

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 140/2020 (D.B.)**

Shri Dattu S/o Balkrushna Dhote,  
Aged about 53 years,  
Occ. Legal and Probation officer,  
R/o Plot No. 104,  
Beldar Nagar,  
Narsala Road, Dighori, Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Women and Child Development,  
New Administrative Building,  
3<sup>rd</sup> Floor, Madam Cama Road,  
Hutatma Rajguru Chowk,  
Mantralaya, Mumbai-32.
- 2) The Commissioner for Women & Child Development,  
(under integrated Child Protection Scheme),  
Maharashtra State Child Protection Society,  
2<sup>nd</sup> Floor, 28 Queens Garden,  
New Old Circuit House,  
Pune-01.
- 3) The President and Collector,  
District Child Protection Committee,  
Civil Line, Nagpur.
- 4) The District Women and Child Development Officer,  
New Administrative Building No. 2,  
6<sup>th</sup> Floor, Civil Line, Nagpur.

**Respondents**

---

**Shri A.Y.Sharma, Id. Advocate for the applicant.**

**Shri H.K.Pande, Id. P.O. for the respondents.**

---

**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &  
Hon'ble Shri M.A.Lovekar, Member (J).**

---

**JUDGMENT****Judgment is reserved on 22<sup>th</sup> Feb., 2023.****Judgment is pronounced on 17<sup>th</sup> Mar., 2023.****(Per:-Member (J))**

Heard Shri A.Y.Sharma, learned counsel for the applicant and Shri H.K.Pande, learned P.O. for the Respondents.

2. The applicant was initially appointed as Honorary Social Worker under the Integrated Child Protection Scheme (ICPS for short) of the Central Government and worked from 1999 to 2012. He was paid honorarium by the Central Government. W.e.f. 31.03.2012 functioning of Adoption Corporation Agency (ACA) was taken over by State Adoption Resource Agency (SARA). Ministry of Women and Child Development, Government of India directed respondent no. 1 to give preference to persons like the applicant who had worked for ACA, while appointing staff of SARA owing to their experience. By order dated 28.02.2017 respondent no. 4 appointed the applicant as Legal and Probation Officer for a term of two years. By order dated 20.02.2019 the term was extended by two years w.e.f. 01.03.2019. However, before expiry of said extended term of two years an advertisement was issued by respondent no. 2 to fill various posts under SARA. The applicant applied for the post of Legal and Probation Officer. He appeared for written test. He was shortlisted. He then appeared for interview. He learnt that he may not be

selected. He worked till 13.03.2020. By order dated 16.03.2020 (Annexure-M) his services were terminated. By pleading thus the applicant prays that the impugned order dated 16.03.2020 be quashed and set aside and his term be extended appropriately.

3. In their reply at PP. 48 to 57 the respondents have averred as follows. Respondent no. 2 society is implementing ICPS since 2012 under the supervision of respondent no. 1. The scheme is being implemented by the Central and the State Governments, their contribution being 60:40. The scheme provides for hiring contractual staff at State and District level. The decision to fill posts in SARA by outsourcing was communicated vide letter dated 05.07.2017 (A-R-2). This decision was quashed and set aside by the Hon'ble Bombay High Court by judgment dated 04.03.2019 (A-R-3) passed in Writ Petition No. 7798/2017. While allowing this writ petition it was observed by the Hon'ble High Court that the respondents were at liberty to consider continuation of petitioners in terms of Clause 3.4 of the scheme. Hence, directions were issued by letter dated 05.08.2019 (A-R-4) to initiate the process of appointment of contractual personnel at District Child Protection Units. On 05.09.2019 a meeting was held minutes of which are at A-R-5. In this meeting a policy decision was taken to fill vacant posts and prepare a waiting list for those personnel whose period of contract had come to an end in the year 2020.

In W.P. No. 6546/2019 the High Court was pleased to pass an interim order dated 24.09.2019 (A-R-6) that the petitioners shall be at liberty to apply for the posts without prejudice to their rights.

Government of India has introduced Integrated Child Protection Scheme (ICPS) in year 2012 in entire country. The Government of India has established Central Adoption Resource Authority (CARA) under ICPS Scheme. Accordingly, the State Government has adopted the ICPS Scheme and established State Adoption Resource Agency (SARA) for implementation and monitoring the adoption activities under Juvenile Justice (Care and Protection of Children) Act, 2000 and Amended Juvenile Justice (Care and Protection of Children) Act, 2000 Act, 2015 in Maharashtra State.

By virtue of order passed in W.P. No. 3133/2016 contract period of the applicant was extended by order dated 20.02.2019 (A-R-8) by two years. Since the post held by the applicant is contractual he cannot claim extension or regularization as a matter of right. The applicant had also applied for the post of Protection Officer and his name was shortlisted at Sr. No. 5 in the list dated 18.11.2019 (A-R-9). One Sadhana Hatwar was found to be most suitable for the post. This decision was recorded in minutes of meeting of the committee (A-R-10). By the impugned letter dated 16.03.2010 (A-R-11) the applicant was informed

that his candidature could not be considered because he had not furnished marksheets of LL.B. and P.G. examination and his services were liable to be terminated since the selected candidate had joined on the post.

This Tribunal has no jurisdiction to entertain and adjudicate instant O.A..

4. We have considered rival submissions and record of the case. We find that question of jurisdiction of this Tribunal will be decisive.

In response to the Revised Integrated Child Protection Scheme (ICPS) sponsored by the Ministry of Women and Child Development, Government of India, an agreement was entered into with the State Government containing Clause Nos. 3.1 to 3.4 under the caption of Selection and Appointment Process which are reproduced below:-

3.1. A Program of this magnitude and nature requires a team of dedicated professionals to establish and run ICPS successfully. The Scheme provides for hiring of contractual staff at State and District level; however the States may appoint the staff on permanent basis or on higher salaries than provided in this scheme for which the States will have to bear the extra expenditure incurred in this regard

3.2 In order to appoint competent and professionally qualified personnel, the contractual posts would be advertised through national/local dailies and personnel recruited on the basis of qualifications, experience, high degree of motivation and commitment to children's causes. Individual terms of reference (TOR) will be drawn up for each post by the State Government. Central level contractual staff will be recruited by the program Joint Secretary (ICPS). State level staff shall be recruited by the Director, ICPS in consultation with the State Principal Secretary/Secretary. The District level staff shall be recruited by the District Magistrate. All recruitments shall be made as per the guidelines of the respective Governments.

3.3 A Selection Committee constituted by the State Principal Secretary/Secretary dealing with ICPS shall recruit the technical and support staff of the SCPS and SARA. For appointment of staff of the DCPU; the District Magistrate shall head the Selection Committee. The other members of this selection committee may include district level officers e.g. District Program Officer (ICDS), District Social Welfare Officer, Chairperson/Members of CWC, Members of JJB etc.

3.4 Every personnel shall have a contract of 3 years, extendable by 2 years on the basis of performance appraisal reports. A review of the performance of each personnel shall be undertaken every year at the

state level by the State Principal Secretary/Secretary dealing with the ICPS and at district level by the District Magistrate. Once the DCPO is appointed, either by deputation or contract, he/she shall also be part of the selection committee, for appointment of other personnel of the DCPU.

5. In orders of appointment dated 28.02.2017 and 20.02.2019 (A-D & E, respectively) *inter alia* following conditions were stipulated:-

“१. जिल्हा बाल संरक्षण कर्मचा-यांची कंत्राटी स्वरूपाची असुन ती ११ महिण्यांसाठी असेल. शासकीय सेवेसाठी संबंधितास कोणताही अधिकार सांगता येणार नाही. भविष्यात यासंबंधात कोणतीही मागणी निवेदन अथवा न्यायालीन अर्ज करता येणार नाही.

४. प्रत्येक वर्षी कर्मचा-यांचे कार्यमुल्यांकन करण्यात येईल आपले कामकाज असमाधानकारक आढळून आल्यास आपली सेवा तात्काळ समाप्त करण्यात येईल.

५. कर्मचा-यांना एकत्रित मासिक मानधन हे पदनिहाय देय असेल.”

6. The question to be determined at the outset is whether services rendered by the applicant for ICPS were in the nature of civil service of the State/whether he was holding a civil post under the State.

7. Section 15 of the Administrative Tribunals Act reads as under:-

**“15. Jurisdiction, powers and authority of State Administrative Tribunals.—**

*(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to—*

*(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;*

*(b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14 appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation or society owned or controlled by the State Government;*

*(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation or society or other body as is controlled or*



*owned by the State Government, at the disposal of the State Government for such appointment.*

*(2)\*\*\*\**

*(3)\*\*\*\**

*(4)\*\*\*\**

8. On the point of jurisdiction of this Tribunal pleading of the applicant is as follows:-

*“The applicant most respectfully submits that he is performing his service under the authority of respondent no.4 as Legal cum Probation Officer on contractual basis in view of the order passed by other respondents and the respondents are 'State' within meaning of Article 12 of the Constitution of India. Therefore this Hon'ble Tribunal has jurisdiction to entertain the present original application.”*

9. A conjoint consideration of Section 15 of the Administrative Tribunals Act, selection and appointment process under the ICPS and terms and conditions stipulated in letters of appointment establish that appointment given to the applicant under ICPS cannot be equated with a civil service of the State nor can it be said that he was holding a civil post under the State. Case of the applicant is not covered by any of the limbs

of Section 15 (1) of the Administrative Tribunals Act. It is not the case of the applicant that by virtue of any notification as provided under Section 15 (2) of the Administrative Tribunals Act jurisdiction to entertain instant O.A. was vested in this Tribunal. There appears to be no dispute that tenure of appointment given for implementation of ICPS lasts only so long as the scheme continues.

10. The applicant has relied on the judgment of the Hon'ble Bombay High Court in W.P. No. 3133/2016 dated 20.09.2016 (A-H). In this case the petitioners' services were sought to be terminated on the ground of completion of contract period of three years by making fresh appointments through outsourcing. The respondents made a statement before the court that those of the petitioners whose performance was satisfactory would be given extension of two years but no extension would be given to those whose performance was not satisfactory. Liberty was given to those whose performance was found to be not satisfactory to make a representation against negative assessment. Thus grievance of the petitioners was redressed.

11. The applicant has also relied on interim order dated 09.12.2019 passed in W.P.No.14776/2019 (A-K). By this order the respondents were directed not to disturb the posts on which the petitioners were working while going ahead with the selection process.

This interim order was to subsist till the next/ returnable date. The applicant has not placed on record any subsequent or final order passed in this writ petition.

12. In W.P. No. 7798/2017, by judgment dated 04.03.2019 (A-R-3) the petition was allowed in the following terms:-

*“In view of above, this writ petition is allowed. The decision containing in Communication dated 05.07.2017 issued by the Commissioner, Women and Child Development Department to adopt outsourcing as mode of recruitment in ICPS Scheme is hereby quashed and set aside. The respondents shall be at liberty to consider the continuation in service of the petitioners in terms of Clause No. 3.4 of the scheme which is reproduced above.”*

13. The applicant has further relied on the judgment of the Bombay High Court dated 30.08.2022 in W.P.No.11009/2021 (**Jayashree Bhale and others vs. The State of Maharashtra & Ors.**). In this writ petition grievance of the petitioners was identical to the grievance of the applicant before us. In this judgment it is observed:-

*“In such circumstances, it is clear that the respondents are replacing the services of the petitioners with fresh candidates.*

*It is trite that adhoc candidates cannot be replaced by other adhoc candidates. The Supreme Court in the case of Mohd. Abdul Kadir and another Vs. Director General of Police, Assam and others reported in (2009) 6 SCC 611 has held that the process of termination and reappointment every year should be avoided and the candidates should be continued as long as the scheme continues, co-terminus with the scheme. In its recent judgment in the case of Mukesh Gupta Vs. President Jan Bhagidari Samiti in Civil Appeal Nos. 3084-3088 of 2022 decided on 21.04.2022, the Apex Court has reiterated the principle that an adhoc employee cannot be replaced by another adhoc employee. He can be replaced only by a candidate who is regularly appointed by following regular procedure prescribed.”*

Operative part of this judgment reads as under:-

*“A. The respondents are directed to reinstate the petitioners in service on their respective posts and to continue them on contractual basis until continuation of the scheme or until they attain the age of superannuation, whichever occurs earlier. For that purpose, the termination orders are set aside.*

*B. The prayer of the petitioners for regularization of their services is rejected.*

*C. The respondents would be free to terminate the services of the petitioners for any other reason like dissatisfactory service, misconduct, medical unfitness, etc. as and when occasion arises.*

*D. The petitioners shall not be entitled for backwages in respect of the period during which their services were terminated on the principle of no work no pay.*

*E. Rule is made absolute in above terms with no orders as to costs.”*

Aforesaid portions of this judgment reinforce the conclusion drawn above that the applicant was not in civil service of the State nor was he holding a civil post under the State. Therefore, we hold that this Tribunal has no jurisdiction to entertain this O.A.. **The O.A. is accordingly dismissed with no order as to costs.** The applicant would be at liberty to avail proper remedy for redressal of his grievance.

**(M.A.Lovekar)**  
**Member(J)**

aps

Dated – 17/03/2023

**(Shree Bhagwan)**  
**Vice Chairman**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman  
& Hon'ble Member (J).

Judgment signed : 17/03/2023.  
on and pronounced on

Uploaded on : 18/03/2023.