

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.275/2017

DISTRICT: PARBHANI

1. Mohd. Asfiouddin s/o. Mohd. Bashiruddin,
Age : 63 years, Occu. : At present Nil,
R/o. Equbal Nagar, Near Adv. Pathak House,
Parbhani, Tq. & Dist. Parbhani.

2. Sambha s/o. Ganpatrao Wankhede,
Aged : 63 years, Occ : At present Nil,
At present R/o. Hadgaon,
Tq. Hadgaon, Dist. Nanded.

...APPLICANTS

V E R S U S

1) The State of Maharashtra,
Through it's Secretary,
Water Supply and Sanitary Department,
Mantralaya, Mumbai – 32.

2) The Director,
Ground Survey and Development Agency,
Maharashtra State, Pune.

3) The Deputy Director,
Ground Survey and Development Agency,
Aurangabad Region, Aurangabad,
4th Floor, Vikas Bhavan, Adalat Road,
Aurangabad.

4) The Chief Executive Officer,
Zilla Parishad, Parbhani.

...RESPONDENTS

APPEARANCE :Shri I.D.Maniyar, Advocate for the
Applicant.

:Shri V.R.Bhumkar, Presenting Officer for
the respondent nos.1 to 3.

:Smt. S.E.Madne, Advocate for respondent
no.4.

CORAM : B. P. Patil, Vice Chairman

Reserved on : 25-07-2019

Pronounced on : 30-07-2019

J U D G M E N T

1. The applicants have challenged the order dated 13-04-2015 passed by the respondent no.3 and prayed to quash and set aside the same by filing the O.A. The applicants have also prayed to declare that they are eligible for regularization of their services from 09-04-1987.

2. The applicants were appointed on 13-10-1981 and 01-12-1980 as Watchman by the respondents. Accordingly, they worked sincerely and diligently without any complaints. They were in continuous service from respective dates of appointment. After completion of 5 years of regular service, they should have been regularized. Therefore, the applicants requested the respondents for regularizing their services but their request was not considered by the respondents. Therefore, they approached the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad by filing Writ Petition No.573/1987 along with other two employees. The Hon'ble High Court by order

dated 09-04-1987 protected their services by granting interim relief in terms of prayer clause "C". Since then the applicants are in continuous service. Thereafter, the matter came to be disposed of. The applicants filed Review Application on 22-11-1999. Meanwhile, one of the employees was absorbed in the services.

3. The Hon'ble High Court by order dated 13-12-1999 transferred the Writ Petition to this Tribunal and directed the parties to remain present before the Tribunal. Accordingly, Writ Petition was transferred in this Tribunal and it was numbered as T.A.No.63/1999. Applicants had filed M.A.No.174/1999 in T.A. for suitable interim relief and this Tribunal by order dated 20-12-1999 extended the interim relief in favour of the applicants. As per the order passed by the Tribunal, the applicants continued in the service. Meanwhile, the Government of Maharashtra issued G.Rs. dated 24-11-2000 and 24-04-2001 and decided to regularize the service of the employees who were in service continuously for 5 years as per the Justice Kalelkar Award. The applicants were in continuous service and they were eligible for regularization as per the said G.Rs. Therefore, they filed various representations with the respondents.

This Tribunal had passed order on 24-06-2003 in T.A.No.63/1999 and disposed of the same directing the respondents to decide the representations filed by the applicants and continued interim relief granted on 20-12-1999 till final decision. Order passed by the Tribunal was not followed by the respondents. Therefore, the applicants filed contempt proceedings but nothing fruitful happened. Consequently, the contempt proceeding was disposed of.

4. Thereafter, the applicants again approached the concerned authority and persuaded to regularize their services but their request was not considered by the respondents. Thereafter, the applicants filed O.A.No.505/2018 for regularization. In that proceedings, the respondents contended that the proposal for regularization of the applicants was already sent with the respondent no.2 on 30-01-2009 showing the date of appointment of the applicants as 01-12-1980 and 13-10-1981 and also recommended for regularization. Therefore, this Tribunal by order dated 16-07-2009 disposed of the O.A. observing that the respondents should consider the proposal, as early as possible. But the

statement made by the respondents before this Tribunal was not complied with and the services of the applicants were not regularized. Therefore, the applicants had given notice of hunger strike. By the letter dated 15-10-2009 respondents informed them that their proposal is pending with the respondents and respondents will take decision thereon as early as possible.

5. The applicants approached the respondents time and again with a request to regularize their services but the respondents had not regularized their services for the reasons best known to them. The respondent no.2 again forwarded another proposal dated 14-03-2012 mentioning all the details regarding services of the applicants. The applicants are in service since the year 1981 and 1980 and they are continued in service by virtue of orders passed by the Hon'ble High Court and this Tribunal. In spite of that the respondent no.3 had issued impugned order dated 13-04-2015 and regularized their services w.e.f. 16-07-2009 and further observed that because of the fact that the applicants have retired on superannuation no posting was given to them. It is their contention that the impugned order is illegal and against the facts. It is their

contention that they are in service since the year 1981 and 1980. They ought to have been regularized in service from that date but the respondents have regularized their services w.e.f. 16-07-2009 on the basis of G.R. dated 01-04-2015. It is their contention that the respondents have wrongly interpreted the G.R. dated 01-04-2015. It is their contention that they ought to have been regularized w.e.f. 09-04-1987 as the Hon'ble High Court has passed the order dated 09-04-1987 and granted interim relief in their favour which has been continued thereafter by the order passed by this Tribunal. Therefore, they approached this Tribunal and prayed to quash and set aside the impugned order dated 13-04-2015 passed by the respondents. They have also sought declaration that they are eligible for regularization of their services from 09-04-1987 and also entitled to get consequential benefits from that date.

6. Respondent nos.1 to 3 have resisted the contentions of the applicants by filing their affidavit in reply. It is their contention that the applicants were engaged on daily wages from the year 1981 and 1980 respectively as labourers and accordingly they were given work as per the availability of the work and requirement. The applicants were never given

permanent or temporary appointment till 13-04-2015 as they were working on daily wages. The condition of 5 years' continuous service as daily wage worker first came in existence in the Award of Justice Kalelker and accordingly it was mentioned in the G.R. dated 24-11-2000.

7. It is their contention that in the year 1987, the applicants were orally terminated as there was no work available. The applicants apprehended that department may appoint other labourers after their removal. Therefore, they approached the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad by filing Writ Petition No.573/1987 and it was disposed of on 11-09-1999. The services of the applicants were protected from 09-04-1987 by interim relief granted by the Hon'ble High Court. The interim relief came to an end after disposal of the Writ Petition No.573/1987 on 11-10-1999. It is their contention that the subject of regularization of temporary employees was considered in the Cabinet Meeting dated 10-02-2015 and on the basis of decision taken by the Cabinet, G.R. dated 01-04-2015 has been issued. In the said G.R. dated 01-04-2015, it is specifically stated that services of the employees will be regularized from the date of judgment or

the date mentioned by the Court in the respective cases of the employees. As O.A.No.505/2018 was disposed of by order of the Tribunal on 16-07-2009, the said date has been considered for regularization of these applicants. All the O.As. filed by the applicants prior to O.A.No.505/2008 had not been allowed by this Tribunal or the Hon'ble High Court. Therefore, interim relief granted in earlier Writ Petition was not considered.

8. It is contention of the respondents that the applicants are working as labourers from 1981 and 1980 and therefore, it has been mentioned in various proposals submitted by the respondent no.3. Their services are regularized on the basis of decision taken by the Government in the Cabinet Meeting dated 10-02-2015 as per G.R. dated 01-04-2015. The services of the applicants are regularized as per the G.R. dated 01-04-2015. The applicants were regularized in Group IV (Watchman) and their date of retirement on superannuation was before the order dated 13-04-2015. They retired on 31-03-2013 and 31-12-2013 respectively. It is their contention that the interim relief was granted in the Writ Petition No.573/1987 and it was disposed of finally on 11-10-1999. Thereafter,

the Review Petitions were filed by the applicants. The matters had been transferred to this Tribunal and numbered as T.A.No.63/1999 and it was disposed of by this Tribunal. They have admitted the fact that the applicants have filed O.A.No.505/2018 and same has been disposed of on 16-07-2009. It is their contention that the impugned order has been passed in view of the G.R. dated 01-04-2015 and there is no illegality in the same. Therefore, they have supported the impugned order and prayed to reject the O.A.

9. The applicants have filed their affidavit in rejoinder. It is their contention that as per the G.R. dated 01-04-2015, the employees should be regularized from the date of order passed by the Court in a particular matter. It is their contention that the services of the applicants are protected by the order dated 09-04-1987 passed by the Hon'ble High Court and thereafter the matter has been transferred to this Tribunal. Protection granted by the Hon'ble High Court was continued thereafter till the disposal of the O.A. Therefore, they are entitled for regularizing their services from 09-04-1987. It is their contention that the services of Ramesh Deorao Kamble,

who is a similarly situated employee has been regularized from 01-02-1989 but the respondents have taken a different stand while regularizing services of the applicants which amounts to discrimination. On this ground, they have prayed to regularize their services from 09-04-1987.

10. I have heard Shri I.D.Maniyar, Advocate for the Applicant, Shri V.R.Bhumkar, Presenting Officer for the respondent nos.1 to 3 and Smt. S.E.Madne, Advocate for the respondent no.4. Perused the documents placed on record by the parties.

11. Admittedly, the applicants were appointed as Watchman on 13-10-1981 and 01-12-1980 respectively on daily wages. In the year 1987 they approached the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad by filing Writ Petition No.573/1987 along with other two employees with a prayer to direct the respondents not to fill the posts of Watchman and Drillers by removing them. In the Writ Petition, the Hon'ble High Court granted interim protection in favour of the applicants by order dated 09-04-1987.

12. On 13-12-1999, Hon'ble High Court transferred the Writ Petition to this Tribunal. Same was numbered as T.A.No.63/1999 in this Tribunal. In the T.A.No.63/1999, applicants filed M.A.No.174/1999 claiming interim relief and the Tribunal by order dated 20-12-1999 extended interim relief granted in their favour as the Hon'ble High Court granted interim relief in their favour. On the basis of the interim protection granted by the Hon'ble High Court and the Tribunal the applicants continued in the service. This Tribunal disposed of the T.A.No.63/1999 on 24-06-2003 with direction to the respondents to decide the representations filed by the applicants and continued the interim relief till the final decision on the proposal. Respondents had not complied with the order, therefore, the applicants approached the Tribunal by filing the contempt proceeding but it was disposed of. The applicants time and again approached the respondents with a request to regularize their services but their request was not considered. Therefore, they have filed O.A.No.505/2008 and prayed to regularize their services. During the pendency of the O.A., the respondents submitted that proposal dated 30-01-2009 has been forwarded for their regularization. Therefore, the matter came to be disposed

of on 16-07-2009 with a direction to the respondents to consider the proposal submitted by the department as early as possible. Thereafter, the decision has not been taken by the Government though the applicants persuaded their claim. Meanwhile, the Government issued G.R. dated 01-04-2015 and decided to regularize services of the applicants and other employees situated on the same footing from the date of order of the Tribunal, Court or from any date specified by the Tribunal or the Court. On the basis of said G.R. respondents issued the impugned order and regularized the services of the applicants from the date of order passed by this Tribunal in O.A.No.505/2008 i.e. w.e.f. 16-07-2009.

13. Learned Advocate for the applicants has submitted that the applicants are serving on daily wages since the year 1981 and 1980. They are entitled to get regularized in service on completion of regular service of 5 years in view of the G.R. dated 24-11-2000 and 24-04-2001 but the respondents had not considered the said G.Rs. and issued the impugned order illegally. He has submitted that at the most, the applicants' services ought to have been regularized from 09-04-1987 when the Hon'ble High Court

decided the Writ Petition. Interim relief granted by the Hon'ble High Court can be taken into consideration while regularizing the services of the applicants but the respondents have not considered the said aspect. He has submitted that services of the applicants were protected by the interim relief granted by the Hon'ble High Court on 09-04-1987 in Writ Petition No.573/1987 and from that date their services ought to have been regularized by the respondents but the respondents had not considered the said aspect. Therefore, he has prayed to allow the O.A. and quash and set aside the impugned order and extend the benefits of regularization of service w.e.f. 09-04-1987.

14. Learned P.O. has submitted that the applicants had filed Writ Petition No.573/1987 with a prayer not to terminate the services and to allow them to continue in service. Hon'ble the High Court granted interim protection to the applicants and on the basis of the interim protection, the applicants continued in the service. Thereafter, the Writ Petition No.573/1987 came to be transferred to this Tribunal and it was numbered as T.A.No.63/1999. Said T.A.No.63/1999 was disposed of with a direction to the respondents to consider the representations of the

applicants. He has submitted that thereafter, the applicants filed one more O.A. bearing No.505/2008 and claimed relief of regularization. Said O.A. came to be disposed of on 16-07-2009 with a direction to the respondents to take decision on the proposal submitted by the department regarding regularization of the service as early as possible.

15. Learned P.O. has further submitted that thereafter Government issued G.R. dated 01-04-2015 and regularized the services of the applicants and other employees. In the said G.R., it has been specifically mentioned that services of such employees can be regularized from the date prescribed by the Tribunal or court or from the date of order of the Tribunal or court. He has argued that on the basis of said G.R., the respondents issued the impugned order and regularized services of the applicants from the date of decision of the Tribunal in O.A.No.505/2008 and regularized services of the applicants w.e.f. 16-07-2009 on which date O.A.No.505/2008 was disposed of. He has submitted that there is no illegality in the impugned order and G.R. dated 01-04-2015. Therefore, he has supported the impugned order.

16. On going through the documents on record it is crystal clear that initially applicants had challenged the order regarding removal from service by filing the Writ Petition No.573/1987 before the Hon'ble High Court. By way of interim protection granted by the Hon'ble High Court on 09-04-1987 they continued in the service. Thereafter, the case came to be transferred to this Tribunal which was numbered as T.A.No.63/1999. Interim protection given to the applicants was continued. Said O.A. came to be disposed of on 24-06-2003 with a direction to the respondents to decide the representation of the applicants. Thereafter, the applicants filed O.A.No.505/2008 with a prayer to direct the respondents to regularize their services. Same O.A. came to be disposed of on 16-07-2009 with a direction to the respondents to consider the proposal regarding regularization of the applicants at the earliest.

17. Thereafter, the Government took policy decision in the Cabinet meeting held on 10-02-2015 and decided to regularize services of those daily wagers who fulfill condition of 5 years' continuous service as daily wagers till 31-12-1998. On the basis of the said decision the Government issued G.R. dated 01-04-2015. In the said

G.R., it has been specifically mentioned that the services of those daily wagers who are eligible shall be regularized from the date appointed by the Court or Tribunal or from the date of order of the Tribunal or Court in the respective cases. Provisions of the said G.R. dated 01-04-2015 are material. Relevant provision (paper book page 73-74) is reproduced as follows:

“ भूजल सर्वेक्षण आणि विकास यंत्रणा, पुणे
यांच्या अधिनस्त कार्यालयातील २६ रोजंदारी
कर्मचा-यांना नियमित करण्याबाबत.

महाराष्ट्र शासन

पाणी पुरवठा व स्वच्छता विभाग

शासन निर्णय क्रमांक: आपना-१००९/प्र.क.३७/पापु-१५

७ वा मजला, गोकूलदास तेजपाल रुग्णालय इमारत संकुल,

लोकमान्य टिळक मार्ग, मंत्रालय, मुंबई - ४००००१.

तारिख: १ एप्रिल, २०१५

प्रस्तवाना :

शासन निर्णय :

१. -----

२. मा. न्यायालयांनी संबंधित प्रकरणी दिलेल्या आदेशानुसार त्या त्या कर्मचा-यांच्या सेवा मा. न्यायालयाच्या आदेशाच्या दिनांकापासून अथवा मा. न्यायालयांनी ज्या कर्मचा-यांच्या सेवा एका विशिष्ट दिनांकापासून नियमित करण्याबाबत आदेशीत केले आहे, त्या दिनांकापासून त्यांच्या सेवा नियमित करण्यास मान्यता देण्यात येत आहे. ज्या कर्मचा-यांच्या बाबतीत मा. न्यायालयांनी सेवेतील सर्व लाभ अदा करण्याचे आदेश दिले आहेत (all consequential

benefits/ back wages) अशाच कर्मचा-यांना सेवेचे
अनुषंगीक लाभ / मागील वेतन (back wages) अनुज्ञेय राहतील.

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18. On going through the said provisions in the G.R., it is crystal clear that the Government has taken conscious decision and decided to regularize the services of eligible daily wagers from the date of order of the Court or Tribunal or from the specific date given by the Tribunal or Court as the case may be. The respondent no.3 has rightly considered the provisions of the said G.R. and issued the impugned order. O.A.No.505/2008 filed by the applicants for regularization of the services has been disposed of by order dated 16-07-2009. Therefore, the services of the applicants have been regularized from that date as no specific date has been mentioned in the order. Therefore, I find no irregularity in the impugned order.

19. It is also material to note here that the applicants have not challenged the said G.R. dated 01-04-2015. Had it been a fact that they are aggrieved by the relevant provisions mentioned in clause 2 of the said G.R. regarding date of enforcement of regularization, they ought to have challenged the same before the appropriate forum but they

have not challenged the same. Therefore, they are entitled to get regularized their services from the date mentioned in the G.R. The respondent no.3 has rightly considered the provisions of the said G.R. and issued the impugned order dated 13-04-2015. Therefore, I do not find any illegality in the said order.

20. Learned Advocate for the applicants has submitted that the respondent no.3 has issued the order in respect of similarly situated persons, namely Shri Suresh Jagdhane and Ramesh Devrao Kamble and regularized their services w.e.f. 22-01-2004 and 01-02-1989, respectively. He has submitted that the respondents ought to have considered the cases of the applicants and issued the order regularizing their service from the date mentioned in their orders but the respondents have not considered the said aspect and passed the impugned order which is discriminatory. Therefore, he has prayed to quash the impugned order on that ground and allow the O.A.

21. Learned P.O. has submitted that the dates regarding regularization of the services of Shri Suresh Jagdhane and Ramesh Devrao Kamble have been fixed on the basis of decision rendered in the O.As. filed by them in view of

Clause 2 of the G.R. dated 01-04-2015 and there is no illegality in the same. Therefore, the applicants cannot claim dates of regularization of those persons as dates for their regularization in service. He has submitted that the dates of order passed in those O.As. are different and date of order passed in the O.A. of the applicants is different. Therefore, the applicants cannot claim date of regularization of other employees as their date of regularization in service.

22. I have gone through the record and I find substance in the submissions advanced by the learned P.O. that the employees have been regularized in service as per the order of Tribunal or Court. The said dates have been fixed in view of clause 2 of the G.R. dated 01-04-2015. The date of regularization of the applicants is as per the date of order passed in O.A.No.505/2008. There is no discrimination on the part of the respondents in fixing the date of regularization in the case of applicants and other employees. Therefore, I do not find any substance in the submissions advanced by the learned Advocate for the applicants in that regard.

23. In view of the above said discussion, it is crystal clear that the impugned order has been issued in view of the provisions of G.R. dated 01-04-2015. There is no illegality in it. Hence, no interference is called for in the said order. There is no merit in the present O.A. Consequently, O.A. deserves to be dismissed.

24. In view of the discussion in the foregoing paragraphs O.A. stands dismissed without any order as to costs.

(B. P. PATIL)
VICE CHAIRMAN

Place : Aurangabad
Date : 30-07-2019.