

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.875 OF 2017

DISTRICT : Mumbai

1. Shri Suryakant S. Agawane)
R/at D/408, Sai Seva Krupa C. H.S.,)
Kurla (E), Mumbai 24.)
2. Shri Baban P. Hirave)
R/at 65/4/6, Subhedar Ramji, Ambedkar)
Nagar, Near Worli Diary, Worli, Mumbai-18))
3. Shri Subhash M. Gadhave,)
R/at. Swapnagandha C.H.S. Thankarpada))
Kalyan (W), Dist. Thane.)
4. Shri Avi Raju Kamble)
R/at. Juli Arc Bldg., Goldev Naka,)
Bhayander (E), Dist. Thane.)
5. Shri Abaji Gulab Galande)
R/at. Krushna Master Chawl, Nariman)
Lane, Kurla (W), Mumbai- 70.)
6. Shri Sujit Kisan Ghode)
R/at Sant Dnyaneshwar Nagar, Wagle)
Estate, Thane (W).)
7. Shri Dinesh B. Sutar, R/at. 405,)
Sai Lake C.H.S. Near Aadarsh Nagar,)
Kolbad, Thane (W).)
8. Shri Bhaskar K. Kharmate,)
R/at. Juna Gaon I.I.T. Circle, Gavte Galli,)
Wage Estate, Thane (W).)
9. Shri Vijay R. Shinde,)

- R/at. C-14, Shashikant Patil Chawl,)
Aniket Niwas, Vitava, Thane.)
10. Shri Madhukar S. Maharnawar)
R/at Siddhivinayak Chawl, Chikanghar,)
Kalyan (W), Dist. Thane.)
11. Shri Sunil M. Warghade)
R/at Veluk, Po Shiroshi, Tal. Murbad,)
Dist. Thane.)
12. Shri Prabhakar Shriram Wagh)
R/at Prayag Galaxy, New Panvel Khanda)
Colony, New Panvel.)
13. Shri Nilesh K. Gaikwad)
R/at Nirmal Anand Nagar, Kolshet Road)
Thane (W).)
14. Shri Mohan S. Nalawade)
R/at Govind Devkar Chawl, Datta Nagar,)
Gurukul Socy, Panchpakdi, Thane (W).)
15. Shri Vitthal B. Gawade)
R/at A/P Malad, Tal. Baramati, Dist.Pune.)
16. Shri Pramod V. Mahadik)
R/at A/P Nevri, Tq.Kadegaon, Dist.Sangli.)
17. Shri Santosh M. Makhare)
R/at A/P Indapur, Tal.Indapur, Dist.Pune)
18. Shri Sanjay J.Manjulkar)
R/at. A/P Patas, Tal. Daund, Dist. Pune.)
19. Shri Ashish M. Kaldate)
R/at Plot No.64, Talegaon Dabhade,)
Tq.Mawal, Dist. Pune.)
20. Shri Sujit A. Bodake)
R/at A/P Shendurjane, Tal.Koregaon,)
Dist. Satara.)

21. Shri Pankaj P. Mokase)
R/at Room No.7, HIG 16,Chattrapatinagar)
CIDCO, Nashik.)
22. Sanjay P. Nagare)
R/at A/P Mhalsakore, Tal.)
Niphad, Dist. Nashik.)
23. Shri Bholeshwar B. Bairagi)
R/at A/P Niphad, Dist. Nashik.)
24. Shri Vijay B. Batwal)
R/at Dakegav-Patoda, Tal.Yeola,)
Dist.Nashik.)
25. Shri Chandrakant G. Salunkhe)
R/at A/P Kundane, Post Varkhede,)
Tal. & Dist. Dhule.)
26. Shri Naresh N. Mahajan)
R/at A/P Warwade, Post Shirpur,)
Dist. Dhule.)
27. Shri Hemant S.Mali)
R/at A/P Kapadne, Tal. & Dist.)
Dhule.)
28. Shri Farookh S. Pinjari)
R/at A/P Shirkoli, Tal & Dist.)
Jalgaon.)
29. Shri Umesh B. Salunkhe)
R/at A/P Khedgaon, Tal.Chalisingaon)
Dist. Jalgaon.)
30. Shri Sujit K. Chavan)
R/at Near Old Power House,)
Bhimnagar, Chalisingaon, Dist.)
Jalgaon.)
31. Shri Kishor B. Moghe)
R/at A/P Gurudatta Colony,)

- Kusumba, Tal.& Dist.Jalgaon.)
32. Shri Bhagwat R. Pariskar)
R/at Gurdatt Nagar, Near Hanuman)
Temple, Tq. & Dist. Aurangabad.)
33. Shri Sandeep S. Jondhale)
R/at A/P Shivaji Nagar, Gadkheda,)
Aurangabad.)
34. Shri Umesh D. Durande)
R/at malawati Road, Tuljapure Nagar,)
Latur.)
35. Shri Baliram D. Shinde)
R/at A/P Z.P.H.S. High School, behind)
Nalegaon, Tq.Chakur, Dist. Latur.)
36. Shri Ramakant S. Suryawanshi)
R/at A/P Sugaon, Tq.Chakur, Dist.Latur.)
37. Shri Ajit G. Dhumal)
R/at A/P Shedol, Tq. Nilanga, Dist.Latur)
38. Shri Dhanaji R. Bhutale)
R/at A/P Martodi, Tq. Deglur, Dist.Nanded)
39. Shri Dilawar Khan Pathan)
R/at Nijam Colony, Nanded.)
40. Shri Shravan B. Jadhav)
R/at Degaon (Bk), Post Pimalgaon, Tal.)
Ardhapur, Dist. Nanded.)
41. Shri Mohammad A.M. Afsar)
R/at Cristion Colony, Devi Khadan,)
Tq. & Dist. Akola.)
42. Shri Sanjay N. Bhalerao,)
R/at Kekeszri, Post Pudiyal, Mhoda,)
Tq.Jiwate, Dist. Chandrapur.)

43. Shri Suresh M. Hivrle)
R/at A/P Shahapur, Tal.Warvel, Dist.)
Amaravati.)
44. Shri Javed Khan Jafar Khan Pathan)
R/o. Amdar Colony, Tal.Jindur,)
Dist-Parbhani 431509.)
45. Shri Vilas L. Tayade)
R/at Arjun Nagar, Amravati.)
46. Shri Ghanshyam P. Tikkas)
R/o Shreya Welding, Ward No.4,)
Mhalsa, Wardha-442001.)
47. Shri Balraj Ratan Gondole)
R/o Asray Apts. Paranjape Colony)
Camp, Amravati.)
48. Shri Anil V. Gunjekar)
R/o Marwadi B. K., Tal. Pusad,)
Dist. Yeotmal.)
49. Shri Umesh D. Wandare)
R/o Wagthapur Naka Vishwa Shanti)
Nagar, Yavatmal.)
50. Shri Sagar S.Chingale)
R/o 31/239, Motilal Nagar No.3,)
M.G. Road, Goregaon (W), Mumbai 104.)
51. Shri Sujit A. Kadam)
R/o Kamgar Nagar, Build.No.307,)
Nav Kiran Marg, Char Bangla,)
Andheri (W), Mumbai 53.)...Applicant

Versus

1. The Transport Commissioner, (M.S.)
Mumbai, O/at Administrative Build.)
4th floor, Government Colony,)
Bandra (E)), Mumbai -51.)

2. The State of Maharashtra)
 Through Principal Secretary,)
 Transport Department, O/at)
 Mantralaya, Mumbai 400 032.) **....Respondents**

Shri Arvind V. Bandiwadekar, Advocate for Applicants.

Smt. Kranti Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 14.12.2020

JUDGMENT

The Applicants claimed regularization of their service on the post of driver w.e.f. their initial appointment in regular pay scale invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Undisputed facts necessary for disposal of the Original Application are as under:-

(i) Respondent No.1 and Regional Transport Commissioner had issued advertisement inviting applications to fill in the post of Driver purely on contract basis and the applications were to be submitted on or before 21.02.2011 (Page No.56 to 65 are the Advertisement).

(ii) The Applicants in pursuance of the said advertisement submitted applications and they were called for technical test and for interview (Page Nos.78 and 81 of PB).

(iii) The Applicants gone through the selection process and having found eligible, they were appointed on contract basis throughout Maharashtra.

(iv) Initially the Applicants were appointed on consolidated salary of Rs.4000/- PM for 29 days subject to other conditions mentioned in the appointment order which will be dealt with a little later. (Page No.86 of PB).

(v) Even after expiration of first spell of 29 days after technical break, they were continued in service on contract basis and still they are in service.

(vi) Though initially they were appointed on contract basis on consolidated salary of Rs.4000/- PM. Later, their monthly remuneration were increased in view of provisions of Minimum Wages Act.

(vii) The Applicants made representations to the Respondents for absorption in service on regular pay scale. (Page Nos.264A to 264H are the copies of representations) but it was not responded.

(viii) In representations, the Applicants raised grievance that in the year 2012, eighteen posts of the Driver were filled in on regular basis ignoring their claim for absorption.

3. On the above background, Shri A.V. Bandiwadekar, learned Counsel for the Applicants has filed present Original Applications for absorption in service contending that despite regular vacancies in the department, the Applicants are deprived of benefit of regular employee and Respondents are exploiting the Applicants. He further submits

that still there are regular vacancies but the Respondents continued the Applicants on contract basis which is contrary to the service jurisprudence and State being model employer ought to have absorbed the Applicants on regular basis in view of their ten years service.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicants sought to place reliance on the following decisions:-

(a) The decision of the Hon'ble Bombay High Court rendered in ***W.P. No.2046/2010 (Sachin Dhavale & Ors V/s State of Maharashtra) decided on 19.10.2013.***

(b) ***2019 (3) SLR 644 (Bom) Madhukar & Ors V/s State of Maharashtra.***

(c) ***2020 (4) SLR 710 (Bom) Shailesh Kulkarni V/s Khandesh Education Society.***

(d) Decision of Hon'ble Bombay High Court bench Aurangabad ***W.P. 1060/2017 State of Maharashtra V/s Amol Kakade decided on 06.02.2018.***

(e) The decision rendered by this Tribunal in ***O.A.No.975/2018 Balasaheb Khambate V/s District Collector, Satara, decided on 16.04.2019*** confirmed by the Hon'ble Bombay High Court as well as Apex Court of India.

4. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents submits that the Government by G.R. dated 30.03.2010 had taken policy decision to purchase new vehicles and to appoint Drivers purely on contract basis and it is in pursuance of the said decision, the Applicants were appointed purely on contract basis subject to condition that their appointment is on purely contract basis with consolidated salary and they will not be entitled for any other service benefits much less akin to the regular employee or absorption.

She further submits that the Applicants are bound by the terms and conditions mentioned in the appointment letter and are not entitled to absorption. In this behalf, she placed reliance on the decision of the **Hon'ble Supreme Court (2016) 8 SCC 293 (State of Maharashtra & Anr. V/s Anita & Anr.)**.

5. To begin with let us see the contents of appointment order which are material for the decision of O.A. One of the appointment order dated 30.03.2011 is at Page Nos.86 and 87 and contents are as follows:-

“संदर्भ क्र.9 वरील शासन निर्णय दि.३०.०३.२०१० अन्वये मोटरवाहन विभागासाठी नविन वाहने खरेदी करण्यास शासनाने मंजूरी दिली आहे. ही वाहने ज्या कार्यालयांना उपलब्ध करून दिली आहेत त्या कार्यालयाशी संबंधित प्रादेशिक परिवहन अधिका-यांना त्यांच्या अखत्यारीतील नविन वाहनांच्या संख्ये इतक्या कंत्राटी पध्दतीने वाहन चालकांची नियुक्ती करण्याचे शासन आदेश आहेत. त्यानुसार कंत्राटी वाहन चालकांच्या नियुक्ती करीता देण्यात आलेल्या जाहिरातीनुसार अर्ज सादर केलेले आणि रोजगार व स्वयंरोजगार मार्गदर्शन अधिकारी, मुंबई यांनी पाठवलेल्या यादीमधील उमेदवारांपैकी जे प्रत्येकात व्यवसायिक चाचणी व मुलाखतीस उपस्थित राहिले, त्यांची वाहन चालवण्याची चाचणी व मुलाखत घेवून त्या उमेदवारांमधून खालील उमेदवारांना तात्पुरत्या स्वरूपात केवळ कंत्राटी तत्वावर वाहनचालक म्हणून रु.४०००/- या दराने खालील अटी व शर्ती नुसार नेमणूक देण्यात येत आहे.

- १) या वाहन चालकांची कंत्राटीसेवा कोणतीही पुर्व सुचना न देता कोणत्याही क्षणी समाप्त करण्यात येईल.
- २) या कंत्राटी सेवेमुळे संबंधित वाहनचालकांना नियमित सेवेचे कोणतेही कायदेशिर हक्क प्राप्त होणार नाहीत.
- ३) शासकीय कर्मचा-यांसाठी असलेले महाराष्ट्र नागरी सेवा नियम या वाहनचालकांना लागू राहणार नाहीत.
- ४) शासनाच्या वित्त विभागाने वेळोवेळी दिलेल्या आदेशानुसार / भविष्यात देण्यात येतील त्या आदेशानुसार या मध्ये कोणत्याही क्षणी बदल करण्यात येईल.
- ५) कंत्राटी वाहनचालकांना २९ दिवसांचे नियुक्ती आदेश देण्यांत येतील व एक दिवसांचा खंड देण्यात येईल.
- ६) कंत्राटी वाहनचालक पुर्व परवानगीने गैरहजर राहिल्यास त्या दिवसांचे कंत्राटी वेतन एकूण कंत्राटी रक्कमेतून वजा करण्यात येईल.
- ७) कंत्राटी वाहनचालक पुर्व परवानगी न घेता गैरहजर राहिल्यास त्यांची नेमणूक आपोआप संपुष्टात येईल.
- ८) कंत्राटी पध्दतीने नियुक्तीसाठी घातलेल्या सर्व अटी व शर्ती मान्य असल्याबाबतचे बंधपत्र संबंधित वाहनचालकांना लिहून द्यावे लागेल.”

6. There is no denying that it is in terms of the aforesaid appointment orders, the Applicants joined initially on consolidated salary of Rs.4000/- p.m. purely on contract basis and executed bond, agreeing to terms and conditions set out in the appointment order.

7. At this juncture, it would not be out of place to mention that as per Advertisement, the applications were called with specific stipulation that the posts were to be filled purely on contract basis. The G.R. dated 30th March, 2010 (Page No.318 of P.B.) is the starting point of entire process whereby the Government had taken decision to

purchase new vehicles for Motor Transport Department and to appoint Drivers on contract basis on consolidated salary of Rs.4,000/- p.m. It is explicit from the perusal of G.R. that the Government had taken policy decision to appoint Drivers purely on contract basis for these new vehicles and for that specific purpose only, administrative approval was granted by the Government. Consequent to G.R. dated 30.03.2010, the Advertisements were issued by Transport Commissioner as well as Regional Transport Commissioner for appointment of Drivers on purely contract basis. The conditions of the appointments were set out in the Advertisement as well as in the appointment orders. Admittedly, at the time of joining of service, the Applicants have executed bond agreeing to the terms and conditions that their appointment is on purely contract basis and they have no right for absorption or to be treated alike regular employees.

8. The submission advanced by the learned Advocate for the Applicant that substantive posts were created is misconceived and fallacious. On the contrary, the G.R. dated 30th March, 2010 and Advertisement on the basis of which the Applicants have applied are self-speaking and leaves no doubt that the posts were to be filled-in were on contractual basis and there was no such creation of substantive and vacant posts. Needless to mention that there is difference between sanctioned posts and posts created purely on contract basis. The creation of substantive posts falls within exclusive domain of the executive and if the executive had not created substantive vacant posts and had taken policy decision to avail services on contractual basis, then it cannot be said that the Government had created sanctioned vacant posts which has totally different financial implications. There is absolutely nothing on record that the posts on which Applicants were appointed were substantive vacant posts, as tried to be canvassed by the learned Advocate for the Applicant. True, the Applicants have gone through the process of

appearing in technical tests, interview, etc. but that *ipso-facto* does not convert their posts into substantive posts. The Applicants were appointed on the post of Driver, and therefore, driving test, etc. was essential. Suffice to say, only because the Applicants have undergone some process of selection that itself is of little assistance for absorption, particularly when they were not appointed on substantive vacant post.

9. Shri A.V. Bandiwadekar, learned Advocate for the Applicant further sought to canvass that in 2012, the Department had published Advertisement (Page No.261 of P.B.) to fill-in 18 regular vacant posts and further pointed out that as per Page Nos.356 and 357 in 2018, 36 posts of Drivers were vacant and again as per the information of 2020, 52 posts of Drivers were vacant as seen from Page Nos.368 and 369 of P.B. The learned Advocate for the Applicant further pointed out that the Government had taken decision to outsource the services of Drivers as seen from letter dated 21.01.2019 (Page Nos.373 and 374 of P.B.). As per these documents, 18 posts of Drivers were outsourced and contract was given to M/s. Crystal Integrated Services Private Limited. At the most, these aspects only show the need of services of Drivers. However, only because there were vacancies (which are other than contract appointee) and the Applicants have worked for near about 9 to 10 years on contract basis that *ipso-facto* does not make them eligible for absorption in service in law. It is in pursuance of Government policy, their services were availed purely on contract basis which are accepted by the Applicants without any demur. As such, once they have accepted contractual appointment knowing fully well the terms and conditions, then they cannot claim regularization, as the posts on which they were appointed were created purely on contractual basis.

10. At this juncture, material to note that in 2012, when Department had issued Advertisement, some of the Applicants participated in the process but failed in technical tests, as fairly conceded by the learned Advocate for the Applicants during the course of submission. Suffice to say, in regular process of recruitment, some of the Applicants failed to clear technical tests.

11. Apart, there is one more issue which goes against the Applicants rendering some of them ineligible for regular appointment. In this behalf, material to see the Chart submitted by the Applicants, which is at page nos.54 and 55 of P.B. giving details of their Bio-data. As rightly pointed out by the learned P.O, as per Recruitment Rules, the age limit for the post of Driver is 33 years for Open and 38 years for Backward Class candidates. The perusal of Chart reveals that the Applicant Nos.2, 7, 8, 9, 10, 11, 12,14, 16, 21, 22, 23, 28, 30, 31, 34, 35, 36, 38, 39, 40, 41, 42, 43, 45 and 48 were over-age when they were appointed in 2011 on contract basis. In all, 27 Applicant were over-age at the time of their initial entry in service on contract basis. If this is the position and they are not eligible for regular appointment being over age, how can they ask for absorption on regular basis ? Thus, 27 candidates were over age which makes them totally ineligible even to apply let alone to participate in the process of regular recruitment and absorption. In such situation, I am afraid the claim of absorption on regular post would be in contravention of Service Recruitment Rules.

12. In so far as the decision in **Sachin Dawale's** case is concerned, in that matter, despite the creation of permanent posts and its availability, the Petitioners therein were appointed on contract basis for the period ranging from 3 years to 10 years, but they were not given permanency and other related service benefits. It is in that context, they filed Writ Petition wherein it was found that the sanctioned posts were kept vacant because of ban imposed upon

recruitment by Finance Department since 1998 and it is because of said embargo, the appointments were not made in Polytechnic Institutes. It was further transpired that those posts were regular and full time posts. As such, it was a case of appointment on sanctioned, regular and full time posts. It is in that context and in fact situation, the Hon'ble High Court allowed Writ Petition and directed to regularize the services of Petitioners who were completed three years' service with technical break. Indeed, in the said matter, the Hon'ble High Court later made clarification in view of Civil Application No.821/2017 filed by the Government for clarification wherein the Hon'ble High Court by order dated 27.04.2017 issued clarification as under :-

“We may also observe that, citing the said Judgment, some of the employees who are appointed on temporary or contractual basis and who are removed after putting in a year's or two years service are also seeking regularization. We may clarify that the said Judgment would not lay the ratio that, the persons who are appointed on purely contractual or temporary basis without following the due selection process as laid down by the Apex Court in the case of Umadevi, would also be entitled to regularization of their services.”

Suffice to say in **Sachin Dawale's** case itself which is heavily relied by the Applicant, the Hon'ble High Court made it clear that the said Judgment do not lay down the ratio that contractual employees are entitled to regularization.

13. In 2019(3) SLR 644 (BOM) (cited supra) as referred by the learned Advocate for the Applicant, it was a matter of appointment on sanctioned posts and the Petitioners therein worked for 10 years on meager honorium. It is in that context, the Hon'ble High Court allowed Writ Petition granting the relief of absorption. As such, as the Applicant was on clear sanctioned posts, the Writ Petition was allowed. Similar is the position in respect of decision in **Writ Petition**

No.10060 of 2017 (State of Maharashtra Vs. Amol Kakade & Ors.)

relied by the learned Advocate for the Applicant. In that case also, there were sanctioned posts but the appointments were made on contract basis to fill-in the posts of Stenographers. In regular recruitment process, the Government was not getting the candidates for the post of Higher Grade Stenographers. It is in that context and in fact situation, the O.A. filed for regularization was allowed by the Tribunal and the said Judgment was maintained by Hon'ble High Court in Writ Petition No.10060 of 2017. Whereas, in the present case, the appointments are not on clear vacant posts and on the contrary, the Applicants were appointed purely on temporary basis without creating substantive post. Therefore, these decisions are of little assistance to the Applicants.

14. Similarly, reliance placed on **2020 (4) SLR 710 (BOM) (Shailesh Kulkarni Vs. Khandesh College Education Society)** is misplaced. It was a case under Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1978 where management had appointed Teachers on contractual basis and terminated his services. It is in that context, the order of termination was held unsustainable and illegal with the observation that duly qualified persons cannot be continued to be employed on year to year basis in succession and cannot be terminated since the post was available and work was also available. In the present case, this Judgment therefore is of no assistance to the Applicants.

15. In so far as the decision rendered by this Tribunal in **O.A.No.975/2018 (Balasaheb S. Lambhate Vs. The District Collector, Satara & Ors.)** relied by the learned Advocate for the Applicant is concerned, it was a case of appointment on clear vacant post after going through due selection process. The Applicant therein was given all service benefits on par with regular employee but retiral

benefits were withheld. There was voluminous evidence including recommendation of Collector, and therefore, in fact situation, the O.A. was allowed and directions were issued to release regular pension as well as other withheld consequential service benefits. As such, it was a case relating to appointment on substantive vacant posts.

16. Needless to mention that the ratio of any Judgment must be understood in the background of facts of that case. It has been said long time ago that the case is only authority for what it actually decides and not what logically follows from it. It is well settled that a little difference in fact or single additional fact may make a lot of difference in a precedential value of decision. One should avoid the temptation to decide the cases for matching the colour of one against the colour of another. In short, the brood resemblance to another case is not at all decisive. Each decision has to be understood in the background of the facts of that case. Suffice to say, the decisions referred to above relied by the learned Advocate for the Applicants are quite distinguishable being arising from different facts, and therefore, those are of no help to the Applicants in the present case as a precedent.

17. Today, when the matter was listed for pronouncement of Judgment and while the Judgment was under dictation, Shri Bandiwadekar, learned Advocate seeks leave to refer certain more decisions in support of his submission already advanced in the matter. He was allowed to cite the Judgments though it was at belated stage.

18. The learned Advocate for the Applicants referred to **1986 SCC (L & S) 187 (Dhirendra Chamoli Vs. State of U.P.)**. I have gone through the Judgment which is in fact on the point of equal work equal pay. In that case, the employees accepted the employment with

full knowledge that they will be paid only daily wages and they will not get the same salary as other regular Class IV employees were getting. It is in that context, the Hon'ble Supreme Court held that so long as those employees were performing the same duties, they must receive the same salary and condition of service as of Class IV regular employees and indeed, the relief of regularization claimed by the employees was rejected. As such, this Judgment is on the point of same pay for same work and of no help to the Applicants in the present case.

19. Reference was also made to the decision rendered by this Tribunal in **O.A.1091/2015 (Dr. Kshitij D. Lohite Vs. State of Maharashtra & Ors.) decided on 08.05.2019**. In that case, the Applicants seems to have been appointed on contract basis on the post of Dental Surgeon. The MPSC had issued Advertisement for appointment of Dental Surgeon against 189 posts. Some of the candidates were eliminated, enblock on the ground of want of proper experience. Besides, MPSC seems to have adopted criteria for giving preference to the candidates holding MDS degree eliminating the candidates holding BDS. It is in that context and controversy, the O.A. was disposed of with the observation that enblock, eliminating of the candidates is improper and directions were given to MPSC to revise the list of selected candidates and send additional names by including name of the Applicant who was possessing minimum qualification. As such, facts are quite distinguishable and this authority is of little assistance to the Applicant in the present case.

20. Reference was also made to the decision of Hon'ble Supreme Court **1991 SCC (L & S) 25 (Jacob M. Puthuparambil & Ors. Vs. Kerala Water Authority & Ors.)**. This Judgment too is of no help to the Applicants. In that case, the employees were recruited in erstwhile Public Health Engineering Department and were continued

in service even after their transfer to Kerala Water and Waste Water Authority constituted under Section 3(1) of Ordinance XIV of 1984, which was later replaced by enactment of 1986. Resolution was passed on 30th January, 1987 by authority recommending to the State Government for regularization of services of such employees already recruited in erstwhile Public Health Engineering Department. Thus, it was a matter pertaining to absorption and regularization after they were transferred to another Department. It is in that context, the Hon'ble Supreme Court granted relief of absorption in new department considering the principle of job security vis-à-vis surplus labour in unorganized job section. As such, it was not a case of initial appointment on contract basis alike the present case. This being the position, this authority is also quite distinguishable and is of no assistance to the Applicant.

21. The submission advanced by the learned Advocate for the Applicants that only because the Applicants have executed the bond agreeing to the terms and conditions of employment, they being helpless Drivers, such undertaking should not be taken to their disadvantage holds no water. As stated above, at the cost of repetition, it is necessary to point out that the Applicants participated in the process knowing fully well that the appointments would be purely on contract basis on consolidated salary and willingly executed the bond. This being the position, they cannot resile from the terms and conditions of contractual employment. Apart, in absence of appointment on substantive post and some of them being quite ineligible for regular appointment at the time of their entry in service, the claim for regularization will have to be rejected.

22. The submission advanced by the learned Advocate for the Applicant that the Government is exploiting the services of the Applicants by giving them meager salary, and therefore, it is violative

of Article 14 of the Constitution of India also holds no water. It is always prerogative of the Government to formulate particular policy as it falls within its domain and its efficacy cannot be questioned, if it does not violate the statutory provisions or the provisions of Constitution of India. The Applicants knowingly accepted the contractual appointment, and therefore, the question of violation of Article 14 does not arise. Suffice to say, the Tribunal cannot sit in the Judgment of such policy decision taken by the executive.

23. Indeed, the controversy in the present case is fully covered by the decision of Hon'ble Supreme Court in latest Judgment **(2016) 8 SCC 293 (State of Maharashtra & Ors. Vs. Anita & Anr.)**. The facts of this case are quite similar. In that case, the State of Maharashtra had appointed 471 Legal Advisors, Law Officers, Law Instructors on contract basis pursuant to G.Rs. dated 21.08.2006 and 15.09.2006 which are alike G.R. dated 30.03.2010 at Page No.318 of the present O.A. The candidates in Anita's case accepted the contractual appointment agreeing that the appointments are on purely contract basis creating no right, interest or benefit of permanent service. It is in that context, when the issue of regularization arises, the Hon'ble Supreme Court held that they are not entitled to permanent service. In Para Nos.13 and 16, it has been held as follows :-

“13. *The intention of the State Government to fill up the posts of Legal Advisors, Law Officers and Law Instructors on contractual basis is manifest from the above clauses in Government Resolutions dated 21.08.2006 and 15.09.2006. While creating 471 posts vide Resolution dated 21.08.2006, the Government made it clear that the posts should be filled up on contractual basis as per terms and conditions prescribed by the Government. As per clause 'B' of the Government Resolution dated 15.09.2006, the initial contractual period of appointment is eleven months and there is a provision for extension of contract for further eleven 7months. Clause 'B' makes it clear that the appointment could be made maximum three times and extension of contract beyond the third term is not allowed. If the competent authority is of the opinion that the reappointment of such candidates is*

necessary then such candidates would again have to face the selection process.

16. *The High Court did not keep in view the various clauses in the Government Resolutions dated 21.08.2006 and 15.09.2006 and also the terms of the agreement entered into by the respondents with the government. Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred but merely because the posts were created, they cannot be held to be permanent in nature. When the government has taken a policy decision to fill up 471 posts of Legal Advisors, Law Officers and Law Instructors on contractual basis, the Tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature.”*

The facts of present case are exactly identical to the facts of **Anita's** case wherein Hon'ble Supreme Court conclusively held that they are not entitled for absorption on regular basis. Needless to mention, it being recent law laid down by Hon'ble Apex Court, this Tribunal is bound to follow it as precedent.

24. The totality of aforesaid discussion leads me to sum-up that the Applicants are not entitled to the relief of regularization and O.A. is devoid of merit. Hence, I proceed to pass the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 14.12.2020
Dictation taken by :
S.K. Wamanse.

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