

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.625 OF 2021**

**DISTRICT : THANE**

1. Shri Kaplesh D. Binner, )
  2. Shri Ravi D. Nikam, )
  3. Shri Haridas L. Gaikawad, )
  4. Shri Anil D. Shirname, )
  5. Shri Shuhas R. Patil, )
  6. Shri Imran R. Shaikh, )
  7. Shri Baliram G. Vankhede, )
  8. Shri Deepak H. Gholap )
- All are working as Ambulance Driver, )  
C/o Shri K.R. Jagdale, Advocate, MAT, Mumbai )..Applicants

Versus

1. Civil Surgeon, Civil Hospital, District Palghar, )
2. Civil Surgeon, Civil Hospital, District Thane )
3. The Deputy Director, Health Services, Thane )
4. Principal Secretary, Public Health Department, )  
G.T. Hospital, 10<sup>th</sup> Floor, Mumbai )
5. Commissioner, Health Services Commissionerate)  
Arogya Bhavan, St. Georges Hospital Compound,) )  
Mumbai )..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

Smt. Medha Gadgil, Member (A)

DATE : 15<sup>th</sup> March, 2024

### **J U D G M E N T**

1. Ld. Advocate for the applicants submits that applicants have been working on contract basis in Thane and Palghar districts as Vehicle Drivers especially on Ambulance since 2005 ranging from 18 to 10 years. Ld. Advocate submits that applicants have also worked during COVID-19 Pandemic period. However, their services are temporary and some of them are age barred. Ld. Advocate submits that for many years the posts were not advertised by the respondents. The applicants therefore pray for regularization of their services.

2. Ld. Advocate for the applicants submits that after 2005 no advertisement was issued and no recruitment process was carried out for Ambulance Driver by this department and thereafter in 2019 the advertisement was issued and some Ambulance Drivers were appointed. Thereafter on 21.5.2021 the advertisement was issued but it was cancelled. This OA was filed on 23.8.2021. In March, 2023 the advertisement was issued for 11 posts in Thane and Palghar Districts and the same was withdrawn. On 28.8.2023 fresh advertisement was issued for 11 posts in Thane and Palghar District. 11 persons were selected and 8 are appointed. Ld. Advocate for the applicants submits that OA was filed on 23.8.2021 and the applicants are to be accommodated and absorbed as Drivers.

3. Earlier OA No.316/2019 with OA No.1192/2016 and OA.237/2017 were filed by the applicants and others and the same were disposed by order dated 18.9.2019 with the following directions:

*4. In view of this, Government is directed to follow the recommendations of Cabinet Committee dated 28.6.2019 as expeditiously as possible.*

*5. With these directions the Original Applications are disposed of. The decision should be communicated to the applicants and this Tribunal for record forthwith.”*

4. Ld. Advocate for the applicants while explaining the effect of the said order submitted that other applicants in these OAs were working under National Rural Health Mission (NRHM) and therefore the order directing the Govt. to take decision as per recommendation of the committee dated 28.6.2019 was not considered in respect of present applicants as they were not working under NRHM. The issue did not end there. The committee at the relevant time should have considered the position of present applicants who were also party to those OAs but they were not working under NRHM. It is a matter of common sense that plight of the Ambulance Drivers under NRHM and the present applicants was the same who rendered same services to the Government and their services should have been regularized. The order was passed to consider the cases of the applicants as per the recommendation of the Cabinet Committee dated 28.6.2019 as early as possible.

5. Smt. Nilima Sangvai, Under Secretary, Public Health Department, Shri K.P. Jadhav, Assistant Superintendent, Thane and Shri M.B. Giri Administrative Officer, Civil Hospital, Thane are present in the Court. Ld. PO on instructions from Under Secretary, Public Health Department,

submits that no decision was taken pursuant to the order of this Tribunal dated 18.9.2019.

6. No answer is given to our query why not all the posts were filled up and whether department does need Ambulance Drivers. Hence, by interim order dated 8.11.2023 the applicants were continued in service and they are to be accommodated.

7. We have no proper assistance from the officers of the respondents-department. Answer is given that information is known to the other officers of the other Desk. It is very difficult for the Tribunal to find out who is the knowledgeable officer from the department and it is not the job of the Tribunal. It is the responsibility of the respective Secretary of the respective Department to send correct persons who is conversant with the matter. We are unable to find out whether the order of the Tribunal was implemented and communicated to the applicants.

8. We are aware of the ratio in **State of Karnataka Vs. Umadevi, 2006(4) SCC 1** where backdoor entry in appointment is prohibited. Ld. Advocate for the applicants relied on the following judgments:

(a) State of Karnataka & Ors. Vs. M.L. Kesari & Ors. Civil Appeal arising out of SLP (C) No.15774/2006 decided by the Hon'ble Supreme Court on 3.8.2010.

(b) Sheo Narain Nagar & Ors. Vs. State of Uttar Pradesh & Ors. Civil Appeal No.18510 of 2017 decided by the Hon'ble Supreme Court on 13.11.2017.

(c) Sachin Ambadas Dawale & Ors. Vs. The State of Maharashtra & Anr. (2014) 2 Mh.L.J. 36.

9. The law laid down in *Umadevi* (supra) prohibiting backdoor entry in breach of Article 14 and 16 of the Constitution was further discussed in *M.L. Kesari* (supra) and the meaning of term, 'one time measure' while regularizing the services of temporary employees was explained and expanded considering the employees who have completed more than 10 years' service as on 10.4.2006 (the date of decision in *Umadevi* (supra)) and thereby allowing regularization of the applicants.

10. In the present case admittedly some of the applicants are appointed prior to 2006 and some are thereafter but all have more than 12 years' service on contract basis. However, it is to be noted that respondent-state continued to appoint persons on different jobs on daily wages/temporary basis for a prolonged period of even more than 10 years. The applicants are working as Drivers on the Government Ambulance and rendering very useful service in Public Health Department for more than 10 years, though there are vacancies available the respondents have not considered issuing the advertisement since 2005 till 2020 i.e. for more than 15 years. The vacancy position of the Ambulance Driver in Thane and Palghar is 14. Seven in Thane and seven in Palghar. We have by our order dated 27.6.2023 granted interim relief and passed the following order:

*“(a) The respondents shall pay to the applicants as per GR dated 22.2.2019, Rs.14900/- from 22.2.2019 till September 2020 and as per GR dated 8.2.2023, Rs.19900/- from September 2020 till date and thereafter.*

*“(b) The said payment should be paid to the applicants by 28.7.2023.”*

11. By this order dated 27.6.2023 we have directed the respondents to keep 8 posts vacant. Admittedly, we heavily relied on the judgment of Hon'ble Supreme Court in *Sachin A. Dawale* (supra) and also *Sheo Narain Nagar* (supra). The Hon'ble Supreme Court in *Sheo Narain Nagar* (supra) while addressing the same issue of regularization of temporary employees has aptly held as follows:

8. .... We regretfully make the observation that *Uma Devi* (supra) has not be implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, 16 read with Article 34 (1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in *D.S. Nakara v. Union of India*, AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc. There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights.”

12. We note that the present applicants have worked as Ambulance Drivers in critical period of COVID-19 Pandemic and rendered valuable services. Ambulance Drivers who are similarly situated like applicants however appointed under NRHM Scheme are already regularized but services of the applicants were not even considered by the State despite orders of the Tribunal as mentioned above. Hence, we direct that the services of the applicants are to be considered for regularization and for

which the eligibility criteria is to be considered as and when they were appointed especially in respect of educational qualification is to be made applicable. For the aforesaid reasons we pass the following order:

**ORDER**

- (a) The Original Application is allowed.
- (b) The applicants are to be absorbed and regularized from 18.9.2019 when the order was passed by this Tribunal.
- (c) The orders are to be issued within four weeks from the date of uploading of the order.
- (d) No order as to costs.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**  
**15.3.2024**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**  
**15.3.2024**

Dictation taken by: S.G. Jawalkar.

G:\JAWALKAR\Judgements\2024\3 March 2024\OA.625.21.J.3.2024-KDBinner & Ors.-Absorption.doc

Uploaded on : 28.3.2024.