

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 971 OF 2014

DISTRICT : pune

1. Shri Ashok Laximan Khamkar,)
Occ : Service as Electrician,)
Dr Bandorwalla Leprosy Hospital,)
Kondhawa, Pune 411 048.)
R/o: Shivshakti Sadan C.H.S,)
Hadapsar, Pune 411 028.)
2. Shri Rudrappa Sivappa Sheded)
Occ : Service as Physiotherapy)
Dr Bandorwalla Leprosy Hospital,)
Kondhawa, Pune 411 048.)
R/o: Dr Minu Mehta Hos. Soc.)
Yevale Wadi, Pune 411 048.)
3. Shri Raju William Karunakaran,)
Occ : Service as Footwear Technician))
Dr Bandorwalla Leprosy Hospital,)
Kondhawa, Pune 411 048.)
R/o: Dr Minu Mehta Hos. Soc.)
Yevale Wadi, Pune 411 048.)

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4. Shri Samson Jaykumar S. David)
 Occ : Service as Lab Technician)
 Dr Bandorwalla Leprosy Hospital,)
 Kondhawa, Pune 411 048.)
 R/o: RB/3, Bldg no. 582, Flat no.11)
 Near Maldhaka, Station Road,)
 Pune 411 001.)
5. Shri Phillip Thomas Paul,)
 Occ : Service as OPD Assistant,)
 Dr Bandorwalla Leprosy Hospital,)
 Kondhawa, Pune 411 048.)
 R/o: Dr Bandorawalla Leprosy)
 Hospital Compound, Kondhawa,)
 Pune 411 048.)...**Applicants**

Versus

1. The State of Maharashtra)
 Through Addl. Chief Secretary,)
 Public Health Department,)
 Mantralaya, Mumbai.)
2. The Director of Health Services,)
 Public Health Department,)
 Arogya Bhavan, St. George's)
 Hospital Compound, Near CST)
 Railway Station, Mumbai.)
3. The Secretary,)
 Law & Judiciary Department,)
 Mantralaya, Mumbai.)



4. The Secretary,)
General Administration Department,))...**Respondents**
Mantralaya, Mumbai.)

Shri V.P Potbhare, learned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 12.04.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri V.P Potbhare, learned advocate for the Applicants and Ms Neelima Gohad, learned Presenting Officer for the Respondents.


2. This Original Application has been filed by the Applicants challenging the communication dated 9.7.2014, issued by the Respondent no. 1 informing the Joint Director of Health (Leprosy & T.B), Pune that the Applicants' services cannot be regularized, as they were appointed on contract basis.

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3. Learned Counsel for the Applicants argued that Dr Bandorwala Leprosy Hospital, Pune was handed over to Poona District Leprosy Committee w.e.f 16.2.1950 under certain terms and conditions pursuant to an agreement between Government of Bombay and the said Committee. Initially, agreement was for 5 years but continued longer. Ultimately, it was again taken over by the Government on 25.9.2001. The Applicants were appointed on different posts from 1976 onwards by the Committee running the said hospital on contract basis. After the said hospital was taken over by the Government, the Respondent no. 1 vide G.R dated 26.2.2002 approved the continuance of 10 persons including the Applicants in service. Learned Counsel for the Applicants argued that the Hospital is now run by the State Government and appointment of the Applicants in different posts has been approved by the Government, by the aforesaid G.R. The Applicants are, therefore, eligible to be absorbed in Government service in vacant posts as per their qualifications. The Applicants have given consent that they may be absorbed in Government service from 15.11.2001, ignoring their past services. Learned Counsel for the Applicants argued that Hon'ble Bombay High Court by judgment dated 20.3.2006 in W.P no 1885/1989 had directed the State Government that first priority should be given in employment to Leprosy patients and Leprosy cured persons in the said hospital and in Cooperative Societies started by the Bandorwala

Leprosy Hospital, Pune. It was specifically directed that appointments be made in the posts to be created for the said hospital from amongst the Leprosy cured patients subject to their suitability and preference to be given to such persons. Learned Counsel for the Applicants argued that the Applicants are Leprosy cured persons and are entitled to be absorbed against sanctioned posts, subject to their suitability for the said posts in terms of the order of Hon'ble High Court. The Applicants had earlier filed O.A no 1276/2010 before this Tribunal and by order dated 6.5.2014, this Tribunal directed the Respondents to consider the representation of the Applicants afresh for regularization of their services. However, the Respondents have once again rejected the representation of the Applicants despite orders of this Tribunal and Hon'ble Bombay High Court referred to above.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicants were appointed by Poona District Leprosy Committee on fixed pay on contract basis. The hospital was taken over by the Government from the Committee on 25.9.2001 and the services of the Applicants were continued on same terms and conditions. The Applicants were not employed as per recruitment rules and therefore, their services cannot be regularized in view of the judgment of Hon'ble Supreme Court in the case of **SECRETARY, STATE OF KARNATAKA Vs. UMARANI, AIR 2006 S.C 1806.**



5. We find that all these issues were discussed in our judgment dated 6.5.2014 in O.A no 1276/2010 filed by the present Applicants. It is a fact that Dr Bandorwala Leprosy Hospital, Pune was handed over to Poona District Leprosy Committee by an agreement between the Committee and Government of Bombay dated 16.2.1956. It was a Government Hospital which was handed over to a Society registered under the Societies Registration Act, 1960 for management. The Staff working in the Hospital was lent to the Committee for one year. The Committee was also allowed to engage staff required to run the Hospital. Government agreed to grant yearly some amount to the Society. It is a fact that the Applicants are Leprosy cured patients who were appointed by the Committee to run the said Hospital. Hon'ble Bombay High Court in suo-motu Writ Petition no 1885 of 1989, on 20.3.2006, passed certain directions regarding this hospital. In the context of the present Original Application, para 9(a) of the aforesaid judgment is important. It reads:-

“9. We, therefore, direct the State of Maharashtra through the Director, Health Services, and the Commissioner for Handicapped as well as the Commissioner for the Co-operative Societies to take following steps:



(a) To obtain sanction to fill in remaining 71 posts and in the said posts, one post of Social Worker (Full Time) shall also be created in addition to the medical and other administrative staff. Needless to mention that the appointments against this sanctioned posts would be made from amongst leprosy cured persons subject to their suitability and preference shall be given to such persons. The sanction should be cleared as expeditiously as possible and preferably within a period of three months from today.”

By then, the management of the Hospital was taken back by the State Government w.e.f 25.9.2001. The directions of Hon'ble Bombay High Court were explicit that preference in employment to run Dr Bandorwala Leprosy Hospital, Pune was to be given to Leprosy cured persons. The Applicants were working in the said Hospital, before it was taken over by the Government from the Committee in 2001. By G.R dated 26.2.2002, the Government approved appointment of 10 persons, including the Applicants.

“शासन निर्णय:-

डॉ. बांदोरवाला लेप्रसी रुग्णालय शासनाने स्वतः ताब्यात घेतल्यामुळे ते चालू ठेवणे शासनाला बंधनकारक असल्यामुळे शासनाकडून सध्या संस्थेला ज्या दराने अनुदान दिले जात आहे त्यात कुठलीही वाढ होणार नाही याची दक्षता घेऊन या सोबतच्या विवरणपत्रात दर्शविलेल्या दहा कर्मचा-यांची नियुक्ती करण्यास या शासन निर्णयान्वये मान्यता देण्यात येत आहे.

उपरोक्त कर्मचा-यांचे वेतन संस्थेला शासनाकडून मिळणा-या सहाय्यक अनुदारातून देण्यात येईल.’’

The Government has decided in 2002 itself to approve appointment of the Applicant, which can only mean appointment in Government service. Read with the order of Hon'ble Bombay High Court, the Applicants should have been absorbed in Government service from the date of proposal of the Respondent no. 2 (i.e 29.11.2001), which proposal was accepted by Government by the aforesaid G.R. The Applicant should have been absorbed in the sanctioned posts based on their qualifications and suitability. Though various proposals were submitted for regularization of services by the Applicants to the Respondent no. 1, no decision was taken. The Applicants filed O.A no 1276/2010 before this Tribunal. The Applicants are restricting their demand to regularization from 29.11.2001, the date on which the proposal was sent by the Respondent no. 2 to the Respondent no. 1 for approval of their employment in the Government . This Tribunal in Para 6 of the judgment dated 6.5.2014, observed in para 6 as follows:-

“6. It is seen from the letter dated 15.1.2013 annexed to the affidavit, it has been decided not to regularize services of the Applicants on the basis of judgment of the Hon'ble Supreme Court in Secretary, State of Karnataka Vs. Umarani, AIR 2006 SC 1806. It is mentioned that appointment of the Applicants were not made after following the Recruitment Rules and prescribed procedure. Prima facie, this view of the Respondents seems

unduly harsh and it ignores many important facts. The Applicants were not appointed by the Administrator of the hospital out of blue. They and give others persons were appointed by Poona District Leprosy Committee, and when the hospital was taken back from the Committee, the Applicants were given fresh appointment on contract basis. It is to be appreciated that the whole hospital was being run by these Applicants till Government decided to sanction 72 posts in 2007 by G.R dated 21.5.2007. There is one more fact, which has to be considered. Some of the Applicants are cured Leprosy patients. If the services of the Applicants were not continued in 2001, there would have been lot of problems in smooth running of the hospital. Obviously, when the Applicants were appointed initially by a private body, the question of their appointment as per recruitment rules or by following prescribed procedure does not arise. The Applicants are not back door appointed Government servants but in a way, part of assets and liabilities taken over by the Government while taking over the management of the hospital. Their case is clearly distinguishable from Umadevi's case and it should be possible to frame a scheme for their absorption in the Government."

Despite these clear directives, the State Government has refused to regularize services of the Applicants. It appears that at present 4 posts of 'Dresser' in Group 'D' are vacant in the said hospital, as stated by the learned Presenting Officer on instructions. Educational qualification for Group 'D' post is Class-IV pass. The Applicants no 1 to 4 are eligible to be appointed in Group 'D' posts on the basis of educational qualifications possessed by them. The Respondents are directed to

absorb these Applicants as 'Dressers' in Group 'D' posts with effect from 15.11.2001. The Applicant no. 5 has passed H.S.C. He can be absorbed in Group 'C' post w.e.f 15.11.2001. The Applicants will be entitled to get pay and allowance in such posts from the date of their absorption. This process will be completed by the Respondents within a period of three months from the date of the order.

This Original Application is allowed accordingly with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 12.04.2016
Dictation taken by : A.K. Nair.