

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION OF 864 OF 2015

DISTRICT : SOLAPUR

Smt Anjali Vishwesh Lanke,)
Residing at F-5, Vrundavan Park,)
Opp. Gaibi Peer Hotgi Road,)
Solapur 413 003.)...**Applicant**

Versus

1. The Chief Secretary,)
State of Maharashtra,)
Mantralaya, Mumbai 400 032.)
2. The Additional Chief Secretary,)
Medical Education & Drugs Dept.,)
Mantralaya, Mumbai 400 032.)
3. The Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032.)
4. The Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai 400 032.)
5. The Director,)

Medical Education & Research,)
Government Dental College Bldg,)
4th floor, St. Georges Hospital)
Campus, Mumbai 400 001.)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 30.08.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Smt Punam Mahajan, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant challenging the order dated 26.3.2015 rejecting the case of the Applicant for pension

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Bio-chemist by the Dean,

Dr V.M Medical College, Solapur by order dated 9.10.1977 on ad hoc basis. The Applicant was selected through a Selection Committee at the Medical College, which was treated as Divisional Selection Board. This was stated in a letter dated 28.1.1983, sent by Dean, V.M Medical College, Solapur to the Respondent no. 5. The issue regarding regularization of temporarily appointed Lecturers / Bio-chemists was under the consideration of the Government. Various Class-III employees appointed on ad hoc basis were regularized, but there was no decision on various representations submitted by the Applicant to the Respondents on regularization of her service. On 27.3.1991, the Applicant was informed that the Respondent no. 5 was the Competent Authority to take decision regarding regularization of her service. The Applicant made a number of representations to the Respondent no. 5, who submitted proposal on 6.5.2013 to the Respondent no. 2 to grant permanency to the Applicant. The Applicant retired from service on 31.3.2013 on reaching the age of superannuation. Then the Applicant made a number of representations to grant her pension and finally by the impugned order, her request has been rejected. Learned Counsel for the Applicant argued that the Applicant was eligible to get her service regularized in terms of the judgment of Hon'ble Supreme Court in the case of **STATE OF KARNATAKA & ORS Vs. M.L KESARI (2010) 9 SCC, Page 247**). The Respondents in similar cases have

granted pensionary benefits to Smt Aparna Upalekar, S/Shri Sangam, Deshpande and Shinde, while the same has been denied to the Applicant. Learned Counsel for the Applicant also relied on the judgment of this Tribunal dated 22.6.2015 in O.A no 308/2012.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant was appointed by the Dean, Dr. V.M Medical College, Solapur as Bio-Chemist by order dated 9.10.1977. The Dean is not the appointing authority. Also, at the time of appointment, the Applicant had a degree in M. Sc Biochemistry. However, for the post of Bio-chemist, the requirement is a Master's degree in M. Sc Biochemistry along with 2 years of experience. The selection is also required to be through the Maharashtra Public Service Commission (M.P.S.C). As such, the appointment of the Applicant was not legal and it cannot be regularized. The Applicant cannot be granted Certificate of permanency, as she was not validly appointed. Learned Presenting Officer argued that the Applicant is not eligible for pensionary benefits as her appointment was not valid as per the Recruitment Rules. The Respondents in their affidavit in reply dated 22.12.2015 have relied on the judgment of Hon'ble Supreme Court in the case of **SECRETARY, STATE OF KARNATAKA & ORS Vs. UMADEVI (3) & ORS : (2006) 4 SCC 1.**

5. We find that in para 53 of the aforesaid order, Hon'ble Supreme Court has held that those who have put in more than ten years of continuous service without protection of any interim order of Courts or Tribunals, before the date of decision in UMADEVI (3) was rendered, are eligible to be considered for regularization. Only stipulation is that such persons must be duly qualified for the post in which they were working. In the present case, the Respondents have claimed that the qualification for the post of Bio-chemist was Master's degree in Bio-Chemistry with two years of working experience in para 3 of the affidavit in reply of the Respondents no. 1 to 3 dated 6.1.2015. In the affidavit in rejoinder the Applicant has stated in para 2, that she was appointed in 1977, while the Recruitment Rules relied upon by the Respondents were issued in 1986. As per the Recruitment Rules applicable in 1977, the qualification for the post of Bio-chemist was M. Sc, Biochemistry only, and the Applicant was fully qualified to be appointed in 1977 as Bio-chemist. In the affidavit in sur-rejoinder, filed by Respondent nos 2 to 5, the Recruitment Rules of 1972 are annexed as Exhibit R-1J on page 113 of the Paper Book. Rule (c)(ii) for appointment by nomination, reads as below:-

“(c) by nomination from among candidates, who....

(ii) possess either (a) the M.B.B.S degree of a statutory University or any other qualification specified in First or Second Schedule to the Indian Medical Council Act, 1956, or a post-graduate degree in Biochemistry of a statutory University, or (b) a second class degree in Science with Chemistry of a statutory University, and experience of biochemical work in a general hospital or a medical college, for not less than five years required after obtaining the degree in Science.”

It is quite clear that one of the requirements for the post of Biochemist was M. Sc (Bio-chemistry) and no prior experience was required for M. Sc degree holders. The Applicant was, therefore, fully qualified to be appointed as Bio-chemist in 1977. Hon'ble Supreme Court in the case of **STATE OF KARNATAKA & ORS Vs. M.L KESARI & ORS : (2010) 9 SCC 247**, held that:-

“11. The object behind the said direction in para 53 of Umadevi (3) is twofold. First is to ensure that those who have put in more than ten years of continuous service without protection of any interim orders of Courts or tribunals, before the date of decision in Umadevi (3) was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate

the practice of employing persons on daily wages/ ad hoc / casual basis for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the Constitutional or Statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 [the date of decision in Umadevi (3)] without the protection of any interim order of any Court or tribunal, in vacant post, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi (3) or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above decision in Umadevi (3) as a one-time measure.”

The facts in the present case will clearly make the Applicant eligible for regularization of her service. This Tribunal by judgment dated 22.6.2015 in O.A no 308/2013, has relied, inter alia, on this judgment of Hon'ble Supreme Court and have held that an employee who was irregularly appointed, cannot be deprived of pensionary benefits, if he was eligible to be regularized.

In the present case, the Applicant is eligible to be regularized in service. She has put in about 36 years of service from 1977 to 2013.

6. Having regard to the aforesaid facts and circumstances of the case, the impugned order dated 26.3.2015 is quashed and set aside. The Respondents are directed to consider the case of the Applicant for regularization of her service in the light of observation in this judgment and to process and complete her case for grant of pensionary and post retiral benefits within 3 months from the date of this order. This Original Application is allowed accordingly with no order as to costs.

(R.B. Malik)
Member (J)

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 30.08.2016
Dictation taken by : A.K. Nair.