

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1136 OF 2012

DISTRICT : MUMBAI

1. Smt. Ratna Sanjiv Thakurdesai,)
2. Ms. Kunda Madhukar Kharat,)
3. Smt. Sneha Sanjiv Panchal,)
4. Smt. Vidya Ghanasham Desai,)
5. Smt. Shakuntala Shankar Desai,)
6. Mrs. Sangita Pravin Kadam,)
7. Mrs. Pratibha Ganesh Diwane,)
8. Smt. Shubhangi Vishnu Mayekar,)
9. Mrs. Rashmi Nitin Kamble,)
10. Mrs. Vaishali Ajit Kedari,)
11. Smt. Varsha Dinesh Nakhawa,)
12. Smt. Nayana Balkrishna Lad,)
13. Smt. Shital Balkrishna Chavan,)
14. Mrs. Pradnya Dhondu Gawade,)
15. Smt. Swati Vishwanath Khedekar,)
16. Smt. Kalpana Bhaskar Barve,)
17. Shri Yashwant Gunaji Nijapkar,)
18. Shri Ravindra Dattaram Birwadkar.)

All aged Adult, Occ.: Govt. Service as)
Junior Clerks working in the office)
of Maharashtra State Lottery)
(F & A), having office at Haji Bunder)
Road, Sewree (E), Mumbai 400 015.)

Address for Service of Notice :)

Shri A.V. Bandiwadekar, Advocate, 9,)
"Ram-Krishna", Lt. Dilip Gupte Marg,)
Mahim, Mumbai 400 016.)

)...Applicants



Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Finance Department,)
Mantralaya, Mumbai - 400 032.)
2. The Commissioner.)
Small Savings and State Lottery,)
Having office at New Administrative)
Building, 8th Floor, Opp. Mantralaya,)
Mumbai 400 032.)...Respondents

Shri A.V. Bandiwadekar, Advocate for Applicants.

Ms. N.G. Gohad, Presenting Officer for Respondents.

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


DATE : 22.01.2016

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

JUDGMENT

1. This Original Application (OA) presented by 18 Junior Clerks seeks permanency in the said job mainly relying upon the judgment of the Nagpur Bench of the Hon'ble Bombay High Court in **Writ Petition No.2046/2010 (Sachin A. Dawale and 90 others Vs. State of Maharashtra and one another, dated 19.10.2013)** confirmed by the Hon'ble Supreme Court in

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Special Leave to Appeal (C) No.39014/2013 (State of Maharashtra and another Vs. Sachin A. Dawale, dated 6.1.2015). There are alternative prayers as well and they are really several. The main prayer should cover the nature of the claim.

2. The Applicants came to be appointed by a process of selection to which a reference will be presently made. The details thereof are to be found in what is Exh. 'B' (Page 32 of the Paper Book) in this OA as well as Exh. 'F' (Page 74 and 75 of the P.B.). The Applicant Nos. 1, 2, 3, 4, 5, 8, 15, 16, 17 and 18 came to be appointed in July, 2001 (6th, 7th and 9th). The Applicant Nos. 6 & 7 were appointed on 7.9.2001. The Applicant Nos. 9, 10 and 11 came to be appointed on 1.8.2002. The Applicant Nos. 12 & 13 came to be appointed on 1st March, 2004. The Applicant No.14 came to be appointed on 7.2.2001. All of them were appointed as Junior Clerks on the basis of an order which is not in dispute. It shall be presently referred to. These appointments were made in the Lottery Department and in so far as the details thereof are concerned, they are to be found in Exh. 'C' (Page 36 of the P.B.). It is not in dispute that the State of Maharashtra initially floated the Lottery Scheme in 1967. Thereafter, every year on the days of significance like festivals, etc.

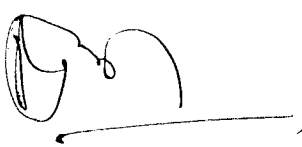


Mega Lotteries came to be floated. However, in so far as the present matter is concerned, it again appears to be an indisputable factual position that 2 and 3 digit Lottery Scheme was decided to be implemented under the G.R. dated 16th May, 2001. The main office was apparently located at Sewree. 135 officers/employees were to be initially appointed. Since the Lottery was a monthly event, it was necessary to fill up the posts on urgent basis (तात्कालीने) (See Exh. 'E', Page 67 of the P.B.). There were several posts, but we in this OA are concerned with the posts of the Junior Clerks, Group 'C' (86 posts). In order to make these appointments, on 4.6.2001, a written examination was conducted in the Government Law College, Churchgate. 512 candidates appeared in the written test of which 208 were short-listed for interview by a Committee under the Director of Lottery and Small-Savings. In case of some of the candidates, Computer test was also taken. However, it was uncertain as to whether the venture would succeed because of the fluctuating nature thereof. If it went off well a large number of employees was necessary, but if it did not, then lesser number of employees were required, and therefore, for the office at Sewree, instead of regular appointments, appointments on contract basis (कंत्राटी करार पद्धती) was decided in accordance with the Finance Ministry G.R. of 15.9.2001.

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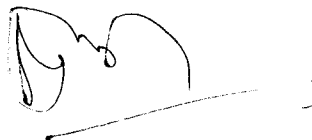
It was further decided that 114 posts of Junior Clerks, Group 'C' would be filled up on contract basis for 89 days with one day's break.

3. Thereafter, the Lottery Scheme got closed on 17.12.2001 resulting in the termination of service of these employees. On 8.4.2002, again two digit Lottery got started and thereafter, from December, 2004 to February, 2005, 70 posts of Junior Clerks from December, 2005 to February, 2006, 52 posts and from December 2006 to February, 2007, 40 posts and then finally from December, 2007 till date, in as much as the two digit Lottery had been closed, 21 contract employees were functioning. It needs to be noted that the Applicants earlier brought an OA being OA 755/2011 wherein by an order dated 15.11.2011, the Respondents were directed to take a final decision with regard to the representations detailed in Para 9(A) thereof within a period of three months from the date of receipt of the order and to communicate the decision to the Applicants. The Applicants raised certain issues in their representations just referred to falling within five broad-heads. It would suffice our purpose, if we were to set out the replies to each one of them. It was mentioned that in Sewree office, 135 posts were created after approval of the Committee of the Secretaries in their meeting of 16.5.2001.

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All those posts were permanent. For the reasons set out therein at that point in time, the need was of 21 employees and it could be possible to absorb them in service in the Lottery Department (संचालनालय).

4. A reference was made to two Rulings whereupon the Government instruments came to be issued in effect implying that those who came by backdoor should go through that door itself. That aspect of the matter will have to be considered in the context of the matters decided by this Tribunal. Thereafter, there were historical details with regard to the number of posts and pay structure, etc. In so far as the 21 employees whose services were sought to be regularized, the GAD had given its opinion on 18.2.2010. It was their opinion that as per the information given by them on 18.2.2010, once the posts were sanctioned, then for the functions to be discharged by those employees could not be got done by the contract employees. If in accordance with the policy of Lottery, some scheme was closed and an alternative one was introduced, then steps should be taken to fill up those vacancies. The opinion of the Principal Secretary (Service) in substance was that for filling up the posts on contract basis, MPSC's permission was not necessary. It was further noted that the appointments were made in



accordance with the G.R. of 30th May, 2001 and after an open examination, both written and oral through proper manner (विहित मार्गानेच नियुक्ता करण्यात आलेल्या आहेत. ही वस्तुस्थिती आहे.).

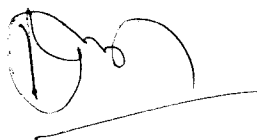
5. As we shall be presently pointing out the determination of the issues herein involved will be governed by the case law for which some facts will have to be stated in so far as the steps taken for appointment and the nature of the appointment, etc. It will be found from the record that under a document, a copy of which is at Exh.'E' (Page 67), there are minutes of the meeting attended by highly placed Secretarial Personnel and the Hon'ble Deputy Chief Minister, who held the port-folio of finance.

6. From the discussion thus far, it will become very clear that the Applicant's came to be selected through a process of selection which was open to all and from a number of them, a short-listing was made. Having said that the point however remains that for those posts that were in Mumbai, the candidates were not selected by MPSC. As far as all the Applicants herein are concerned, they are posted in Mumbai. It is equally clear that the candidates were not selected in an arbitrary manner or if one might say so, under some kind of cloud of secrecy, etc.



It cannot be said by any stretch of imagination that these appointments were what has come to be known as back-door entry. The same examination process was taken recourse to and the same were the standard fixed. This holds good both for written as well as oral test. This aspect of the matter will have to be borne in mind as the discussion progresses. Pertinently, it was due to the exigencies of the situation including the uncertain nature of the Scheme itself, the Government took a conscious decision with due deliberation manifested expressly to have the contract appointments.

7. Now, in this connection, we may also mention that in this matter, an Hon'ble people representative (MLA) intervened on behalf of the Applicants and represented their case before the Hon'ble Minister since the time, his predecessor was in office. There are recitals in the documents in that behalf which on a fair reading would give an indication that the Government was favourably disposed to consider the case of the Applicants for regularization. We must, however, mention with great respect to the high dignitaries mentioned above that even as they perform their public duty as they must, the judicial forum like the present Bench of MAT has to decide the matter in accordance with the principles of law applicable



to the facts, and therefore, on the basis of the record, an application of law emanating from the decided cases, it must be found that a case is made out for grant of relief. We make it clear that we are deciding this OA only on the basis of the principles of law including the first principles.

8. There is a G.R. dated 21.2.2004 of the Finance Department which is at Page 199 of the P.B. wherein two earlier G.Rs dated 10.9.2001 and 26.2.2001 have been referred to. It is mentioned therein that a review of 154 posts in the Lottery Department at Sewree was undertaken in the High Powered Committee under the Chief Secretary. Those posts were granted approval. 100 posts of Junior Clerks were decided to be filled on contract basis and 19 posts from the Accounts and Treasuries Department were decided to be transferred to Sewree Office.

9. Before this G.R. was issued on 15th February, 1995 which set out the details of the manner in which the appointment should be made on the contract basis. In a Finance Department G.R. of 30.9.1997, it was decided to review the functioning of the Lottery Department. By another G.R. of 6th February, 2009 issued by the Finance Department, a unified pay structure was approved for the employees working on contract basis in the Lottery Department.



10. The above discussion, therefore, would make it very clear that apart from the fact that the appointments were made under regular open examination and process, several steps came to be taken to make sure that though appointed on contract basis and given breaks, the State Government never treated the Applicants as what can be described as outsiders much less dispensable. This further reinforces the observations that we made initially in the nature of preface.

11. At this stage, we may turn to the Affidavit-in-reply. In Para 7 of the Affidavit-in-reply filed on 3.7.2013, it is pleaded by the Respondents that as an economy or austerity measure, the Government gave directions against new recruitments and the appointments to be made on contract basis. The remuneration paid to the Applicants was as per the policy of the Government. Then there was an exhibition of arrogance and insensitivity by pleading that the Applicants like several others of their ilk were free to seek employment elsewhere. That is quite irrelevant also but in Exh. 'F', the Applicants have given out the details of the private employments that they gave up to take the present employment under the Government. But, we shall not dwell on this fact component any further bar mentioning that the Respondents could have done without



being discourteous to their own employees, even if they were not full-fledged as it were.

12. But quite significantly and it must be noted here and now, the device of contract appointment was brought into being quite consciously as an economy measure. There was nothing extraneous much less devious or sinister about it. This studied alongside the back door entry or rather absence of it as discussed above will make the Rule of **Sachin Dawale** (supra) applicable without incurring the wrath of the Rule against back door entry.


13. Now, we have already alluded to the process of examination, etc. to make appointments on contract basis. But let us reproduce from the same Affidavit-in-reply.

“For filing up 114 posts, a proper procedure was followed as there should not be any chance for partiality or any kind of malpractice considering the large number of candidates seeking the job though the recruitment was on contract basis, for filing up the above said 114 posts a proper procedure was followed, as there should not be any chance to malpractices or partiality and also to maintain the transparency in the recruitment.”

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14. It is quite clear that in as much as the hallmark of an examination in order to be commended for objectivity and impartiality and such attributes must have all the ingredients that were carefully implemented. That after-all is the raison-detre of constitutional bodies like UPSC and MPSC, etc. It is, therefore, quite clear that even as the examination held in this matter did not have the name of MPSC, but the conduct of the examination was quite meritorious. A few other attributes including the openness, etc. in the process of selection has already been discussed above. As far as MPSC is concerned, apart from the recitals in the documents of contemporaneous vintage referred above viz. absence of necessity in case of contract employment et'al the most significant aspect of the matter is that other factors remaining constant, the Applicants had, as aspiring candidates no choice in the matter of selecting the selection agency. Whatever was offered by the system they had to take it. The system itself did not suffer from any vitiating vice. And that is it.

15. The Affidavit-in-reply then deals with the peculiarity of the Scheme of Lottery and the uncertainty associated with it. It was also pointed out that for such Schemes, State itself had no final say. In view of the fact, as to which of the three lists, the item fell even the Union



Government had a very decisive looking say in the matter. This in good measure was in connection with pay scales aspect of the matter. There has already been a reference to 2009 G.R. which in its own way streamlined that aspect of the matter.

16. Another fallout of the events mentioned in the preceding Paragraph was what can be called retrenchment and the introduction of rotation system. In that behalf, let us quote a part of Para 9.2 of that Affidavit-in-reply.

“Considering the above stated volatile nature of the lottery business and directions issued as per the Policy Decision taken by Government of Maharashtra in this regard from time to time, the clerical staff was appointed on contract basis. At present only 18 staff members are working on contract basis and only Traditional Scheme is run by the State. Also as the 2 digit lottery scheme was reviewed on 8.4.2002 the staff members were given fresh appointments on contract basis as per the decision taken by the Government.”

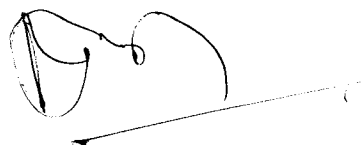


17. Thereafter, in various ways averments are made in the Affidavit-in-reply pointing out that no regularization could be granted to the Applicants.

18. The Applicants have tried to draw analogical sustenance from a couple of other departments that regularized the non-permanent employees. The Respondents have tried to rebut by filing the copies of the Government instruments. Now, no doubt, there may be some scope to draw parity between the two but there is a basic difference in the very nature of Lottery when compared with other departments including education. Lottery is uncertain and ephemeral as even life is. That may not be true in case of other departments. In that ambit also in this O.A. we are concerned with the appointment to the posts and its nature.

19. In the above set of facts and circumstances even if there may be a little repetition but a concised recapitulation will be perfectly in order. A few deductions need to be noted, as under :

(a) The posts were duly and legally created as per rules as evidenced inter-alia by the G.R.s etc.

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(b) The appointments to those permanent posts may have been on contract basis but the posts were permanent in the sense that term is understood in this field of Law.

(c) Though the appointments were not made through M.P.S.C. but the process adopted was remarkable for its openness, exactitude and fairness and objectivity.

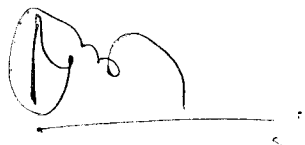
(d) The nature of appointments was dictated basically by the peculiar nature of the scheme of lottery.

(e) The temporary nature of appointment was attributable to (d) above and there was no extraneous or dishonourable or questionable motive either to gain dishonestly or cause loss in an improper or culpable manner.

(f) There was no adhocism or discriminatory conduct nor was there any other vitiating vice affecting the process of examination.

(g) The Applicants were not backdoor entrants.

20. The Applicants made representations from time to time canvassing their case more or less in the manner above discussed. One such representation is at Exh. 'D' page 37 dated 14.02.2013.

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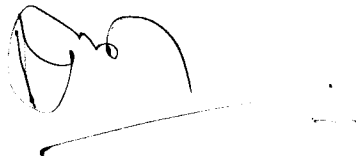
21. We have already found *inter-alia* with profuse reference to Exh. 'E' that the Government was not quite averse to accept the claim of the Applicants. But there was some change of heart nay mind when by the communication herein impugned (Exh. 'A' page 30), the request of the Applicant was turned down. Let us reproduce it in Marathi.

“विषय:- सेवेत नियमित करणे व त्या अनुषंगाने इतर मागण्या.

वरील विषयाबाबत महाराष्ट्र प्रशासकीय न्यायाधिकरणाने दि.१६.३.२०१२ रोजी असे निर्देश दिले आहेत की, आपण शासनास व लॉटरी संचालनालयास सादर केलेल्या दि.३.७.२००६, ७.११.२००६, २४.२.२०१० आणि १४.१०.२०१० च्या निवेदनावर अंतिम निर्णय घ्यावा.

२. आपल्या निवेदनाच्या अनुषंगाने कळविण्यात येते की, शासन परिपत्रक, सामान्य प्रशासन विभाग, क्र.एसआरव्ही-२००५/प्र.क्र.४७/०५/१२, दिनांक २५.८.२००५ नुसार “लोकसेवा आयोगाच्या कक्षेतील पदावर तात्पुरत्या/अस्थायी स्वरूपात नियुक्ती केलेल्या कोणताही कर्मचारी त्या पदावर कितीही वर्षे सेवेत राहिला तरी कायम करण्याचा हक्क सांगू शकत नाही. महाराष्ट्र राज्य लॉटरी शिवडी कार्यालयातील कनिष्ठ लिपिकाची पदे बृहन्मुंबईतील असल्यामुळे ती महाराष्ट्र लोकसेवा आयोगाच्या कार्यक्षेत्रात येतात. त्यामुळे सदर पदे महाराष्ट्र लोकसेवा आयोगाच्या शिफारशीनुसार भरणे आवश्यक आहे”

३. कर्नाटक सरकार विरुद्ध उमादेवी प्रकरणात मा. सर्वोच्च न्यायालयाने दिलेला निर्णय विधी व न्याय विभागाने दि.१२ जून, २००९ रोजी प्रस्तुत केला असून सदर निर्णयात असे नमूद केले आहे की, “जर नियुक्ती ही करार पद्धतीने केली असेल तर



ती नियुक्ती कराराचा कालावधी संपल्यानंतर किंवा ज्यावेळी सेवा समाप्त करण्यात येईल त्यावेळी संपुष्टात येते त्याचप्रमाणे तात्पुरत्या स्वरूपात नियुक्त केलेले कर्मचारी त्यांच्या नियुक्तीचा कालावधी संपल्यानंतर कायमपणाचे फायदे मागू शकत नाहीत. तात्पुरत्या स्वरूपातील कर्मचारी किंवा नैमित्तिक कर्मचारी यांच्या सेवा विहित केलेल्या कालावधीनंतर पुढे चालू ठेवल्या तरी देखील त्यांना सेवेत सामावून घेण्याचा कोणताही अधिकार त्यांना प्राप्त होत नाही किंवा कायमपणाचा फायदा त्यांना केवळ त्यांच्या सेवा विहित केलेल्या कालावधीनंतरही पुढे चालू ठेवण्यात आल्या म्हणून त्यांना मिळू शकत नाही.

४. आपण आयुक्त, अल्पबचत व राज्य लॉटरी यांना सादर केलेल्या करार पद्धतीवर नियुक्तीचे हमीपत्रात असे नमूद केले आहे की, कंत्राटी पद्धतीवर तात्पुरत्या स्वरूपातील नियुक्त्याबाबतच्या सर्व अटी व शर्ती मान्य असून जाणीवपूर्वक स्वेच्छेने तात्पुरती नियुक्ती स्वीकारीत आहे व कायमस्वरूपी नियुक्ती मिळण्याचा हक्क राहणार नाही याची पूर्ण जाणीव आहे.

५. उपरोक्त सर्व बाबी विचारात घेता आपली सेवेत कायम करण्याची व इतर मागण्या मान्य करता येत नाही.

(प्रा.प्र. वसईकर)
कक्ष अधिकारी, महाराष्ट्र शासन'

22. The perusal of the impugned order would show that the action was influenced on the supposition that regardless of the length of service as a temporary or contract employee, permanency cannot be claimed. Further, the Lottery Department in so far as the appointments are concerned falls within the jurisdiction of MPSC and it was necessary, therefore, to appoint the



candidates recommended by the MPSC. Then there was a reference to the judgment in the matter of Umadevi and it was opined that the Applicants could not be "absorbed". Finally, a reference was made to the undertaking given by the Applicants that they would be bound by the terms and conditions of the appointment letters and could not claim permanency.

23. Now, we shall just now turn to the case law which in our opinion is governing in so far as this OA is concerned. But even at this stage, we may advantageously note that in so far as the last ground in the impugned communication is concerned with regard to the undertaking, law will prevail upon every other consideration. If law including the law laid down by the Hon'ble Supreme Court and the precedent laid down by the Hon'ble High Court produce certain results, then those who are bound thereby viz. every Indian Citizen would be entitled also to take the benefit thereof and the undertaking, etc. whether voluntary or whatever would never be able to override the law of the land. Still, regard being had to all these facts and circumstances, in addition, it must be noted that the circumstances that the Applicants like in other lower middle class people would be only too willing to sign on dotted lines to suffer loss of job.



In normal circumstances, they will be bound by it, but then as we mentioned just now, ultimately, the benefit of law cannot be denied to them because nobody can contract out of law, more particularly, when the two parties were not equal in strength.

24. In this background, we may now turn to **Sachin Dawale** (supra). A Division Bench of the Hon'ble Bombay High Court at its Nagpur Bench rendered that judgment in dealing with the Lecturers in different Government Polytechnic Colleges in the State of Maharashtra. They came to be appointed in accordance with the G.R. and by the time, they went before the Hon'ble High Court, they had already rendered service for a period ranging between 3 to 10 years, but they were not being given permanency and the benefit of the permanent appointment. There was a ban on recruitment in force in the matter of appointments in public services since 1998 which was in fact the case here also. In that set of circumstances, in order to safe-guard the students, the Government of Maharashtra made provisions for temporary, contractual appointments, initially for a period of two years, subject to termination if even before that regular candidates were available through MPSC. For selecting those candidates, a Committee of 5 highly placed functionaries like Joint



Director, Technical Education, Principal of the Institution, representative of the Backward Classes and subject expert was constituted. The interviews were conducted and selections made. The orders of appointment came to be issued by the Director of Technical Education and in due course of time, the orders of appointments were made. Now, here at this stage itself, we may usefully note that in this OA as well, a Committee was constituted, a written test was held followed by the interview and out of a larger number of Applicants a shorter number came to be selected and appointed to the posts which were duly created in accordance with the known procedure.

25. Proceeding further in **Sachin Dawale** (supra), the Directorate of Technical Education proposed the grant of permanency and other service benefits to the Professors appointed as above. Ultimately, the matter came to be placed before the Hon'ble High Court by way of the Writ Petition. The Hon'ble High Court was told that the Petitioners there were selected by a duly constituted Selection Committee in accordance with the procedure therein mentioned. There was a move afoot to take those posts out of the purview of MPSC. A reference was made to a large number of employees in other departments whose appointments was like the appointments of the



Petitioners of Hon'ble High Court in **Sachin** (supra) and they came to be granted regularization and parity was sought.

26. As far as the State is concerned, in **Sachin** (supra), it relied upon **Umadevi's** case to resist the claim. Their Lordships in **Sachin** (supra) discussed the various facets of the matter and on page 28 in following a judgment of the Hon'ble Supreme Court, Their Lordships were pleased to hold that an appointment of a person on contract basis for an uninterrupted period of 10 years would amount to exploitation.

27. We have already mentioned above that the case of the Respondents in this OA also is that the Applicants with open eyes entered into this arrangement and gave an undertaking which has already been commented upon hereinabove. In Para 13 of **Sachin** (supra), Their Lordships repealed the contention which in substance was the same. It was *Inter-alia* recorded that the appointments were made by a proper process. It is not as if the MPSC's jurisdiction was in any manner interfered with. Quite pertinently, in this matter also, it is not even the case of the Respondents that the appointment of the present Applicants has in any manner interfered with the conduct of examination or test




by MPSC. In fact, for all one knows, neither the Government nor the MPSC ever cared to think of holding examination for the post of Junior Clerks in Lottery Department. In Para 13 of **Sachin** (supra), Their Lordships were pleased to observe that the Petitioners before them as candidates had no option to participate in whatever was the process of selection. There was no discrimination between similarly placed candidates. It was nowhere the case that Article 14 was in any manner offended in which connection, **Central Inland Water Transport Corporation Limited Vs. Brojo Nath Ganguly, AIR 1986 SC 1571** was referred to. A useful reference in that behalf can be had to Para 13 of **Sachin's** case (supra).

28. Further, in **Sachin's** case (Para 14), a specific note was taken about the Government not having held the selection through MPSC for more than 10 years and having adopted the only process which the Petitioners were made to appear at. The Hon'ble High Court was pleased to observe, "the Respondent State has extracted the work from the Petitioners for years together". It was found that in that kind of situation, many Petitioners had become age-barred. The same observation of Their Lordships would squarely applied to the present matter as well and here as we have observed above, there was a fair degree of material

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to suggest that at some stage, at least the Government was so minded as to accept the claim of the Applicants.

29. Thereafter, in **Sachin** (supra), Their Lordships discussed **Umadevi's** case. In Para 16, Their Lordships in **Sachin** (supra) were pleased to hold that the Rule of **Umadevi** would not be applicable to those facts in as much as the Petitioners were working on duly sanctioned posts. Now, here in this OA as well, as already discussed in extenso by a legitimately known process, posts were created and there was nothing even irregular much less illegal in that behalf. Their Lordships were pleased to refer to the fact that in **Sachin** (supra), a regular Selection Committee was constituted for selection which is exactly the case in this OA as well. Further, it was found by Their Lordships that though the appointment was for fixed term, but the same continued. The same is the state of affairs here also and in the context of these facts, the break as it is called would cause no ultimate difference to the outcome. In Para 17 of Sachin (supra), Their Lordships were pleased to read the observations of the Hon'ble Supreme Court in Umadevi (supra) to highlight as to how in Umadevi, the appointments were what can be called, "through backdoor". Another judgment of the Hon'ble Supreme Court which was considered in Umadevi's case

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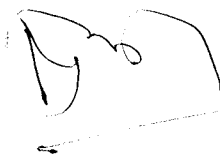
was referred to in **Sachin's** case and the facts and legal principles were crystallized in Paras 18 and 19 of **Sachin's** case (supra).

30. As already mentioned above, the above judgment of the Hon'ble High Court was confirmed by the Hon'ble Supreme Court.

31. Mr. Bandiwadekar, the learned Advocate relied upon **Mineral Exploitation Corporation Employees Union Vs. Mineral Exploration Corporation Limited and another, (2006) (3) SCT** in which **Umadevi** (supra) was discussed.

32. Pertinently, in **State of Karnataka and others Vs. M.L. Kesari and others, (2010) 9 SCC 247, Umadevi's** case was again considered in the context of the dead line of six months for a particular class of employees to be regularized. In Para 7, the exceptions from the Rule of **Umadevi** were pointed out.

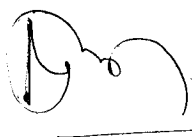
33. After the judgment of **Sachin** (supra), a fasciculus of OAs came to be decided by this very Bench in **OA 126/2014 and others (Shri Milind A. Surdikar and others Vs. The State of Maharashtra and one another**



and other OAs. Relying upon Sachin's case and a few other judgments relief of regularization was extended to those Applicants. In another group of OAs No.292/2014 and others (Shri Santosh Pandurang Arabatti Vs. The District Collector and 2 others and other proceedings, dated 8.10.2015, relying upon M.L. Kesari's case (supra), directions were given to consider the case of the Applicants for regularization.

34. It is, therefore, very clear that to the present facts, the Rules of Sachin (supra) and M.L. Kesari (supra) are squarely applicable. The law laid down by the Hon'ble Supreme Court in Umadevi's case when applied hereto in the context of the above discussion, would lead us to uphold the case of the Applicants. We have discussed this aspect of the matter in extenso hereinabove to which a reference can usefully be made. The interpretation of Umadevi by Sachin Dawale will have to be applied vide P.H. Advani Vs. Harpal Singh, AIR 1975 Bombay 120 (DB).

35. The upshot, therefore, is that the Applicants are entitled to the relief. A large number of clauses are there in the prayer clause, but in our opinion, the nature of the final relief in such matter must be ordained by the relief



granted in Sachin Dawale (supra) which is what we also did in deciding a fasciculus of OAs in OA 126/2014 and others, dated 11.3.2015. The Respondents are hereby directed to regularize the services of the Applicants who have completed three years service with technical breaks. The Respondents shall absorb the Applicants within a period of six weeks from today and shall be continued in service as regular employees. It is, however, made clear that the Applicants shall be entitled to regular salary from 1st March, 2016 with other admissible allowances, etc., but would not be entitled to claim any monetary benefit for past services rendered by them, even after they are made permanent in accordance herewith. Needless to state that since the Applicants' services are regularized, they shall be entitled to continuity in service for all other purposes except monetary purposes from the dates of their first appointments. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
22.01.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
22.01.2016

Mumbai

Date : 22.01.2016

Dictation taken by :

S.K. Wamanse.

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