

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.975 OF 2018

DISTRICT : SATARA

Shri Balasaheb Sadashiv Lambhate.)
Age : 59 Yrs., Occu.: Retired as Junior Clerk from)
the office of Tahasildar, Khatav (Waduj),)
District : Satara and residing at Anand Nagar,)
Girvi Naka, Near Tulsi Provision Stores,)
A/P. Phaltan, Tal.: Phaltan, District : Satara.)...**Applicant**

Versus

1. The District Collector.)
Satara.)
2. The Tahasildar.)
Tal.: Khatav (Waduj), District : Satara.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Revenue Department, Mantralaya,)
Mumbai – 400 032.)
4. The Principal Accountant General)
(A & E)-I, having office at M.K. Marg,)
Mumbai – 400 0020.)...**Respondents**

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

Ms. S.T. Suryawanshi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 16.04.2019

JUDGMENT

1. In the present Original Application, the challenge is to the impugned orders dated 14.04.2017 and 27.04.2018 and for grant of consequential service benefits 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 under :-

The Applicant is M.Com. and had also passed Marathi and English Typing Examinatino with 30 w.p.m. The Respondent No.1 – District Collector, Satara appointed the Applicant by order dated 02.10.2918 as Junior Clerk in the Collector Office on the basis of Notification issued by G.A.D. dated 18.06.1983 through District Selection Committee on the recommendation of Employment Exchange Office. Accordingly, the Applicant joined on 02.10.1985 and worked till 31.12.1986. His services were terminated w.e.f. 31.12.1986 in view of Zero Budget policy of the State Government. Therefore, the Applicant and other similarly situated 35 employees have approached this Tribunal by filing O.A.530/1992. The Tribunal granted interim relief and on the basis of interim relief, the Applicant and other similarly situated employees were continued in service. Accordingly, the Applicant's Service Book was maintained as a regular employee and the benefits of 3rd, 4th, 4th and 6th Pay Commissioner was granted. Besides, all other service benefits were granted on par with regular employee. In the meantime, the O.A.530/1992 was dismissed by the Tribunal on 31.07.1998 on the ground that the post on which the Applicant and others were appointed were abolished by the State Government. Being aggrieved by it, the Applicant and others have filed Writ Petition No.4091/1998 wherein, the Hon'ble High Court was pleased to grant interim relief for continuation of the Applicant and others in service. However, the Hon'ble High Court disposed of Writ Petition No.4091/1998 by order dated 25th March, 2013 giving direction to the State

Government to consider the representation of the Applicant in view of favourable report submitted by Collector, Satara for regularization of the services of the Applicant and others. The Hon'ble High Court directed for continuation of interim relief till the final disposal and the representations of the Applicant and others and to continue the same for a period of two weeks in case adverse order is passed on the representation.

3. The Applicant accordingly continued in service on the post of Junior Clerk and stands retired w.e.f.31.05.2017. After retirement, the gratuity, commutation of pension, PPF, GIS was granted to the Applicant. Besides, regular pension was also granted from June, 2017 to April, 2018. However, abruptly, the Respondents stopped the pension of the Applicant as well as also rejected his claim for Leave Encashment on the ground that the State Government had rejected the representation of the Applicant and others for regularization in service. The State Government by order dated 14.04.2017 held that the appointment of the Applicant and others were purely on temporary basis and those posts were abolished in view of Zero Budget policy of State Government in 1986. The State Government, therefore, rejected the representation for regularization in service. In consequent to it, the pension of the Applicant had been stopped w.e.f. May, 2018. The Applicant contends that the pensionary benefits were also granted to his colleagues viz. Mr. Farande and Smt. Desai, but he is subjected to discrimination by stopping his pension.

4. On the above background, the Applicant has filed the present O.A. challenging the impugned order dated 14.04.2017 issued by State Government as well as communication dated 27.04.2018 issued by Tahasildar, Khatav, District Satara stopping the pension of the Applicant. The Applicant also prayed for consequential service benefits including Leave Encashment, and to release regular pension.

5. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.68 to 79 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. Undisputedly, he was initially appointed by order dated 02.10.1985 and his services were terminated w.e.f.31.12.1986 in view of Zero Budget policy of State Government. It is also not in dispute that, in pursuance of interim relief granted by this Tribunal in O.A.530/1992, the Applicant was continued in service till his retirement i.e. 31.05.2017. The Respondents contend that the Applicant was appointed purely on temporary basis and was continued in service only because of interim relief granted by the Tribunal in O.A.530.1992 as well as by Hon'ble High Court in Writ Petition No.5091/1998. The Respondents contend that in view of direction given by Hon'ble High Court in Writ Petition No.4091/1998 considered the representation of the Applicant, but having found that the appointments were purely on temporary basis and continued only on the basis of interim relief granted by the Courts, held that they cannot be regularized in service. The Respondents thus sought to justify the Government decision dated 14.04.2017. It is not in dispute that, after retirement, gratuity, commutation of pension, PPF, GIS was paid to the Applicant and pension was also paid from June, 2017 to April, 2018. With these pleadings, the Respondents prayed to dismiss the application.

6. Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that the stand taken by the Respondents that the Applicant was on purely temporary basis without appointment on sanctioned available posts is totally erroneous, as the documents, particularly report of Collector, Satara clearly spells that the Applicant and others similarly situated employees were accommodated on vacant substantive available posts even after abolition of posts in 1986. He, therefore, urged that the Applicant having completed 23 years' unblemished service, that too on vacant post, now the Government cannot disown the liability to give retiral benefits. He has further pointed out that the Applicant has been subjected to discrimination, as no such action of stoppage of pension has been

taken against similarly situated employees viz. Mr. Farande and Smt. Desai. He has also highlighted that, undisputedly, the Applicant was having required qualification for the post and his appointment was through District Selection Committee on the recommendation of Employment Exchange Office, and therefore, such appointment cannot be termed as illegal or backdoor entry. He, therefore, urged that the impugned action of the Government refusing regularization in service and withholding of regular pension and other consequential service benefits is illegal, arbitrary and violative of Article 14 of Constitution of India.

7. Per contra, Ms. S.T. Suryawanshi, learned Presenting Officer for the Respondents sought to contend that the appointment of the Applicant was without due process of law and secondly, it was purely on temporary basis, and therefore, not entitled to be regularized in service. She has further emphasized that, it is only because of interim relief granted by this Tribunal as well as Hon'ble High Court, the Applicant was continued in the service till his retirement, and therefore, the mere continuation in service would not qualify for pension in the facts of the present case. According to the learned P.O, as per direction of Hon'ble High Court in Writ Petition No.4091/1998, the Government has considered the representation of the Applicant, but found that not entitled to the regularization in view of the law laid down by Hon'ble Supreme Court in its various decisions in (i) ***State of M.P. & Ors. Vs. Lalit Kumar Verma (Appeal (Civil) 5185 of 2006)***, (ii) ***State of Karnataka & Ors. Vs. M.L. Kesari & Ors. (SLP No.15774 of 2006)***, (iii) ***Secretary, State of Karnataka Vs. Umadevi & Ors. (Civil Appeal No.3595-3612 of 1999)***, (iv) ***Nihal Singh & Ors. Vs. State of Punjab & Ors. (Civil Appeal No.1059 of 2005)***, (v) ***A. Umarani Vs. Registrar, Cooperative Societies & Ors. (Civil Appeal No.1413 of 2003)***. She, therefore, prayed to dismiss the O.A.

8. In view of submission advanced at the Bar, the following factors emerges as uncontroverted factual aspects :

- (i) The Applicant was initially appointed by Respondent No.1 on the post of Junior Clerk by order dated 02.10.1985 after going through the process by the District Selection Committee and on the recommendation of Employment Exchange Office and worked till 31.12.1986.
- (ii) At the end of 31.12.1986, the Applicant's services were terminated in view of Zero Budget policy of the State Government.
- (iii) The Applicant and 35 others have filed O.A.530/1992 for continuation in service wherein interim relief was granted by the Tribunal.
- (iv) On the basis of interim relief granted by the Tribunal, the Applicant was continued in service till his retirement i.e. upto 31.05.2017.
- (v) O.A.530/1992 was dismissed on 31.07.1998 on the ground of abolition of posts.
- (vi) In Writ Petition No.4091/1998 filed by the Applicant and others, the Hon'ble High Court continued interim relief in favour of the Applicant and others.
- (vii) The Hon'ble High Court by Judgment dated 25.03.2013 directed State Government to decide the representation made by the Applicant and others in view of the report of Collector, Satara for recommending the Applicant and others for regularization in service.
- (viii) During the tenure of service, the Service Book of the Applicant was maintained on par with regular employee, yearly increments were granted as well as benefits of 3rd, 4th, 5th and 6th Pay Commission were granted.

- (ix) After retirement, the gratuity, commutation of 1/3rd Pension, G.I.S, regular pension from June, 2017 to April, 2018 was released.

9. The crux of the matter is whether the Applicant was appointed without following due process of law, purely on temporary basis and secondly, whether the post on which he admittedly worked for 23 years was substantive post. I must make it very clear that this is not a case that, despite non-availability of substantive vacant post, the Government servant is continued in service only on the basis of protection given by the Tribunal. It is only in a case where only on the basis of protection, the Government servant is continued in service without evidence of substantive post, then mere continuity in service may not confer any rights in favour of such employee. Here is a case which clearly demonstrates that the posting of the Applicant was on available substantive post. This is very crucial and important aspect of the matter and also exposed the maintainability of the Government's decision rejecting the representation of the Applicant. In this behalf, the compilation containing Collector's report, Committee report, etc. marked by letter 'Z' for identification clearly spells that the Applicant worked on vacant substantive post till his retirement.

10. As stated above, there is a reference of Collector's report in the decision of Hon'ble High Court in Writ Petition No.4091/1998 decided on 25.03.2013 whereby directions in the light of favourable Collector's report. The authenticity or genuineness of Collector's report placed on record is not at all doubted by the Government. True, initially, the Applicant was appointed purely on temporary basis by order dated 02.10.1985 and his services were terminated w.e.f.31.12.1986. Indisputably, the selection of the Applicant was through District Selection Committee and was based on the recommendation of Employment Exchange Office. The Applicant was admittedly eligible for the appointment on the post of Junior Clerk. At the end of December, 1986, the

appointment of the Applicant was cancelled in view of abolition of posts based on Zero Budget policy of State Government. However, later again, the Applicant was appointed by order dated 03.02.1994 and continued in service till retirement. Therefore, it would be appropriate to see the nature of posting of the Applicant from 1994 to 2017.

11. Here, pertinent to note that as per order of re-appointment dated 31.01.1994 (in view of interim relief granted by the Tribunal), the Applicant was appointed on clear vacant post, which was fallen vacant because of removal of one Shri R.B. Anpat, Clerk from the service. True, in the order, it is mentioned that the appointment is on ad-hoc interim basis. However, the fact remains that he was appointed on clear vacant post in the pay scale of Rs.950-20-1150. As such, it is amply clear that even after abolition of post, re-appointment was given on clear vacant post.

12. Now, turning to the report submitted by Collector, Satara, the perusal of report of Collector dated 25.05.2000 submitted to the Government reveals that the Government in terms of its G.R. dated 08.03.1999 called upon the Collector to submit the report to consider the issue of absorption/regularization of ad-hoc employees. The Collector in his report submitted that in the year 1986, in view of Government decision of Zero Budget policy, some of the Schemes initiated by the Government were lapsed and consequently, the employees were terminated. However, later, in view of interim relief granted by the Tribunal in O.A.530/1992, the Applicant and similarly situated employees were re-appointed. What is important to note that the Collector clearly opined that the Applicant and other co-employees fulfilled the criteria laid down in G.R. dated 08.03.1999. Here, it would be material to reproduce the relevant extract of Collector's report dated 25.05.2000, which is as follows :

“५. मा. उच्च न्यायालय, मुंबई व महाराष्ट्र प्रशासकीय न्यायाधिकरण यांचेकडे दाखलकेलेले वरील दावे व त्यातील निर्गमित झालेले निकाल यांचा साकल्याने विचार करता वरिल वस्तुस्थिती तसेच शासन सामान्य प्रशासन विभागाकडील दिनांक ८.३.१९९९ च्या निर्णयातील अटी मध्ये खालील खुलासा करण्यात येत आहे.

१. संबंधित कर्मचा-याने सेवाप्रवेश नियमाप्रमाणे विहित केलेली शैक्षणिक अर्हता व वयाची अट मुळ नियुक्तीच्या वेळी पूर्ण केलेली असावी.	:	सदर कर्मचारी सेवाप्रवेश नियमाप्रमाणे विहित केलेली शैक्षणिक अर्हता अट नियुक्तीच्या वेळी पूर्ण केली आहे.
२. दि. १/४/१९९९ रोजी वर्षाची सलग सेवा झालेली असावी व दर्जा किमान चांगला असावा.	:	दिनांक १/४/१९९९ रोजी या कर्मचा-याची सलग सेवा ५ वर्षे पूर्ण होत आहे. तसेच कामाचा दर्जा चांगला आहे.
३. पदे उपलब्ध असावीत.	:	सध्या ते उपलब्ध पदावर कार्यरत आहे.
४. नियमीतीकरण करतांना आरक्षण आरक्षणबिंदू व समांतर आरक्षणाच्या संबंधित तत्वाचे पालन करण्यात आले असावे.	:	नियमीतीकरण करण्याचे झाल्यास आरक्षणबिंदू व समांतर आरक्षण याबाबतचे तत्वाचे पालन होईल.
५. कर्मचा-यांची सेवाजेष्ठता प्रस्ताव आदेश निर्गमित झालेल्या दिनांकापासून करण्यात यावी.	:	याबाबत शासनाकडून निर्गमित होणारे आदेशांचे पालन करणेत येईल.
६. अपारित नियुक्तीचा फायदा कुठल्याही प्रयोजनार्थ कारणासाठी देण्यास येणार नाही.	:	शासनाने सदर कर्मचा-याचे या अटीवर नियमितीकरण करावे असे मत आहे.

Thus, there is specific mention in the report that the Applicant and other co-employees were working on available posts. In other words substantive posts were available, and therefore, the Applicant and other similarly situated persons were continued in service albeit on the basis of interim relief granted by the Tribunal.

13. Then again, it comes to the second report dated 28.01.2008 submitted by Collector, Satara to the Government. Last 2 Paragraphs of the Collector's report are important, which are as follows :

“हे कर्मचारी जिल्हा निवड समितीच्या सर्व निकषांना पात्र ठरत असून जवळ जवळ २० ते २२ वर्षे महसूल खात्यातील विविध पदांवर काम करत आहेत मात्र त्यांना सेवेत नियमित करण्यात आलेले नाही. मा. उच्च न्यायालयाचे अंतरीम आदेशानुसार त्यांना सेवेत कायम ठेवणेत आलेले आहे.

शासनाने महसूल खात्याचा आकृतीबंध मंजूर केला आहे. नविन आकृतीबंध मंजूर केल्याने सदर कर्मचारी अतिरिक्त ठरत नाहीत. आज अखेर रिक्त पदावरच काम करीत आहेत तसेच या कर्मचा-यांना शासन सेवेत

सामावून घेतल्यास नविन पदे निर्माण करण्याची आवश्यकता भासणार नाही. त्याचप्रमाणे नविन वित्तीय तरतूद करण्याची आवश्यकता भासणार नाही.

सबब वरील सर्व पार्श्वभूमी विचारात घेता तसेच हे कर्मचारी सन १९८५ मध्ये मूळ नियुक्तीचे वेळी तत्कालीन सेवा भरती नियमाप्रमाणे विहित केलेली शैक्षणिक अर्हता व वयाची अट पूर्ण करित असल्याने तसेच त्यांना शासन सेवेत सामावून घेतल्यास वेगळी वित्तीय तरतूद करण्याचा अथवा नविन पदे निर्माण करण्याची आवश्यकता भासणार नाही. न्यायालयात दाखल असलेली याचिका स्वखर्चाने मागे घेण्याच्या अटीवर व भविष्यात या संदर्भात कोणत्याही न्यायालयात दाद मागणार नाही असे हमीपत्र सादर करणेच्या अटीवर, या कर्मचा-यांना त्यांचा महसूल खात्यातील कामकाजाचा पूर्णानुभव विचारात घेवून एक विशेष बाब म्हणून शासकीय सेवेत सामावून घेवून त्यांची सेवा नियमित करण्यात यावी असे वाटते. त्याप्रमाणे सलग सेवेच्या दिनांकानुसार जे लाभ नियमित कर्मचा-यांना मिळतात उदा. सेवानेष्ठता, १२ वर्षांच्या सलग सेवेनंतर आश्वासित प्रगती योजना, पेन्शन, ग्रॅज्युटी, खात्याची विभागीय दुय्यम सेवा परिक्षा/महसूल अर्हता परिक्षेस बसण्यास परवानगी इ. लाभ व फायदे या कर्मचा-यांना लागू करणेस मान्यता मिळणेस विनंती आहे. तरी त्याप्रमाणे शासनस्तरावरून जरूर ते आदेश निर्गमित होणेस विनंती आहे. या कर्मचा-यांचा सेवेचा तपशील यापूर्वीचे प्रस्तावासोबत अलाहिदा सादर करणेत आलेला आहे.”

14. Then again, reference of letter of Collector dated 10.08.2015 is important, which shows that total 254 posts of Clerks were sanctioned posts and out of it, 230 were filled-in and 24 posts were vacant. At the end of letter, the Collector opined for absorption of all these employees with a specific note that, all those employees including the Applicant were working on sanctioned posts and if they are regularized in service, it would not invite additional financial burden of the Government. Last Paragraph of letter dated 10.08.2015 is as follows :-

“सदर कर्मचारी सन १९८५ मध्ये प्रथम नियुक्तीचे वेळी तत्कालीन सेवाभरती नियमाप्रमाणे विहित केलेली शैक्षणिक अर्हता व वयाची अट पूर्ण करित होते. तसेच सदर कर्मचारी हे अतिरीक्त कर्मचारी नसून मंजूर पदाअंतर्गत कार्यरत आहेत. सदर कर्मचारी यांना लिपिक संवर्गातील नियमित वेतन अदा केले जात असल्याने त्यांना शासन सेवेत सामावून घेतल्यास वेगळी वित्तीय तरतूद करण्याची अथवा नवीन पदे निर्माण करण्याची आवश्यकता भासणार नाही. सदर कर्मचारी हे सन-१९९४ पासून सेवेत सलग कार्यरत आहेत.”

15. At this juncture, it would be apposite to refer the note prepared by Principal Secretary, Revenue Department, Mantralaya, which goes to show that, under the Chairmanship of Hon'ble Minister, the meeting was held on 16.11.2016 and in pursuance of discussion in the meeting, directions were given to Department to prepare the note for appropriate decision which was to be taken in pursuance of directions given by Hon'ble High Court in Writ Petition No.4091/1998. The said note is placed on record by the learned Advocate for the Applicant with compilation mark 'X' for identification purpose. What is important to note that the Principal Secretary, Revenue Department as well as

Principal Secretary, Law & Judiciary Department had recommended for regularization of these 36 employees considering their long tenure of service as one time measure. The note states that these employees fulfilled the criteria laid down by Hon'ble Supreme Court in **Umadevi's** case, **Kesari's** case and **Nihal Singh's** case (cited supra) and specifically pointed out that the appointments of these employees at the most can be termed 'irregular' and not 'illegal'. There is specific mention in the note that those were appointed on sanctioned posts and they fulfilled eligibility criteria in terms of educational qualification and have also completed more than 10 years' service, and therefore, deserves to be regularized as one time measure. Significantly, it further states that, in terms of G.R. issued by G.A.D. dated 08.03.1999, the 3761 employees appointed through District Selection Committee were regularized and absorbed in service by relaxing the requirement of regular recruitment, but the Applicant and other similarly situated persons (36 employees who had filed Writ Petition No.4091/1998) could not be regularized because of pendency of Writ petition No.4091/1998 as well as inaction on the part of G.A.D. to submit the proposal for their regularization as a one-time measure in the light of directions given by Hon'ble Apex Court in **Umadevi's** case. The Committee comprises of Principal Secretary, Revenue Department and Principal Secretaries, Law & Judiciary Department had taken note of all these aspects and submitted proposal to the Government for seeking opinion of Advocate General for further decision.

16. Despite the reports submitted by Collector as well as the note prepared by the Committee consists of Principal Secretaries of Revenue and Law & Judiciary Department, unfortunately, the Government by impugned order dated 14.04.2017 rejected the representation of the Applicant and others. The Government failed to consider that the appointment of the Applicant and others were on substantive vacant posts and they were appointed through District Selection Committee on the recommendation of Employment Exchange having found fulfilled the eligibility criteria. They are not appointed through backdoor

entry. Therefore, the reason given in the impugned order that their case does not fall within the parameters laid down in *Umadevi's* case is erroneous. True, these employees were continued in service on the basis of interim relief granted by the Tribunal as well as by Hon'ble High Court as mentioned in the impugned order. However, this cannot be used to their disadvantage in view of admitted fact that their appointments were on clear vacant substantive posts through District Selection Committee on the recommendation of Employment Exchange Office. In the impugned order, one of the reason is that, in 1986, the then existing posts were lapsed in view of Zero Budget policy of the State Government. However, the Government seems oblivious of the fact that, later the posts were found available in Collector's office, Satara and they were appointed on the clear vacant posts. Suffice to say, the reasons given in the impugned order does not stand to scrutiny and in fact, it is contrary to the factual aspect.

17. Thus, in view of various reports submitted by Collector and the note prepared by Principal Secretaries of Revenue and Law & Judiciary Department, it is quite clear that, had the Applicant and other similarly situated persons have not approached the Tribunal or Hon'ble High Court, their cases would have been considered as one-time measure for absorption and regularization in view of regularization of 3761 employees, who were regularized as one-time measure in view of directions of Hon'ble Supreme Court in *Umadevi's* case. This being the position, only because the Applicant was continued on the basis of interim relief granted by the Tribunal and by Hon'ble High Court, he cannot be deprived of retiral benefits and not to grant retiral benefits to him is definitely iniquitous and arbitrary. The learned Advocate for the Applicant has also pointed out that the retiral benefits have been already granted to two employees viz. Shri Farande and Smt. Desai, who are similarly situated employees. This being the position, the Government cannot discriminate the Applicant. The leaned P.O's contention that the Department is looking into the matter of grant of pension to these two

employees and steps will be taken to cancel the same is nothing but lame excuse to hide the discrimination meted out to the Applicant.

18. Now, let us see the decisions sought to be relied by the learned P.O. She referred to the decision of the Hon'ble Supreme Court in ***State of M.P. Vs. Lalit Kumar, arising from Civil Appeal No.5185/2006, decided on 24th November, 2006.*** In that matter, the Respondent was appointed on daily wages and undisputedly, his recruitment was not made in terms of the statutory Rules. Besides, no offer of appointment was issued. He filed an application before Labour Court for classification of permanent category of workman on the ground of continuously worked for more than six months, and therefore, could not be terminated without provisions of Section 25(f) of Industrial Dispute Act, 1947. He was directed to be classified on permanent basis and held to be entitled to prescribed wages. It is in this context, when the matter was taken before Hon'ble Supreme Court, the petition filed by State of M.P. was allowed. However, the Hon'ble Supreme Court directed for grant of compensation of Rs.1,50,000/- to the Respondents. As such, in this matter, the initial appointment itself was de hors the Recruitment Rules, and therefore, this authority is of little assistance to the Respondents in the present O.A.

19. In ***Umarani's*** case, the large number of employees were appointed in Cooperative Societies in the State of Tamil Nadu without notifying the vacancies to the Employment Exchange and without following other mandatory provisions of Tamil Nadu Cooperative Societies Act, 1961 and Madras Cooperative Societies Rules, 1963. The employees appointed did not have requisite educational qualification and recruitments were found beyond the permissible cadre strength. It is in that situation, the Hon'ble Apex Court rejected the claim of regularization of the services. In the facts and circumstances of the present case

this authority is of little help to respondent in the light of various subsequent judgments of Hon'ble Supreme Court.

20. In **Umadevi's** case, the Constitutional Bench of Hon'ble Supreme Court held that the appointments made without following due process or Rules relating to appointment did not confer any right on the appointees and Court cannot direct their absorption or regularization. However, the Hon'ble Apex Court made exception to this position and in Para No.53 held as follows :

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [1967 (1) SCR 128], R.N. Nanjundappa [1972 (1) SCC 409] and B.N. Nagarajan [1979 (4) SCC 507] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date."

21. Again, the issue of absorption and regularization came before Hon'ble Supreme Court in **M.L. Kesari's** case, wherein it was a case of appointment of daily wages worker by Zilla Parishad and they were continued in service for more than 15 years without protection of order of any Court or Tribunal. The Hon'ble Apex Court referred to the decision in **Umadevi's** case wherein the directions were given to regularize the employees who fulfilled the criteria laid down therein as one-time measure and again gave direction to State of Karnataka to regularize the services of those Z.P. employees who fulfilled the criteria laid down in para No.53 of **Umadv's** case referred to above.

22. In so far as **Nihal Singh's** case is concerned, it pertains to the appointment of Special Police Officers by State of Punjab in 1980 in view of large scale disturbance in the State of Punjab and inability of the Government to handle law and order situation with the available Police Personnel. It is in that context, the State of Punjab appointed some Special Police Officers resorting to recruitment under Rule 17(1) of Police Act, 1961. Material to note that in **Nihal Singh's** case, the Hon'ble Supreme Court observed that **Umadevi's** judgment cannot become license for exploitation by the State and its instrumentalities. The Hon'ble Apex Court accordingly gave direction to State of Punjab for regularizing the services of the Appellants by creating necessary posts within three months. Para Nos.35 and 36 of the Judgment is important having bearing over the present issue, which are as follows :-

“35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action(inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the Legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is – the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution.

Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities.

23. Shri A.V. Bandiwadekar, learned Advocate for the Applicant referred to the decision rendered by this Tribunal in **O.A.No.308/2012 (Sunil Padave Vs. The Commissioner, State Intelligence Department) decided on 22.06.2015**. In this case, the Applicant Shri Sunil Padave was appointed purely on temporary basis on temporary vacancy of one Mr. M.A. Datar, who was on leave. The Applicant was continued in service for 25 years and his Service Book was maintained on par with regular employee. All service benefits were rendered to him on par with regular employee. However, the dispute arose when he tendered notice of voluntary retirement under Rule 66 of Maharashtra Civil Services (Pension) Rules, 1982. The notice of voluntary retirement was rejected on the ground that he was the temporary employee and his services were never regularized. He, therefore, approached this Tribunal for retiral benefits in view of resignation on completion of more than 20 years' service. This Tribunal elaborately dealt with the decisions in **Umadevi, Umarani** as well as **M.L. Kesari's** case and granted retiral benefits to the Applicant. This judgment was confirmed by Hon'ble High Court in Writ Petition No.163/2016, decided on 2nd March, 2016 and SLP was dismissed by Hon'ble Supreme Court on 17.10.2016. The legal principles discussed in the Judgment are also attracted in the present situation. Suffice to say, where the appointment is on clear vacant post and the employee is treated on par with regular employee by maintaining his Service Book, giving yearly increments and benefits of successive Pay Commissions he cannot be deprived of retiral benefits, particularly when, the appointment is made through some recognized mode of appointment.

24. Before concluding, it would be apposite to refer Rule No.30, 31 and 57 of M.C.S.(Pension) Rules, 1982, which are as follows :-

“30. Commencement of qualifying service.- Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency :

(Provided further that, in cases where a temporary Government servant retires on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of superannuation. Invalid or, as the case may be. Retiring Pension : Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.)

31. Conditions subject to which service qualifies.- (1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression “service” means service under Government and paid by Government from the Consolidated Fund of State or a Local Fund administered by Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by Government.

(3) In the case of a Government servant belonging to the Central Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the Central Government in an officiating or temporary capacity, if any, following interruption by substantive appointment, or the continuous service rendered under that Government is an officiating or temporary capacity, as the case may be, shall qualify :

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply.”

57. Non-pensionable service.- As exceptions to Rule, the following are not in pensionable service:-

- (a) Government servants who are paid for work done for Government but whose whole-time is not retained for the public service,
- (b) Government servants who are not in receipt of pay but are remunerated by honoraria,

- (c) Government servants who are paid from contingencies,
- (d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable,
- (e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government.”

25. The ‘permanent post’ is defined in Rule 9(40) of M.C.S.(Pension) Rules, 1982 as follows :

“**9(40)** : “Permanent Post” means a post carrying a definite rate of pay sanction without limit of time.”

26. The ‘Substantive Pay’ is defined in Rule 9(51) of M.C.S.(Pension) Rules, 1982 as follows :

“**9(51)** : “Substantive Pay” means the pay other than special pay, personal pay or emoluments classed as pay by Government under sub-rule (36)(iii) to which a Government servant is entitled on account of post to which he has been appointed substantively or by reasons of his substantive position in a cadre.”

27. As such, having regard to the provisions contained in Rules 30, 31 and 57, it is explicit that the Applicant’s case fulfilled the necessary criteria contemplated in these Rules for entitlement to the retiral benefits.

28. It is necessary to borne in mind that, in the present matter, the Applicant is seeking direction for retiral benefits after completing qualified service on sanctioned post in view of appointment through District Selection Committee on the recommendation of Employment Exchange Office. Thus, this is not a case where the employment is gained through backdoor entry and were continued in service merely on the basis of some protective orders of the Court. Therefore, the distinction will have to be made while considering the claim for regularization in service where the employment is gained through backdoor entry without subjected to Selection Committee where the appointment itself can be termed

'illegal' and where appointment is made on substantive vacant post through some selection process on recommendation of Employment Exchange Office. In the present case, at the worst, the appointment of the Applicant can be said 'irregular' and not 'illegal' much less to deny retiral benefits to him.

29. In so far as service jurisprudence is concerned, it is well settled principle of law that when a 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 latches, delays as well as acquiescence. In so far as the present matter is concerned, there is no question of latches, 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 Applicant is denied to him.

30. The totality of aforesaid discussion, therefore, leads me to sum-up that by impugned order dated 14.04.2017 as well as consequent communication dated 27.04.2018 are not sustainable in law and deserves to be quashed. The Applicant is, therefore, entitled to the retiral benefits and O.A. deserves to be allowed. Hence, the following order.

ORDER

(A) The Original Application is allowed.

- (B) The impugned order dated 14.04.2017 issued by Respondent No.3 as well as communication dated 27.04.2018 issued by Respondent No.2 are hereby quashed and set aside.
- (C) The Respondents are directed to release regular pension to the Applicant, which has been withheld from May, 2018.
- (D) The Respondents are also directed to extend the benefit of Leave Encashment to the Applicant in accordance to Rules.
- (E) The aforesaid exercise be completed within two months and monetary benefits be released accordingly.
- (F) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 16.04.2019

Dictation taken by :

S.K. Wamanse.

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