

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.216 OF 2016

DISTRICT : SINDHUDHRG

Smt. Archana Prakash Charate.)
Age : 40 Yrs, Occu.: Nil (Worked as Lecturer in)
Government Polytechnic, Solapur and residing)
at Tilari Colony, Executive Engineer Bungalow,)
Sawantwadi, Charata, District : Sindhudurg.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Higher & Technical Education Dept.,)
Mantralaya, Mumbai – 400 032.)
2. The Directorate of Technical Education,)
M.S, 3, Mahapalika Marg, P.B. No.10036,))
Mumbai – 1.)
3. The Principal.)
Government Polytechnic, Solapur,)
Having office at Akkalkot Road, Solapur.)...**Respondents**

Mr. D.B. Khaire, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 10.04.2019

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JUDGMENT

1. In the present Original Application, the Applicant has challenged the order dated 7th September, 2012 whereby she was illegally relieved from the post of Lecturer as well as order dated 13.10.2015 whereby her application for reinstatement and absorption in service has been rejected invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as follows :-

The Applicant is B.E. in Electronics. She was appointed as a Lecturer in Government Polytechnic on contract basis for the period of two years or until the appointment of Lecturer through Maharashtra Public Service Commission (MPSC), whichever is earlier, by appointment order dated 5th November, 2007 issued by Respondent No.3 – Director of Technical Education, State of Maharashtra. Accordingly, she joined at Government Polytechnic, Solapur (Respondent No.3) on 07.11.2007. After two years' service, she was relieved by order dated 03.11.2009. Again, she was appointed on contract basis by Respondent No.2 on 25.11.2009 for two years. She was again relieved and lastly appointed on the post of Lecturer (Electronics & Telecommunication) by order dated 29.11.2011 issued by Respondent No.2. As per the terms and conditions of the order dated 29.11.2011, she along with other candidates were appointed for the period from 01.12.2011 to 31.10.2012 or until the appointment of Lecturer through MPSC whichever is earlier. As such, the Applicant had worked on the post of Lecturer at Government Polytechnic, Solapur from 07.11.2007 to 07.09.2012.

3. The Applicant contends that the Respondent No.3 by order dated 7th September, 2012 relieved her from the post on the ground that one Shri G.G. Ovarikar had joined on the post and consequently, the Applicant being junior-

most candidate, she ordered to be relieved from the post. In this behalf, she contends that as per appointment letter dated 29.11.2011, her appointment was till 31.10.2012, but she had been illegally relieved on 06.09.2012 though she was not junior-most in the cadre. She, therefore, contends that the relieving order dated 7th September, 2012 is unsustainable and illegal. She specifically contends that one Shri Bulla was junior to her, but her services were continued, and therefore, the order dated 07.09.2012 is illegal.

4. She made various representations dated 14.12.2012, 01.03.2015, 01.04.2015 and 27.04.2015. In the meantime, the colleague of the Applicants Shri Sachin A. Dawale and 90 others similarly situated Lecturers, who were appointed on contract basis had filed Writ Petition No.2046/2010 before the Hon'ble High Court, Bench at Nagpur, which came to be allowed on 19.10.2013. The Hon'ble High Court directed the Government to regularize the services of Lecturers, who were appointed on contract basis and were in service on 15.10.2013. Accordingly, the Lecturers who have completed three years' service with technical break have been absorbed and regularized in service. In pursuance of the Judgment of Hon'ble High Court, the Respondent No.1 – Government took decision on 14.01.2015 to regularize the services of those Lecturers. The decision of Hon'ble High Court has been confirmed by Hon'ble Supreme Court and has attained finality. Thereafter again, the Government by decision dated 13.03.2015 extended the benefit of permanency to 317 Lecturers appointed on contract basis who have completed three years' service and were in service till 31.01.2015. However, the Applicant could not get the benefit of decision of Hon'ble High Court as well as the decision of Government dated 13.03.2015, as she was out of service in view of illegal relieving order dated 07.09.2012.

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5. Ultimately, the Respondent No.2 by communication dated 13th October, 2015 rejected the demand of the Applicant for reinstatement and absorption in service on the ground that she has already been relieved w.e.f.06.09.2012, and therefore, not entitled to the benefit of decision in ***Writ Petition No.2046/2010 (Sachin Dawale and Ors. Vs. State of Maharashtra) decided on 19.10.2013***. The Applicant has, therefore, approached this Tribunal by filing the present O.A.

6. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.127 to 146 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. It is not in dispute that the Applicant was initially appointed on contract basis for two years by appointment order dated 05.11.2007 and was continued in service till 06.09.2012 with technical break. The Respondents contend that, by order dated 07.09.2012, she was relieved from the post of Lecturer in view of appointment of another candidate Shri Ovarikar. Thereafter, she remained silent spectator till the decision of Hon'ble High Court in Sachin Dawale's matter. The Respondents denied that the Applicant had made representation on 14.12.2012 for reinstatement/absorption in service. The Respondents contend that the Applicant herself was not interested in service, and therefore, she remained silent for three years, and therefore, now not entitled to claim the benefit of the Judgment in ***Sachin Dawale's*** case because of lapses on her part. The Respondents further sought to contend that the Applicant was on leave for longer period and secondly, another candidate was appointed on the post of Lecturer, and therefore, she was rightly relieved w.e.f.06.09.2012. As such, the Respondents sought to justify the order dated 07.09.2012 whereby she was relieved from the service and denied that the Applicant is entitled to reinstatement as well as absorption on the post of Lecturer.

7. At the very outset, it needs to be stated that the Applicant had filed his O.A. along with the application for condonation of delay vide M.A.No.359/2017 which was allowed by this Tribunal. In fact, the impugned communication is dated 13th October, 2015 and the application has been filed well within limitation. However, it would be material to see the contents of M.A.359/17, which have bearing with the present matter. In the said M.A, the Applicant contends that she had made representation on 14.12.2012 and waited for six months for the decision on her representation in terms of Section 21 of Administrative Tribunals Act, 1985 and, therefore, limitation starts after six months from filing of representation dated 14.12.2012. As such, according to her, the O.A. ought to have been filed on or before 14.06.2014 but the same is filed on 26.02.2016, and therefore, prayed for condonation of delay. It is in this context, the M.A. was filed and allowed by this Tribunal by order dated 27.09.2017.

8. Heard Shri D.B. Khaire, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents at a length.

9. In view of submissions advanced at the Bar and the pleadings, the following factors emerges as admitted position :-

- (i) The Applicant was one of the Lecturers who were appointed in Government Polytechnic throughout the State of Maharashtra, as per policy of Government of Maharashtra incorporated in G.R. dated 25th July, 2002 as modified by another G.R. dated 2nd August, 2003 and 3rd October, 2003. In pursuance of this Government policy, the Notification dated 25th August, 2003 was issued inviting the applications from eligible candidates for the post of Lecturer in Government Polytechnic in State of Maharashtra.
- (ii) In pursuance of G.R. dated 2nd August, 2003, the Selection Committee for the appointment of Lecturers in Government Polytechnics was constituted and the Applicant was amongst other

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Lecturers, who were selected for the appointment on contract basis through the said Committee.

- (iii) The Applicant was appointed firstly by appointment order dated 05.11.2007 on contract basis for two years which was thereafter extended from time to time with technical breaks and she was continued in service upto 06.09.2012.
- (iv) By order dated 07.09.2012, the Respondent No.3 – Principal, Government Polytechnic, Solapur relieved the Applicant from the post (कार्यमुक्त) in view of joining of one Shri G.G. Ovarikar.
- (v) Sachin Dawale and other 90 Lecturers had filed Writ Petition No.2046/2010 before the Hon'ble High Court, Bench at Nagpur seeking the relief of absorption in Government Polytechnic and it was allowed by Judgment dated 19.10.2013.
- (vi) SLP filed against the decision in W.P.No.2046/2010 has been dismissed by Hon'ble Supreme Court and the Judgment of Hon'ble High Court attained finality.
- (vii) In pursuance of the decision in Writ Petition No.2046/2010, the Government by G.R. dated 14.01.2015 regularized the services of 62 Lecturers, who were appointed on contract basis and accordingly, they were absorbed in service.
- (viii) Again, the Government by G.R. dated 13.03.2015 decided to extend the benefit of decision of W.P.2046/2010 to 317 Lecturers, who were similarly situated and regularized their services having completed three years' service and were in service on 31.01.2015.

10. In view of aforesaid undisputed position, the crux of the matter is whether the Applicant is also entitled to the relief of absorption/regularization in service in view of the decision of Hon'ble High Court in Writ Petition No.2046/2010, which has been implemented by the Government and also extended the benefit to another set of 317 Lecturers, who were also appointed on contract basis. This being the position, there is no denying that the Applicant is also similarly situated employee. However, the only distinguishing factor is that she was relieved from the post (कार्यमुक्त) w.e.f.06.09.2012.

11. Shri D.B. Khaire, learned Advocate for the Applicant vehemently urged that the relieving order dated 07.09.2012 *ex-facie* illegal for the following reasons:-

- (a) As per last appointment order dated 29.11.2011 (Page No.43 of P.B.) she was appointed for the period from 01.12.2011 to 31.10.2012 or until the appointment of the candidates through MPSC whichever is earlier but she was relieved before completion of tenure which was upto 31.10.2012.
- (b) In relieving order dated 07.09.2012, the reason for relieving was that she was junior-most, and therefore, was liable to be relieved. In this respect, the learned Advocate for the Applicant urged that the Applicant was not junior-most and one Shri Bulla, who joined on 15.01.2008 i.e. after the appointment of Applicant was junior, and therefore, the Applicant should not have been relieved on the ground of being junior.
- (c) As per relieving order date 07.09.2012, one Shri Ovarikar was transferred in Government Polytechnic, Solapur, and therefore, the Applicant being junior was liable to be relieved. In this behalf, the learned Advocate for the Applicant has pointed out that, as per relieving order dated 07.09.2012 itself Shri Ovarikar was also appointed on contract basis and was transferred to Government Polytechnic, Solapur and it is not a case that Shri Ovarikar was selected through MPSC, and therefore, the services of the Applicant were liable to be terminated.

12. True, where a person enters into appointment on contractual basis and the appointment is not based on proper selection as recognized by the Rules, he has no vested right to claim absorption or regularization in service. However, in the present matter, the situation is totally different as hundreds of Lecturers who

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were appointed in Government Polytechnic on contract basis have been absorbed and regularized in service in view of decision of Hon'ble High Court, which had attained the finality. The Government by G.Rs. dated 14.01.2015 and 13.03.2015 accordingly absorbed the similarly situated Lecturers appointed on contract basis. It is in this situation, the Applicant is claiming absorption on the principle that when a particular set of employees is given relief by the Court or Executive, all other identically situated persons need to be treated alike by extending that benefit, otherwise it would amount to discrimination and could be violative of Article 14 of Constitution of India.

13. In this behalf, it is pertinent to note that the specific contention raised by the Applicant that it is Shri Bulla, who was junior to the Applicant is not at all controverted by the Respondents. There is absolutely no challenge to this specific contention raised by the Applicant, which is one of the decisive factor to determine the legality of the relieving order dated 07.09.2012. The Applicant has placed on record the order issued by Respondent No.1 (G.R. dated 13.03.2015, Page Nos.113 to 118 of P.B.) which reveals that the date of joining of Shri Bulla was 15.01.2008. Whereas, admittedly, as per appointment order of Applicant dated 05.11.2007 (Page No.54 of P.B.), the Applicant was appointed on 05.11.2007. This being the position, there is no denying that the reason mentioned in relieving order dated 07.09.2012 that the Applicant was junior-most in Government Polytechnic, Solapur, and therefore, she was liable to be relieved or terminated is *ex-facie* illegal.

14. Furthermore, as stated above, the Applicant was appointed for two years as per last order dated 29.11.2011 and the period of two years was upto 31.10.2012 or until the appointment of candidates through MPSC whichever is earlier. Whereas, in the present case, as per the contents of relieving order dated 07.09.2012 itself, the reason for relieving the Applicant was transfer of Shri Ovarikar in Governme-nt Polytechnic, Solapur and not as a candidate selected

through MPSC. This being the position, *ex-facie*, the reasons on both counts as mentioned in the relieving order dated 07.09.2012, the Applicant was not liable to be relieved from the service. This aspect is very crucial and important in the present matter for deciding the Applicant's entitlement for the absorption/reinstatement in service. Significantly, the Respondents have not placed on record any material to show that Shri Ovarikar was selected through MPSC or Applicant was junior-most in Government Polytechnic, Solapur, despite the specific contention raised by the Applicant in this behalf. Therefore, it is quite clear that neither the Applicant was junior-most nor Shri Ovarikar was the candidate selected through MPSC, so as to legally relieve the Applicant from a post or to terminate her services.

15. For the aforesaid reasons, I have no hesitation to sum-up that the relieving order dated 07.09.2012 is not legal and the Applicant's services has been terminated arbitrarily. Once this aspect is set at rest, the next material question comes whether the Applicant is entitled to reinstatement and absorption in service.

16. Once, the services of the employee found terminated illegally, consequent to it, such employee will be obviously entitled to the reinstatement in service, particularly when such relief of absorption in service has been granted to the similarly situated employees. In the present matter, as stated above, hundreds of Government Polytechnic Lecturers, who were appointed on contract basis have been absorbed in view of the decision rendered by Hon'ble High Court. As per the decision in **Sachin Dawale's** case, the Lecturers who have completed three years' service and were the employment as on 15.10.2013 were absorbed in the service. It is on the basis of this Judgment in **Sachin Dawale's** case, the Applicant is claiming the similar relief. Undisputedly, she has completed more than five years' service on the post of Lecturer in Electronics and Telecommunication before 07.09.2012 i.e. the date on which she relieved

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illegally. This being the position, it would be unjust and arbitrary to deny the relief of reinstatement and absorption to the Applicant.

17. In this behalf, it would be apposite to refer the Judgment of Hon'ble Supreme Court **(2015) 1 SCC 347 (State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava & Ors.)** wherein the Hon'ble Supreme Court laid down the following legal principles :-

"The most question that requires determination is as to whether the approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled out from the judgments cited both by the appellants as well as the respondents, can be summed up as under :

(i) *Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.*

(ii) *However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.*

(iii) *However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India(supra)). On the other hand, if the*

judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

18. The exposition of law enunciated in the aforesaid authority is squarely applicable to the present situation, as the benefit of absorption and regularization has been already extended to similarly situated employees. Had the applicant was not relieved illegally by order dated 07.09.2012, she would have continued in service and in that event, she ought to have held entitled to the benefit of decision in **Sachin Dawale's** case in view of admitted position that she had completed more than five years' service. Therefore, on the principle laid down by Hon'ble Supreme Court, as stated above, the Applicant is definitely entitled to reinstatement as well as absorption on the post of Lecturer in Government Polytechnic.

19. The learned P.O. sought to contend that the Applicant is guilty of laches, as she remained silent for the period of four years, and therefore, she is not entitled to the discretionary relief on the principle laid down by Hon'ble Supreme Court in **Arvind Kumar Srivastava's** case (cited supra). Indeed, the Hon'ble Supreme Court held that the principle of parity is the subject to the exception where the employee is guilty of laches or for delay in approaching the judicial forum. In this behalf, the Applicant contends that she had firstly made representation on 14.12.2012 (Page 55-A of P.B.) but it was not responded. Whereas, the Respondents categorically denied the receipt of representation dated 14.12.2012. True, the Applicant could not produce the acknowledgement of representation dated 14.12.2012. However, fact remains that, thereafter also, she had made representations on 01.04.2015 and 27.04.2015 (Page Nos.120 and 122 of P.B. which are not disputed) after the decision in **Sachin Dawale's** case. The Applicant's explanation that she was expecting remedial measures from the

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Respondents themselves cannot be brushed aside. She had legitimate expectation that she will be treated alike. In fact, as per the principle laid down by Hon'ble Supreme Court in *Arvind Kumar Srivastava's* case where the Judgment pronounced by the Court is a Judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not, with such a pronouncement, the obligation is cast upon the executives to itself extend the benefit thereof to all similarly situated persons. True, in the present case, the Judgment in *Sachin Dawale's* case cannot be termed as the Judgment in rem, but one should not be oblivious of the fact that later, on the basis of Judgment in *Sachin Dawale's* case itself, the Government had extended the benefit of absorption to 317 Lecturers by G.R. dated 13.03.2015 who are similarly situated. This being the position, now the Applicant cannot be left out and deprived of from the benefit of the said Judgment, particularly when, her services were found terminated illegally.

20. As such, this is not a case where the Applicant can be said guilty for lapses or she had acquiesced. In order to see whether the Applicant is guilty of laches, one need to consider whether there is acquiescence on the part of Applicant and whether there is any change of position that has occurred on the Respondents' part. In view of representations dated 01.04.2015 and 27.04.2015 (which are not disputed by the Respondents) it cannot be said that she has acquiesced or relinquished her claim of absorption. It is in this context, the M.A. for condonation of delay was filed which was allowed by the Tribunal. Therefore, the alleged lapses or delay in filing O.A. cannot be the ground to deny the benefit of absorption to the Applicant, particularly when her services were terminated illegally. This injustice now needs to be undone by issuing appropriate direction.

21. The learned P.O. made last attempt to justify the impugned order on the ground that she was on leave for substantial period, and therefore, was not entitled to reinstatement in service. So far as this aspect is concerned, in first

place, her termination/relieving from post was not on the ground of availing leaves. The grounds impugned in relieving order are totally different and non-existent as concluded above. True, there is reference of availing leave in impugned order dated 13.10.2015. There is only passing reference that she was on leave for 141 days. Material to note that, there is no specific averment in the impugned order dated 13.10.2015 that because of frequent leave, she was found not eligible for reinstatement or absorption in service. Apart important to note that admittedly, it was not unauthorized leave. The Applicant has produced leave sanction order dated 7th August, 2012 (Page No.54-Z of P.B.) which shows that the leave was treated as 'Earned Leave' as well as 'Without Pay Leave'. As the Applicant was appointed on contract basis, she was not entitled to regular leave, and therefore, some period of leave was treated as 'Without Pay'. The Applicant has also produce leave application dated 14.02.2012 (Page No.54-M of P.B.) which shows that, while proceeding on leave, she had intimated to the Principal that on account of ill-health, she will not be able to remain present and leave was also recommended by the concerned authority. The charge of her post was also kept with another Lecturer. Suffice to say, this is not a case where the Applicant proceeded on unauthorized leave which could be the ground to refuse the benefit of reinstatement and absorption in service.

22. The necessary corollary of aforesaid discussion leads me to sum-up that there is no valid reason to deny the benefit of absorption to the Applicant. There is no defence of non-availability of post. The benefit of absorption was given to the Lecturers who have completed three years' service, whereas the Applicant has completed more than five years' service till the date of impugned order. Even assuming that she did not file her representation dated 14.12.2012 or immediately after relieving from service, the fact remains that she approached after the decision of Government vide G.R. dated 13.03.2015 whereby 317 Lecturers were absorbed in service. As such, she was also expecting some benefit to her, and therefore, filed representations on 01.04.2015 and 27.04.2015. As

such, the doctrine of legitimate expectation comes in play and Government should be fair enough to accept her claim. At any rate, she cannot be held guilty for inaction not it can be said that she had acquiesced to the Respondents. Basically, her relieving order of termination of service itself is illegal.

23. As such, the irresistible conclusion is that the impugned orders dated 07.09.2012 and 13.10.2015 are not sustainable in law and deserves to be set aside. The Applicant is, therefore, entitled to the relief claimed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 07.09.2012 and 13.10.2015 are hereby quashed and set aside.
- (C) The Respondents are directed to reinstate the Applicant on the post of Lecturer, Electronics and Telecommunication in Government Polytechnic and shall also absorb her in service being similarly situated person, as done in respect of other Lecturers by G.Rs. dated 14.01.2015 and 13.03.2015 referred in the Judgment.
- (D) The above exercise be completed within one month from today.
- (E) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 10.04.2019

Dictation taken by :

S.K. Wamanse.