

[REDACTED]

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.483 TO 486 OF 2015

DISTRICT: MUMBAI

ORIGINAL APPLICATION NO.483 OF 2015

Ms. Sneha Subodh Pradhan.)
Age : 52 Yrs, Occu.: Govt. Service as)
Clerk in the Office of Deputy Collector)
(Enc./Remove), Borivali, Mumbai and)
Residing at H2, 504, Poonam Sagar)
Complex, Mira Road (E), Dist : Thane.)...**Applicant**

Versus

1. The Chief Secretary.)
State of Maharashtra,)
Mantralaya, Mumbai - 400 032.)
2. The Principal Secretary.)
General Admn. Department,)
Mantralaya, Mumbai 400 032.)
3. The Principal Secretary.)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)

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4. The District Collector.)
 Bombay Suburban District)
 Mumbai having Office at 10th Floor,)
 Administrative Building, Bandra)
 Kurla Complex, Govt. Colony,)
 Bandra (E), Mumbai 400 051.)
5. Sadanand Waghmare (Deceased))
 Through Legal Heir and Representative))
 Wd/o Smt. Anjali Waghmare,)
 Age : 55 Yrs. Working at the Office)
 of Deputy Collector, Encroachment/)
 Removal Bhandup, Mumbai.)...Respondents

WITH

ORIGINAL APPLICATION NO.484 OF 2015

- Ms. Medha Vasant Shringarpure.)
 (Smt. Medha A. Deshpande))
 Age : 50 Yrs, Occu.: Govt. Service as)
 Clerk in the Office of Collector, 10th Floor,))
 (Administrative Building, Near Chetna)
 College, Bandra (E), Mumbai and)
 Residing at E33/703, Sector-1, Shanti)
 Nagar, Mira Road (E), Dist : Thane.)...Applicant

Versus

1. The Chief Secretary & 4 Ors.)...Respondents

WITH

ORIGINAL APPLICATION NO.485 OF 2015

Ms. Vandana N. Choudhary.)
 Age : 50 Yrs, Occu.: Govt. Service as)
 Clerk and Residing at Shri D.P. Save,)
 Sadanand Sadan, Pangurangwadi,)
 Goregaon (E), Mumbai 400 061.)...**Applicant**

Versus

1. The Chief Secretary & 4 Ors.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.486 OF 2015

Shri Dayanand B. Navgire.)
 Age : 59 Yrs, Occu.: Govt. Service as)
 Typist in the Office of Deputy Collector)
 (Enc./Remove), Chambur and Residing at)
 Anandwadi, Room No.54, Barkatali,)
 Darga Marg, Wadala (E), Mumbai 37.)...**Applicant**

Versus

1. The Chief Secretary & 4 Ors.)...**Respondents**

Mr. Gunratan Sadavarte, Advocate for Applicant.



**Mr. D.B. Khaire, Special Counsel with Mrs. K.S. Gaikwad,
Presenting Officer for Respondents.**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

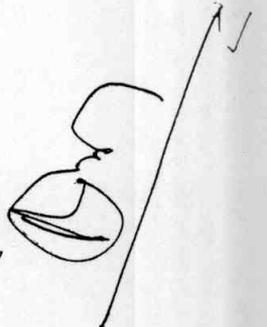
DATE : 17.01.2017

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. These four Original Applications (OAs) moved in order to get regularization of service in fact reflects a sorry state of affairs whereby despite clear directions given in the 1st round of litigation by the Bench of the then Hon'ble Chairman in **OAs Nos.315/2012 and others (Ms. Sneha S. Pradhan Vs. Chief Secretary and 4 others, dated 22nd February, 2013)**, the authorities including the Collector of Mumbai either deliberately or otherwise did not properly implement the ratio of **Secretary, State of Karnataka and others Vs. Umadevi and others (2006) 4 SCC Page 1** and in fact, even as that particular Judgment of the Hon'ble Supreme Court should have been read along with **State of Karnataka and others Vs. M.L. Kesari and others, (2010) 9 SCC 247** (Kesari's case), it has not even been referred to anywhere by the Respondents nor in fact, even in the Affidavit-in-reply filed hereto, to which the learned Presenting Officer Mrs. K.S. Gaikwad has appended her

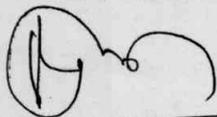
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2. We have perused the record and proceedings and heard Mr. Gunratan Sadavarte, the learned Advocate for the Applicants and Mr. D.B. Khaire, the learned Special Counsel with Mrs. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

3. The Applicants are working as Clerks since long and in fact, the Applicant Mrs. Pradhan has been working as such since 23rd November, 1984. Shorn of avoidable details, they seek regularization of service after having put almost more than 25 years of service in every respect including arrears, etc. We have, in the first Paragraph itself referred to an order of the Bench of the Hon'ble Chairman to which one of us (Shri Rajiv Agarwal, Vice-Chairman) was also a member. For all practical purposes, exactly the same relief was sought therein. The Bench reproduced Para 53 of **Umadevi** (supra). Paras 7 and 11 of **M.L. Kesari's** case were also reproduced. The Bench observed in effect that even if the appointment of the Applicants was irregular, they would be entitled to the benediction of the Rule of **Umadevi** read with **M.L. Kesari**. In Para 6, although the Bench had observed, "accordingly, we direct the Respondents to consider the case of the

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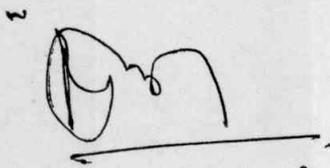
Applicant for regularization in the post of Clerk. This exercise shall be completed as expeditiously as possible, preferably, within a period of four months from the date of receipt of this order”, in our opinion, however, the Respondents were in duty bound to read the entire Judgment wherein important Paragraphs from **Umadevi** and **M.L. Kesari** were reproduced. This is precisely something which the authorities observed in its complete breach.

4. The 1st Respondent hereto is the Chief Secretary of the State of Maharashtra, the 2nd Respondent is the State of Maharashtra in General Administrative Department, the 3rd Respondent is the State of Maharashtra in Revenue and Forest Department, the 4th Respondent is the District Collector, Bombay Suburban District and the 5th Respondent was a private party Respondent who is no more now.

5. The 4th Respondent – District Collector, Bombay by his order of 2.12.2014 (Exh. 'A', Page 19 of the Paper Book (PB)) referred to 7 OAs to which a reference has already been made, decided by the Bench of the then Hon'ble Chairman being OA Nos. 303/2012 to 307/2012. Specific reference was made to Paragraph therefrom which

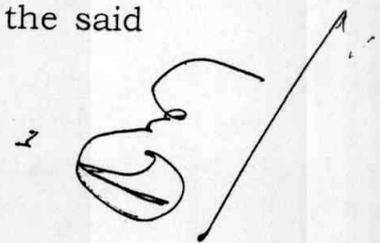


is just now quoted above. It was then mentioned that the matter was referred to the General Administration Department (GAD). The GAD opined *inter-alia* relying upon a G.R. of 18th September, 1952 that in Mumbai, the posts in question were within the purview of Maharashtra Public Service Commission (MPSC), and therefore, even as the Applicant possessed the qualification for the post and were appointed on the posts that were permanent, but since their appointments were not through MPSC, in accordance with **Umadevi** (supra) as read and understood by the Collector, Mumbai, their appointments could not be regularized. In fact, this is the crux of the case of the Respondents. The learned Special Counsel has placed on record a note of Law and Judiciary Department made by Mr. D.S. Patil, Deputy Secretary (Legal). The opinion of GAD and L & J.D was that in as much as the appointment of the Applicants, regardless of they possessing the requisite qualification and having been in service for more than 20 years on a post which was permanent, could not seek regularization because their appointment was made by the MPSC. They apparently thought that the appointment was not irregular but illegal, and therefore, the mandate of **Umadevi** (Para 53) read with **M.L. Kesari** (supra) would not be applicable.

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6. We have already indicate above that in various notings, etc. as also in the impugned order, **M.L. Kesari's** case has not even been mentioned much less discussed although in the earlier round of litigation, the Bench of the then Hon'ble Chairman had not only referred to, but reproduced a few Paragraphs from **M.L. Kesari's** case. The 7th Paragraph from **Kesari's** case was in fact fully quoted by that Bench in Para 3 and had anybody taken trouble to read it even cursorily, the fallacy of the stand that the appointment of the Applicants was illegal would have become clear. In fact, it was a case of irregular appointment at the most. We again reproduce the said Paragraph 7 from **M.L. Kesari's** case which was reproduced in Para 3 of the Bench in earlier round of litigation. We fully quote Para 3 hereinbelow.

"3. Mr. Sadavarte, the learned Counsel contended that the aforesaid judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and Others Versus Umadevi (3) and Others (2006) 4 Supreme Court Cases 1** was again clarified further by the Hon'ble Supreme Court in the case of **State of Karnataka and Others Versus M.L. Kesari and Others (2010) 9 Supreme Court Cases 247**. Para 7 and 11 of the said judgment read as under:

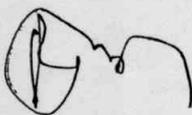


7. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in *Umadevi*, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed and continued him in service voluntarily and continuously for more than ten years.

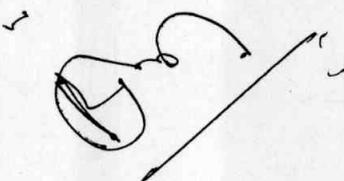
(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

11. The objet behind the said direction in para 53 of *Umadevi* is twofold. First is to ensure that those who have put in more than ten years of continuous service

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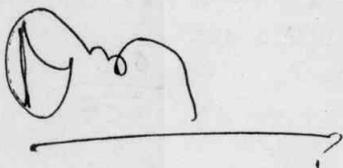
without the protection of any interim orders of courts or tribunal, before the date of decision of Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/ instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc-casual 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) without the protection of any interim order of any court or tribunal, in vacant posts, 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 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 directions in Umadevi as a one-time measure.”

7. We have, therefore, no hesitation in holding that at the most, at the highest or at the lowest, it is case of irregular appointment and not illegal appointment. When we are at **Kesari's** case, we may as well usefully note that

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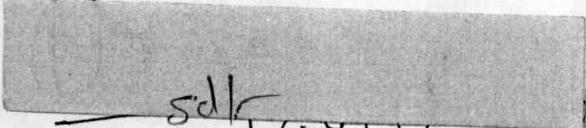
Paras 9 and 10 thereof would make it very clear that a proper understanding of Para 53 of Umadevi (supra) would be necessary when one considers the implication of the words, "one-time measure". It was observed in M.L. Kesari (supra) in Para 10 that the one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi are so considered.

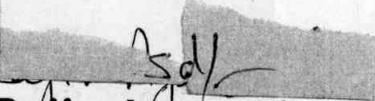
8. In our opinion, therefore, the impugned order itself suffers from not just irregularity but illegality. We must repeat that we are completely aghast to find that the authorities concerned did not even take trouble of reading the Judgment in the first round of litigation of this Tribunal. Had they done so, it is clear that they would have found the significance of a proper reading of Umadevi in the light of M.L. Kesari (supra). We think that in effect that it could be by accident or by design or by obstinacy that this course of action was adopted because we are at a complete loss to understand as to how they have not even have referred to M.L. Kesari's case. It needs hardly be emphasized that a proper grasp of the mandate of the Tribunal and more particularly of the Hon'ble Supreme Court is an absolute imperative and the authorities have failed to do so. The impugned order based on any number



of notings either in GAD or in L & J.D wherever would have to be quashed and set aside.

9. The orders herein impugned stand quashed and set aside. The Applicants are held entitled to be regularized in the service, which they have been rendering all these years, with all attended service benefits of a regular Government employee. The Respondents are hereby directed to comply herewith and also with the mandate of the Hon'ble Supreme Court in **Umadevi** and **M.L. Kesari** discussed hereinabove within a period of two months from today. The Original Applications are accordingly allowed in these terms with no order as to costs.


 (R.B. Malik)
 Member-J
 17.01.2017


 (Rajiv Agarwal)
 Vice-Chairman
 17.01.2017

Mumbai

Date : 17.01.2017

Dictation taken by :

S.K. Wamanse.