

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 785 OF 2012

DISTRICT : PUNE

Smt Shashikala Premal Jedhe)
423, Somar Peth, Sassoon Quarters,)
'A' Block, Room No. 28,)
Opp State Bank, Pune 411 001.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Medical Education & Research)
Department, Mantralaya,)
Mumbai 400 032)
2. The Director,)
Medical Education and Research,)
St. Georges Hospital Building)
Mumbai 400 001.)
3. The Dean,)
Sassoon General Hospital,)
Pune 411 001.)...**Respondents**



Shri D.B Khaire, learned advocate for the Applicant.

Shri N.K. Rajpurohit, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

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

DATE : 17.06.2016

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

ORDER

1. Heard Shri D.B Khaire, learned advocate for the Applicant and Shri N.K. Rajpurohit, learned Presenting Officer for the Respondents

2. This Original Application is brought by the lady Applicant for what has been described as compassionate appointment, but the case really falls within the ambit of 'Lad Page Committee'. The Applicant in the alternative seeks directions to give appointment to her in Class-IV post either from 1990 or 1997 and as further alternative she seeks to be appointed as Junior Clerk because though she belongs to Valmiki community, she has graduated in Commerce, and she now also holds the qualification of typing and MS-CIT, which entitles her for being appointed in Group-C post.



3. We have perused the record and proceedings. We have also perused the affidavit in reply filed by Dr. Y.U Jadhav, Associate Professor in B.J Medical College, Pune.

4. The grandmother of the Applicant late Smt Rupa Chotu Tramboli was working as a Sweeper and she retired on 30.6.1990. The Applicant applied for being appointed as a Sweeper on 1.7.1990. She was working as what is known as Badli Kamgar, Class-IV on 29 days basis. It so happened that a Registered Trade Union viz., Maharashtra Kamgar Sanghtana / Bhartiya Kamgar Sena filed a complaint under Maharashtra recognition of Trade Union and Prevention of Unlawful Practices Act, 1971 (ULP hereinafter) had included the name of the present Applicant as well as their member to that complaint. However, the Applicant disputed her Membership. Be that as it may, in the ultimate analysis regard being had to the course of action that we seek to adopt, this aspect of the matter will not be that much crucial. It is noted as a narration. The Industrial Court decided the Complaint No 27/2002 on 30.10.2010 in favour of the said recognized Union. However, it may be noted here, so as to avoid unnecessary discussion that ultimately the Applicant was absorbed in Group-D by an order dated 9.9.2015, which is at Exh. R-4, page 300 of the Paper Book. The dispute, however, is as to her entitlement such as she claims to be absorbed in Group-

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C in accordance with the Government circular dated 1.10.2003, which is at page 39 of the Paper Book.

5. Before we proceed further, it may be noted that the above referred determination by the Industrial Court came to be challenged by the State Government before the Hon'ble High Court in Writ Petition no. 246/2015, (State of Maharashtra & Anr Vs. Bhartiya Kamgar Sena). The orders made by the Hon'ble High Court from time to time have been annexed to the affidavit in reply tendered today by the Respondents. That Writ Petition is pending, and is now fixed for 4.7.2016 and there is no stay granted by the Hon'ble High Court and as a matter of fact as per the order of 7.9.2015 it would quite clearly appear that a statement was made on behalf of the State that a broad policy decision to absorb those employees who had been working on temporary basis for more than 10 years on certain terms and conditions would be taken and in that behalf reliance was placed on a judgment of the Hon'ble Supreme Court in Hari Nandan Prasad & anr Vs. Employer I/R to Management to FCI & anr 2014 AIR (SC) 1848. The said order may be perused. By an order of 23.11.2015, the Hon'ble High Court was pleased to record that as per communication therein referred to, a statement was made that the services of the Respondents would be regularized and an affidavit to that effect would be filed.



6. As we mentioned above the issue now is only with regard to whether in accordance with Government Circular dated 1.10.2003 the Applicant can be considered for being absorbed in Group-C post. Mr Khaire, learned advocate for the Applicant has furnished for our perusal the orders in respect of Mr Devidas R. Kachotia, Smt Sushila B. Parche, Shri Mohan B. Chavan, Smt Nalini M. Chavan, Shri Vicky V. Solanki, Smt Reshma D. Lal, Smt Geeta P. Solanki and Shri Prakash P. Chaglani.

7. We have perused the said orders dated 8.3.2016 and we find that the case of those employees were exactly similar to the present applicant. Mr Kahire, told us that the case of the Applicant was not considered only because of the pendency hereof. In fact, the officer who is present before this Tribunal also mentions that since the case of the Applicant was subjudice (न्यायप्रविष्ट), therefore, it could not be considered. Now, even as we shall make it clear that whatever orders are made by us herein would be ultimately subject to the orders passed by the Hon'ble High Court in Writ Petition No. 246/2015 above referred to. But as for now, the mere fact that this matter was pending here could be no ground to deny to the Applicant her legitimate due and placing her in any manner disadvantageous to those who were similarly placed. That is quite clearly an offence to the letter and spirit of the Constitution of India.



8. Learned Chief Presenting Officer on instructions from the officer abovenamed submits that apart from the fact that the decision would be subject to the orders of the Hon'ble High Court, it should also be clarified that the issue of age would be also taken into consideration.

9. Now in our opinion, we are not giving order appointing the Applicant to Group-C post. We are giving directions to the Respondents to do the needful by making sure that there is no hostile discrimination between the Applicant on one hand and others on the other as indicated above.

10. The learned Advocate for the Applicant invites our attention to recitals in para 13.1 of the affidavit in reply of the Respondents themselves which may be quoted herein below:-

"It is further submitted humbly that the High Power Committee of the Govt. rightly considered the applicant's case and that the present applicant who was working as a temporary Badli employee, as many other Badli employees, and as a special case directed to give regular appointment by relaxing upper age limit in case of the applicant."

A handwritten signature in black ink, consisting of a stylized 'G' followed by a diagonal line.

Further, the Government circular of 1.10.2003 will have to be borne in mind by the Respondents not just in letter, but also in spirit.

11. In the above background, this Original Application is hereby disposed of with a direction to the Respondents to consider the case of the applicant for being appointed in Group-C post on par with the others named above within a period of three months from today and communicate the Applicant within one week thereafter the result thereof. It is clarified that this order is subject to the order passed by the Hon. High Court in Writ Petition no 246/2015. No order as to costs.

Sd/-

(R.B Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 17.06.2016

Dictation taken by : A.K. Nair.