

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.373 OF 2019

DISTRICT: - Dhule

Gajendra s/o Ramrao Patil,)
Age:48 years; Occ.: Service)
(as Laboratory Asstt. Sakri R.H.),)
R/o : At Post – Kirwade,)
Tal. Sakri, Dist. Dhule.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra**)
Through its Secretary,)
Public Health Department,)
Mantralaya, Mumbai-32.)
- 2. The District of Health Services,**)
M.S., 1st Floor, Arogya Bhavan,)
St. George's Hospital Compound,)
Near C.S.T. Station, Mumbai-01.)
- 3. The Deputy Director of Health**)
Services, Nashik,)
Nashik Civil Hospital, Campus,)
Trimbak Road, Nashik.)
- 4. The Civil Surgeon, Dhule,**)
Sakri Road, Vidya Vihar Colony,)
Dhule.)
- 5. The Medical Superintendent**)
Sakri Rural Hospital, Sakri,)
Dist. Dhule.)....**RESPONDENTS**

APPEARANCE : Shri Avinash S. Deshmukh, learned
Advocate for the applicant.
: Shri M.P. Gude, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **05.09.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed seeking direction to the respondents in general and the respondent No.3 in particular to regularize the applicant's service on the post of Laboratory Assistant w.e.f. the date of his initial appointment on the said post in the year, 2000 with all consequential service benefits.

2. The facts in brief giving rise to this Original Application can be stated as follows:-

(i) The applicant belongs to the "Kunbi" caste, which is included in the OBC category. His date of birth is 10.10.1970 and as such he has practically completed 48 and ½ years of his age and has meagre chances of getting regular employment. However the applicant is also Project Affected Person.

(ii) The applicant acquired qualifications of B.Sc. and DMLT in the years 2001 and 2003 respectively. The applicant was

appointed as Laboratory Assistant by the respondent No.3 for the period of 60 days from 15.09.2000 to 13.11.2000 by issuing appointment order dated 11.09.2000 (Annex. 'A-3'). The applicant pursuant to the said appointment order joined his duty at the Rural Hospital, Pimpalner in Dhule District.

(iii) It is further submitted that before the tenure of his appointment vide above referred order dated 11.09.2000 came to an end, he approached this Tribunal and filed Original Application No.905/2000 seeking directions to continue him in service. The said Original Application filed by the applicant was disposed off vide an order dated 03.11.2000 (Annex. 'A-4') by which this Tribunal was pleased to observe and direct that the applicant being an ad-hoc/temporary appointee on the post of Laboratory Assistant was entitled to continue in service on the same terms and conditions till regular selectee from the competent Selection Agency was made available and posted. In view of that, the respondent No.3 was pleased to issue an order dated 09.11.2000 (Annex. 'A-5') continuing him in service on the post of Laboratory Assistant till availability of regularly selected candidate. Admittedly, before being continued in

service on the post of Laboratory Assistant, the applicant was given technical break of one day by the respondent No.3.

(iv) It is further submitted that in view of above, the applicant has been continuously working under the respondents without a single day's break during the period of last more than 18 years when he has always rendered more sincere, efficient and bonafide services to the department.

(v) It is further submitted that though the applicant has been working continuously under the respondents for a prolonged period of more than 18 years, during all these years he has not been given any service benefits such as annual increment, consequential pay-fixation, leave, functional promotion and/or Time Bound Promotion, benefit of one-step promotion for working in the Tribal area etc. Consequently, the applicant is still working as a freshly recruited Laboratory Assistant even after rendering more than 18 years of service to the department. As on date, the applicant is drawing his salary in the same pay band of Rs.5200-20200 with grade pay of Rs.2000 which is the revised pay band for the pay scale of Rs.3200-4900 in which the applicant was given appointment in the year, 2000.

(vi) It is further subtitled that during his prolonged services, the applicant has been given additional charge of the higher post of Laboratory Technician on number of occasions, which he had duly held and had discharged duties attached to that post, which is demonstrated by the documents at Anex. 'A-6' collectively.

(vii) It is further submitted that in the year 2000 when the applicant entered in the service, the minimum educational qualification required for the post of Laboratory Assistant though was X Standard pass, which was later on increased to XII Standard in Science stream, but, the applicant has already acquired higher educational qualification of B.Sc. in the year 2001 and DMLT in the year 2003. Thus the applicant was having educational qualification more than XII Standard in Science Stream.

(viii) It is further submitted that in view of the order dated 03.11.2000 (Annex. 'A-4') in Original Application No.905/2000 filed by the applicant, it was very much permissible for the respondents to bring his ad-hoc/temporary services to an end by getting a regularly selected candidate posted in his place. However, that action was not taken by the respondents during all these years. On

the contrary, the services of the applicant have been continued to extract work from the applicant attached to the post of Laboratory Assistant and even attached to the higher post of Laboratory Technician on some occasions without giving him any service benefit whatsoever. This amounted to exploitation of the applicant and taking of undue benefit of the precarious position in which the applicant is placed wherein he has no option but to continue working under the respondents inasmuch as it was/is very difficult to get any employment.

(ix) It is further submitted that the applicant has crossed the upper-age limit for entry in service under the State Government long back. He is the sole bread earner in the family. The respondents have not taken any steps to regularize the services of the applicant on the post of Laboratory Assistant and continued him on ad-hoc/temporary post. Therefore, the applicant submitted representation dated 14.08.2017 (Annex. 'A-7') to the respondent No.5 i.e. the Medical Superintendent, Sakri Rural Hospital, Sakri, Dist. Dhule seeking regularization of his services. The respondent No.5 vide its communication dated 21.08.2017 (Annex. 'A-8') was pleased to forward the said

representation of the applicant to the respondent No.4 i.e. the Civil Surgeon, Dhule, but wrongly mentioned therein that a Court matter relating to regularization of applicant's services was sub-judice. The respondent No.4 in turn submitted that the said proposal of the respondent No.5 to the respondent No.3 i.e. the Deputy Director of Health Services, Nashik for necessary action vide its communication dated 27.11.2017 (Annex. 'A-9').

(x) It is further submitted that in spite of aforesaid developments, nothing has happened thereafter till this date meaning thereby no decision is being taken in respect of regularization of services of the applicant. Failure of the respondents in regularizing the applicant in service and continuing him therein only on ad-hoc/temporary service even after rendering more than 18 years of service is resulting in violation of right to life guaranteed u/A 21 of the Constitution of India. The applicant has been deprived of all the consequential service benefits thereof. Hence, this application.

3. The application has been resisted by filing affidavit-in-reply on behalf of the respondent Nos.1 to 5 by one

Vishveshvar Daulatrao Patil working as the In-charge Chief Administrative Officer in the office of Respondent No.3 i.e. the Deputy Director of Health Services, Nashik, thereby he denied all the adverse contentions raised in the Original Application.

(i) It is specifically contended that the applicant was initially appointed by issuing appointment order dated 11.09.2000 purely on temporary basis for the specific period of 60 days and after completion of 60 days, the applicant's services automatically comes to an end and there was not need of passing and issuing separate order for termination of services of the applicant as stated in terms and conditions of that order. In view of same, the applicant is not entitled for continuation of services on that count. The applicant, however, after accepting the terms and conditions laid down in the appointment letter dated 11.09.2000, filed Original Application No.905/2000 before Ld. Tribunal in which order came to be passed directing the respondents to continue the services of the applicant on the same terms and conditions except the condition No.3 till the regular selectee from the competent Selection Agency made available and posted therein.

(ii) It is denied that the proposal submitted by the respondent No.4 to the respondent No.3 is simply pending. In fact the respondent No.3 vide its order dated 22.01.2018 (Exh. 'R-1') has asked the respondent No.4 as to how they have recommended to regularize the temporary services of the applicant when the applicant is continued in service as per the order of the Ld. Tribunal till the availability of regular employee selected by the competent authority and thus no question arises to regularize the services of the applicant.

(iii) The respondent No.3, however, asked the explanation of the respondent No.4 for submitting the wrong proposal regarding the regularization of the services of the applicant. The respondents have reproduced paragraph No.4 of the order dated 03.11.2000 passed in O.A.No.905/2000 which is as follows:-

“4. Petitioner being an ad-hoc appointee on the post of Laboratory Assistant is entitled to continue on the same terms and conditions except the condition No.3 as per the appointment order dated 11.09.2000 till regular selectee from the competent selection agency is made available and posted.”

In view of that, according to the respondents the applicant is not entitled for regularization of services on the post of Laboratory Assistant.

(iv) It is however, not denied that the applicant is getting requisite salary of the post of Laboratory Assistant but without regular annual increment and other service benefits. It is further submitted that as per ratio laid down in the judgment of the Hon'ble Apex Court in the case of **Umarani Vs. Registrar, Co-operative Societies, Tamilnadu and Ors.**, the applicant is not entitled for regularization of services. Therefore, application is devoid of merit and liable to be dismissed.

4. I have heard at length the arguments advanced by Shri Avinash S. Deshmukh, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer representing the respondents on other hand.

5. After having considered the rival pleadings and documents on record, it is evident that the applicant is seeking the remedy of regularization of his services on the post of Laboratory Assistant with effect from the date of his

initial appointment i.e. dated 11.09.2000 (Annex. 'A-3'). The respondent No.3 i.e. the Deputy Director, Health Services Nashik Circle, Nashik issued appointment letter dated 11.09.2000 (Annex. 'A-3') to the applicant purely on temporary basis for 60 days. Clause No.3 of the said appointment letter dated 11.09.2000 (Annex. 'A-3') was as follows:-

“ ३) आपली ही नेमणूक निव्वळ तात्पुरत्या स्वरूपाची असल्याने आपणास सेवेत कायम करण्यांत येणार नाही व त्यासाठी न्यायालयातही दाद मागता येणार नाही.”

As per this appointment letter dated 11.09.2000, the applicant was given appointment on the post of Laboratory Assistant in the pay scale of Rs. Rs.3200-4900. His appointment was made against the vacant post.

6. It is not disputed that the requisite qualification for the post of Laboratory Assistant was X Standard pass. The applicant was having the said minimum educational qualification. Moreover he has acquired qualification of B.Sc. and DMLT in the years 2001 and 2003 respectively. He has produced on record his B.Sc. Certificate (Annex. 'A-2'). So he is having more than required educational qualification for the post of Laboratory Assistant.

7. Before the tenure of his first appointment vide appointment letter dated 11.09.2000 came to an end, the applicant filed Original Application No.905/2000 seeking to continue him in service. The said Original Application was disposed of by an order dated 03.11.2000 (Annex. 'A-4') by which this Tribunal observed and directed that the applicant being an ad-hoc/temporary on the post of Laboratory Assistant was entitled to continue in service on the same terms and conditions till regular selectee from the competent Selection Agency was made available and posted and on the same terms and conditions, but except condition No.3 which precluded the applicant from seeking any judicial remedy.

8. In view of above, learned Advocate for the applicant submitted that thereafter the applicant has been continued in service but according to him, the protection given to the applicant was qualified one as in view of the nature of the order dated 03.11.2000 passed in O.A.No.905/2000. The respondents were at liberty to carry out the selection process for the post of Laboratory Assistant on the very next day. But in spite of that, no any selection process was carried out and instead the applicant's services were continued. This way the applicant has been continuously working for the prolonged

period of more than 18 years. However, in all these years, the applicant has not been given service benefits only because his services were temporary in nature. However, in the next day commission, the applicant has been given pay band of Rs. Rs.5200-20200 with grade pay of Rs.2000 revising the earlier pay scale. In the circumstances as above, learned Advocate for the applicant submitted that in view of the law laid down by the Hon'ble Apex Court in the matter of **Sheo Narain Nagar and Ors. Vs. State of Uttar Pradesh and Ors.** (cited supra) reported in AIR 2018 SC 233, the applicant is entitled for regularization of services with all the service benefits in accordance with law.

9. As against that while resisting the claim of the applicant, it is submitted on behalf of the respondents that the applicant is appointed purely on temporary basis and his services are continued in view of interim protection given to him as per order dated 03.11.2000 passed in O.A.No.905/2000. In this regard, the respondents placed reliance on the judgment of the Hon'ble Apex Court in the matter of **Umarani Vs. Registrar, Co-operative Societies, Tamilnadu and Ors. [Appeal (Civil) No.1413 of 2003 decided on 28.07.2004]**, whereas it is held as follows:-

“(a) Regularization cannot be mode of recruitment by any State within the meaning of Article 12. It is a settled proposition that the appointment made in violation of the mandatory provision of the statute and in particular ignoring the minimum educational qualification and other qualifications would be wholly illegal and such illegality cannot be cured by taking recourse of regulations.

(b) Those who come by back door should go through that door.

(c) Regularization further cannot be given to the employees whose services are ad-hoc in nature.

(d) No regularization is permissible in exercise of the Statutory power conferred under Article 12 of the Constitution of India when the appointment are in contravention of the statutory rules.

(e) No regularization is permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules.

(f) It is trite that appointments cannot be made on political considerations and in violation of the Government Directions for reduction of establishment expenditure or filing up of vacant posts or creating new posts including regularization of daily wage employees.

(g) There is no scope for regularization unless the appointments were made on a regular basis.

(h) If the employees are appointed for the purpose of a scheme, they do not acquire vested right of continuance after the project is over.”

10. Learned Advocate for the applicant, however, submitted that the ratio laid down in the case of **Umarani Vs. Registrar, Co-operative Societies, Tamilnadu and Ors.** was referred by the Hon’ble Apex Court in its further case law of **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.**, reported in (2006) 4 SCC 1.

11. In the Hon’ble Apex Court citation of **Sheo Narain Nagar and Ors. Vs. State of Uttar Pradesh and Ors.** (cited supra), the appellants therein were initially engaged on daily-wages. Later on, they were appointed on contractual basis. The respondents issued an order appointing them as regular employees on the minimum pay scale. By way of an order, they were conferred the status of temporary employees with retrospective effect. There was direction issued by the Hon’ble High Court to consider them for regularization, but their services were not regularized. The learned Single Judge ultimately dismissed the Writ Petition seeking regularization. That order was affirmed by the Division Bench of the Hon’ble

High Court and the services of the appellants were terminated. Hence, the appeal was filed by the appellants.

12. In paragraph No.4 of this citation, paragraph No. 53 (44) is referred and reproduced from the decision of the Hon'ble Apex Court in case of **Secretary, State of Karnataka and Ors. Vs. Umadevi & Ors.** which is reproduced as follows:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts

that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

Thereafter, in the said citation case in paragraph No.8 and 10 it is laid down as under:-

“8. When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms. This situation was not envisaged by Uma Devi (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry

and in the available pay scale. That spirit of the Uma Devi (supra) has been ignored and conveniently overlooked by various State Governments/ authorities. We regretfully make the observation that Uma Devi (supra) has not been 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. We have to strike a balance to really implement the ideology of Uma Devi (supra). Thus, the time has come to stop the situation where Uma Devi (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The

employment cannot be on exploitative terms, whereas Uma Devi (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in Uma Devi (supra).

10. The High Court dismissed the writ application relying on the decision in Uma Devi (supra). But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2.10.2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of Uma Devi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 2.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 2.10.2002, consequential benefits and the arrears of pay also to be paid to the

appellants within a period of three months from today.”

13. Perusal of the Hon'ble Apex Court citation in the matter of **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.** (cited supra) would show that the case law in case of **Umarani Vs. Registrar, Co-operative Societies, Tamilnadu and Ors.** is referred in paragraph No.27 in the subsequent citation of the Hon'ble Apex Court in the case of **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.** (cited supra) as follows:-

“27. In A. Umarani Vs. Registrar, Cooperative Societies and Others (2004 (7) SCC 112), a three judge bench made a survey of the authorities and held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularized by the State. The State could not invoke its power under Article 162 of the Constitution to regularize such appointments. This Court also held that regularization is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. Regularization furthermore cannot give permanence to an employee whose services are ad hoc in nature. It was also

held that the fact that some persons had been working for a long time would not mean that they had acquired a right for regularization.”

14. In the circumstances as above, in my considered opinion, considering and facts and circumstances of the present case, the law laid down by the Hon'ble Apex Court in the matter of **Sheo Narain Nagar and Ors. Vs. State of Uttar Pradesh and Ors.** for regularization of the ad-hoc/temporary employees is very well be made applicable in the present case. In the case in hand the applicant was appointed purely on temporary basis initially, but against vacant post. Though temporary services of the applicant were initially protected by an order of the Tribunal as discussed above, from the very next day, the respondents could not taken steps of selecting the regular Laboratory Assistant. The respondents failed to do that for more than 18 years and the applicant was continued purely as temporary employee. He has got the regular pay scale of the post of Laboratory Assistant. However, he being appointed temporarily, the applicant is not given any other service benefits attached to the said post.

15. In the circumstances, the applicant is totally covered under the parameters laid down in the Hon'ble Apex Court citation in the matter of **Sheo Narain Nagar and Ors. Vs. State of Uttar Pradesh and Ors.** (cited supra). Therefore, the applicant must succeed in this Original Application. I therefore, proceed to pass the following order:-

ORDER

The Original Application is allowed in following terms:-

- (A) The respondents in general and the respondent No.3 in particular is directed to regularize the applicant's services on the post of Laboratory Assistant with effect from the date of his initial appointment i.e. on 11.03.2000 on the said post with all consequential service benefits within a period of three months from the date of this order.
- (B) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place :- Aurangabad
Date :- 05.09.2022
SAS O.A.373/2019