

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.116 OF 2014
(O.A.276/2010 at Aurangabad)**

DISTRICT : A'BAD

1. Budharatna S. Lihitkar.)
Age : 32 Yrs, Occu.: Service as)
Lecturer, Govt. College of Science &)
Arts, Aurangabad.)
 2. Ankush Z. Gaikwad.)
Age : 44 Yrs, Occu.: Service as)
Lecturer, Govt. College of Science &)
Arts, Aurangabad.)
 3. Dr. Manjusha C. Kulkarni.)
Age : 42 Yrs, Occu.: Service as)
Lecturer, Govt. College of Science &)
Arts, Aurangabad.)
 4. Abhijit A. Pandit.)
Age : 36 Yrs, Occu.: Service as)
Lecturer, Govt. College of Science &)
Arts, Aurangabad.)
-)...Applicants**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Higher & Technical Education Dept.,)
Mantralaya, Mumbai - 400 032.)
2. The Director of Higher Education.)
M.S, Pune.)

V-1


3. The Principal.)
Govt. College of Arts & Science,)
Aurangabad.)
4. The Chairman / Secretary.)
Maharashtra Public Service)
Commission, Bank of India Building,))
3rd Floor, M.G. Road, Hutatma Chowk))
Mumbai 400 001.)...**Respondents**

Mr. Kadeshankar with Mr. K.R. Jagdale, Advocates for Applicants.

Mr. K.B. Bhise, Presenting Officer for Respondents.

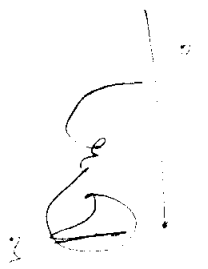
CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 13.06.2017

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

JUDGMENT

1. The four Applicants, at the time of institution of this OA came to be appointed on what can be described as contract basis in accordance with the Government Resolution dated 25th July, 2002, a copy of which is at Annexure 'A' (Page 14 of the Paper Book (PB)). At the time of arguments, we were informed that the Applicant No.3 had since got selected through MPSC on 9.10.2011 and it



seems that now, the cases of Applicants 1, 2 and 4 are required to be considered. The Applicants claim regularization in service and also a declaration that the GR above referred to, whereunder, they were appointed on contract basis was unconstitutional and illegal. An advertisement came to be issued in the meanwhile by the MPSC for the post of Assistant Professor in Public Administration and that advertisement is being sought to be quashed.

2. We have perused the record and proceedings and heard the submissions of Mr. Kadethankar and Mr. K.R. Jagdale, the learned Advocates for the Applicants and Mr. K.B. Bhise, the learned Presenting Officer (PO) for the Respondents.

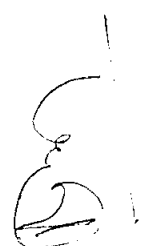
3. We may mention right at the outset that this OA shall be decided mainly seeking guidance from a Judgment of the Hon'ble Bombay High Court at its Nagpur Bench in the matter of **Sachin A. Dawale and 90 others Vs. State of Maharashtra : (2014)(2) Maharashtra Law Journal, Page 36)**. Based on that Judgment, we in this very Bench decided a fasciculus of OAs, the leading one being **OA No.781/2013 (Smt. Pankaja M. Waghmare and others Vs. State of Maharashtra, Through Secretary, Higher**



and Technical Education and others and other OAs, dated 26.6.2015]. When the present OA was instituted at this Tribunal's Aurangabad Bench, **Sachin Dawale's** case was not yet rendered. **Sachin Dawale's** case rendered by the Hon'ble High Court came to be confirmed by the Hon'ble Supreme Court in **Special Leave to Appeal (C) Nos.39014/2013 (State of Maharashtra and Anr. Vs. Sachin Dawale and others, dated 6.1.2015)**. It is, therefore, very clear that **Sachin Dawale's** case has now been confirmed by the Hon'ble Supreme Court, and therefore, it will not just be appropriate but necessary to rely thereon. Some other Judgments also came to be cited on behalf of the Applicants which we shall discuss at an appropriate stage and place in this Judgment.

4. The record at a couple of places shows the personal details with regard to the Applicants. The Applicant No.1 – Mr. Budharatna S. Lihitkar holds a post graduate degree in Music and has also cleared what in the field of education is called NET examination. He came to be selected in accordance with the prevailing Selection Committee in accordance with the G.R. of 25th July, 2002 on contract basis. The advertisement came to be issued for that post on 29.7.2003 and his appointment order issued by the Director of Higher Education, M.S, Pune was

2



dated 16.9.2003. Whatever the order may have mentioned, but it is a common ground that the Applicant continued to serve in the same capacity from year to year and ultimately, he brought this OA before the Aurangabad Bench along with the co-Applicants on 12.4.2010. His selection was not through MPSC. He was being paid a fixed salary in accordance with the said order. We have already referred hereinabove the fact that the MA No.185/2011 is being decided hereby along with the OA. That MA was for seeking directions to the Respondents to implement the 6th Pay Revised Scale to the Applicants.

5. The Applicant Nos.2's, 3's & 4's cases were almost exactly like the Applicant No.1. In case of Applicant No.2, the advertisement was issued in June, 2005. He teaches Political Science. The manner of his selection, payment, etc. is exactly like Applicant No.1. He came to be appointed on 20.9.2005.

6. In so far as the Applicant No.4 is concerned, the Advertisement was issued on 1.6.2002. He is M.A.MPhil in Public Administration and has cleared SET examination. The date of his appointment was 22nd August, 2002. In his case, the requisition for appointment to the said post was sent to the MPSC showing one post to be for Open category



and one for SC category. According to him, in the year 2002, one post was shown vacant for OBC category on which he came to be appointed, and therefore, according to him, the change of roster is not proper and legal.

7. It would appear from the record that on 25.4.2014, this very Bench granted interim relief to the Applicants. The same needs to be reproduced.

“Heard Shri K.R Jagdale, learned advocate for the Applicants and Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

The Applicants in this Original Application are working as Assistant Professors/Lecturers in Government Colleges of Education on contract basis. They have challenged the advertisement issued by the MPSC on 29.7.2013 for regular appointment to the post of Lecturers in Government Colleges in Maharashtra Education Services, Group ‘A’. The Applicants are relying on the judgment of the Nagpur Bench of the Hon. Bombay High Court in W.P No 2046/2010 dated 19.10.2013. Though the aforesaid judgment is regarding Lecturers in Government Poly Technical Colleges, the Applicants claims that they were also appointed on contract basis pursuant on the basis of G.R dated 25.7.2002, whereby the




Government has decided to fill 2/3rd of the post on temporary basis by appointing Lecturers on contract basis. The Committee were appointed to interview the candidates which were for the University headed by the concerned Vice Chancellor and for the Colleges headed by the concerned Principal of the College.

Shri Jagdale stated that the appointment of the Applicants were exactly parallel to the appointment of the Lecturers in Govt. Polytechnic Colleges and they have also been continued like Lecturers in Poly Technique Colleges. The ratio decidendi in the judgment of the Nagpur Bench of the Hon. Bombay High Court will be squarely applicable in the present case also.

This Tribunal has granted interim relief to the Lecturers in Government Polytechnic Colleges in O.A No 126/2014. Shri Jagdale, requested that similar interim relief may be granted in the present case also.

As the Special Leave Petition filed against the aforesaid judgment of the Nagpur Bench of the Hon. Bombay High Court will be applicable to the present applicants also, the applicants are also entitled to get the relief as granted in O.A No 126/2014.



“The services of the Applicants has Lecturers will not be discontinued until further orders”. S.O to 19.6.2014.”

8. In the light of the above discussion, we may now refer to the pleadings of the parties to the extent it is necessary. The 1st Respondent is the State of Maharashtra in Higher and Technical Education, the 2nd Respondent is the Director of Higher Education, the 3rd Respondent is the Principal Government College of Arts and Science, Aurangabad where all the Applicants have been working and the 4th Respondent is impleaded by way of an amendment and he is Chairman / Secretary, MPSC. In this OA, the Applicants have pleaded *inter-alia* that the orders of appointment were given in accordance with the GR of 25th July, 2002, a copy of which is at Annexure ‘A’ to the PB). At this stage itself, it will be appropriate for us to read the same. It refers to the Finance Department’s G.R. of 2.6.1998, 15.12.1998, 21.6.2000 and 10.9.2001. It is mentioned in the said GR dated 25.7.2002 that from 1998, the Finance Department had put a ban on the filling up of the posts in all the Departments, and therefore, for 3/4 years before the date of issuance of the GR of 25.7.2002, there was no sanction to fill up any post in Government, Non-Government and Government Aided Educational

Institutions. It came to be relaxed somewhat but still, all the posts could not be filled up and that adversely affected the students in those institutions. In 2002-2003, 50% to 2/3rd of the vacant posts were allowed to be filled up, but for some reason, all the vacant posts could not be filled up. That resulted in the vacancy of as many as 6453 posts, and therefore, it was decided to fill up 2/3rd of the vacant post on contract basis (in Marathi "Kantrati"). The terms and conditions *inter-alia* were that, they were appointed on fixed remuneration and they were required to submit prescribed undertaking on Rs. 20/- Stamp Paper. A table was annexed to show the quantum of payments, etc. One condition was that the appointment on contract basis will be for a maximum of two years or till such time, as the candidate from MPSC was made available whichever was earlier. The composition of the Committee was set out. The said Committee would be chaired by the concerned Vice-Chancellor as Head of the Committee, the Subject Expert, a Teacher representative from Backward Class, Representative of the Government, a Lady Teacher and the Vice-Chancellor of the concerned University.


9. It is very pertinent, therefore, to note that the Applicants may not have been appointed by MPSC, but then there was a regularly appointed Committee headed by



the incumbent of the high office of Vice-Chancellor with other responsible members that interviewed the candidates and appointed them on contract basis. It was further provided therein that, for filling up the vacancies, the posts should be advertised in print media and the procedure should be completed by 31st October, 2002. There were some provisions made who could not meet with the deadline. Clause 6 thereof provided that while filling up the posts on contract basis, the interest of the Backward Class candidates, women candidates, handicapped candidates, etc. and their reservations would have to be borne in mind.

10. Even at this stage, it can safely be mentioned, therefore, that there were nothing secret or what can be described as hanky-panky in the matter of appointments of the candidates, out of four are before us in the matter of appointment on contract basis. Therefore, they could not be said to be backdoor entrants. The Respondents in such matters usually reply upon the Judgments of the Hon'ble Supreme Court in **A. Umarani Vs. Registrar, Cooperative Societies & Ors. (2004) 7 SCC 112** and **The State of Karnataka and others Vs. Umadevi and others, AIR 2006 SC 1806.**

3



11. As indicated above, the facts herein are substantially similar to the facts in the fasciculus of OAs in **Pankaja Waghmare's** case which we decided in this very Bench on 26.6.2015. A copy of that Judgment has been annexed to a separate compilation of Judgments by the Applicants themselves. Before we proceed further, as and by way of a sample, we may reproduce the copy of the order of appointment of the 1st Applicant Mr. B.S. Lihitkar, which is at Page 20 of the PB. The orders of appointments of other Applicants are almost on the similar line.

“क्र. शामवि/कंत्राटी नियुक्त्या/०३-०४/प्रशा-२,
शिक्षण संचालनालय (उच्च शिक्षण),
महाराष्ट्र राज्य, पुणे-४११ ००१.
दिनांक : १६/९/२००३

विषय :- शासकीय अध्यापक महाविद्यालये/ शासकीय महाविद्यालये विज्ञान संस्थेतील
अधिव्याख्याता पदावर कंत्राटी नियुक्त्या.

संदर्भ :- १) शासन निर्णय क्र.संकीर्ण-१००२/(५५३/२००२)/आस्था-१, दि.१९/७/०३.

२) शासन पत्र क्रमांक एससीपी १००३/(१०६/०३)/मशि-२, दि.२९/७/२००३.

संदर्भीय शासन निर्णय, शासन पत्रानुसार व निवड समिती पुरस्कृत उमेदवार म्हणुन श्री बुध्दरत्न संभाजी लिहीतकर यांची संगीत या विषयाचे अधिव्याख्याता म्हणुन शासकीय ज्ञानविज्ञान महाविद्यालय, औरंगाबाद येथे रु.८०००/- एकत्रित मासिक वेतन या ठोक रक्कमेवर केवळ कंत्राटी स्वरूपात खाली नमूद केलेल्या अटीवर नियुक्ती करण्यात येत आहे.

१) सदर नियुक्ती ही उमेदवार हजर होईल त्या तारखेपासून दिनांक ३० एप्रिल, २००४ पर्यंत चालू राहील. दिनांक ३० एप्रिल, २००४ रोजी कंत्राटी नियुक्तीचा करार आपोआप संपुष्टात येईल.

- २) कंत्राटी अधिव्याख्यात्यास महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, १९७९ यांचे पालन करणे बंधनकारक राहिल. जर सदर नियमाचे उल्लंघन आपणाकडून झाल्यास करारनाम्याचा कालावधी संपण्यापूर्वी कोणत्याही पूर्वसूचनेशिवाय सेवा समाप्त करण्याचा अधिकार नियुक्ती प्राधिकारी राखून ठेवत आहे.
- ३) सदर नियुक्ती तात्पुरत्या स्वरूपाची असून याबाबत उमेदवारास पुढील सेवासातत्य मिळण्याबाबत कोणताही हक्क राहणार नाही.
- ४) उमेदवारास हजर होताना विहित नमून्यातील करारनामा २० रुपयांच्या बंधपत्रावर लिहून प्राचार्य/संचालकांकडे द्यावा लागेल. बंधपत्रातील सर्व अटी ह्या उमेदवारांस बंधनकारक राहतील.
- ५) उमेदवारांनी महाविद्यालयात रुजू होतांना एस.एस.सी. प्रमाणपत्र, नेट/सेट उत्तीर्ण झाल्याचे प्रमाणपत्र तसेच नेट/सेट पात्रता परीक्षा उत्तीर्ण नसल्यास इतर शैक्षणिक अर्हता प्राप्त केल्यासंबंधीचे प्रमाणपत्र, जातीचे प्रमाणपत्र इत्यादी मूळ प्रती प्राचार्यांना दाखविणे आवश्यक राहिल. तसेच या प्रमाणपत्रांच्या दोन सत्यप्रती महाविद्यालयास सादर कराव्यात.
- ६) उमेदवारांनी वैद्यकीयदृष्ट्या पात्र असल्यासंबंधीचे योग्य त्या जिल्हा शल्य चिकित्सक यांचे आवश्यक ते प्रमाणपत्र शक्यतो त्वरित अथवा एक महिन्याच्या आत संबंधित महाविद्यालयाच्या प्राचार्यांना सादर करावे.
- ७) उमेदवारास पोलीसामार्फत चारित्र्य उडताळणी अहवाल एक महिन्याच्या आत सादर करावा लागेल.

वर नमुद केलेल्या सर्व अटी/शर्ती तसेच शासनाकडून वेळोवेळी प्राप्त होणारे आदेश विचारात घेवून संबंधितांनी त्यांच्या पदावर हे आदेश प्राप्त झालेनंतर सात दिवसांत रुजू व्हावे अन्यथा हे आदेश आपोआप रद्द होतील.

सही/-

शिक्षण संचालक (उच्च शिक्षण)

महाराष्ट्र राज्य, पुणे-१”

12. Paras 11 to 15 from **Pankaja Waghmare** (supra) in fact need to be fully reproduced for facility.

“11. One would find from the above order that a Selection Committee came to be constituted in

accordance with the G.R. therein mentioned dated 29th January, 1994. The Applicants appeared before the said Committee and were selected for the subjects mentioned in the said letter of appointment. It was as clearly emphasized as possible that the appointment was temporary, ad-hoc, contract basis, etc. The conditions inter-alia were that the tenure of the appointment would be till the end of the academic year with a proviso that it would come to an end without notice, in case the MPSC selected candidate became available. Secondly, the appointments of the Applicants were as per the service conditions in vogue. Thirdly, the process was on to appoint candidates from MPSC. Fourthly, regard being had to the nature of the appointment it would come to an end by itself after conclusion of the duration of the period and it conferred no right on the incumbent. It was necessary that such an undertaking was given by the Applicants. The Applicants were directed to produce SCC Certificate, NET SET clearance Certificate and other certificates in support of their eligibility. Sixthly, they were also required to submit the



Medical Certificate of fitness and Seventhly, the Police Verification was also necessary. If the Applicants did not report within 7 days, the appointment would stand cancelled.

12. The sum and substance of the case of the Applicants in their pleadings and the submissions advanced on their behalf by Shri Deshmukh, the learned Advocate inter-alia is that except for the fact that they were not recommended by MPSC, the Applicants were fully eligible and qualified to be appointed to the post that they came to be appointed to. As far as the educational qualification was concerned, it is their case that they possessed all the qualifications and in fact they also cleared what is known as NET SET examination. It appears that their claim is, therefore, that they held the NET SET eligibility criterion which is necessary inter-alia on account of the criterion fixed by the UGC and they are, therefore, qualified for being appointed. Be it noted here that this requirement of NET SET for the teaching community having been introduced in the year 1991 came to be extended from time to time

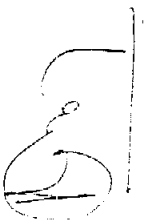


almost till the year 2009. The present facts do not necessitate a detailed delve into that aspect of the matter. According to the Applicants, they come true on that anvil. Further, according to the Applicants, there is absolutely nothing on record to suggest that they did not satisfactorily perform their duties. The very fact that they continued to hold the same post for all those years exemplifies this aspect of the matter. We find that there is nothing on record to show that the Applicants, some of them or anyone of them was found wanting in so far as this criterion was concerned. We may proceed on the basis that their performance was not unsatisfactory.

13. The Applicants have referred to a G.R. dated 25th July, 2002, a copy of which is at Exh. 'D' collectively (Page 186 in OA 781/13). There are other G.Rs also that they have referred to. We may mention here that very shortly herein we will closely read for guidance our High Court's judgment in the matter of Sachin (supra) and once we did that, we think that a very detailed reading of the 2002 G.R. and the G.R. for the period before 2014-15 may not be necessary.




14. The above discussion must have made it clear that it is not as if the Applicants some of them or even one of them was in the manner of speaking parachuted or shown any special favour as one individual. There was a Committee that interviewed them. It is also clear that though MPSC is constitutionally obliged to discharge its functions, but by and large and generally, there have been really long periods when the MPSC did not hold any examination. In some of the orders, there are references to the difficulties faced by the students in view of the vacancies. The Applicants have been occupying the posts that are earmarked for regular appointees and for none of them any post was specially created. The significance of the matter in so far as failure to conduct the tests by MPSC over a long period of time lies in the fact that the Applicants were likely to become age barred. In some cases, there were other grievances about the norms, etc. Therefore, it cannot be stated as a general rule that non-selection from MPSC would necessarily point to lack of merit. Further, when we discuss presently **Sachin's** case, we shall point out the



similarity in the facts thereof and those in these OAs.

15. In so far as the Respondents are concerned, they do not apparently dispute any fact as a fact. Even if, they did, they would not succeed because the facts generally are borne out by the record. According to the Respondent – State, the Applicants are all temporary, ad-hoc, etc. and they cannot prevail at the expense of the regular MPSC appointees. In the pleadings, as well as at the time of addresses, strong reliance was placed *inter-alia* on **A. Umarani Vs. Registrar, Cooperative Societies & Ors. (2004) 7 SCC 112.** According to the Applicants, **Umarani's** case (supra) prohibits continuation of the appointments of back-door entrants. The Respondents also relied upon **Official Liquidator Vs. Dayanand (2008) 10 SCC Page 1 (Official Liquidator).** If we correctly understood the Respondents, by making these submissions, they perhaps wanted to contend that we should not rely much on **Sachin's** case decided by a Division Bench of our High Court and confirmed by the Hon'ble Supreme Court. According to them, we

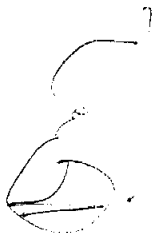


must instead rely upon **The State of Karnataka and others Vs. Umadevi and others, AIR 2006 SC 1806 (Umadevi's case)**.

13. Thereafter, in that Judgment, we noted from **Sachin's** case that the same GR of 25th July, 2002 was also involved therein. Very pertinently from **Sachin's** case itself, it came about that in the due course, the posts in the Department of Higher Education were taken out of the purview of MPSC. It was also noted that the kind of regularization that the Applicants therein as well as herein are claiming were made in respect of at least 5 other Departments, if not more. In so far as the Judgment in the matter of **Umadevi** (supra) is concerned, in Para 23 of our Judgment in **Pankaja Waghmare** (supra), we reproduced Para 10 from **Sachin's** case (supra) which needs to be reproduced herein.

“23. In Para 9 of **Sachin's** case **Umadevi** (supra) was cited. The observations in Para 10 of **Sachin's** case are apposite for these OAs as well and, therefore, we reproduce the same.

“We have considered the submissions on behalf of the petitioners and the



respondents. It is undisputed that the appointments of the petitioners are as per the policy incorporated in the Government resolution dated 25th of July, 2002 in which it is laid down that the appointments will be on contractual basis and till the availability of the candidates appointed through regular selection process. However, it is important to consider that the petitioners are appointed after following the procedure of issuance of advertisement and conducting interviews by a duly constituted Selection Committee.”

14. It was further observed by Their Lordships in **Sachin's** case that, in the manner of speaking, the State did not properly discharge its function of regularly holding MPSC tests and those observations were made in the context of **Umadevi's** case itself. Paras 14, 16 & 17 of **Sachin's** case came to be reproduced in Para 24 of **Pankaja Waghmare's** case. Those three Paragraphs can safely be reproduced herein as well.

“14. In the facts of the present case, the Government did not hold selection through



MPSC for a period of more than 10 years and selected the Lecturers only through the selection process as provided under the said Government Resolution and the petitioners were duly selected through that process. The respondent – State has extracted the work from the petitioners for years together. Now, by efflux of time and on account of the respondent – State not holding the selection process for years together, many of the petitioners have become over-aged and would not be in a position to participate in the selection process through MPSC. It could be clearly seen that the issue before the Apex Court in case of **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.** (supra) was pertaining to the appointments which were made clandestinely and without advertisement and the persons were appointed without following due selection process. The facts of the present case are totally different. In the present case, the petitioners have been appointed after the posts were advertised, they were selected in a selection process by Committee of Experts duly constituted as per the said Government Resolution. In that view of the matter, the law



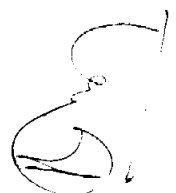
laid down by the Apex Court in the case of Secretary, State of Karnataka & Ors. (supra) would not be applicable to the facts of the present case."

16. In our view, the submissions made on behalf of the respondents relying on the judgment in case of **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.** (supra) would not be applicable in the facts of the present case. It is undisputed that the posts, in which the petitioners are working are sanctioned posts. As discussed earlier, the Government of Maharashtra had issued the resolution dated 2nd August, 2003 by which the Selection Committee came to be constituted for the selection of the candidates. The respondents have not disputed that though the petitioners were initially appointed for a fixed term, they are continued in service. It is not disputed that the leave facility is made available by the resolution dated 18th February, 2006 to such employees. The respondents have stated in their affidavit that the monthly pay

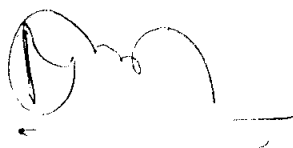


to these employees has been increased, it is not disputed that the petitioners are having the qualifications required for the posts in which they are working. The respondents have not disputed that the appointments for the teaching posts are taken out of the purview of the MPSC as informed by the communication dated 29th March, 2008.

17. The submission on behalf of the respondents relying on the judgment of **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.** (supra) cannot be accepted in the facts of the present case. In the above case, the Hon'ble Supreme Court has observed in paragraph 3 of the judgment that the States have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or "otherwise as per the rules adopted" and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out



those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. The Hon'ble Supreme Court has observed that Courts should desist from issuing orders preventing regular selection of recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. In the present case though the petitioners are not selected through MPSC, it is undisputed that the petitioners are selected after the procedure for selection is followed and through the duly constituted Selection Committee as constituted by the Government of Maharashtra. The advertisement was issued before the petitioners were selected and all interested candidates had applied for the posts for which the petitioners are selected. Thus, it cannot be said that the petitioners have got the employment through back door entry. It cannot be said that the candidates qualified for the posts were deprived of the opportunity to compete



for the selection for the posts in which the petitioners are working.”

15. Further, in Para 15 of **Sachin's** case, it was in effect held by Their Lordships that in case of contract appointees who had put in considerable length of service in the guise of policy decision, governmental whim and fancy could not be allowed to prevail nor the policy of hire and fire and use and throw. The same state of affairs obtains here as well. It was further noted that, there were several GRs including the one of 20th April, 2002 whereby the regularization was made in case of other employees, and therefore, were the same relief to be denied to the Applicant that would amount to hostile discrimination. The same holds good for this particular matter as well. In so far as **Umadevi's** case is concerned, relying on **Sachin's** case, we made the observations in Para 29 of **Pankaja Waghmare's** case which we may now reproduce.

“29. We have extensively read **Sachin's** case (supra) which was affirmed by the Hon'ble Supreme Court. Our High Court discussed **Umadevi** and other authorities as discussed above. There is factual parity in **Sachin** (supra) and these O.A.s. Apart from other aspects the



Hon'ble High Court followed the Principles of **Umadevi** to reach a finding on facts that the Applicants could not be called back door entrants. Thus the law declared by the Apex Court was applied in **Sachin's** case by our High Court which was confirmed in the S.L.P. The essence of the matter is the application of legal principles laid down by **Umadevi**. The conclusions would depend on the facts which are found to be peculiar to each case. It is therefore quite clear that our High Court followed **Umadevi** and in this group of O.A.s we are also bound by that mandate."

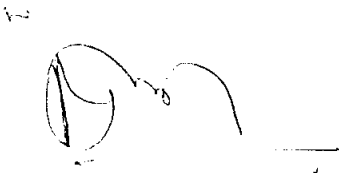
16. The above discussion will make it very clear that **Sachin's** case (supra) rendered by the Division Bench of the Hon'ble Bombay High Court and confirmed by the Hon'ble Supreme Court and naturally followed by us in **Pankaja Waghmare** is a complete answer to all the questions that the Respondents would like to pose in contesting this OA. We will have to decide this OA as we did **Pankaja Waghmare** which as just noted drew heavily on **Sachin**. In substance, there is factual parity between this OA and **Pankaja Waghmare**. Here also, the outcome must be the same. In fact, after **Sachin's** case, a few other



Judgments came to be rendered by the Division Benches of our High Court. In that connection, the learned Advocate for the Applicants relied upon **Writ Petition No.8118/2015 (Vaidya Mayur Vs. State of Maharashtra and one Anr, dated 25.2.2016) (Aurangabad Bench)**. In that particular Judgment, in fact, Their Lordships also took note of the fact that, in view of the post having not been advertised by the MPSC for a long period of time, some of the Applicants became age-barred and for no fault of them, they would suffer. The same is the state of affairs that obtains here. A fasciculus of Writ Petitions, the leading one being **Writ Petition No.3849/2014 (Abdul Wasey Abdul Waheed Siddiqui and others Vs. The State of Maharashtra and other Writ Petitions, dated 24.02.2015 (Aurangabad Bench)**. Another Judgment relied upon on behalf of the Applicants was in **Writ Petition No.526/2015 (Dr. Vishakha S. Saji & Ors. Vs. State of Maharashtra, dated 3.9.2015 (Nagpur Bench)**.

17. The Applicants seek the quashing and setting aside of the GR of 25th July, 2002. That GR has already been read in Para 8 hereinabove. As already indicated above, the said GR also came up for consideration in **Pankaja Waghmare** (supra). In our opinion, in the first place, since the initial appointment of the Applicants was

thereunder and they want relief pertaining thereto the quashing and setting aside thereof would produce results which will not just be difficult, but almost impossible even for the Applicants. They cannot cite a particular document seek its construction in the light of the subsequent binding precedents including **Sachin Dawale** and then turn around and seek its quashment. Further, in our view, the facts herein are such that to advance remedy to the Applicants, if they are found entitled thereto, it is not at all necessary to strike down that particular G.R. and in any case, just like any other document or instrument, even this GR has to be read in the light of the surrounding circumstances and the legal principles emanating from binding precedents and the position such as it obtains as of now, will have to be applied thereto, for which it is not at all necessary to strike down the said GR. In fact, striking it down, as we mentioned above, might produce anomalous results. The gist of the prayer, however, is that the letter thereof, preferring the substance including the situation that obtains as a result of the binding precedents including **Sachin Dawale** to the form and the relief that was extended to **Pankaja Waghmare's** Applicants will have to be extended in favour of the present Applicants as well.



18. The reading of the OA would show that a number of GRs came to be issued from time to time and the employees so similarly placed as the present Applicants were for all practical purposes granted the benefit of permanency. There is, therefore, no justification, at least none is pointed out for the Respondents to treat the Applicants differently and as a matter of fact, doing so would tantamount to not just discrimination but hostile discrimination at that, which is impermissible going by the constitutional mandate. Just like in **Pankaja Waghmare's** (supra), here also, the vacancies are not a limiting factor because they exist in abundance.

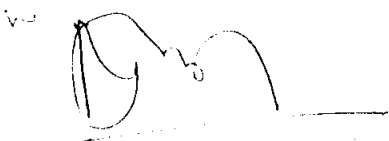
19. The OA refers to a communication intra-departmental where in fact one particular authority viz. the Directorate had favourably recommended the case of the Applicants.

20. The Affidavits-in-reply have been filed by the Respondent No.3 – Principal of the Government College of Arts and Science, Auragabad on 26.4.2010. Another one was filed by the then Director of Higher Education – Dr. Rambhau V. Kirdak in September, 2010. The Affidavit-in-rejoinder was filed thereto, to which 3rd Respondent again filed another Affidavit-in-rejoinder when the matter was



pending before the Aurangabad Bench itself. The sum and substance of the case of both the sides, in fact, has already been discussed hereinabove. The crux of the case of the Respondents has been that the Applicants having been appointed in broadly so speaking, temporary manner. They have got no right to seek permanency. Now, the above discussion based on the binding case law would make it quite clear that, in all probability, the Affidavits when they were filed were influenced by the situation such as it obtained at that time when the Judgment in **Sachin Dawale** and subsequent Judgments of the Hon'ble High Court and Hon'ble Supreme Court above referred to, had not been rendered. Therefore, the Respondents' case was consistent with the position such as it obtained at that point in time while now, one has to go by the mandate of **Sachin Dawale** and other Judgments of the Hon'ble High Court and the Hon'ble Supreme Court, just as we did in **Pankaja Waghmare's** case. The final order in this OA will be exactly in line with **Pankaja Waghmare's** case, a few matter of details being different notwithstanding.


21. In one MA No.185/2012 which was withdrawn on 10.9.2015, the relief pertaining to the UGC guidelines came to be sought. Even otherwise, it would not have been necessary for us to closely examine this aspect of the



matter because the nature of the order that we are going to make herein would take care of every aspect of the matter.

22. To conclude in so far as Respondent No.3 is concerned, she has already been appointed through MPSC and that position will not be disturbed. It is made clear that, in any case, she would have been entitled to the same relief as her co-applicants herein are going to get. But now, her position will be that of MPSC appointed candidate which position will not be altered at all. The Respondents are hereby directed to regularize the services of the Applicants 1, 2 and 4 in this OA and to confer permanency on them. The Respondents shall absorb Applicants 1, 2 and 4 by 30th June, 2017 and the said Applicants will continue in service as regular employees. However, in the facts and circumstances of the case, we direct that the Applicants 1, 2 and 4 shall be entitled to regular salary as any other regularly appointed Government employee w.e.f. 1st July, 2017 and would not be entitled to claim any monetary benefits for the past services rendered by them in spite of their regularization. Needless to say that, since the above referred Applicants' services are regularized, they shall be entitled to the continuity in service for all other purposes, except monetary purposes from the date of their first appointment. The Government may take an

2



appropriate decision about the scheme of pension applicable to the said Applicants as early as possible preferably within a period of six months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)**Member-J****13.06.2017**

Sd/-

(Rajiv Agarwal)**Vice-Chairman****13.06.2017**

Mumbai

Date : 13.06.2017

Dictation taken by :

S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2017\6 June, 2017\O.A.116.14.w.6.2017.Regularization.doc