

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.316 OF 2017**

DISTRICT : PUNE

1. Shri Vasant Namdeo Zagde,)
2. Shri Dattatraya Bhikaji Sasthe,)
3. Shri Ramdas Sakharam Jambhale,)
4. Shri Somnath Maruthi Shinde,)
5. Shri Rajaram Jinayak Bhos,)
6. Shri Chagan Baban Kapse,)
7. Shri Arun Maruti Kurnkar,)
8. Shri Datla Baban Shelar,)
9. Shri Milind Popat Atre)
All working as Health Worker/)
Multipurpose Health Worker,)
at Primary Health Centre, District Pune)
C/o Shri V.P. Potbhare, Advocate, MAT, Mumbai)..Applicants

Versus

1. The State of Maharashtra,)
Through Additional Chief Secretary,)
Public Health Department, Mantralaya, Mumbai)
2. The Director, Public Health Services,)
Aarogya Bhavan, St. Georges Hospital Compound)
Near VT Station, Mumbai)

3. The Joint Director of Health Services,)
Malaria and Filariasis, Aarogya Bhavan,)
in front of Vishrant Wadi Police Station,)
Vishrant Wadi, Pune-6)
4. The Assistant Director,)
Malaria, Aarogya Bhavan, Parivartan Building,)
Pune-6)
5. District Malaria Officer,)
Near Yerwada Post Office, Yerwada, Pune-6)..Respondents

Shri V.P. Potbhare – Advocate for the Applicants

Miss S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman
Shri P.N. Dixit, Member (A)

RESERVED ON : 1st November, 2018

PRONOUNCED ON : 2nd November, 2018

PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Shri V.P. Potbhare, learned Advocate for the Applicants and Miss S.P. Manchekar, learned Presenting Officer for the Respondents.

Admitted facts:

2. The applicants were appointed as Spraying Workers. Subsequently they were appointed as Multipurpose Health Workers as bonded candidates for a period of 2 years. This appointment was on ad hoc basis.

After expiry of the bond period the services of the applicants were to be terminated. However, they were continued, without terminating their services. Meanwhile respondent no.5 constituted a Selection Committee for selecting candidates for giving appointment to the post of Multipurpose Health Worker and accordingly the applicants were selected by the District Selection Committee. The benefits of permanency and benefits of pay scale of Rs.5200-20200 plus Grade Pay of Rs.2400 were extended to them from the date of regularization.

3. According to the applicants the services of Health Workers who were working in the Zilla Parishad at Nashik, Ahmednagar, Pune their services have been regularized by condoning technical breaks. The applicants who have been working from their date of appointment continuously and thereafter when they are selected, but the earlier period of ad hoc services in their cases have not been taken into account.

4. Separately OA No.66 of 1999 with OA No.360/1998 etc. were heard by this Tribunal, Bench at Aurangabad with directions to consider their cases for regularizing appointment as Multipurpose Health Worker. Following the same, services of the bonded candidates, who were working on the post of Health Workers were regularized by respondent no.1 by issuing GR dated 31.3.2015 (Exhibit R-1 page 295) as one time measure in respect of 155 bonded workers named in the GR. Decision was taken to regularize the services of the candidates mentioned from the initial date of their appointment. These candidates were working from the year 1991.

5. Similarly situated employees in Zilla Parishad, Pune were regularized by condoning the break period from their initial dates of appointment. According to the applicants though they are similarly situated they have not been regularized. They have been issued permanency certificates from the year 2000 when they were selected by

the District Selection Committee but their earlier services have not been treated as a regular service. According to the applicants their grievance is exactly similar in nature. The applicants rely on Government Circular No.681-2016/Misc./E dated 28.2.2017 issued by the Law & Judiciary Department. In this circular in para 3 the reference of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh & Others Vs. Arvind Kumar Srivastava reported in 2015(1) SCC 347** has laid down similar principles thus:

“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.”

(Quoted from Exhibit N page 276-77 of OA)

6. The applicants therefore, prayed that:

- “9(b) That the action of the Respondents no.1 to 5 of not regularizing the services of the applicants from the initial date of appointment by granting increments and other service benefits and granting the similar benefits to the similarly situated employees may kindly be declared as illegal, arbitrary and discriminatory and violative of Articles 14 and 226 of the Constitution of India.*
- (c) That the Respondent no.1 to 5 may kindly be directed to regularize the services of the applicants in the same line as per GR dated 31.3.2015 where the benefits of regularization of services have been*

given from the initial date of appointment to the adhoc employee who were working as a bonded candidates on the post of Multipurpose Health Worker under the kind control of Respondents No.1 to 5.

- (d) That the respondents no.2 to 5 may kindly be directed that not to issue promotion orders from the post of Multipurpose Health Workers to the post of Health Assistant till the pendency of hearing and final disposal of this OA.*
- (e) That the respondents no.2 to 5 may kindly be directed to include the names of the applicants in the list prepared for granting promotions from the post of Multipurpose Health Workers to the post of Health Assistant.”*

7. Ld. CPO has refuted the above arguments and filed affidavit on behalf of respondents no.1 to 4. The relevant portions in the affidavit states:

3.
the Cabinet has decided this matter as “One Time Measure” in respect of 155 bonded candidates listed there and that decision applies only to those 155 bonded candidates and cannot be universally applied to all similar cases. This case is different than those of 155 bonded candidates.

7.
The bond period was extended either with or without break only as temporary post and it is clearly mentioned and accepted by the applicant that the said extension was purely temporary and no claim on service would be entertained.

8.
The selection of candidates through District Selection Committee was

done in case of applicants' no.1 to 9. The applicants' knew that their temporary service cannot be considered for permanent appointment, hence all of them appeared for District Selection and the Committee selected them after which they were issued appointment orders and thereafter joined the duties.

9.
The bonded service period is considered as purely temporary service period and this is accepted by the applicants as they have submitted the bond. Secondly, the period of bonded services cannot be regularized as the appointment orders are very clear about the nature of purely temporary appointment. They were thereafter appointed by following the proper selection process laid down by Government for entry in Government Service.

12.
The application dated 04.12.2014 was received by the respondent no.2 is from Pune district employees. Since the bonded service period is considered as purely temporary service period and the same was accepted by the applicants as they have submitted the bond. Secondly, the period of bonded services cannot be regularized as the appointment order on bond was very clear about the nature their appointment as purely temporary.

(i) *The Chief Officer of Zilla Parishad has the power of regularizing and condoning technical breaks in case of Zilla Parishad employees of that particular Zilla Parishad. But in case of State Government employees, no such provision is there in service rules. Hence the adhoc service period cannot be considered as regular service unless it is regularized and an order to that effect is passed by appropriate authority after scrutiny of all relevant documents.*

16.
However, it is very clearly mentioned in the same GR dated 31.03.2015 that it is "One Time Measure" and is applicable to only those who were working as ad hoc employees for many years. The applicants in this OA are already been selected through Selection process and have joined as regular employee after selection process thus the situations in OA 66/1999 and Others is different to that of the applicants 1 to 9 here."

(Quoted from page 280-286 of OA)

8. The issue for consideration is:

- (a) Whether the similarly situated workers can be treated differently when 155 candidates have been provided the benefits of regularization from the date of their bond period?

Findings and discussions:

9. Perusal of the circular dated 31.3.2015 reveals that:

“राज्य मंत्रीमंडळाच्या दिनांक १२ मार्च २०१५ रोजी आयोजित बैठकीतील निर्णयानुसार, खालीलप्रमाणे नमूद सर्वजिनक आरोग्य विभागांतर्गत १५५ बंधपत्रित आरोग्य कर्मचा-यांच्या त्यांच्या मूळ नियुक्तीच्या दिनांकापासून सेवा एक वेळची बाब (One Time Measure) म्हणून नियमित करण्यात येत आहेत.”

(Quoted from Exhibit R-1 page 235 of OA)

10. It is admitted fact that 155 candidates were provided regularization by the above GR and present 9 applicants are on similar footing. The only difference appears to be that while 155 remained to be temporary and were not selected by the Selection Committee, even then the Government

vide GR quoted above has considered it proper to regularize their services and give them necessary benefits from the date of their bonded period.

11. The present 9 applicants have been selected by the District Selection Committee and thus are on a higher footing in view of their merit. Giving a preferential treatment to those who are not selected by Selection Committee vis-a-vis those who have been selected by the Selection Committee does not appear to be justified and is certainly arbitrary, apart that it results in discrimination.

12. There is no rational or justification to deprive them of the benefits for the period when they worked on bond and remained as temporary workers. The discrimination is writ large and deserves to be removed by issue of a mandatory order.

13. In view of the foregoing, the respondents are directed to extend the same benefits as provided to the 155 candidates and regularize their services from the initial appointment as done through GR dated 31.3.2015, along with all consequential benefits.

14. The Original Application therefore succeeds. Parties are directed to bear own costs.

Sd/-

(P.N. Dixit)
Member (A)
2.11.2018

Sd/-

(A.H. Joshi, J.)
Chairman
2.11.2018

Dictation taken by: S.G. Jawalkar.