

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 941 OF 2018

DIST. : DHULE

Dr. Neeta Kaluram Hatkar,)
 Age. 50 years, R/o Bhausahab Hire)
 Government Medical College, Dhule,)
 District Dhule.) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
 Through its Principal Secretary,)
 Medical Education & Drugs)
 Department, Annex Building,)
 Mantralaya, Mumbai.)

2. Director of Medical Education and)
Research, Dental College Building,)
 Saint George's Hospital Campus,)
 C.S.T., Mumbai.) .. **RESPONDENTS**

 APPEARANCE :- Shri V.B. Wagh, learned counsel for
 the applicant.

: Shri V.G. Pingle, learned Presenting
 Officer for the respondent authorities.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

RESERVED ON : **30th April, 2024**
PRONOUNCED ON : **21st October, 2024**

ORDER

[Per :- Justice P.R. Bora, V.C.]

Heard Shri V.B. Wagh, learned counsel for the applicant and Shri V.G. Pingle, learned Presenting Officer for respondent authorities.

2. The applicant passed the MBBS examination in October, 1990 and examination of M.D. (Pediatrics) in June, 1994. The applicant was selected and recommended for the post of Lecturer in Pediatrics on ad-hoc basis on 16.06.1996. Apprehending that her services will be discontinued and another ad-hoc appointee will be appointed the applicant had earlier approached this Tribunal by filing Original Application No. 796/1996 and the same was disposed of by this Tribunal by directing the respondents not to replace the applicant by another ad-hoc appointee. The applicant thereafter continued to serve with the respondents.

3. On 21.01.2009 the respondent no. 01 i.e. the Medical Education and Drugs Department of the State took a policy decision to regularize the services of the Lecturers working on ad-hoc/temporary basis in Government Medical Colleges and in Government Dental Colleges. The list was prepared by the respondents of such Lecturers who are entitled

to be regularized. Name of the present applicant was included in the said list. On 04.05.2009 the respondent no. 01 issued another G.R. thereby regularizing the services of the Lecturers working in the Government Medical Colleges and in the Government Dental Colleges on the basis of the G.R. dated 22.01.2009 on certain terms and conditions. One of such term was that such Lecturers will not be entitled for any benefit of the period of service rendered by them as the temporary appointees.

4. It is the contention of the applicant that the Division Bench of the Hon'ble Bombay High court, Bench at Aurangabad in the case of **Mrs. Kunda W/o Ramchandra Lakhkar Vs. the State of Maharashtra & Ors. (Writ Petition No. 8317/2013)** held the petitioner therein entitled for all the service benefits of the period of her temporary service. It is the case of the applicant that her case is identical with that of the petitioner in the said Writ Petition. As such, according to the applicant she is also entitled for all such benefits.

5. The present Original Application has been filed by the applicant with a prayer to hold and declare that the applicant is entitled for the benefit of her past service in between 18.05.1996 to 22.01.2009. The applicant has also

sought declaration that the condition no. 07 of the G.R. dated 4.05.2009 be declared as ultra vires and not binding on the applicant. The applicant has also sought the benefit of regularization of services w.e.f. 18.05.1996 with all consequential benefits.

6. The Original Application is opposed by the respondents. Respondent nos. 01 and 02 have filed joint affidavit in reply. It is the contention of the respondents that the temporary service rendered by the applicant can be considered for the limited purpose of leave and increments. It is contended that the applicant has already availed the said benefit of leave and increments in the temporary service she rendered. It is further contended that since the temporary service of the applicant is regularized in the year 2009, she cannot be held entitled for Old Pension Scheme and G.P.F. scheme. It is further contended that the decision of the Hon'ble High Court in case of **Mrs. Kunda W/o Ramchandra Lakhkar** (cited supra) cannot be made applicable in the case of the present applicant. The respondents on the aforesaid grounds have prayed for rejecting the Original Application.

7. When the present matter was heard by us the learned counsel for the applicant tendered on record G.R. dated

08.11.2023. Learned counsel brought to our notice that vide the aforesaid G.R. the candidates, whose services have been regularized vide G.R. dated 02.02.2009, are held entitled for their pay fixation with the annual increments earned by them of the period of service from the date of their initial appointment. Learned counsel submitted that in view of G.R. dated 08.11.2023 issued by the Government the present O.A. filed by the applicant deserves to be allowed. Learned counsel also referred to the judgment of this Tribunal in the case of **Dr. Uddhav Shankar Khaire Vs. the State of Maharashtra & Ors. (O.A. No. 891/2018)** dated 02.02.2024. Learned counsel submitted that the respondents have complied with the order passed by this Tribunal in the said O.A.

8. We have duly considered the submissions made on behalf of the parties. We have perused the judgment of the Division Bench of the Hon'ble High Court in the case of **Mrs. Kunda W/o Ramchandra Lakhkar Vs. the State of Maharashtra & Ors.** (cited supra). In the said matter the petitioner therein was also regularized in the Government service vide G.R. dated 04.05.2009. The said petitioner was also refused the benefits of the period of temporary service. After having considered the concerned G.R. and other circumstances, the Hon'ble Division

bench held the said petitioner entitled for all the benefits of the period of past service rendered by her before her regularization at par with the regular employees. We deem it appropriate to reproduce herein below the observations in paragraph nos. 11 & 12 of the said judgment of the Hon'ble High Court, which read thus:-

“11. The respondents themselves suo moto have taken decision to regularize the services of the petitioner with effect from 22.01.2009. Now in the present petition, the respondents are taking up the case that the petitioner was not qualified that is the petitioner did not possess the necessary qualification. In fact, the petitioner was appointed by duly constituted Divisional Selection Board and when they are intending to regularize the service of the petitioner since 2009, then the stand that the petitioner is not qualified cannot be accepted. All along the petitioner has been treated as a permanent and regular employee. At no material point of time the petitioner was ever given an understanding that the petitioner is not in permanent and regular employment. On the contrary, after completion of 8 years of service, the petitioner is given senior/higher pay scale as is given to other permanent employees. The petitioner is also given increments as is given to employee appointed on permanent post. For all purposes the petitioner is treated as regular employee, at least after completion of eight years of service as was given higher pay scale and all other benefits which were available for a person holding permanent and regular post. After 33 years of service, it would be too late in the day for respondents to contend that, the petitioner would stand regularized from the year 2009 and the petitioner would not be entitled for any benefits of past service. The said action would be unjust. It is not a case of back door entry of the petitioner. The petitioner initially in the year 1977 was appointed by Dean, Medical College and thereafter in the year 1978 was interviewed and selected by duly constituted Divisional Selection Board

and was issued appointment order in the year 1979 with effect from 24.10.1977. All the aforesaid facts would unequivocally go to show that the petitioner was treated as an employee holding a permanent post. Even the Tribunal has observed that for all these 33 years not a single advertisement was given by the M.P.S.C. for the said post. Be that as it may, the petitioner was not once given notice during all these years that the petitioner is not qualified or that petitioner is not regularly appointed. The respondents could have discontinued the petitioner. It is also a fact that, for all these years the respondents could not appoint a candidate who has come through M.P.S.C. for the said post. In view of the above, the act of respondents in treating the petitioner as regular since 2009 only is illegal.

12. In the light of the above, the impugned order of tribunal is set aside and modified. The impugned show cause notices are quashed and set aside. So also the Government Resolution dated 22.01.2009 and 04.05.2009 shall be held not binding on the petitioner and the petitioner shall be treated as regular employee as was treated earlier and shall be entitled to all the benefits of her service as that of regular employee since the date of her initial appointment.

Rule accordingly is made absolute in above terms. No costs."

9. After having considered the facts involved in the present matter we are convinced that the case of the applicant is identical with the case of the petitioner in W.P. No. 8327/2013. In the said W.P. G.R. dated 22.01.2009, as well as, subsequent G.R. dated 04.05.2009 both have been referred and discussed by the Hon'ble High Court. In such circumstances, it appears to us that the applicant deserves to be granted same

relief as has been granted in favour of the petitioner in W.P. No. 8327/2013. Hence, the following order: -

ORDER

(i) It is held and declared that the Government Resolutions dated 22.1.2009 and 4.5.2009 are held not binding on the applicant and the applicant shall be treated as regular employee as was treated earlier and shall be entitled to all the benefits of her service as that of regular employee since the date of her initial appointment.

(ii) The Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 21.10.2024