adversely affect the medical services as well as would have adversely affect the number of intake of students in view of restrictions placed by Dental Council as well as Medical Council of India. Thus on facts, Applicants' case is not comparable on parity with the case of Assistant Professor and of Dental Surgeons serving on adhoc basis in Government Dental Colleges. In present case, the posts held by Applicants were created on year to year basis and now regular recruitment process has already began while in case of Dental Surgeons, the candidates were not being available and selection process was being inordinately delayed. Thus there is no comparability in these two cadres.

27. This Tribunal has already discussed in detail as to how the case of applicants do not stand on parity with that of petitioners in Sachin Dawle's case (Lecturers in Polytechnic Colleges) seen from the angle of length of service, number of vacancies, opportunity for consideration etc, or on grounds whatsoever.

28. Thus, the posts and persons holding various posts referred to in O.A. are not comparable with the post, nature of work, purpose and reason of absorption/ grant of permanency.

29. On its own merit as well on the point of discrimination, present Original Application does not have merit. Hence present Original Application deserves to be dismissed and is dismissed.

30. Learned Advocate C.T. Chandratre for the Applicant in present O.A. has placed reliance on reported judgment of Hon'ble Supreme Court in Civil Appeal No.18510 of 2017, AIR – 2018 SC-233 (SCW) in Sheo Narain Nagar & Ors. Versus State of Uttar Pradesh & Ors. (copy whereof is at page 135, A-12, of the paper book of O.A.). Perusal of judgment reveals that Honble Supreme Court has deprecated practice of continuing the Government servants for years together. On the very face of the judgment it is eloquent that the said judgment does not operate as precedent for governing the facts of present O.A.. Thus present O.A. is decided on the basis of above facts which are admitted and demonstrated.

31. Parties are directed to bear own costs.

32. Interim relief granted by this Tribunal on 31.08.2018 is hereby vacated.

Sd/-

(A.H. Joshi, J.)
Chairman

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