

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 165 / 2015 (S.B.)

1. Santosh S/o Datta Khadse,
Aged about 41 yrs., Occ. Service,
R/o 302, Sobha Apartment,
Sangam Developer Building,
Vijayanand Society, Narendra Nagar,
Nagpur-15.
2. Mrunal D/o Vinod Joharapurkar,
Mrunal W/o Nitin Dange (after marriage),
Aged about 33 yrs., Occ. Service,
R/o Dr. Bhiwapurkar Marg,
Dhantoli, Nagpur-12.

Applicants.

Versus

- 1) The State of Maharashtra,
Through its Principal Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai- 400 032,
- 2) Directorate of Art,
State of Maharashtra,
Through its Director,
J.J.School of Art Campus,
Dr. D.N.Road, Mumbai-1.
- 3) Shashkiya Chitrakala Mahavidyalaya,
Through its Dean, Opposite
Deekshabhoomi, Laxminagar,
Nagpur-22.

Respondents

With
ORIGINAL APPLICATION NO. 161 / 2015 (S.B.)

1. Pradip S/o Jankiram Kumavat,
Aged about 39 yrs., Occ. Service,
R/o Tilak Nagar, Silod, Near Kalika Mata
Mandir, Tah. Sillod,
Dist. Aurangabad-431 001.
2. Narayan S/o Punjaram Sonawane,
Aged about 34 yrs., Occ. Service,
R/o Sector No. 155, Plot No. 46, Gokul,
Nagar, Surewadi, Aurangabad-431 001.

3. Sharad S/o Vitthalrao Mahure,
Aged about 51 yrs., Occ. Service,
R/o 9, Shri Swami Vivekanand Puram,
Peer Bazar, Usmanpura,
Aurangabad-431 005.
4. Ashwini D/o Ramesh Salodkar,
Aged about 31 yrs., Occ. Service,
C/o V.S.Kulkarni, Block No. 11, Municipal
Colony, Kile Ark, Aurangabad-431 001.

Applicants.**Versus**

- 1) The State of Maharashtra,
Through its Principal Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai- 400 032,
- 2) Directorate of Art,
State of Maharashtra,
Through its Director,
J.J.School of Art Campus,
Dr. D.N.Road, Mumbai-1.
- 3) Government School of Art,
Through its Dean, Janana Mahal,
Kile Ark, Aurangabad-431 001.

Respondents**With****ORIGINAL APPLICATION NO. 162 / 2015 (S.B.)**

1. Vijay S/o Vishnu Bondar,
Aged about 33 yrs., Occ. Service,
R/o Parth Sadan, Mahasul Colony,
Behind Tahsil Office, Kallam,
Tq. Kallam, Distt. Osmanabad-413 507.
2. Abhijeet S/o Baban Salunkhe,
Aged about 33 yrs., Occ. Service,
R/o Mali Galli, Tajgaon,
Tq. Tajgaon, Distt. Sangli – 416312.
3. Yashwant S/o Bhagwan Bhavsar,
Aged about 33 yrs., Occ. Service,
R/o F/101, Laxmi Nagar (kardal),
Saphale, Tq. & Distt. Palghar-401 102.

4. Shreekant S/o Tumadu Khairnar,
Aged about 36 yrs, Occ. Service,
R/o Mukund Co-operative Housing
Society, Godavari Building, 2nd Floor,
Room No. 11, Thane (West) 400 601.
5. Shardul S/o Sambhaji Kadam,
Aged about 32 yrs., Occ. Service,
R/o C/o Sujata Thombre, 101,
Nageshwar Kripa Society,
Opposite KBMC, Kulgaon, Badlapur,
(East) Thane-421 503.
6. Shailesh S/o Ramrao Dudhalkar,
Aged about 38 yrs., Occ. Service,
R/o Shivaji Ward, Warora, Tq. Warora,
Distt. Chandrapur-442 907.
7. Shashank S/o Balram Mhashilkar,
Aged about 29 yrs., Occ. Service,
R/o 001-B/ Wing Building No. 2,
Morya Nagari, Manera Road,
Ulhas Nagar-421 004.
8. Prafulla S/o Pramod Satokar,
Aged about 39 yrs., Occ. Service,
R/o 401, Divyakshi Co-operative,
Housing Society, Near Mayuresh Park,
Pakhadi Road, Khadegaon,
Kalwa (West) Thane-400 605.
9. Prakash S/o Hari Sonawane,
Aged about 36 yrs., Occ. Service,
R/o 601, A-4, Sukur Residency,
Near Saibaba Complex,
Anand Nagar, G.B. Road,
Thane (West) 400 067.

Applicants.

Versus

- 1) The State of Maharashtra,
Through its Principal Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai- 400 032,
- 2) Directorate of Art,
State of Maharashtra,
Through its Director,
J.J.School of Art Campus,
Dr. D.N.Road, Mumbai-1.

- 3) Sir J.J. School of Art,
Through its Dean, Sir J.J. School of Art Campus,
Dr. D.N.Road, Fort, Mumbai-400 001.

Respondents

With

ORIGINAL APPLICATION NO. 163 / 2015 (S.B.)

1. Chetan S/o Ramakant Jagtap,
Aged about 38 yrs., Occ. Service,
R/o Jagtap Complex,
Post Devgad, Tq. Devgad,
Distt. Sindhudurg-416612.
2. Rahul S/o Dhondiram Thorat,
Aged about 38 yrs., Occ. Service,
R/o N-11, F-5/8, Navjivan Colony,
Hudco, Aurangabad – 431 003.
3. Hemant S/o Bharat Ravandale,
Aged about 35 yrs., Occ. Service,
R/o Plot No. 57, Bholebaba Nagar,
Near Kolwale Nagar,
Behind Nisarg Upchar Kendra,
Malegaon Road, Dhule-424 001.
4. Shailesh S/o Daulatrao Sautkar,
Aged about 43 yrs, Occ. Service,
R/o 80, Gajanan Nagar,
'Raghukul-5', 3rd Floor,
Wardha Road, Nagpur- 440 015.
5. Deepa D/o Ashok Shegaonkar,
Aged about 31 yrs., Occ. Service,
R/o Sai Deep Residence, Khanda
Colony, Sector 4, 2nd Floor, Room NO. 201,
New Panvel, Mumbai.
6. Rahul S/o Ravindra Meshram,
Aged about 37 yrs., Occ. Service,
R/o Shakambari, C.H.S. Flat No. 02,
Plot No. 82, Ground Floor, Kansai,
Bhidewadi, Ambarnath (East),
Distt. Thane-421501.

Applicants.

Versus

- 1) The State of Maharashtra,
Through its Principal Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai- 400 032,

- 2) Directorate of Art,
State of Maharashtra,
Through its Director,
J.J.School of Art Campus,
Dr. D.N.Road, Mumbai-1.
- 3) Sir J.J. institute of Applied Art,
Through its Dean, Dr. D.N.Road, Fort,
Mumbai-400 001.

Respondents

With
ORIGINAL APPLICATION NO. 166 / 2015 (S.B.)

1. Kishor S/o Digambar Ingale,
Aged about 31 yrs., Occ. Service,
R/o Near Shrikrishna Mandir,
At & P.O. Bori Arab, Tq. Darvha,
Distt. Yavatmal-445 201.
2. Prafulla S/o Sheshrao Nayse,
Aged about 35 yrs., Occ. Service,
R/o C/o Jaydeep G. Nayse,
163, S-1, Anand – 5, Pandye Layout,
Khamla Road, Nagpur-440 015.
3. Pankaj S/o Ashok Itkelwar,
Aged about 32 yrs., Occ. Service,
R/o Ward No. 1, Bothli, Near Gram Panchayat,
Tq. Saoli, Distt. Chandrapur-441 225.

Applicants.**Versus**

- 1) The State of Maharashtra,
Through its Principal Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai- 400 032.
- 2) Directorate of Art,
State of Maharashtra,
Through its Director,
J.J.School of Art Campus,
Dr. D.N.Road, Mumbai-1.

- 3) Shaskiya Chitrakala Mahavidyalaya,
Through its Dean, Opposite Deekshabhoomi,
Laxminagar, Nagpur-22.

Respondents

With
ORIGINAL APPLICATION NO. 48 / 2016 (S.B.)

1. Deepali D/o Suresh Vyawahare,
(Now Sau. Deepali W/o Milind Limbekar)
Aged about 36 yrs., Occ. Service,
R/o 57, A/2, Kanchangeet,
Shivaji Nagar, Nagpur-440 010.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Principal Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai- 400 032,
- 2) Directorate of Art,
State of Maharashtra,
Through its Director,
J.J.School of Art Campus,
Dr. D.N.Road, Mumbai-1.
- 3) Shaskiya Chitrakala Mahavidyalaya,
Through its Dean, Opposite ,
Deekshabhoomi, Laxminagar, Nagpur-22.

Respondents

Shri R.L.Khapre & Shri M.R.Joharapurkar, the Id. Advocates for the applicants.

Shri A.M.Ghogre, the Id. P.O. for the respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.

JUDGMENT

PER : VICE CHAIRMAN

Judgment is reserved on 23rd Aug., 2019.

Judgment is pronounced on 04th Sep., 2019.

Heard Shri R.L.Khapre and Shri M.R.Joharapurkar, Id. counsels for the applicants and
Shri A.M.Ghogre, Id. P.O. for the respondents.

2. The Applicants who are lecturers in different Colleges in faculty of Art in the Colleges administered by Respondent Nos. 1 & 2 in State of Maharashtra had approached this Tribunal for relief of extension of benefit of regularisation and permanency to them as against the appointed posts from date of their initial appointment on contractual and Adhoc basis, as they had rendered service for more than 7 to 12 years, the grievance of the Applicants is that, on 12/03/2015, Respondents in case of faculty of Art had again issued directions to fill 72 posts again on contractual basis and the action of extension of contractual appointments is to be further perpetual at the hands of Respondents and thus they had approached this Tribunal for non-granting permanency and benefits of permanent appointment.

3. The claim of applicants in all the Original Applications is on similar grounds and only their appointments are on different dates thus, all the Original Applications are decided by this Common Judgment.

4. That, Respondent No. 2, Director of Art, controls and supervise the services of Applicants and works under the directives issued from time to time by Respondent No. 1. The Respondent No. 3 administers the College as per the guidelines of Respondent No. 2, the Applicants are presently in service in Respondent No. 3 College in different Original Applications, as claimed by them which is not disputed by the Respondents.

5. The applicants had come up with the case that, they hold qualification as submitted by them in the Original Applications in Table at Annexure A-1, the Qualifications, Appointments are not disputed on part of Respondents, as such the said information submitted on part of Applicants is accepted.

6. That, on 25/07/2002 Government of Maharashtra issued a Govt. Resolution which was modified by the Government on 02/08/2003 and 03/10/2003. That, in terms of said Government Resolution on 15/09/2003 advertisement was published inviting the Applications from eligible candidates for the post of Lecturers in Government Art Colleges in different subjects and qualification for the said posts were specifically pointed out in respect

to different subjects. That as per the said advertisement which was in terms of Notification, the appointment was to be made on contract basis for temporary purpose on contractual basis on consolidated pay of Rs. 8,000/- per month. That even the roster points were taken care.

7. That, the Applicants further pointed out that, they were called to attend the interviews for the requisite posts for which they have applied at the office of Respondent No. 2. That, after thus due interview of the Applicants conducted on 29/09/2003 (Annexure-A-5, P.B., Pg. No. 68), office Order was issued appointing the candidates for the respective posts with specific directions that, they are appointed on consolidated pay on contract basis for the period 10/11/2003 to 08/10/2004 i.e. for 11 months on condition to submit an agreement to that effect. It was further stated that, if the candidates from MPSC who is selected is available, the appointment given to the Applicants would stand automatically cancelled, the said agreement is to be submitted prior to joining the services and only after completion of terms and conditions they have to join the services on 10/11/2003 at respective Colleges as stated in the Order of appointment. That accordingly the Applicants had submitted Agreements as sought by the Respondents and the Applicants joined the said services.

8. That, as per the Government Resolution issued on 25/07/2002 it is stated that, there are no appointments in the Department from the year 1998. That, the Committee is also formed as per the said Resolution which would consist of Dean of the concern University, who would be Chief of the said Committee, two experts of the subject, one teacher from Backward Class representing the said Class as member, one lady representative from Government Lecturers and Principal of the said University.

9. Thus, after following due procedure of advertisement selection by constituted Committee, the Applicants were appointed in the said post and the first appointment Order of Applicants in O.A. No. 165/2015, out of all the said Applicants is issued on 31/10/2003.

10. That, on 31/10/2003 the Lecturers were appointed on contract basis and on 12/10/2004 by office Order, the Applicants were appointed for further period of 11 months

from 10/11/2003 to 8/10/2004 again for 11 months on the same terms and conditions and to produce an Agreements as stated in earlier Orders, accordingly thereafter the Applicants in O.A. No. 165/2015 were further given office Orders and the Applicants who were thus appointed on contractual basis had submitted chart at Annexure- A-1 which would show that after giving technical breaks, they were continued in service.

11. That, on 08/12/2005 thereafter again an advertisement was issued for appointment of Lecturers on contract/ temporary basis on consolidated pay of Rs. 8,000/-. Similarly again the advertisements were issued and said procedure was again followed. That, on 03/12/2007 again advertisement was issued to appoint contractual lecturers walk in interview that at the said instance the Department had sought for 21 candidates to be appointed and a time table and pattern of examination was given, the areas to be tested in fine art aptitude test viva-voce was also to be conducted, thus the Applicants after giving written examinations, portfolio presentations, interviews were duly selected by the Committee and on 27/12/2007 appointment Order was issued, so also again the advertisement was issued on 13/08/2008 and on 05/02/2010, the Applicants were appointed with terms and conditions as stated in the office Orders at different Colleges and the said process continued even when the office orders issued on 25/07/2014. Thus, Applicants tried to demonstrate that, they were regularly appointed in vacant, clear sanctioned posts, on contractual basis with consolidated salary which was increased from Rs. 8,000/- to 12,000/- and thereafter Rs. 12,000/- to Rs. 24,000/- and the said appointments were thus continued after giving technical breaks and the Applicants were working with the Respondents at Respondent No. 3 College in different institutions.

12. That, the Applicants further submits that, the Applicants had been selected by duly constituted Selection Committee by following the procedure of issuing advertisement, inviting the applications from all the eligible candidates and they have been working to the satisfaction of the Respondents and therefore they are entitled for the regularization and/or permanency in the post in which they are working. The Applicants have submitted that, the

Government of Maharashtra had framed Rules in exercise of powers for the posts in the Directorate of Art on 16/02/1983 in exercise of the powers conferred by provisions of Article 309 of the Constitution of India and in supersession of all existing Rules which are known as professor, lecturers, etc in Government Art Institute under the Directorate of Art of the Government of Maharashtra, (Recruitment Rules), 1983. That under the said Rules also all the Applicants hold the requisite qualification for the appointment of the post of lecturers. That, even it was contended that, under the said Rules the candidates can be appointed on probation for period of 2 years only.

13. It is also contended by the Applicants that, Government of Maharashtra by the communication dated 29/03/2008 had informed the Director of Education (Higher Education) that the teaching posts which fall within the purview of MPSC and which were to be filled only on the basis of the interview have been taken out of purview of MPSC and the cabinet had granted its approval for the same. The applicants also contended that Government of Maharashtra being a modern employer has to treat its similarly situated employers alike and it cannot discriminate between different sets of similarly situated employees, the Applicants also pointed out categories of employees which were regularised by Government of Maharashtra by producing different Govt. Resolutions.

- a. Copy of Government Resolution in respect of Employees Primary & Higher Secondary School vide Government Resolution dated 27/04/2000 (Annexure-A-40, Page No. 188).
- b. Copy of Government Resolution in respect of regularisation of services of 62 contractual Lecturers in Government Polytechnic vide Government Resolution dated 14/01/2015 (Annexure-A-43, Page No.201).
- c. Copy of Government Resolution in respect of regularization of services of 317 Contractual Lecturers in Government Polytechnic vide Government Resolution dated 13/03/2015 (Annexure-A-44, Page No.204).

- d. Copy of Government Resolution in respect of regularisation services of 86 Contractual Lecturers in Government Polytechnic & Engineering Colleges issued on 21/03/2016 (Document No-1, Page No. 741 along with Additional Affidavit at Pg. No. 735).
- e. Copy of Government Resolution in respect of regularization services of Government Seasonal/Contractual Lecturer/ Librarian/Director of Physical Education vide Government Resolution dated 23/03/2016 (P.B., Page No. 694).
- f. Copy of Government Resolution in respect of regularization services of contractual employees in Government Medical and Ayurvedic Colleges vide Government Resolution dated 22/10/2016 (Document No-3 at Page No. 757 along with Additional Affidavit Pg. No. 735).
- g. Copy of Government Resolution in respect of cancellation of direct recruitment & appointment of candidates in the cadre of Assistant Professor, Computer Engineer in Maharashtra State Engineering Colleges teaching services in Grade-A vide Government Resolution dated 18/01/2017 (Page No. 794 along with Additional Affidavit).
- h. Copy of Government Resolution in respect of Regularization Services of Temporary Assistant professors in Government Medical Colleges vide Government Resolution dated 08/06/2017 (Document-4, Page No. 782 along with Additional Affidavit on Pg. No. 735)
- i. Copy of Government Resolution in respect of regularization of Services of Temporary Assistant Professor and Dental Surgeon in Government Dental Colleges, Hospital and Government Medical Colleges in Dental Department vide Government Resolution dated 15.06.2017 (Document no. 5, Page No. 785 along with Additional Affidavit on Pg. No. 735)

Thus, the Applicants complained discrimination by Government of Maharashtra in the matter of regularization of services of the Applicants.

14. The Applicants further pointed out that, Respondent No. 3 is a Technical Institution within the meaning of Section 2 (h) of the All India Council for Technical Education Act 1987. It is also contended by the Applicant under the said Act, provision of Section 3, Section 10 were relied upon so also it was contended that, under Section 23 (1) of the said Act it further confers power to frame regulation. It is even claimed by the Applicants that, respondent no. 3 college is approved by All India Council for Technical Education and to substantiate the said contentions even letter issued by the said Council are produced and thus the regulations of said AICTE are applicable to the Applicants is also claimed.

15. The applicants also claimed that, the Resolutions were issued time to time by the Respondent Government and the similar Government Resolutions which were made applicable to Government Technical Institute were also made applicable to the faculty of Arts by issuing Government Resolutions, thus Applicants at the said instance were kept in par with the said similar placed lecturers in other streams by the Respondent State, they also claimed that they are entitled to back wages of 3 years from the date of institution of application.

16. That, even Applicants pointed out that, since service conditions of the applicants are governed by All India Council for Technical Education, respondent state is not entitled to fix different pay scales and thus Respondents be directed to pay salary as per pay scales fixed by All India Council for Technical Education and thus claimed that, respondents ought to have followed and implemented the scheme as regulated by AICTE.

17. The Applicants relied upon the Judgment delivered by High Court of Judicature at Bombay, Nagpur Bench Nagpur in W.P. No. 2046/2010 Sachin Dawale and others Vs. State of Maharashtra delivered on 19/10/2013 and contended that, the said Judgment is already confirmed by the Hon'ble Apex Court on 06/01/2015 and thus the Applicants who are also

appointed under the said Government Resolutions firstly issued on 25/07/2002 and thereafter they also needs to be granted relief of regularization.

18. The Applicants relied upon Judgment delivered by Mumbai Bench of Maharashtra Administrative Tribunal in Original Application No. 781/2013 with O.A. No. 290/2015 with O.A.No.868/2014 with Misc. Application No. 546/2014 with O.A. No.150/2015 decided on 26.06.2015 (P.B., Pg. Nos. 638 to 693) decided in respect of various applicants related to Education Department. In para no. 41 (P.B., Pg. No. 680) of the said Judgment following observations have been made:- "*These O.As. therefore can be decided mainly on the basis of Sachin's case. We have discussed in extenso Umadevi and Official Liquidator relied upon quite strongly by Mr. Bhise, the learned Presenting Officer*" contending that, on the basis of Judgment delivered by Hon'ble High Court in Writ Petition No. 2046/2010 (Annexure-A-38, P.B., Pg. No. 145), this Hon'ble Tribunal relying upon the said Judgment also regularized the services of Applicants and the said Judgment delivered by this Tribunal is accepted by the Respondent, State by issuing Government Resolution on 23/03/2016 (P.B., Pg. No. 694) and the services of Applicants therein are regularized in view of Order passed by this Hon'ble Tribunal. It is further claimed that, the Applicants are working in respondent institutions they are appointed by due procedure of law are holding the requisite eligible qualification they also placed on record documents showing that they are doing the similar work as required to do by the regular lecturers and had done worked in respect of all sort, so also shown that, even they acquire more qualifications and therefore the discrimination only regarding the regularization of their services is impermissible in law and is violative of the guarantee enriched under Article 14 of the Constitution of India.

19. That, the Respondents by their Affidavit had contended and accepted the factual aspects in the matter, it is contentions of the Respondents that, only two colleges are approved by AICTE and approval by AICTE does not mean that the college has been approved by AICTE forever. It is further contended that, Government had not adopted staffing pattern and tried to differentiate the qualifications under the recruitment rules and

qualifications under AICTE norms. It is further contended that, the posts were not fill-up by regular advertisement for filling the regular posts and as the advertisement was only to fill-up the posts of lecturers on temporary contract basis, the said advertisement cannot be considered and the applicants were appointed only for 11 months or till the regular candidates from Maharashtra Public Service Commission are made available. It is also contended that, the appointments were contractual and the Applicants would be automatically terminated on 09/05/2014.

20. That in para no. 16 of the reply though the Applicants are duly qualified and appointed against sanctioned vacant posts, the recruitment to the said posts fell squarely, within the purview of MPSC and these Candidates were not selected by MPSC by following regular process of selection.

21. The respondent thus further contended that, appointment made in violation of mandatory provisions of the statute_and minimum education qualification being eligible cannot be cured by taking recourse of regularization reliance is also placed by the respondents on the Judgment of Apex Court in case of Sectary of Karnataka Vs. Umadevi and other Judgments as referred in their reply.

22. That in response to reply filed, even the Applicants filed Rejoinder and submitted copy of AICTE Regulations even contended that, the contentions on the part of Respondents are incorrect. It was pointed out that, the colleges are affiliated to different universities and the certificates issued by the Universities are also produced and it was also pointed out that, UGS regulations on minimum qualifications and the extracts are produced to that effect. It was also contended that, Government had regularised services of seasonal and contractual employees in Government Technical Schools and thus the Applicants be treated as Lecturers from their initial date of appointment and the Original Applications filed by them be allowed.

23. That, during pendency of the present Original Applications on 13/04/2016 advertisement was issued by Maharashtra Public Service Commission to fillup 63 posts in different subjects, that by virtue of said advertisement the applicants contended that, they

would be deprived of regularization in services and are also not eligible as some of them had already crossed 35 years of age and the advertisement is issued almost after about 14 years as far as applicants in O.A. No. 165/2015 had joined the services with the respondents. It was also contended that, when the matter was subjudice before this Tribunal and after passing interim order in favour of Applicants the issuance of advertisement is only with malafide intention and even it is pointed out that, the MPSC cannot fill-up the posts of teachers category. It is also contended that, the services of the Applicants as are of from category Teachers they are governed by cabinet decision reflected in Government order dated 29/03/2008 and the said Government decision is already considered by Hon'ble High Court in the matter of Sachin Dhawale. It was further pointed out that applicant had already completed the requisite period of probation and as per the vacancies notified by the Respondent through MPSC, it is fact on record that the said posts are still vacant and issuance of said advertisement would further show that, qualification at the time of appointing the Applicants was sought at higher instance, whereas by virtue of said advertisement the educational qualification as sought is done as per rules of recruitment where the less qualification is required.

It is fact on record which is tried to be put forth on part of Applicants that Government did not hold selection through MPSC and selected the lecturers only through the selection process as provided under the said Government Resolution and the applicants were duly selected through that process. The Respondents had extracted the work from the Applicants for years together, now by efflux by time and account of Respondent State not holding the selection process for years together, many of the Applicants had become over age and would not be in a position to participate in the selection process through MPSC. In that view of the matter, considering the long standing services rendered by the Applicants and the observations in the matter of Sachin by Hon'ble High Court which are also applicable in the matter of present Applications that, the posts on which the Applicants had worked they

cannot be at the whims and fancies of the Respondent State and State cannot adopt a policy of hire and fire or use and throw, in that view of the matter.

24. That, the services of Applicants were protected by Tribunal by its Order passed on 28/04/2015. That, even Tribunal by its earlier Order passed on 05/05/2016 by interim order directed respondent Government not to conduct further recruitment process following issue of the advertisement dated 13/04/2016 in respect of the posts occupied by the Applicants.

25. That, before I proceed further, at this stage itself, I think it proper to closely rely upon the observations in Sachin's case cited by the Applicants. In Sachin's case petitioner invoked extra ordinary jurisdiction of High Court in Writ Jurisdiction seeking the relief of permanency and service benefit which was denied to them having put service on contract basic for the period ranging from 3 to 10 years, the teachers were teaching in different departments of Government Polytechnic Colleges they were appointed as per G.R. dated 25/07/2002, 02/08/2003 and further modified on 03/10/2003, the applicants before me are teaching different subjects and the basic facts and applicable legal principal as formulated by Sachin's case are similar, the position will get further clearer and crystalised further.

26. There was ban on employment and an education, as such education was getting adversely affected the same fact situation is in these Original Applications. The Government resolution dated 25/07/2002 was the basis in Sachin's case and the present Applicant's services were governed on the similar Governement Resolution and the Order of appointment depicts the said facts, not only this, even further Government Resolutions were made applicable to the faculty of Arts Teachers which were subsequently issued in the matter of other faculties.

27. It was found in Sachin's case that a selection committee came to be constituted for holdings tests to appoint the lecturers there also no selection was made by MPSC in these O.A's also regular committees were constituted to make selections, the applicants were the successful candidates in that open competitions though not through MPSC.

28. That, even lump sump consolidated amount was payable as by way remuneration which is also paid to the present applicants. The duration fixed in the first letter of appointment of 11 months came to be extended by same period and with passage of time as stated in Sachin's case the remuneration was increased and some other facilities were also given to the present applicants.

29. It is thus clear that, Government Resolution as pointed out would show a grievance of hostile discrimination, where reliance is placed by the applicants and the applicants were appointed through a process of selection committee they held the requisite qualifications, no compromise was made for that aspect still further the possibility in the conduct of tests by the MPSC and the consequential disadvantage prejudice is to be caused to the Applicants, these are all quite significant aspects.

30. That, the reliance placed by the Respondents on Umadevi cited supra is also considered by the Hon'ble High Court in Sachin's case and it is held that, the appointments of the petitioners are as per policy incorporated in Government Resolution dated 25/07/2002 in which it is laid down that, the appointment will be on contractual basis and till the availability of the candidates appointed through regular selection process and it is considered that, Applicants are appointed after following the procedure of issuance of advertisement, conducting interviews by the duly constituted Selection Committee. That, in Sachin's case in paragraph no. 12, 13 and 14, so also further paragraphs from 15 to 17 it is observed that, petitioners were the contract appointees for considered length of time on regular post. It was observed that, continuation in service of the Petitioner there would not offend Article 16 of the Constitution of India. Thus as mentioned above, the SLP against the said Judgment of Sachin is already dismissed. It is therefore quite clear that, ratio of Sachin's case will squarely can be made applicable to the Applications herein.

31. That, this Tribunal at the time of deciding the Original Application No. 781/2013 on 26/06/2015 relied upon on the Judgment of Sachin's case and held that, the Applicants in the said Original Applications are entitled to permanency of their services.

32. That, during the course of arguments thus on behalf of Applicants though they cited many more Judgments other than this including AIR 2001 Supreme Court 2861 and (2015) 15 Supreme Court cases 713, so also the Respondents relied upon Judgments reported in (2016) 8 Supreme Court cases 293 and (2017) 4 SCC 113 I consider the same as under.

33. That, the respondents had relied upon Judgment delivered in the matter of state of Maharashtra and others Vs. Anita and Another, wherein the Legal Advisors, Law Officers, and Law Instructors under the establishment of Director General of Police and the Commissioner of Police, Greater Mumbai created by Government resolution dated 21/08/2006. That, in the said case the appointments were purely contractual and the said posts were created only for administrative purposes for sanction of the amount towards expenditure incurred and it was held that, the said posts cannot be held to be permanent in nature. Thus the said Judgment cannot be made applicable to the facts of present case. That as far as another Judgment relied upon by the Respondent State in the matter of State of Tamilnadu Vs. A. Singamuthu, the Respondent was appointed as a part time Masalchi and it was stated that, monitory benefits would ensue only from date of Order of regularization. Thus, the said Judgment is not at all helpful to the Respondents at it was concerning part time employee, whereas the present applicants are claiming regular appointment and thus the facts of the case itself do not make out case to consider the said Judgment in present set of facts.

34. That, as far Judgments relied upon by the Applicants, particularly 2015 (2) Scale 115, Para No. 8 of the said Judgment would show that, there was recommendation of the names of selected candidates after advertisement and Applicants applying for the post of Assistant Account Officer and after written test and interview, the facts of the said case in Para No. 11 are similar to the present facts where all procedure for regular appointment is complied with. In the said case the Hon'ble Apex Court granted regularization of services from date of their initial appointment and to treat the initial period of 2 years as probation and to provide them with other consequential benefits. That even in the case reported in AIR 2001 Supreme

Court 2861 reliance is placed by the Applicants on the claim made by them on the basis of Section 10 of AICTE Act.

35. That, as far as Applicants in Original Application No. 165/2015, they only had made prayers of issuance of Directions to grant pension and pensionary benefits from date of appointment, as they were initially appointed in the year 2003 and as far as other applicants are concerned no such prayer is made in their Original Applications.

36. That, as far as other Original Applications are concerned, the facts in the said Original Applications are also almost similar. That, Original Application No. 161/2015, the Applicants in the said Original Application Annexure A-19 & A-23 are advertisements which are concerned with the said Applicants and Annexure A-24 to A-27 are there Orders of first appointments and further Orders of appointments are at Annexure A-29 to A-33. That they also produced on record by way of Affidavit further qualification gathered, so also experience of work and all other facts are similar as in Original Application No. 165/2015 which was considered as base for arguments by consent of parties.

37. That, as far as Original Application No. 162/2015, the Applicants in the said Original Application, the advertisement at Annexure A-14, A-17 and A-23 are concerned to them and Annexures A-15, A-21, A-22 and A-24 are the first Orders of appointments, so also Order of appointment at Page No. 265 as far as Applicant No. 6. That, Annexure A-29 to Annexure A-30, these are the further Orders of appointments issued to the said Applicants for the permanent vacant posts, these Applicants also produced Rejoinder, Additional Affidavit of qualification gathered by them and experience of work done by them as of regular lecturers.

38. That, as far Original Application No. 163/2015 the Applicants in the said Original Application are concerned with Annexure A-15, A-24 & A-28 which are the advertisement and Annexure A-16, A-17, A-18 & A-29 pertains to first Orders of appointment to the said Applicants and Annexure A-32 to A-35 are the Orders of appointments further issued to them, they had also placed on record Additional Affidavit of acquiring further qualification and experience of work.

39. That, as far as Original Application No. 166/2015, these Applicants are concerned and relied upon Annexure A-19 and A-25 which are advertisement and Annexure A-23 to A-26 their first Orders of appointments and Annexure A-28 to A-30 the further Orders of appointment issued to them, they also submitted Affidavit in respect of qualification gathered by them and the experience and the work done by them as of done by the regular lecturers as claimed by them.

40. As discussed in Para Nos. 5, 6, 7 & 8 of above discussions, it is clear that applicants appointments was according to open procedures and it cannot be said as a back door entry. They were first appointed after following due process of Law.

41. The reliance placed by Id. Counsel for the applicant in the Judgment of Sachin Ambadas Dawale V/s Government of Maharashtra and Ors by Hon'ble High Court Mumbai, Bench at Nagpur, delivered on 19th Oct. 2013 has also considered in para no. 9 Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors. Reported in AIR 2006 SC 1806 (1). This Judgment squarely covers the grievances of petitioners in observations made in para no. 22 of said Judgment. The said Judgment has also been upheld by Hon'ble Apex Court. In above discussions in para no. 12, the citations made particularly at f, g and h are in response to redressal of grievances of similarly placed employees.

42. That, as far as Original Application No. 48/2016, it is claim of only one Applicant, wherein she had relied upon Annexure A-4 and advertisement in the year 2003 and an advertisement at Annexure A-20, so also Annexure A-5 and A-24 which pertains to Orders of appointment issued in respect of said Applicant, she also produced on record by way of Affidavit, the qualification gathered by her and the experience in respect of work done as of regular lecturer.

That, common arguments were heard by consent of all the parties and some documents which were referred in the Original Application No. 165/2015 were also considered to decide these Original Applications, wherein a reference is already made and extract of said documents are part of record. The Id. P.O. was directed to consult respondents

and if any decision has been taken on the representation the same to be filed till 30.08.2019. However, nothing has been filed by Id. P.O. regarding decision on representation of the applicants by respondents.

43. In view of discussions in foregoing paras, it appears that in the interest of justice and equity with employees which are at para no. 13 (f, g & h) and in the light of W.P. No. 2046/2010 Sachin Dawale and others Vs. State of Maharashtra delivered on 19/10/2013 and contended that, the said Judgment is already confirmed by the Hon'ble Apex Court on 06/01/2015 following common order is passed in respect of all the listed O.As. :-

O R D E R

1. All the Original Application Nos. i.e. 161/2015, 162/2015, 163/2015, 165/2015, 166/2015 and 48/2016 are partly allowed.
2. The Respondents are directed to regularise the services of the Applicants and confer permanency to all the Applicants. The Respondents shall absorb the Applicants **within a period of 03 Months** from the date of this order and all the Applicants will continue in service as regular employees.
3. It is further directed that, Applicants would be entitled for regular salary from 01/10/2019 and would not be entitled to claim any monetary benefits for the past services rendered by them, inspite of their regularization. Needles to state that, since the Applicant's services are regularized, they would be entitled to continuity in services for all other purposes, except for monetary purposes from the date of their first appointment.
4. That the Government may take an appropriate decision about the scheme of pension to be made applicable to the Applicants in O.A. No. 165/2015 only.

5. The process of recruitment initiated by Respondent No. 1 through Maharashtra Public Service Commission vide advertisement bearing file no. 2044 (12)/ 6975/1/7-A is quashed and set aside to the extent of present Applicants only.
6. No orders as to costs.

(Shri 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.

Judgment signed on : 04/09/2019.
and pronounced on

Uploaded on : 05/09/2019.