

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 638 OF 2015
(Subject – Regularization)**

DISTRICT : JALGAON

Harichandra s/o Deelip Patil,)
Age : 33 years, Occu. : Service,)
R/o : House No. 21, Parwati Nagar, Jalgaon,)
Tq. and Dist. Jalgaon.) **APPLICANT**

V E R S U S

1. **The Secretary,**)
Home Department,)
Mantralaya, Mumbai-32.)
2. **Special IGP,**)
Nashik Range, Nashik.)
3. **Superintendent of Police,**)
Jalgaon, Dist. Jalgaon.)... **RESPONDENTS**

APPEARANCE : Shri S.R. Patil, Counsel for Applicant.

: Shri A.P. Basarkar, Presenting Officer for
respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

RESERVED ON : **30.07.2024**

PRONOUNCED ON : **19.09.2024**

O R D E R

1. Heard Shri S.R. Patil, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the sides at the admission stage itself.

3. By filing the present Original Application, the applicant is seeking quashing and setting aside order dated 08.06.2015 issued by respondent No. 3 and further seeking directions to respondent Nos. 1 to 3 to consider the applicant for the post of Mali and regularize the services on the said post with all consequential benefits.

4. Brief facts as stated by the applicant giving rise to the Original Application are as follows :-

(i) By order dated 11.08.2009 (Annexure A-2), the respondent No. 3 was pleased to appoint the applicant as Mali on temporary basis.

(ii) The respondent No. 1 by its G.R. dated 15.06.2011 was pleased to sanction one post of Mali in the office of respondent No. 3.

(iii) By letter dated 16.05.2012 (Annexure A-3), the respondent No. 3 has informed to respondent No. 1 that the said post of Mali has to be filled up in terms of the said G.R. dated 15.06.2011.

(iv) On 19.11.2012 (Annexure A-4), the applicant has made representation to respondent No. 2 requesting therein that since he is already working on the post of Mali, he shall be appointed permanently on the sanctioned post of Mali.

(v) By letter dated 26.11.2012 (Annexure A-5), respondent No. 2 please to forward the representation of the applicant to respondent No. 3 for necessary action.

(vi) Thereafter on 16.12.2014 (Annexure A-6), the applicant has made another representation to respondent No. 1 requesting therein that he is working as Mali on temporary basis in the office of respondent No. 3 since 2009 and the said post was sanctioned by the Government, he may be appointed on the said post by issuing permanent appointment order. However, the respondent No. 3 has not taken any decision on the representations of the applicant. Thus the applicant has filed W.P. No. 5264/2015 before the Hon'ble High Court of Bombay, Bench at Aurangabad seeking direction to the respondents to decide his representations. In the said W.P. , the respondent Nos. 1 to 3 herein have filed affidavit in reply on 09.06.2015 and in

para No. 5 of the said affidavit in reply it has been specifically stated that on 09.04.2013, the Home Department granted permission to fill up newly sanctioned post. However, the recruitment rules to the said post were not available. Therefore, communications were issued to various departments for seeking recruitment rules to the said post. However, the rules are not made available.

(vii) By order dated 16.06.2015 (Annexure A-8), the Hon'ble High Court has disposed of the said W.P. as the petitioner is having alternate remedy before this Tribunal.

(viii) By order dated 08.06.2015 (Annexure A-1), the respondent No. 3 has refused to give appointment to the applicant permanently on the post of Mali mainly for the reason that the recruitment rules for the post of Mali are not available. Hence, the present Original Application.

5. Learned counsel for the applicant submits that there cannot be any justification to refuse to issue an order of appointment to the applicant, who is working in the department on the post of Mali since 2009 solely for the reason that the recruitment rules to fill up the said post of Mali are not available. Learned counsel submits that in terms of G.R. dated 15.06.2011,

the post of Mali came to be sanctioned to the respondent department in terms of clause-E (ई) of the said G.R. dated 15.06.2011 that if the recruitment rules are not available to fill up the particular post, then the Director General of Police, Maharashtra State shall immediately get prepared the service rules and to fill up the vacancies. Learned counsel submits that in Statement-A (विवरण पत्र-१), which is annexed to the said G.R. dated 15.06.2011, the sanctioned post of Mali is at Sr. No. 58.

6. Learned counsel for the applicant has further pointed out the communication dated 31.01.2014 (Annexure AA-5) issued by respondent No. 1 to the Inspector General of Police, Mumbai, wherein it is informed that if the recruitment Rules for the post of Mali are not available in the district, in that contingency it would not be appropriate to frame recruitment rules for each of the district. Thus the existing rules applicable in Public Works Department for the post of Mali can be made applicable to fill up the post of Mali in the Police Department of State on the sanctioned post. Even copy of the said Rules by way of Resolution dated 29.04.1960 (Annexure AA-6) is also forwarded, wherein it is specifically stated that the persons on work-charges establishment and rated staff who worked in gardens may be given preference. Even further as per

communication dated 05.02.2016 (Annexure AA-7) made by the Office Superintendent, office of Superintendent of Police, Jalgaon to respondent No. 1 in this regard, wherein the reference has been given to the present Original Application so also Annexures AA-5 and Annexure AA-6. However, even then thereafter by way of impugned order dated 08.06.2015 it was informed to the applicant that he cannot be appointed permanently on the post of Mali. Learned counsel for the applicant thus submits that the present Original Application deserves to be allowed.

7. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 2 and 3 submits that order dated 08.06.2015 passed by respondent No. 3 rejecting thereby the prayer of the applicant for permanent appointment on the post of Mali is legal, self-explanatory, correct and proper. Learned P.O. submits that as for as initial appointed order dated 11.08.2009 is concerned, it reveals that the applicant was appointed on honorarium basis for the period from 15.08.2009 to 14.07.2010. It could be at most said to be contractual appointment, but it cannot be said that it was appointment on temporary basis.

8. Learned Presenting Officer submits that vide G.R. dated 15.06.2011, one post of Mali is sanctioned under the

establishment of Superintendent of Police, Jalgaon and respondent No. 3 vide its letter dated 16.05.2012 forwarded a letter to the Director General of Police, M.S. Mumbai requesting therein to send copy of letter of GAD. However, the said letter yet to be received from the said office. Pursuant to the said letter dated 19.11.2012, respondent No. 2 forwarded the said letter to respondent No. 3 and directed to take necessary action. Further considering the G.R. dated 15.06.2011, the respondent No. 3 has submitted letter to the Additional Chief Secretary to the Government (service) dated 22.02.2013 requesting therein to send the recruitment rules for the post of Mali. As the said Rules are not received, reminder letters to that effect were also issued from time to time by respondent Nos. 2 and 3 i.e. on 23.09.2013, 25.11.2014, 10.03.2015, 28.04.2015, 24.07.2015 and 14.10.2015. But the said rules are awaited. On this count also the present Original Application is premature. Learned P.O. submits that the applicant was not given ad-hoc appointment or temporary appointment and it was purely for specific period. It can be called at the most contractual appointment or an appointment made to stop gap arrangement.

9. Learned Presenting Officer submits that after sanction of post of Mali under the establishment of District

Superintendent of Police, Jagaon, respondent No. 3 has made various efforts by forwarding letters to the competent authorities to procure the recruitment rules in order to fill up the said post. But the recruitment rules are still awaited. This fact is also mentioned in the order dated 08.06.2015. Learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed.

10. Learned counsel for the applicant on the basis of rejoinder affidavit of the applicant submits that the applicant came to be appointed on the vacant and permanent post of Mali available with the respondent No. 3 office w.e.f. 11.08.2009 and since then the applicant is working as Mali with respondent No. 3 office.

11. Learned counsel for the applicant submits that before sanctioning of the post of Mali, the applicant has submitted representation dated 10.03.2011 to respondent No. 3 office thereby claiming regularization for his appointment as Mali. The respondent No. 3 office was pleased to submit the proposal in this regard to Inspector General of Police, Maharashtra State vide letter dated 25.03.2011 (Annexure AA-2). It has been specifically mentioned and made it clear by respondent No. 3 that if in future

the post of Mali is created and sanctioned, the applicant must be given priority and made permanent on the post of Mali.

12. Learned counsel for the applicant submits that as per the letter dated 31.01.2014 (Annexure AA-5) the Home Department of Maharashtra has suggested to adopt and act as per the recruitment rules available with Public Works Department for filling up the post of Mali and as per the said rules, for filling up the post of Mali, the person must have adequate practical knowledge of gardening and must not be more than 40 years of age. The applicant is having adequate practical experience of gardening and he is also less than 40 years of age. Even though the applicant has not been appointed permanently. Learned counsel submits that it is a matter of record that by recent communication dated 05.02.2016; the respondent No. 3 office requested respondent No. 1 Home Department to pass appropriate orders permitting respondent No. 3 office to fill up the sanctioned post of Mali as per the above stated recruitment Rules of Public Works Department. However, despite of several requests, the respondent No. 1 Home Department is showing lethargic approach and inaction in permitting the respondent No. 3 office to fill up the post of Mali as per the Recruitment Rules of Public Works Department.

13. Learned counsel for the applicant in order to substantiate his contentions placed his reliance on following cases :-

- (i) Secretary, State of Karnataka and Ors. V. Umadevi and Ors., AIR 2006 Supreme Court 1806.
- (ii) Nihal Singh and Others Vs. State of Punjab and Others, 2013 (14) SCC 65.
- (iii) O.A. No. 714/2020 (Shri Dattatraya Shyamrao Shende Vs. The State of Maharashtra and Ors.), decided on 03.04.2024 (Nagpur Bench).

14. Learned Presenting Officer in response to the aforesaid arguments submits that there was no vacant and permanent post of Mali in the office of respondent No. 3 on 11.08.2009. The applicant came to be appointed on honorarium basis for the period from 15.08.2009 to 15.07.2010 and the said amount was paid by the Jalgaon District Police Welfare Fund and not by the Government. All the allegations in this regard are baseless without supported by any documentary evidence.

15. Learned Presenting Officer submits that by Annexure AA-2 the application filed by the applicant merely forwarded by the then respondent No. 3 to the Director General of Police, M.S.

Mumbai and no such recommendation has been made. The applicant has tried to mislead the Tribunal. Learned P.O. submits that in terms of G.R. dated 15.06.2011 unless the Recruitment Rules are framed, no permanent post of Mali can be filled. The said rules are still awaited. Learned P.O. submits that the respondent No. 3 is ready to fill up the said post of Mali as soon as the recruitment rules are framed and received. Learned P.O. submits that there is no substance in the present Original Application and the same is liable to be dismissed.

16. It is undisputed that by order dated 11.08.2009 (Annexure A-2), the respondent No. 3 was pleased to appoint the applicant as Mali on temporary basis. The respondent No. 1 by its G.R. dated 15.06.2011 was pleased to sanction one post of Mali in the office of respondent No. 3. There is internal correspondence between the respondents that the said post of Mali has to be filled up in terms of the said G.R. dated 15.06.2011. On 19.11.2012 (Annexure A-4), the applicant has made representation to respondent No. 2 requesting therein that since he is working on the post of Mali, he shall be appointed permanently on the sanctioned post of Mali. Even his representation was forwarded by respondent No. 2 to respondent No. 3 for necessary action. Even thereafter on 16.12.2014

(Annexure A-6), the applicant has made another representation to respondent No. 1 requesting therein that he is working as Mali on temporary basis in the office of respondent No. 3 since 2009 and the said post now sanctioned by the Government, he may be appointed on the said post by issuing permanent appointment order. It further appears that the respondents have not appointed the applicant on the post of Mali under the pretext that the Recruitment Rules are not available in the district. Even by communication dated 31.01.2014 (Annexure AA-5), respondent No. 1 has informed to the Inspector General of Police, Mumbai that since the recruitment Rules for the post of Mali are not available in the district, then the existing rules in Public Works Department applicable for the post of Mali can be made applicable to fill up the post of Mali in the Police Department of State on the sanctioned post. There are continuous internal communications between the respondents for framing of appropriate recruitment Rules to fill up the post of Mali in the Police Department, consequently, the applicant who is continuously working in the Police Department on the post of Mali on a meager amount on temporary basis till filing of the present Original Application and even thereafter. The applicant procured record of his continuous working as Mali under the

provisions of Right to Information Act, 2005 from the department and the same has not been disputed by the respondent authorities.

17. In a case of **Secretary, State of Karnataka and Ors. V. Umadevi and Ors., AIR 2006 Supreme Court 1806** relied upon by learned counsel for the applicant, in para Nos. 36 & 44 the Hon'ble Supreme Court has made the following observations :-

“36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain - not at arms length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even

while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

44. *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. Nagrajan (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.”*

18. Learned Presenting Officer has placed his reliance in a case of **Chief Officer, Pen Municipal Council, Pen District Raigad and Anr. V. Shekhar B. Abhang and Anr., 2024 (4) ABR 366**. The

facts of the said case are all-together different and the ratio laid down therein cannot be made applicable to the facts of the present case.

19. In the instance case, though the duly sanctioned post of Mali was available from 15.06.2011 in the office of respondent No. 3 and though the respondent No.1 has unequivocally conveyed to the Inspector General of Police, Mumbai to adopt the Rules framed in Public Works Department for appointment on the post of Mali, the respondents herein neither initiated process of recruitment in terms of the said Rules framed in the Public Works Department for appointment on the post of Mali nor regularized the services of the applicant, who is working continuously on the post of Mali on a meager amount on temporary basis. It is not denied by the respondent authorities that the applicant is still working on the post of Mali on temporary basis as on the date of filing of present Original Application and even thereafter. It is difficult to digest that for all these years for want of framing of Recruitment Rules the applicant was not appointed on the post of Mali. It is therefore, necessary to direct the respondents to regularize the services of the applicant on the post of Mali w.e.f. 15.06.2011 with all the consequential benefits. Hence, the following order :-

ORDER

- (i) The Original Application is hereby allowed.
- (ii) The order dated 08.06.2015 issued by respondent No. 3 is hereby quashed and set aside.
- (iii) The respondents are hereby directed to regularize the services of the applicant on the post of Mali w.e.f. 15.06.2011 with all the consequential benefits within a period of three months from the date of this order.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application is accordingly disposed of.

PLACE : Aurangabad.**DATE : 19.09.2024****(Justice V.K. Jadhav)
Member (J)**