

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 291/2021 (D.B.)**

- 1) Smt. Marisa Arvind Birpol,  
Aged about 52 years,  
Occupation ; Service,  
R/o- Christian Colony Khadan Akola, Tq  
And District Akola.
- 2) Sanghmitra @ Sangeeta Pandit Ingle  
Aged About 51 years,  
Occupation : Service,  
R/o – Shanti Suman Niwas Gokuldham,  
Buldhana Road Malkapur,  
District- Buldhana.
- 3) Smt. Rekha W/o Deepakrao Dudhe,  
Aged about 51 years,  
Occupation : Service,  
R/o – House No.1070 Line No : 5 Gajanan,  
Pote Towanship Amravati.
- 4) Smt. Neeta Bhikaji Mahankar,  
Aged about 52 years,  
Occupation : Service,  
R/o – In front of SKK college Sai nagar,  
Jalgaon Jamod Road Buldhana-443402
- 5) Mangala d/o Jagganath Jadiye,  
After marriage Mangla Umakant Jadhav,  
Aged about 51 years,  
Occupation : Service,

- R/o – Geeta Nagar Washim  
Bypass Road, Akola.
- 6) Smt.Sunita Kalbhage,  
Aged about 52 years,  
Occupation : Service,  
R/o – C/o – Vijay Ingle – Congress Nagar,  
Near Saraswati Junior College,  
Chikli Road Buldhana-443001.
- 7) Meenakshi Dhyandeo Naik,  
Before marriage Meenakshi Laxam Shirsat,  
Aged about 53 years,  
Occupation : Service,  
R/o – Sai Vatika Apartment, Old Radhika,  
Plot Near Ayurvedic Hospital Station,  
Road Akola.
- 8) Kalpana Kisanrao Sonole,  
Aged about 51 years,  
Occupation : Service,  
R/o – Tripura Apartment,  
Gayatri Nagar, Magrulpir Road Akola.
- 9) Meena Shankarrao Bagal,  
Aged about 51 years,  
Occupation : Service,  
R/o – Keshav Nagar, Ring Road Akola.
- 10) Sushma Peter Salve,  
Aged about 50 years,  
Occupation : Service,  
R/o – G-4 Near Nisarg Garden Khadki, Akola.

- 11) Sangeeta Ramchandra Dalvi,  
Aged about 51 years,  
Occupation : Service,  
R/o – “Shri Krushnarpan”Plot No.48,  
Chandore Nagar Dhamangaon Road,  
Durgai layout, Yavatmal.
  
- 12) Pushpa Gulabrao Thote,  
After marriage Pushpa Rajendra Raut,  
Aged about 51 years,  
Occupation : Service,  
R/o – Mangaldham Colony,  
Radhika Nagar, Old Bypass,  
Dastur Nagar Road, Amravati.
  
- 13) Rekha Devidas Asolakar,  
(Before marriage) and after marriage,  
Rekha Baburao Sheraskar,  
Aged about 51 years,  
Occupation :Service  
R/o – Priyanka B Apartment Plot No.3,  
Kharewadi Infront of Bunglow of DIG,  
Amravati-444602.
  
- 14) Meena Narayan Bagde,  
Aged about 53 years,  
Occupation : Service,  
R/o – Girija Vihar, Near water tank,  
Shegaon Naka, Rahatgaon Road,  
Amravati.

- 15) Sindhu Purshottam Kalne,  
Aged about 52 years,  
Occupation : Service,  
R/o – Purva Layout, Krushna Nagar,  
Near Krushna Mandir Kaulkhed,  
Akola – 444004.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
Through its Secretary,  
Public Health Department,  
Mantralaya, Mumbai-32.
- 2) The Commissioner Director of  
Health Service, Public Health Department,  
3<sup>rd</sup> floor, St. George Hospital Campus,  
Arogya Bhavan, Near C.S.T. Mumbai.
- 3) Dy. Director of Health Services,  
Zilla Stri Rugnalaya Campus,  
Akola.

**Respondents**

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Shri G.I.Dipwani, Ld. Counsel for the applicant.  
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

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**Coram:- Hon'ble Shri Shree Bhagwan, Vice-Chairman and  
Hon'ble Shri M.A.Lovekar, Member (J).**  
**Dated: - 7<sup>th</sup> October 2022.**

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**JUDGMENT****Per : Member (I).****Judgment is reserved on 21<sup>st</sup> September, 2022.****Judgment is pronounced on 7<sup>th</sup> October, 2022.**

Heard Shri G.I.Dipwani, learned counsel for the applicants and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. Case of the applicants is as follows.

By orders passed by respondent no.2 the applicants were appointed to the posts of Staff Nurse and started working on the establishment of respondent no.3. They executed bond of two years. From the date of their initial appointment their seniority as Government servant ought to have been counted. Some Staff Nurses approached the Hon'ble Bombay High Court and this Tribunal. On the basis of orders passed by the High Court and this Tribunal communication dated 15.12.2017 (Annexure A-3) was issued to all Deputy Directors of Health Services in the State as follows-

प्रति,

उपसंचालक, आरोग्य सेवा,

मंडळ कार्यालये (सर्व)

विषय : बंधपत्रित अधिपरिचारीकाच्या सेवा नियमित करणेबाबत.

संदर्भ : १. सा.आ.वि., सेवा-५, मंत्रालय, मुंबई यांचे पत्र क्रमांक  
याचिका-२०१७. श्रीन खानदे/प्र.क्र.३०२/सेवा-५, दिनांक १४.१२.२०१७

२. सा.आ.वि. अधिसूचना दिनांक १५.०४.२०१५

३. संचालनालयाचे पत्र दिनांक २५.०१.२०१७

उपरोक्त विषयी संदर्भात नमूद शासन पत्राचे अनुषंगाने सर्व उपसंचालक, आरोग्य सेवा, मंडळ कार्यालये यांना बंधपत्रित अधिपरिचारीकांच्या सेवा नियमित करण्याच्या दृष्टीने पुढीलप्रमाणे सूचना देण्यात येत आहेत.

१. ज्या बंधपत्रित अधिपरिचारीका दि.२५.०८.२००५ रोजी कार्यरत होत्या व आजही कार्यरत आहेत व महासंचालक, आरोग्य सेवा, मुंबई यांचे दि.१०.०९.२००३ च्या पत्रामध्ये दिलेल्या अटी व शर्ती पूर्ण करतात अशा अधिपरिचारीकांच्या सेवा सदर पत्रात दिलेल्या सूचनेनुसार नियुक्तीच्या प्रथम दिनांकापासून नियमित करण्यात याव्यात.
२. दि.२५.०८.२००५ च्या नंतर बंधपत्रित अधिपरिचारीका म्हणून सेवेत जाणा-या आणि दि.३१.१२.२०११ रोजी कार्यरत असलेल्या बंधपत्रित अधिपरिचारीकांच्या सा.आ.वि. अधिसूचना, दिनांक १५.०४.२०१५ मधील परिच्छेद क्रमांक १३ नुसार नियमित कराव्यात.
३. सदर अधिसूचनेनुसार ज्या बंधपत्रित अधिपरिचारीकांनी विशेष लेखी परीक्षा दिली आहे व या परिक्षेत ज्या उत्तीर्ण झाल्या आहेत अशा सर्व बंधपत्रित अधिपरिचारीकांच्या सेवा नियमित करण्याचे आदेश निर्गमित करण्यात आले नसतील तर ते तात्काळ पुढील सात दिवसांच्या आत निर्गमित करावेत.
४. सदर अधिसूचनेनुसार ज्या पात्र बंधपत्रित अधिपरिचारीकांनी अद्याप विशेष लेखी परीक्षा दिली नाही अशा सर्व बंधपत्रित अधिपरिचारीकांकरिता अधिसूचनेतील तरतुदीनुसार दुसरी संधी देण्याकरीता विशेष लेखी परीक्षेचे आयोजन करण्याच्या दृष्टीने अशा लेखी परीक्षा अद्याप न दिलेल्या बंधपत्रित अधिपरिचारीकांची संख्या २२.१२.२०१७ पर्यंत संचालनालयास कळवावी.

५. दि.०१.०१.२०१२ रोजी किंवा त्यानंतर नियुक्त झालेल्या बंधपत्रित अधिपरिचारीकांनी नियमित होण्यासाठी संचालनालयामार्फत आयोजित भरती प्रक्रियेत त्यांची निवड होणे आवश्यक आहे. त्यांच्या सेवा अशी निवड झाल्यानंतर देण्यात येणा-या नियुक्ती आदेशाच्या दिनांकापासून नियमित करण्यात येतील.

उपरोक्त सुचनांनुसार तात्काळ कार्यवाही करून त्याचा अनुपालन अहवाल तात्काळ संचालनालयास सादर करावा.

However, respondent no.3 did not follow the directions contained in the communication dated 15.12.2017 while preparing the impugned seniority list as on 01.01.2021 (Annexure A-1). While preparing this seniority list for promotion to the post of In-charge Sister Nurse respondent no.3, instead of fixing seniority of the applicants from the date of their initial appointment, proceeded to fix it from the date of their repatriation to the parent department. Hence, this O.A. for following principal reliefs-

- i) ***Quash and set aside the impugned communication dated 09/03/2021 [Anx- 'A-1'] forwarded by the respondent no.3 to respondent no.2 along with list enclosed therein and direct the respondent no.3 to prepare fresh list along with all the necessary documents to the respondent no.3 for considering of claim for promotion to the post of In-charge Sister Nurse in the interest of justice.***
- ii) ***Direct the respondent no.3 to comply the direction given by the respondent no.2 in respect of bonded Staff***

***Nurses appointed prior to 25/08/2005 and treat them regular from their date of entry into services and prepare the seniority list accordingly.***

3. Reply of respondent no.3 is at pp.101 to 113. It is his contention that the applicants had accepted repatriation on zero seniority in view of G.R. dated 17.08.2004 (Annexure R-2) and hence their seniority was rightly fixed from the date of their repatriation and not from the date of their initial appointment.

Heading of G.R. dated 17.08.2004 is as under-

जिल्हा परिषदेच्या आस्थापनेवर प्रतिनियुक्तीने कार्यरत बंधपत्रित प्रसाविका परिचारीकांना शून्य जेष्ठतेवर राज्य शासन सेवेत प्रत्यावर्तनाने सामावुन घेणेबाबत.

This G.R. *inter alia* states-

पाच) जिल्हा परिषदेकडील परिचारीका शासन सेवेत आल्यानंतर त्यांची सेवाजेष्ठता शून्य ठरविण्यात यावी.

Thus, the only question which needs determination is from which date seniority of the applicants is to be fixed.

4. The applicants have relied on order dated 24.06.2016 passed by the Bombay High Court in M.C.A.No.862/2014 in W.P.No.4831/2012. This order is as follows-

**The policy decision of the Government to regularize the service of Nurses after following the procedure adopted, is reflected in the communication dated 15.08.2014 issued by the**



Director, Public Health Department, Mumbai. About 5767 Nurses appointed all over the State have been regularized leaving 13 complainants, who had approached the Industrial Court claiming regularization on par with these 5767 Nurses.

The matter came up to this Court in Writ Petition No.4829 of 2012 along with other connected matters which were decided by common judgment of this Court delivered on 08.04.2014. This Court set aside the regularization granted by the Industrial Court to the petitioners/complainants and the complaints filed were dismissed. This Court accepted the distinction made by the Government authorities that the 13 complaints were not selected as bonded candidates. They failed in the selection by the Divisional Selection Committee, and this Court, therefore, had held that the distinction was justified.

All the candidates approached before the Apex Court by filing Special Leave Petition. The Apex Court passed an order on 02.05.2014 in SLP No.12124-12130/14 which is reproduced below :

*“Taken on Board.*

*We find no reasons to entertain these petitions for special leave, which are, dismissed. All the same, liberty is granted to the petitioners to file a review, if the similarly placed persons petitioners have been regularized, in the event of which,*

***the High Court will examine the same and pass appropriate orders, in accordance with law.”***

**Accordingly, these review petitions have been preferred.**

**While, issuing notice to the respondents, the contentions raised by the complainants were noticed with reference to specific documents placed on record to show that all the complainants are similarly placed with those whose services are regularized. Accordingly, the respondents were directed to file reply to the said specific averments by common order dated: 22.09.2014 passed in these Miscellaneous Civil Application for review.**

**The affidavit has been filed by the respondent no.2 on behalf of the respondent Nos.3 and 5 including the Director of Health Services stating that the regularization of the services of 900 Staff Nurses appointed was illegal and against the statutory rules and in violation of Article 14 and 16 of the Constitution of India, and, it is therefore, proposed to move for cancellation of these appointments by holding departmental enquiry. According to the stand in the affidavit dated 13.04.2016, the corrective measures are being adopted to cancel all regular appointment orders of bonded staff Nurses, who were illegally regularized in the service without**

following the recruitment process by the Divisional selection Committee.

Apparently, 5767 Nurses working all over the State were regularized, which is apparent from the order at page 50 issued on 15.02.2014 by the Director, Public Health Department. Out of these, the corrective measures are proposed to be taken only against the 900 Nurses of Nagpur without making any distinction between those who are to be retained and those whose appointments are to be cancelled on the ground that the same were without following the procedure of recruitment by the Divisional Selection Committee.

*Prima facie* it seems that the respondent authorities of the State Government got all the Writ Petitions allowed by misrepresenting before this Court that all the 13 complainants before this Court were not selected, along with the other 900 Nurses from the Nagpur region who were regularized by an order dated 15.02.2014. Even in response to these review applications the stand earlier taken that the complainants were not regularized because they were not selected, has not been reiterated, thereby creating an impression that all the 13 complainants were similarly situated with those 900 staff Nurses regularized in service from the Nagpur region. *Prima facie*, there is no justification for making distinction between 900 Staff Nurses, whose appointments are

proposed to be cancelled and the other out of 5767 Nurses regularized all over the State. *Prima facie*, there appears to be lack of *bona fides* on the part of respondent State Government authorities. If the policy decision is not to regularize the persons appointed de hors the provisions of law, then it has to be implemented in respect of all 5767 staff Nurses regularized in such fashion. This is not the stand with which the respondents are coming forward before this Court.

In view of above, the Director of Health Services (Public Health), Mumbai along with other respondents and the Secretary, Public Health Department of the State are directed to personally remain present before this Court on 18.07.2016 with a clear stand on affidavit in respect of the matters reflected in this order. The object of calling the Secretary is to know the exact policy decision and the other respondents have, in spite of taking lot of time, not come forward with the definite stand which was expected to the specific averments made in these applications and the order passed on 12.09.2014. This Court is *prima facie* of the view that the respondents are playing the game of hide and seek. If the concerned officers fail to remain present on that date, the Court shall be constrained to issueailable warrant to secure their presence.

**Steno copy of this order be supplied to the learned AGP to act upon.**

**The learned AGP to communicate this order by E-mail or speedy communication available in the office to the authorities concerned, within a period of two days from today.**

In the aforesaid matter, on 18.07.2016, the High Court passed the following order-

*In response to the order dated 24-06-2016, the learned Government Pleader Smt. Bharti Dangre has appeared in this matter and submits that the Director and the Secretary of the Department are personally present before this Court. After taking instructions from them, a categorical statement is made by the learned Government Pleader before this Court that all the thirteen complainants shall be regularized in service on the posts of Nurses within a period of one month from today on the same terms and conditions on which the other 5,767 Nurses have been regularized all over the State. The statement made before this Court is accepted as an undertaking to this Court.*

*Put up this matter on 29-08-2016 to see the compliance of the statement made before this Court.*

*It is made clear that if the orders of regularization are issued, it shall not be necessary for the Director and the Secretary of the Department to*

***remain personally present before this Court and filing of an affidavit to that effect sworn by the Secretary of the Department shall be the sufficient compliance.***

On 07.10.2016, in the aforesaid matter, the High Court passed the following order-

***It is reported that in response to the order dated 18.07.2016 passed in Misc. Civil Application (Review) No.856 of 2014 all the complainants have been regularized in service and the grievance of the complainants does not at all survive.***

5. The applicants have further relied on orders dated 16.11.2016 and 09.12.2016 (Annexure A-6) passed by this Tribunal in O.A.No.900/2016. These orders are as under-

***Heard Shri G. Sadavarte, the learned Advocate for the Applicant and Shri N.K.Rajpurohit, the learned Chief Presenting Officer for the Respondents.***

***The learned C.P.O. placed on record a communication from the Director, Health Services, Mumbai, dated 15.11.2016 to the Principal Secretary, Public Health Services, Mantralaya, Mumbai.***

***It is clear that the facts herein are apparently such as to be governed by the judgment of the Division Bench of the Hon'ble Bombay High Court of Nagpur Bench which has been referred to in the said communication.***

*The Director Health Services, Mumbai has apparently requested the government to make appropriate orders. Now, if the matter has to be decided in terms of order of the Hon'ble High Court there is no reason why there should be any delay.*

*I direct the Government to take appropriate decision within three weeks from today. The matter be placed before me on 09.12.2016. Hamdast.*

*Heard Shri G. Sadavarte, the learned Advocate for the Applicants and Shri N.K.Rajpurohit, the learned Chief Presenting Officer for the Respondents.*

*The matter is taken up for final disposal by consent of both the sides. See my order dated 16.11.2016. It is clear that the fact at issue involved herein has to be determined in terms of the judgment of the Nagpur Bench of the Hon'ble Bombay High Court referred to in the communication of the unnumbered second paragraph of the said order dated 16.11.2016. The respondents are directed to decide the case of these applicants in accordance as mentioned by themselves in that letter of the said judgment of the Hon'ble Nagpur Bench in W.P.No.2046/2010 within two months from today and communicate to the applicant the outcome thereof within one month thereafter.*

6. The applicants have also relied on the judgment dated 04.08.2022 delivered by this tribunal in O.A.No.579/2018. While

deciding the said O.A. reliance was placed on the above referred orders of the Bombay High Court as well as this Tribunal. It is not the case of the respondents that the applicants in this O.A. and the persons who had approached this Tribunal and the Bombay High Court earlier are not similarly placed. Hence, the applicants who are now before us would be entitled to benefit of parity. In support of this conclusion reliance may be placed on the following observations of the Hon'ble Supreme Court in "*State of Uttar Pradesh and Others Vs. Arvind Kumar Shrivastava (2015) 1 SCC 347*" -

*"Normal rule is 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 benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."*

7. For the reasons discussed hereinabove the O.A. is allowed in the following terms-



The impugned seniority list dated 09.03.2021 (Annexure A-1) is quashed and set aside. The respondent no.3 shall prepare a fresh seniority list as per the directions contained in the communication dated 15.12.2017 (Annexure A-3). No order as to costs.

(M.A.Lovekar)  
Member (J)

(Shree Bhagwan)  
Vice Chairman

Dated – 07/10/2022

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

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Vice Chairman &  
Court of Hon'ble Member (J) .  
Judgment signed on : 07/10/2022.  
and pronounced on  
Uploaded on : 07/10/2022.