

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1029 OF 2019

DISTRICT :- NANDED

Suraj S/o Suresh Bavat,)	
Age - 38 years, Oce. Labour,)	
R/o Bagdi Niwas, Behind Gitanjali)	
Building, Tilak Nagar, Nanded)	
Dist. Nanded.)	
		.. APPLICANT

V E R S U S

1.	The State of Maharashtra,)	
	Through its Principal Secretary,)	
	Department of Drugs & Medicine,)	
	Mantralaya, Mumbai -32.)	
2.	Director of Medical Health,)	
	St. George Hospital,)	
	CST Railway Station, Mumbai.)	
3.	The Dean,)	
	Dr. Shankarrao Chavan Govt.)	
	Medical College & Hospital,)	
	Vishnupuri, Nanded.)	
4.	Smt. Godavaribai Kashiram)	
	Kesarwadikar,)	
	Class-IV (Ward Attendant))	
	Maternity Ward,)	
	Dr. Shankarrao Chavan Govt.)	
	Medical College & Hospital,)	
	Vishnupuri, Nanded.)	
			.. RESPONDENTS

APPEARANCE	:	Shri M.S. Chaudhari, learned counsel for the applicant.
	:	Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities.

**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

DATE : 26.08.2024

O R A L O R D E R

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri M.S. Chaudhari, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities.

2. The applicant was appointed by the respondent no.3 on ad-hoc basis on leave vacancy of regular Class-IV employee of the Hospital since 15.6.2000. It is the contention of the applicant that thereafter also on different occasions the applicant did serve as Safaigar in the Hospital and each time he was appointed for the period of 29 days. As further contended in the Original Application, the process of giving such ad-hoc appointment continued till 19.9.2010 and thereafter even after several requests to respondent no. 3, he avoided to appoint the applicant by showing a reason that there is no leave vacancy available.

3. Applicant has further contended that respondent no. 03, however, promised the applicant to accommodate him

whenever the vacancies will be created. The applicant has alleged that the respondent no. 3, however, did not keep his promise and did not provide any employment to the applicant thereafter.

4. It is the further contention of the applicant that vide Circular dated 4.2.2019 the Government called for the information of the employees in the prescribed form for the purposes of regularizing the said employees in the Class-IV post, who have worked for 10 years or more than that and in each said year have worked for minimum 240 days.

5. The applicant has further alleged that from the year 2010 onwards till 2019 though the applicant was consistently making request for his appointment, he was not given any appointment and ignoring his seniority by adopting arbitrary and corrupt practices the appointments were given to some other employees. The applicant has given example of respondent no. 4 for such appointment. It is the contention of the applicant that the services of respondent no. 4 came to be regularized immediately after first appointment given to her for 29 days. The applicant has therefore alleged that discriminatory practice is adopted by the respondents insofar as the applicant is concerned. It is his further contention that the

condition of working for more than 240 days is irrational and fulfillment of the said condition is not within the control of the employee. He has further contended that to provide the work is completely within the control of the respondents and if the work is not provided, the employee cannot complete the period of service of 240 days in a particular year. In the circumstances, the applicant has preferred the present Original Application by claiming the following reliefs:-

“A) This Original Application may kindly be allowed.

B) Record and proceeding may kindly be called for.

C) To direct the respondents to relax the condition of 240 days service in every year imposed in circular dtd. 4.2.2019 issued by Resp. no. 2 for regularizing ad-hoc employees in regular class-IV post and instead to adopt the policy of absorbing in regular class-IV employment strictly in accordance with seniority, merit and reservation.

D) To direct the respondent no. 3 to appoint the petitioner as regular class IV employee under control of Resp. no. 3.

E) The petitioner may be awarded deem date benefit since the year 2010 (since the date of appointment of Resp. no. 4) as regular class IV employee of Resp. No. 3.
(Deleted)

F) Cost of the petition and compensatory cost may kindly be awarded by saddling the same upon respondents.”

6. The respondents have resisted the contentions raised in the Original Application and have opposed the prayers made therein. Joint affidavit in reply is filed on behalf of the

respondent nos. 01, 02 and 03. The respondents have denied the allegations raised by the applicant that after 19.9.2010 the applicant was not provided with any work. The respondents have submitted the particulars of the work provided to the applicant even in the month of November, 2010 and all such particulars are placed on record along with affidavit in reply of the respondents and marked as Exhibit R-1. It is further contended that in the attendance report no. 12780/2010 dated 30.11.2010 and report no. 13476/2010 dated 22/12/2010 clearly mentioned that the applicant did not join and therefore no payment was made to him. It is further contended that the seniority lists for the period from 01.01.2011 to 31.12.2011 of the ad-hoc employees demonstrates that the applicant did not join duties. All such reports are collectively filed at Exhibit R-1 by the respondents along with their affidavit in reply.

7. The respondents have stated in paragraph 10 of their affidavit in reply that the respondent no. 4 namely Smt. Godavaribai KashiramKesarwadikar is continued in view of the order passed by this Tribunal in Original Application No. 441/2000 dated 4.7.2000. It is further submitted that as per the guidelines given by the Tribunal more particularly vide order dated 18.6.2024 delivered in 138/2003, it is necessary for the

Badli Workers to complete minimum 240 days' work in every financial year and the employees concerned must have worked in this fashion for 10 such years by date 31.12.2018. According to the respondents, since the applicant did not satisfy the said criteria he is not considered for his regularization.

8. The applicant has submitted rejoinder affidavit to the affidavit in reply submitted by the respondents and has denied the contentions raised in the affidavit in reply insofar as the fact that the applicant did not report for the duties is concerned. Shri M.S. Chaudhari, learned counsel appearing for the applicant submitted that though the applicant was given the appointments up to year 2010, he was not provided with any appointment thereafter despite he was consistently making the request therefor. Learned counsel reiterated the ground taken in the Original Application that the condition as has been imposed that the employee must have worked for 10 years or more than that and in each said year must have worked for minimum 240 days, is arbitrary, as it is not within the capacity of the applicant to work for such a period of time unless he is provided with such work by the concern authority. Learned counsel reiterated his objection as about the regularization of

services of respondent no. 4. Learned counsel, in the circumstances, has prayed for allowing the Original Application.

9. Shri V.R. Bhumkar, learned Presenting Officer in his arguments made submissions on the basis of the stand taken by the respondents in their affidavit in reply and has prayed for dismissal of the Original Application.

10. We have reproduced hereinabove the prayers made by the applicant in his Original Application. The very first prayer of the applicant is to direct the respondents to relax the condition of 240 days service in every year imposed in the Circular dated 4.2.2019 issued by respondent no. 2 for regularizing ad-hoc employees in regular class-IV post and instead to adopt the policy of absorbing regular class-IV employees strictly in accordance with seniority, merit and reservation. We are afraid any such relief whether can be asked and can be considered by the Tribunal since it's a matter of policy. Not only in the present matter but in almost all matters of regularization such condition is invariably prescribed that the employee concerned must have worked for 240 days in a year of preceding five years or Ten years as the case may be for claiming regularization. It does not appear to us that the said condition is in any way arbitrary or irrational. Applicant has

not provided any justification why such condition shall not be imposed and if not this then which shall be the methodology.

11. Another prayer made by the applicant is to direct the respondent no. 3 to appoint the applicant as regular class-IV employee under the control of respondent no. 3. The request so made is also liable to be rejected at the threshold for the reason that the Tribunal may not direct the respondents in any matter to appoint the particular applicant. It's the matter within the exclusive domain of the appointing authority. It is not the case that the services of the applicant are wrongly terminated and the order of reinstatement is sought by the applicant. There is nothing on record to show that from the year 2010 onwards till filing of the present Original Application i.e. till year 2019, the applicant has worked with the respondents even for a shorter period. The said prayer also, therefore, deserves to be rejected. The prayer (E) is deleted by the applicant. Insofar as the allegation of discrimination is concerned, the respondents have clarified that the respondent no. 4, Smt. Godavaribai Kashiram Kesarwadikar, has approached this Tribunal and under the orders of the Tribunal her services were continued. The said objection also, therefore, cannot be maintained. The applicant has thus not made out any case for grant of any relief as has

been prayed by him in the Original Application. Hence, the following order:-

ORDER

The Original Application stands dismissed, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 26.08.2024

O.A.NO.1029-2019 ABSORPTION - APPOINTMENT