

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.83 OF 2020

DISTRICT : THANE

1. Shri Murali C. Lilani)
Age : 56 Years, Working as Ward Boy in)
The office of District Civil Surgeon, Central)
Hospital, Ulhasnagar -3, Dist. Thane.)
R/at Flat No.305, Preeti Apartments, O.T.)
Section, Ulhasnagar-3, Dist. Thane.)
 2. Smt. Jaywanti Dadu Chavan)
Age : 55 Years, Working as Sweeper in)
The office of District Civil Surgeon, Central)
Hospital, Ulhasnagar -3, Dist. Thane.)
R/at Flat No.5, Central Hospital Quarters,)
Ulhasnagar-3, Dist. Thane.)
 3. Smt. Sulochana N. Kawade,)
Age : 61 Years, Occ : Nil,)
Retired as Ward Servant from the office of)
Respondent No.1, R/o. behind "A" Block,)
308, Kurla Camp, Ulhasnagar -4,)
Dist. Thane.)
 4. Smt. Indira J. Chauhan, Aged 61 years,)
Occ. Nil, retired as Sweeper from the)
Office of Respondent No.1, R/o. 10,)
Hospital Area, Ulhasnagar-3, Dist. Thane.)
- Address for Service of Notice :)
Shri Arvind V. Bandiwadekar, Advocate)
O/at 9, "Ram-Kripa" Lt. Dilip Gupte Marg,)
Mahim, Mumbai - 400 016.)...**Applicants**

Versus

1. The District Civil Surgeon,)
Central Hospital, Ulhasnagar-3,)
Dist. Thane.)
2. The State of Maharashtra, through)
Additional Chief Secretary, Public Health)
Department, Mantralaya, Mumbai 32.)...**Respondents**

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

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

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

DATE : 19.11.2020

JUDGMENT

1. The Applicants have challenged the impugned order dated 24.07.2019 whereby the Respondent No.1 rejected the claim for regularization and retiral benefit invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Undisputed facts giving rise to this O.A. and for its decision can be summarized as under :-

(i) The Applicants were appointed on the post of Sweeper/Ward Boy (Group 'D') on the establishment of Respondent No.1 in Civil Hospital in the year 1983 to 1986 on leave vacancies and appointment was shown as temporary appointment.

(ii) All the Applicants were given artificial break after completing 29 days each and they have completed 240 days in all in calendar year from the date of appointment.

(iii) Despite availability of work and vacancy, they were continued as temporary employee by giving artificial break.

(iv) The services of the Applicants were abruptly terminated in the year 1989 without following due process of law.

(v) Being aggrieved by termination, the Applicants and one Shri Anant Bhosale filed ULP No.491, 493, 494, 495 and 499 of 1989 before Industrial Court, Thane alleging that the Respondent No.1

had committed unfair labour practice contemplated under Item Nos.5, 6, 9 and 10 of Schedule 4 of "The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971" (hereinafter referred to as 'MRTUP & PULP Act' for brevity).

(vi) The Industrial Court, Thane by Judgment dated 29.02.2000 allowed the complainant declaring that Respondent No.1 has committed unfair labour practice under Item No.9 of Schedule 4 of 'MRTUP & PULP Act' and directions were given that whenever permanent posts are created or vacancies arises, the Applicants and Shri Anant Bhosale be appointed under regular employment on the said post, if found suitable and fulfilled the necessary requirement (Judgment is at Page Nos.54 to 83 of P.B.).

(vii) In pursuance of directions given by Industrial Court, the Respondent No.1 by order dated 10.10.2000 appointed the Applicants subject to finality of decision of Industrial Court in the pay scale of Rs.2550-55-2060-60-3200.

(viii) In the matter of ULP of Anant G. Bhosale (ULP No.499/1989) the Respondent No.1 had filed Writ Petition No.1482/2001 before Hon'ble High Court, Bombay and it came to be dismissed by order dated 26.09.2005 (Page Nos. 89 to 91 of P.B.).

(ix) In so far as present Applicants are concerned, the Respondent No.1 had filed Writ Petition No.1357, 1360, 1370 and 1378 of 2991 before Hon'ble High Court (Page Nos.86 and 87 of P.B.) and it came to be dismissed by order dated 14.06.2018.

(x) In the matter of Anant G. Bhosale, the Respondent No.1 had filed SLP (SLP [Civil] No.15170 of 2006) before Hon'ble Supreme Court of India which came to be dismissed by order dated 27.08.2007 (Page No.93 of P.B.).

(xi) Shri Anant G. Bhosale then had filed O.A.No.180/2013 before this Tribunal (Anant G. Bhosale Vs. Civil Surgeon, Central Hospital, Ulhasnagar, Thane and Ors.) raising grievance that the Respondents have not taken decision about the regularization of his services in terms of Judgment of Industrial Court.

(xii) O.A.No.180/2013 was disposed of by this Tribunal by order dated 11.09.2014 whereby directions were given to take decision about the regularization of the Applicant within three months from the date of order (Page Nos.94 to 97 of P.B.).

(xiii) The Respondents, however, by order dated 23.08.2016 rejected the claim of Shri Anant Bhosale on the ground that he did not possess requisite qualification and was over-age at the time of initial appointment (Page Nos.98 to 100 of P.B.).

(xiv) Shri Anant Bhosale then again approached this Tribunal by O.A.1049/2016 challenging the order dated 23.08.2016 which came to be allowed by order dated 12.01.2017 whereby the impugned order was quashed and directions were given to regularize the services of Shri Anant Bhosale and to extend all service benefits within four weeks (Page Nos.101 to 116 of P.B.).

(xv) The Judgment rendered by this Tribunal in O.A.1049/2016 was not challenged by the Respondents before higher forum and on the contrary, it has been implemented by giving relief of regularization and retiral benefits to Shri Anant Bhosale.

(xvi) However, in the matter of Applicants, the Respondents by order dated 24.07.2019 rejected the claim of regularization on similar ground that their appointment was purely temporary and they are not eligible for appointment, and therefore, their services cannot be regularized which are subject matter of the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicants vehemently urged that the Applicants' case is exactly similar to the case of Shri Anant Bhosale and when the Judgment rendered by this Tribunal in O.A.No.1049/2016 (in the matter of Anant Bhosale) has been implemented by the Respondents without challenging the same before higher forum, the Applicants are also entitled to the similar relief on the ground of parity being similarly situated persons. He has also pointed out that in the matter of Shri Anant Bhosale also, the Respondents raised the defence that he did not possess requisite qualification and was over-age but it has been turned down by this Tribunal, and therefore, the Respondents now again cannot agitate the same ground. In alternative submission, he submits that in any case, having regard to the facts and circumstances of the present case, the Respondents ought to have exercised the power of relaxation in terms of Rule 4 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity) to do complete justice so as to comply the order passed by Industrial Court maintained by Supreme Court in letter and spirit.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that the Applicants were not eligible for regular appointment at the time of their initial appointment having not possessed requisite qualification and on account of over-age, and therefore, cannot claim relief of regularization. He further submits that the Applicants were appointed purely on temporary basis as stop-gap arrangement on leave vacancy, and therefore, they cannot claim relief of permanency.

5. To begin with, let us see the operative order of Judgment of Industrial Court in ULP Nos.491, 493, 494, 495 and 499 of 1989, decided by common Judgment dated 29.02.2000, which is as follows :-

“ORDER

Complaint (ULP) No.491/89, 494/89, 495/89, 499/89 are partly allowed.

It is declared that the Respondent has committed unfair labour practice under item 9 of Schedule-IV of the Act. The respondent shall and desist from committing such unfair Labour practice.

The Respondent is to prepare the seniority list of all the complainants as per procedure laid down in clause 4(d) of the Industrial Employment (Model Standing) Orders Act, 1946, and shall give employment by giving preference to the respective posts. Similarly whenever the permanent posts are created or permanent vacancies arises due to retirement etc. these complainants be appointed regular employment in the said posts, if at all they are found suitable and fulfilling the necessary requirements.

Complaints under items 5,6 and 10 of Schedule IV of the MRTU & PULP Act is dismissed.

No order as to costs.”

6. Admittedly, the decision of Industrial Court has got finality. In the matter of Shri Anant Bhosale, SLP was filed and was dismissed by Hon’ble Supreme Court. Whereas, in respect of Applicants, no SLP was filed against the decision of Hon’ble Bombay High Court in Writ Petition Nos.1357, 1360, 1370 and 1378 of 2001 whereby the order of Industrial Court has been maintained. Furthermore, indisputably, in the matter of Shri Anant Bhosale, the relief of permanency and retiral benefits has been released in view of decision of this Tribunal in O.A.No.1049/2016.

7. In so far as educational qualification and age on the date of entry in service, material to note that there is specific pleadings in Para No.6.2 of O.A. which is as follow :-

“6.2 The Petitioner stated that they are Indian citizens. That they were born on 10.04.1963, January 1964, 1.6.1958 and 20.09.1958. That they belong to Hindu Open Category (Petitioner No.1) and Scheduled Caste reserved category (Petitioner Nos.2 to 4). That they possess the qualification of 4th std, 6th std, 2nd std and 4th std. That all of them joined the Government service through proper channel in Group-D posts of Sweeper/Ward Servants in the year 1986, 16.10.1984, 1984 and 1983. That the service record of the Petitioners has remained excellent all through out.”

8. Interestingly, the Respondents in Para No.8 of reply admits the pleadings of Applicants made in Para No.6.2 of O.A. in following terms :-

“8. *With reference to Para No.6.2 of the Original Application I say and submit that the contents of this para relates to the particulars of the Applicants i.e. their date of birth, caste category, their educational qualification and their details. Therefore, the contents are factual and / or matter of record and hence admitted.”*

9. Whereas, again in Para No.32 of reply, the Respondents averred as under :-

“32.1 *Applicants are not found eligible to be appointed on permanent basis. As per Recruitment Rules Smt. Sulochana Kawade, Aya is not passed IV Std, and has completed 60 years, till today Shri Murli Lilani, Ward Boy has not produced his educational certificates, at that time of appointment Smt. Indira Jayprakash is over age (more than 25 years) and has completed 60 years. Smt. Jaywanti Dadu Chavan is also not fulfilling criteria as per Notification issued by General Administration Department. The copy of Notification issued by General Administration Department dated 06/06/2017 is annexed hereto and marked as Exhibit-“R-5”.*

10. At this juncture, worth to note that admittedly, considering the length of service of the Applicants, the Deputy Director, Health Services, Thane forwarded reports dated 05.06.2010, 21.08.2010, 05.08.2011 and 16.08.2012 to the Government thereby strongly recommending the regularization of the Applicants on their respective posts. The pleading to that effect made in Para 6.27 of O.A. has been categorically admitted by the Respondents in Para No.33 of reply stating that it is matter of record and admitted position.

11. At the fag end of trial, the Respondents have tendered copy of Resolution No.TR-1065-D issued by GAD, Sachivalaya, Bombay dated 25th August, 1965 prescribing qualification for the post of Peon and other pots in Class-IV for which no specific Recruitment Rules is prescribed. As per this Resolution, in case of nomination, the candidate should not be less than 18 years and more than 25 years of age and must have passed 4th Standard Examination of primary school recognized by the Government. As such, as per the then existing Rules, this was the eligibility criteria for the appointment in Class-IV Group.

12. According to Respondents, the Applicant No.3 – Smt. Sulochana N. Kawade has not passed 4th Standard Examination and Applicant No.4 – Smt. Indira J. Chauhan was over-age at the time of appointment. Indeed, the Applicants have also made this aspect clear in Para no.6.2 of O.A. about qualification and age, which is reproduced above. Thus, the objection is in respect of Applicant No.3 because of not holding requisite educational qualification of passing of 4th Standard Examination and Applicant No.4 was over-age. Material to note, the Applicant No.4 belongs to Scheduled Caste which comes under the Reserved Category.

13. At this juncture, let us see the reasons mentioned in the impugned order dated 24.07.2019 for rejecting the claim of the Applicant. Perusal of impugned order reveals that the Respondent No.1 had sought directions of Respondent No.2/the Government and on receipt of instructions from the Government, the Respondent No.1 rejected the claim of the Applicant in following words:-

“आपण २९ दिवसांच्या तात्पुरत्या सेवेत दिनांक ११.१०.१९८६ पासून ते मा.उच्च न्यायालय, मुंबई यांनी दिनांक १४.०६.२०१६ रोजीच्या दिलेल्या निर्णया पर्यंत कार्यरत असे पर्यंतच्या दरमान्यच्या काळात सन २००७ मध्ये या रुग्णालयाकडून भरती प्रक्रिया राबविण्यात आली होती. तथापी आपण भरती प्रक्रियेत आपल्या नावाचे समावेशन करण्याबाबत या रुग्णालयात अर्ज दाखल केलेला नाही. तसेच २००७ च्या भरती प्रक्रियेनंतर ते मा.उच्च न्यायालय, मुंबई यांच्या दिनांक १४.०६.२०१८ रोजीच्या अंतिम निर्णयापर्यंत या रुग्णालयात भरती प्रक्रिया राबविण्यात आलेली नाही.

प्रस्तुत प्रकरणी आपणास कायमस्वरूपी शासकीय सेवेत सामावून घ्यावे किंवा कसे याबाबत संदर्भ क्रमांक ५, ६ व ७ अन्वये विहित मार्गाने शासनास मार्गदर्शनपर आदेशाबाबत कळविण्यात आले असता संदर्भ क्रमांक ८ अन्वये खालीलप्रमाणे आदेश निर्गमित करण्यात आले आहेत.

“मा.औदयोगिक न्यायालय, ठाणे यांनी दिनांक २९.२.२००० अन्वये तक्रारदार अर्जदारांना नियमित करणे किंवा त्यांना घेण्यासाठी कोणतेही दिशानिर्देश दिलेले नाहीत. तसेच औदयोगिक न्यायालयाने दिलेल्या आदेशानुसार प्रतिवादी यांनी कोणत्याही याचिका दाखल केली नाही. प्रतिवादी हे सध्या अस्तित्वात असलेल्या सेवाप्रवेश नियमानुसार शैक्षणिक अर्हता पूर्ण करित नाहीत. तसेच प्रतिवादी हे नियतवयोमानुसार निवृत्त सेवानिवृत्ती होण्याच्या मार्गावर आहेत. प्रतिवादी हे ज्या ठिकाणी काम करित आहेत त्यापदावर त्यांची भरती किंवा नियमित केली जाऊ शकत नाही. मा.औदयोगिक न्यायालयाने किंवा मा.उच्च न्यायालयाच्या आदेशाद्वारे या टप्प्यावर कायमस्वरूपी सेवेचा दावा करण्याचा अधिकार त्यांना नाही. नियत वयोमानानंतर संबंधितांच्या सेवा समाप्त करण्यात याव्यात.” असे संदर्भिय पत्र क्र.८ अन्वये सूचित करण्यात आले आहे.

त्यानुसार या आदेशान्वये सूचित करण्यात येते की, आपण शासकीय सेवेत नियमित नसल्याने, आपली २९ दिवसांची तात्पुरती सेवा वयाची ६० वर्षे पूर्ण झाल्यानंतर दिनांक ३०.०४.२०२३ रोजी मध्यान्होत्तरपासून संपुष्टात येईल आणि संदर्भ क्र.३ व ८ नुसार आपण शासकीय सेवेत नियमित नसल्याने आपणास कोणतेही शासकीय लाभ अनुज्ञेय ठरणार नाहीत याची नोंद घ्यावी.”

14. Thus, curiously the reasons recorded by the Respondent No.1 while rejecting the claim of the Applicant are indeed beyond the scope

available to the Respondents. The Respondents obviously tried beyond its scope while mentioning that the Applicants have not filed any petition in terms of the decision of Industrial Court. In fact, there was no such direction of Industrial Court that the Applicant should file another petition for regularization. Indeed, the Industrial Court in its order directed Respondent No.1 to absorb the Applicants whenever permanent posts are created or permanent vacancies arises in regular employment subject to their fulfilling necessary requirement. The plain meaning and import of decision of the Industrial Court is that the Applicants were to be absorbed on regular posts whenever vacancies are created subject to fulfilling eligibility criteria.

15. Interestingly, it is nowhere the case of the Respondents that no permanent posts were available for absorption of the Applicants. As a matter of record, in impugned order dated 24.07.2019, there is a reference that in the year 2007, the recruitment process was undertaken. The reason mentioned in the impugned order that the Applicants did not apply in regular recruitment process is totally irrelevant as the obligation was on the part of Respondents to absorb the Applicants whenever vacancies are created subject to fulfilling eligibility criteria. Suffice to say, in 2007 when recruitment drive was undertaken, the Applicants ought to have been absorbed on the vacant posts subject to fulfilling eligibility criteria. Thus, legally speaking, the Respondents have committed contempt of order passed by the Tribunal by not regularizing the services of at least of Applicant Nos.1 and 2 in the recruitments drive of 2007 as there is absolutely no dispute about eligibility of Applicant Nos.1 and 2. However, regret to note that the Respondents failed to fulfill their obligations and continued the exploitation of the Applicant No.1 and 2 by denying absorption to them on regular posts.

16. In so far as the Applicant Nos.3 and 4 are concerned, the claim of the Applicant No.3 is opposed on the ground that she has not passed 4th Standard Examination. As regard Applicant No.4, the Respondents

contend that she was overage at the time of initial appointment. As such, the dispute is raised in respect of Applicant Nos.3 and 4 only and there are absolutely no dispute about eligibility of Applicant Nos.1 and 2.

17. Shri A. V. Bandiwadekar, learned Counsel for the Applicant fairly concedes that the Applicant No.3 has not passed 4th Standard Examination and Applicant No.4 is overage at the time of initial appointment. However, he submits that in the matter of Shri Anant Bhosale though he was not eligible having not passed 10th Standard Examination and not having required qualification for the post of electrician , he was absorbed in terms of the decision rendered by this Tribunal in O.A.No.1049/2016. He, therefore, claimed parity.

18. True, as per G.R. dated 25.08.1965, the minimum qualification for Class-IV employee by nomination was passing of 4th Standard Examination and age should not be more than 25 years on the date of appointment.

19. In so far as Applicant No.4 is concerned, her date of birth is 20.09.1958 and admittedly she joined on 16.10.1984 as seen from the judgment of Industrial Court. As such, on the date of initial appointment, she was 26 years, 0 month, 26 days old. Whereas, as per G.R. dated 25.08.1965 upper age limit is 25 years. It should not be forgotten that the Applicant No.4 belongs to Scheduled Caste which falls under Reserve Category. This being the position, the Respondents ought to have considered the aspect of relaxation of upper age limit available to the candidates for Reserve Category.

20. Though the Respondent No.4 was little overage by one year at the time of initial appointment, the Respondents have forgotten to take note that Applicant No.4 belongs to Scheduled Cast and was entitled for age relaxation in terms of Maharashtra Civil Services (Provision of Upper age Limit for Recruitment by Nomination) Rules 1986. As per Rule 1986,

the upper age limit for recruitment by nomination in Class-I, II, III and IV was 28 years for Open Category and in respect of person belonging to backward class, it was 33 years. Whereas, by Notification dated 17.03.1993, it was enhanced to 30 years and 35 years respectively. The Applicant No.4 joined on 16.10.1984. On the date of joining, she was 26 years, 0 months, 26 days old but she being reserved category, upper age limit was 33 years in terms of 'Rules of 1986' but this crucial aspect is completely ignored by the Respondents.

21. Thus, the Applicant No.1, 2 and 4 were eligible for appointment in accordance to Rules itself. Suffice to say, the rejection of claim of the Applicant Nos.1, 2 and 4 for reasons mentioned in impugned order is outcome of total non-application of mind and arbitrary. Indeed, it is in defiance of the judgment and order of Industrial Court inviting action for contempt of court. Be that as it may, the rejection of claim of Applicant Nos.1, 2 and 4 by Respondents is totally unsustainable in law.

22. In service jurisprudence, it is well settled principle of law that when particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefits and not doing so, would amount to discrimination and would be violative of Article 14 of the Constitution of India. In this behalf, a reference may be made to the Judgment of Hon'ble Supreme Court in **(2015) 1 SCC 347 (State of Uttar Pradesh Vs. Arvind Kumar Srivastava & Ors.)** wherein the Hon'ble Supreme Court emphasized that in service jurisprudence evolved by the Courts from time to time postulates that, all similarly situated persons should be treated similarly. However, this principle is of-course subject to certain well recognized exception in the form of laches, delays as well as acquiescence. In so far as the present matter is concerned, there is no question of laches, delay or acquiescence. This being the well settled legal principle, in my considered opinion, it would be travesty of justice if the relief claimed by the Applicants are denied to them.

23. In so far as Applicant No.3 is concerned, admittedly she has not passed 4th Standard Examination. However, there is no denying that she has served continuously for 34 years and no deficiency was found by the Respondents in service rendered by her. It is nowhere the case of Respondents that that there were any deficiencies in the service rendered by Applicant No.3 on account of her not passing 4th Standard Examination. This being the position, the Respondents ought to have relaxed eligibility criteria so as to implement the judgment of Industrial Court which has been maintained by the Hon'ble Supreme Court. It may be noted that while deciding O.A.No.1049/2016 filed by Shri Anant Bhosale, this Tribunal was aware that Shri Anant Bhosale was not fulfilling the eligibility criteria but rejected the stand taken by the Respondents in this behalf and directed for his absorption on regular post and granted consequential service benefit. The Applicant No.3 being similarly situated person, therefore, ought to have been treated equally otherwise it would amount to discrimination in law.

24. Indeed, the Respondents have availed the services of Applicant No.3 for 34 years, they should have invoked Rule 4 of 'Rules of 1981' to relax the condition of educational qualification as non consideration of the same has caused undue hardship to the Applicant which deprived her of absorption and retiral service benefits. Rule 4 of 'Rules of 1981' is as follows :-

*“4. **Power of relaxation** – Where Government is satisfied that the operation of any of these rules causes or is likely to cause undue hardship in the case of any Government servant or class of Government servants, it may, by an order in writing, exempt any such Government servant or class of Government servants from any provisions of these rules or may direct that such provisions shall apply to such Government servants or class of Government servants with such modifications not affecting the substance thereof as may be specified in such order.”*

25. The totality of the aforesaid discussion leads me to conclude that the impugned orders dated 24.07.2019 are totally unsustainable in law and deserves to be quashed. The Applicants deem to have been absorbed

on regular post and the Respondents ought to have extended all related service benefits to them. Hence the following order :-

ORDER

- (A) Impugned orders dated 24.07.2019 are quashed and set aside.
- (B) The Respondents are directed to treat the Applicants in continuous service since the date of their initial appointment as a regular employee and to extend all service benefits to them.
- (B) Compliance shall be done within six weeks from today.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 19.11.2020

Dictation taken by :

S.K. Wamanse.

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