

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 714/2020 (S.B.)

Shri Dattatraya S/o Shyamrao Shende,
Aged about 46 years,
Occu. : Service as Instructor (Mason) in ITI,
R/o At Post Mul,
Near Panchayat Samiti,
Tahsil Mul, District:- Chandrapur.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
- 2) The Commissioner,
Tribal Development Department,
Maharashtra State, Nashik.
- 3) Additional Commissioner,
Tribal Development Department,
Adivasi Bhavan, Gorepeth,
Nagpur-10.
- 4) The Headmaster, ITI, Chandrapur.

Respondents

Shri S.P.Kshirsagar, Id. Advocate for the applicant.

Shri V.A.Kulkarni, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

JUDGEMENT

Judgment is reserved on 06th March, 2024.

Judgment is pronounced on 03rd April, 2024.

Heard Shri S.P.Kshirsagar, ld. counsel for the applicant and Shri V.A.Kulkarni, ld. P.O. for the Respondents.

2. The case of the applicant in short is as under:-

As per the Government Resolution dated 03.01.2004, Five Industrial Training Institutes (I.T.Is.) were established in Chandrapur District. By virtue of said G.R., the posts of Electrician, Motor Repairer, Diesel Engine/Motor Mechanic, Mason/Carpenter, Television/Radio Repairing, Tailoring, were sanctioned at Nagpur, Devari and Chandrapur. As per advertisement, the applicant was selected for the post of Instructor (Mason) in the department on 30.11.2004 and he is continued in service till date. Since the work of imparting the education in Mason Trade in the I.T.I. is of a permanent in nature. The applicant was appointed at Chandrapur I.T.I. (non applicant no. 4), the applicant was continued from time to time on the post of Instructor (Mason) by giving various appointment orders in order to deprive the applicant from the benefits of permanent employee and regularization. There is continuity of employment and post is also available permanently for the purpose of imparting education to the Students in I.T.I.. The selection of the

applicant is made in accordance with the procedure prescribed with Law. Thus, the applicant ought to have been regularized in the service by the non-applicants on the post of Instructor (Mason).

3. The applicant has made various representations to the non-applicants for regularizing him in service. However, none of the representations of the applicant was considered by the non-applicants in proper prospective. The respondents have not made regular appointment of the applicant though the post is available. This has been done by the respondents with an intention to deprive the applicant from the lawful benefits accruing to the post of the Instructor (Mason), which includes all the service benefits including pay scale of the said post, which was applicable from time to time to the said post.

4. The respondent no. 1 vide G.R. dated 08.07.2014 has directed to regularize the services of existing 414 posts and also directed to pay them regular pay-scale, but inspite of this G.R., non-applicants have not taken any step to regularize the applicant in service on the post of Instructor (Mason). Hence, the applicant approached to this Tribunal for the following reliefs:-

(a) That the applicant's services in the post of Instructor (Mason) be regularized and the non-applicants be directed to pay all the monetary benefits from 30/11/2004 till to date as

per the pay scale available to the post from time to time and the non-applicants be directed to pay the same to the applicant.

(b) That the amount of arrears of salary from the day one from the appointment of the applicant till to date be directed to be paid within stipulated time, failing which interest at the rate of 10% per annum may be granted to the applicant till its actual realization in accordance with law in the interest of justice.

(c) The non-applicants be directed to confirm the applicant in the post of Instructor (Mason) as a permanent employee from his date of appointment i.e. 30/11/2004.

5. The O.A. is opposed by the respondents. It is submitted that the Tribal Development Department is implementing various schemes of Tribal. As a part of various schemes, the department has established Ashram Schools in the remote and inaccessible areas of the Tribal Sub Plan where the Tribal Students are getting education from these Ashram Schools. With a view to get employment to the Tribal youth after completing the school education, the Government has decided to impart Vocational Training amongst the tribal Students together with regular education. Therefore, the Tribal Development Department issued G.R.

dated 14.08.1997 and started Vocational Training Centres attached to the Ashram Schools with the financial assistance of the Central Government and for these faculties of Vocational Training, the Government has issued directions vide G.R. dated 30.01.2004.

6. It is submitted by the respondents that applicant was appointed as Instructor (Mason) initially in the year 2004-2005 w.e.f. 16.11.2004 to 31.03.2005 at Government Post Basic Ashram School affiliated Vocational Training Centre, Dewada, Taluka Rajura, Dist. Chandrapur by the Project Officer, Integrated Tribal Development Project, Chandrapur vide order dated 16.11.2004. Thereafter, the applicant was continuously granted temporary appointment by giving break in service at a particular interval. Accordingly, applicant has worked w.e.f. 16.11.2004 to till date.

7. It is submitted that the regularization of the applicant would amount to back door entry and not a regular appointment. In view of the judgment of the **Hon'ble Supreme Court in the State of Karnataka & Ors. Vs. Umadevi & Ors. (2006) 4 SCC 1**, the applicant cannot be regularized. At last submitted that the O.A. is liable to be dismissed.

8. During the course of submission, ld. counsel for the applicant has pointed out the Judgment of the **Hon'ble Bombay High Court, Bench at Aurangabad in the case of Madhukar Bhavanrao Sadgir &**

Ors. Vs. The State of Maharashtra & Ors. in W.P. No. 5867/2015.

Learned counsel for the applicant has submitted that similarly situated employees have been given the relief. The Hon'ble High Court has directed the respondents to regularize the services of ad-hoc employees who were appointed in the Ashram School and who were in continuous service for not less than 10 years with a technical break. Learned counsel for the applicant has submitted that the said Judgment was challenged by the State of Maharashtra before the Hon'ble Supreme Court in the S.L.P. No.12338 of 2020. The said S.L.P. was dismissed on 20.08.2020. The Hon'ble Supreme Court upheld the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad and directed the Respondents/State to regularise the services of ad-hoc employees within three months. It appears that the respondents have complied the order of the Hon'ble High Court and the Hon'ble Supreme Court.

9. Ld. P.O. submits that the applicant was appointed purely on ad-hoc basis and his services cannot be regularized. If it is regularized, then it amounts to back door entry. It is not permissible in view of Judgment of the **Hon'ble Supreme Court in the State of Karnataka & Ors. Vs. Umadevi & Ors. (2006) 4 SCC 1.**

10. The Hon'ble Bombay High Court considered the judgment of Uma Devi (Supra). Relevant para 13 reads as under:-

13. In case of **Sheo Narain Nagar & Ors Vs. State of Uttar Pradesh & Ors.** supra the Apex Court has observed that employment cannot be on exploitative terms. The employees therein were conferred temporary status in the year 2006 work load was available and posts were also available, the order of regularization was held to be proper. In case of **Secretary, State of Karnataka and Others Vs. Umadevi and Others** supra the Apex Court observed thus:-

"One aspect needs to be clarified. There may be cases where irregular appointments not illegal appointments as explained in S.V.Narayanappa, R.N.Nanjundappa and B.N.Nagarajan 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 regularisation 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 aboveresferred 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 regularise 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. We also clarify that regularisation, if any already made, but not sub-judice, need not be reopened based on this Judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

The material part of the judgment of the Hon'ble Bombay High Court, Bench at Aurangabad is reproduced below:-

14. *In the present case majority of the persons have been appointed prior to ten years and during the pendency of the writ petition some of them have completed ten years. They are regularly working on the said posts on meager honorarium. The government is expected to be a model litigant.*

15. *One needs to keep in mind that these petitioners were appointed as the respondents were not getting Assistant Teachers so also Class-111 and Class-IV employees government tribal to officiate in the government tribal ashram school run under the Tribal Development Department in the remote tribal areas. The respondents also did not conduct the selection process for all these years. Keeping the petitioners for a long period on honorarium would certainly amount to their exploitation.*

16. *Exceptional circumstances exist to consider the case of the petitioners to for regularization of atleast those who have completed ten years of service as laid down in the case of **Secretary, State of Karnataka Umadevi and Others supra and Others Supra.***

17. *The following circumstances persuades us to consider the case of the petitioners for regularization of those who have completed ten years in service.*

1. *The posts on which the petitioners are / appointed are sanctioned posts.*
2. *The work load is available.*
3. *The petitioners have agreed to officiate at the time when the respondents were not getting the necessary teaching and non-teaching staff to work in remote tribal areas and more particularly when the means of communication and transportation were scarce.*
4. *The respondents have not undertaken selection process for all these years to fill in the posts held by the petitioners.*
5. *The petitioners are working continuously for ten years or more on meager honorarium.*
6. *Asking the petitioners to continue to work on meager honorarium for such a long period would*

tantamount to their exploitation not expected from the welfare State. The State is expected to be a model litigant.

18. *We have considered the case of only those petitioners who have completed ten years or more in the service.*

19. *The petitioners and the respondents have given the details of the number of years the petitioners have worked. During the pendency of the present writ petition some of the petitioners are terminated from the service. We would not be considering the case of the petitioners who are terminated from the service prior to the completion of ten years. However, those petitioners who have completed ten years of service and in spite of pendency of the writ petition are terminated are required to be reinstated.*

20. *There is not much difference in the chart given by the petitioners and the State with regard to the number of years the petitioners had worked.*

21. *In light of the above, we pass the following order.*

ORDER

i. *The respondents shall regularize the services of the petitioners who have completed ten years of service with effect from the date they have completed ten years or the date of filing of writ petition whichever is later.*

ii. *Those petitioners who are terminated after completion of ten years of service during the pendency of*

the writ petition shall be reinstated and shall be granted regularization from the date they have filed the petition or after completion of ten years of service whichever is later.

iii. For all practical purposes the services of the petitioners shall be considered regular from the date as observed above. However, we may not grant them actual financial benefit for the period prior to the present order. They will be entitled for the regular pay scale from 01.11.2018.

iv. The respondents shall count the services of the petitioners from their date of appointment continuously for counting ten years of their service.

22. We have not considered the cases of those petitioners who have not completed ten years of their service. We leave it to the respondent-State to consider their case on its own merits and as per their policy

23. Writ Petitions are allowed. Rule is made absolute on aforesaid terms. No costs.

11. The applicant has completed more than 10 years of service. He is kept on ad-hoc basis. Respondents is paying only honorarium of Rs. 7500/-. The applicant is not getting regular salary of the post. There

is no dispute that applicant is still working with the respondents. It is admitted by the respondents that applicant is still working on the ad-hoc basis on the post of Instructor (Mason). In view of the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad cited above, it is clear that ad-hoc employees who were working in the Ashram School, who have completed more than 10 years of services, should have been regularized. The said Judgment was challenged by the State of Maharashtra before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the S.L.P. and directed the respondents to regularize the services of ad-hoc employees within three months. The applicant is similarly situated ad-hoc employees. Hence, he is entitled for the same relief which was granted by the Hon'ble Bombay High Court. In view of the cited Judgment of **the Hon'ble Bombay High Court, Bench at Aurangabad in the case of Madhukar Bhavanrao Sadgir & Ors. Vs. the State of Maharashtra & Ors. in Writ Petition No. 5867/2015**, the following order is passed:-

O R D E R

- A. The O.A. is allowed.
- B. The respondents are directed to regularize the services of the applicant on the post of Instructor (Mason) from the date he has completed 10 years. However, actual financial benefits for regular pay

scale shall be given from 01.11.2018. The respondents shall count the service of the applicant from the date of initial appointment continuously for counting 10 years of his service (as per the judgment of Hon'ble Bombay High Court).

C. The respondents are directed to comply the order **within a period of three months** from the date of receipt of this order.

D. No order as to costs.

(Shri Justice M.G.Giratkar)
Vice Chairman

Dated :- 03/04/2024.
aps

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.

Judgment signed on : 03/04/2024.
and pronounced on

Uploaded on : 04/04/2024.