

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 58 OF 2016

DIST. : NANDED

1. Manyabai w/o Laxman Mundfale,
Age. 49 years, Occ. Service,
R/o At Post Barbada,
Tq. Biloli, Dist. Nanded.
 2. Parubai w/o Sitaram Gajbhare,
Age. 56 years, Occ. Service,
R/o At Post Kahala Khu,
Tq. Biloli, Dist. Nanded.
- APPLICANTS.

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Health Department,
Mantralaya, Mumbai-32.
(Copy to be served on C.P.O.,
MAT, Bench at Aurangabad)
 2. District Health Officer,
Zilla Parishad, Nanded,
Tq. & Dist. Nanded.
 3. Block Development Officer,
Panchayat Samiti, Naygaon,
Tq. Naygaon, Dist. Nanded.
 4. The Medical Officer,
Primary Health Centre, Barbada,
Tq. Naygaon, Dist. Nanded.
- RESPONDENTS

APPEARANCE : Shri P.V. Suryawanshi, learned Advocate
for the Applicants.

- : Smt. Deepali S. Deshpande, learned Presenting Officer for the Respondent no.1.
- : Shri N.S. Kadam, learned Advocate for Respondent nos. 2 to 4.

CORAM : **Hon'ble Shri J.D. Kulkarni, Member (J)**

JUDGEMENT

{Delivered on 7-10-2016}

1. The applicants belong to Scheduled Caste category and were appointed as voluntary health workers on honorarium in the year 1992 on contractual basis. After 2011, the respondent authorities converted the applicants' services as part time voluntary workers and since then they are working as part time voluntary workers at Rs. 1200/- per month. The applicants are working with res. no. 4.

2. According to the applicants, they were working on meagre honorarium from last 22 – 25 years. The Government, therefore, issued a notification on 15.4.2011 and clarified that the honorarium / wages be paid as per the Minimum Wages Act, but

till today the applicants have not received the honorarium as per the notification dated 15.4.2011.

3. According to the applicants, the respondents should have given preference to the guidelines issued by the Govt. and should have forwarded their proposal to the Government for permanency benefits in the Government service. As per rule 28 of the Kalelkar Award, the applicants are entitled to permanency benefit in the service, but no action was taken and, therefore, the applicants have filed this O.A.

4. The applicants are claiming a direction to the respondents to pay honorarium / wages as per the notification dated 15.4.2011 and to consider their claim for regularization of their services on the post of voluntary health workers. It is also claimed that a proposal for regularization of the services of the applicants shall be forwarded to the respondent no. 1 within a stipulated period.

5. The respondent nos. 2 to 4 have resisted the claim of the applicants by filing affidavit in reply. According to the respondents, as per the Govt. policy decision and guidelines of the Government, the Zilla Parishad engaged the female voluntary health workers including the applicants in various Primary

Health Centres and Sub Centres of Health Department of Zilla Parishad. The said appointments are purely voluntary and honorary and there is no fix pay scale for such post. As per the service conditions, such workers can be discharged from the post at any time without giving a notice and without assigning any reason and their appointments shall come to an end after the contract period is over.

6. The respondents submitted that the nature of duties of the applicants is of part time worker i.e. for a few hours in a day and to assist the Nurses and Midwives while giving treatment to the patients and during the family planning programme. The applicants are not entitled for regularization of their services.

7. As per various G.Rs. the remuneration / honorarium to such workers is increased from time to time. Initially as per G.R. dated 19.12.1994, the honorarium of the part time female voluntary workers has been increased to Rs. 300/- per month. Thereafter, by G.R. dated 2.11.1995 the honorarium has been increased to Rs. 400/- per month. As per G.R. dated 1.10.1996, the honorarium of the said post has been increased to Rs. 500 per month and again as per G.R. dated 1.10.2008, it is increased to Rs. 900/- per month. Thereafter as per G.R. dated 6.9.2010,

the honorarium of the post of female Voluntary Workers has been increased to Rs. 1200/- per month. In view of the conditions mentioned in the appointment orders of the applicants, they have no right to claim regularization.

8. Heard Shri P.V. Suryawanshi, learned Advocate for the applicants, Smt. Deepali S. Deshpande, learned Presenting Officer for respondent no. 1 and Shri N.S. Kadam, learned Advocate for respondent nos. 2 to 4. I have also perused the affidavit, affidavit in reply and various documents placed on record by the respective authorities.

9. The material point to be considered in this O.A. is whether the applicants are entitled to regularizations of their services ?

10. The learned Advocate for the applicants has placed reliance on various judgments delivered by this Tribunal, copies of which have been placed on record of this O.A. Vide judgment delivered in **O.A. no. 402/2015 {BHAGWAN S/O SONAJI INGLE & ORS. VS. THE STATE OF MAHARASHTRA & ORS.} dated 8.1.2016,** this bench of the Tribunal was pleased to direct the respondents in the said O.A. to revise the wages of the applicants, who were also part time sweepers, in terms of Notification dated

28.9.2010. In **O.A. no. 34/2016 {GANESH S/O LAXMAN SHINDE & OTHERS VS. THE STATE OF MAHARASHTRA & ORS.}** this Tribunal vide order dated 24.2.2016 was pleased to direct the respondents therein to pay wages to the part time sweepers in terms of Govt. Notification dated 28.9.2010. Similar order was passed by this Tribunal in **O.A. no. 166/2016 {DEEPAK S/O NAMDEO DONGRE & ORS. VS. THE STATE OF MAHARASHTRA & ORS.}**, on 25.2.2016. It is material to note that in none of those cases the relief of regularization has been granted.

11. Perusal of the various orders of appointment placed on record show that the applicants were appointed as voluntary workers. The initial appointment order is dated 19.10.1992 and as per the said order, the honorarium was Rs. 50/- per month. Another appointment order dated 12.3.2008 is placed on record, which shows that the honorarium was increased to Rs. 600/- per month. Vide appointment order dated 22.5.2012 the honorarium has been increased to Rs. 900/- per month; whereas vide order dated 10.6.2015, the honorarium has been increased to Rs. 1200/- per month. All the above appointment orders, however, show some specific conditions on which the applicants

were appointed as Part Time Health Workers and the said conditions are as under :-

- “1. Their services are purely temporary & terminable without Notice.
2. The honorarium should be paid as per the report of ANM Concerned.
3. The honorarium should be claimed with the pay bill of the ANM concerned and expenditure thereof should be debited from the regular heads of ANM.
4. These orders should be revised at the end of the year.”

12. Admittedly, the applicants are working as voluntary workers on part time basis and they are required to work for 4 hours in a day. There is nothing on record to show that, they have been appointed on substantive post or on permanent post. On the contrary, the applicants are appointed on contractual basis and it is specifically mentioned in the appointment orders that their services are purely on contractual basis and can be terminated at any time without any prior notice. The applicants could not place on record any document to show that any right

is created in them to claim regularization and, therefore, the applicants' claim for regularization has no basis.

13. The applicants are claiming minimum rate of wages as per some G.R. dated 15.4.2011, copy of which is placed on record at Exh. A.2 at paper book pages 16 to 18 (both pages inclusive). It is material to note that it is not known as to which authority has issued the so-called notification dated 15.4.2011. It is not signed by any competent authority nor it bears the name and seal of the authority. The applicants have, therefore, miserably failed to produce evidence to show that, they are governed by the said so-called G.R. dated 15.4.2011.

14. From the copies of various judgments delivered by this Tribunal in various O.As. as referred to in foregoing paragraphs, it is clear that, in all those matters the respondents were directed to pay wages to the part time employees in terms of G.R. dated 28.9.2010 and, therefore, at the most the applicants can be held to be entitled to claim wages in terms of Notification dated 28.9.2010.

15. The learned P.O. has invited my attention to one G.R. dated 25.8.2005 issued on the basis of judgment delivered by

Hon'ble the Supreme Court in the case of **A. UMARANI VS. REGISTRAR, CO-OPERATIVE SOCIETIES AND OTHERS {AIR 2004 SC 4504}**. In the said judgment there is a reference to the case decided by Hon'ble Supreme Court in the case of **DR. CHANCHAL GOYAL (Mrs.) Vs. STATE OF RAJASTHAN {(2003) 3 SCC 485}**. In the said judgment Hon'ble Supreme Court has observed that, regularization cannot be a mode of recruitment by any 'State' within the meaning of Art. 12 of the Constitution of India or anybody or authority governed by a Statutory Act or the Rules framed thereunder. It is well settled that an appointment made in violation of the mandatory provisions of the Statute and in particular ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegalities cannot be cured by taking recourse to regularization. Thus, who come by back door, should go through that door, and that regularization further cannot be given to the employees, whose services are ad-hoc in nature.

16. The learned P.O. also placed reliance on the judgment of Hon'ble Supreme Court in **Civil Appeal Nos. 6132-33 of 2016** arising out of **S.L.P. (C) Nos. 34788-34789 of 2012 {STATE OF MAHARASHTRA & ORS. VS. ANITA & ANR. ETC.}**. As already

stated earlier, the applicants have failed to bring on record any evidence to show that the applicants were appointed on a substantive post, and on the contrary, the documents placed on record clearly shows that their appointments are on contractual basis as part time workers on a particular honorarium and, therefore, the applicants cannot claim regularization.

17. In view of the discussion in foregoing paragraphs I pass following order :-

ORDER

- (i) The O.A. is partly allowed.
- (ii) The applicants' claim for regularization in the service as part time health workers and honorarium as per G.R. dated 15.4.2011 stands rejected.
- (iii) The respondents are directed to grant benefit of Govt. Notification dated 28.9.2010 to the applicants and to grant the benefit of wage revision as per the said notification.

There shall be no order as to costs.

MEMBER (J)