

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI
BENCH AT AURANGABAD.

DIST. BEED

MISC. APPLICATION NO.301/2016 IN OA NO.539/2016.

(Subject :- Termination)

1. Amol s/o Kantarao Kakde,
Age 32 years, Occu. Service,
R/o Barshi Naka, Telgaon Road,
Beed, District Beed.
2. Mokind s/o Somanthrao Mule,
Age 31 years, Occu. Service,
R/o C/o Divisional Caste Scrutiny
Committee No.3 Dhule.
3. Ku. Rohini d/o Indrajeet Pise,
Age 28 years, Occu. Service,
R/o B & C Quarters AUSA Road,
Latur, Dist. Latur.

-- **APPLICANT**

VERSUS

1. The State of Maharashtra
Through the Secretary,
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai-32.
2. The Commissioner,
Social Welfare
Maharashtra State,
Pune 411 001.

-- **RESPONDENTS.**

APPEARANCE : Shri V. B. Wagh, learned Advocate for the Applicants.
: Shri M. P. Gude, learned Presenting Officer for the Respondents.

CORAM : **Hon'ble Shri Rajiv Agarwal, Vice Chnairman &**
: **Hon'ble Shri JD Kulkarni, Member (J).**

DATE : 15.12.2016.

ORDER.

(Per : Hon'ble Shri Rajiv Agarwal, Vice Chnairman)

1. Heard Learned Advocate Shri V. B. Wagh for the Applicant and Shri M. P. Gude, learned Presenting Officer for the Respondents.
2. This M.A. was heard along with the O.A. in which the applicants have challenged the order dated 22.6.2016 terminating the services of the applicants.
3. Learned counsel for the applicants argued that the applicant no.1 has appointed as Higher Grade Stenographer by order dated 10.11.2009 on contract basis pursuant to advertisement issued on 11.2.2009 in two State level newspapers viz. Daily Sakal and Lokmat. Other applicants were appointed on different dates in October / November, 2009. A total of 191 applications were received

to fill up 14 posts created by G.R. dated 22.6.2007. 76 candidates were held eligible for examination and 48 candidates actually participated in practical examination. They were interviewed by a six member Selection Committee. The applicants were selected and have been working on that post on contractual basis. They filed representation on 17.7.2014 to the Respondent no.2 to regularize their services considering the judgment of Hon'ble Bombay High Court (Nagpur Bench) in W.P. No.2046/2010. However, the Respondent no.1 rejected the representation of the applicant by communication dated 12.4.2016. The services of the applicants were terminated by the Respondent no.2 by order dated 22.6.2016, which is challenged in the present O.A.

4. Learned Counsel for the Applicants argued that the applicants have been appointed on regularly sanctioned posts of Higher Grade Stenographers. 14 posts were created by G.R. dated 22.6.2007 in the pay scale of Rs.6500 -10,500, while 4 posts were created by G.R. dated 15.10.2007 in the regular pay scales. The respondent no.2 decided to fill these posts on contract basis in consolidated salary of Rs.10,000/- p.m. Learned Counsel for the Applicant stated that there are a total of 41 posts of Higher Grade Stenographer on the establishment of the Respondent no.2. Out of these 50% i.e. 21

posts are in the quota of direct recruitment while 20 posts are in promotion quota. 5 posts from direct recruits quota and 9 posts from promotion quota are vacant. The applicants can be accommodated in the vacant posts from the direct recruits quota. The applicants have been appointed by a selection procedure which included practical and oral examinations. The advertisement inviting application for the posts was issued in two leading Marathi newspapers having State wide Circulation. The applicants are not back door entrants. Learned counsel for the applicants contended that the applicants are similarly situated persons as the petitioners in W.P. No.2046/2010 and are entitled to be regularized in service.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the applicants were appointed on contract basis initially for a period of 11 months. It was made clear in the appointment order that the applicants would not be treated as Government servants. Their appointment was renewed from time to time by giving them technical breaks. The Respondent no.2 had forwarded representation dated 17.7.2014 of the applicants for regularization of service to the Respondent no.1. The applicants filed W.P. No.13397/2014 before Hon'ble High Court and by order dated 15.10.2014, Hon'ble High Court directed the Respondentno.1

to decide the matter on merits within six months from the date of order. It was found that judgment of Hon'ble High Court in W.P. No.2046/2010 would not apply to the facts of the present case. The representation of the Applicants was rejected. The applicants are no longer in service from 1.7.2016.

6. The issue before us is whether the present applicants are covered by the judgment of Hon'ble High Court in W.P. No.2046/2010. In para 10 of the judgment, Hon'ble High Court has observed as under :-

“10. We have considered the submissions on behalf of the petitioners and the respondents. It is undisputed that the appointments of the petitioners are as per policy incorporated in the Government resolution dated 25th of July, 2002 in which it is laid down that the appointments will be on contractual basis and till the availability of the candidates appointed through regular selection process. However, it is important to consider that the petitioners are appointed after following the procedure of issuance of advertisement and conducting interviews by a duly constituted Selection Committee. The Selection Committee constituted as per the Government resolution dated 2rd August, 2003 comprises of highly experienced and technical persons like :

- (i) Joint Director, Technical Education Department,
- (ii) representative of women,

- (iii) Principal of the concerned institution,
- (iv) Representative of backward class, and
- (v) two Experts of concerned subject.”

In view of the above facts, it cannot be said that the appointments of the petitioners are back door or illegal. It cannot be said that the petitioners are appointed arbitrarily or haphazardly or clandestinely without issuing advertisement and without giving an opportunity to all the eligible candidates to participate in the selection process. From the record it clearly appears to be an undisputed position that in response to the advertisement several candidates had participated in the selection process and it is the petitioners who were found eligible and suitable for the posts and as such were selected and appointed. It is not the case of the respondents that any illegalities took place during the selection process.”

7. The facts in the present case are remarkably similar. State Govt. has created a total of 18 posts of Higher Grade Stenographers for the Caste Scrutiny committees working all over the State. By letter dated 18.11.2008, 14 posts were permitted to be filled on contract basis till regular appointments were made. On 11.2.2009, advertisements were issued in widely circulated Marathi newspapers viz. Sakal & Lokmat inviting applications. A total of 191 applications were received and 76 candidates were held eligible and called for practical examination. 48 candidates appeared for

practical examination and candidates were interviewed by a Selection Committee, which has following members :-

1. Director, Social Welfare, M.S. Pune --- Chairman.
2. Additional Director, Social Welfare, Pune ---Member.
3. Regional deputy Director, Employment & Self Employment. -- --- Member.
4. Deputy Director, Tribal Research & Training Institute, Pune. -- --- Member.
5. Dist. Women & Child Welfare Officer,Pune - --Member.
6. Deputy Director (Admn.) Social Welfare, Pune. — -- Member - Secretary.

The appointment of the applicants cannot be said to be back door or illegal. They were not appointed arbitrarily or haphazardly or clandestinely without issuing advertisement and without giving opportunity to all eligible candidates to participate in the selection process. A large number of candidates appeared in the selection process and the applicants were selected. There were no illegalities in the selection process. The applicants have worked for more than 6 years.

8. The Govt. did not held the selection process for regular appointment during all these years. From the affidavit in reply filed

on behalf of the Respondent nos. 1 & 2 on 1.9.2016, it is clear that suitable persons are not available for the post of Higher Grade Stenographer. In para no.7 it is stated that :-

“7. I say and submit that respondent no.2 has made efforts to recruit the post of higher grade Stenographer on regular pay scale. But there is no satisfactory response to the advertisement given by the respondent no.2.”

9. The State Govt. has issued G.R. dated 8.1.2016 to engage retired Officers/employees on contractual basis and retired persons are taken on contract basis as H. G. Stenographers. From the file noting of the Respondent no.1 placed on record by the applicants under the Right to Information Act, it is seen that out of 41 posts on the establishment of the Respondent no.2, 5 posts from direct recruits quota and 9 posts from promotion quota are vacant in the cadre of Higher Grade Stenographer. No suitable lower Grade Stenographers are available for promotion. In the present case, there does not appear to be any possibility that suitable candidate could be available to fill the vacancies in the post of H.G. Stenographer. The applicants, though appointed on contract basis, were appointed in the post which are permanent and full time posts and their services are required by the Govt. of Maharashtra. The applicants continuation in service would not adversely affect the

fundamental rights of anyone under Article 16 of the Constitution. All these facts were considered by Hon'ble High Court while deciding W.P. No.2046/2010 and in the present case, these requirement are fulfilled.

10. We are of the considered opinion that the applicants are eligible to be regularized in service. We, therefore, direct the respondents to grant regular pay scale to the applicants from 15.12.2016. They would not be entitled to any monetary benefits for the past services rendered by them in spite of their regularization. This order should be implemented w.e.f. 15.12.2016.

11. This O.A. is allowed in these terms with no order as to cost. As the O.A. is allowed nothing survives in the M.A., which also stands disposed of.

MEMBER (J)

VICE CHAIRMAN

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