

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.199 OF 2016**

**DISTRICT : MUMBAI**

1. Smt. Satyawati P. Ambare. )  
Age : 56 Yrs, Occu.: Servant, R/at )  
Gopal Dham Building, Room No.3, Diva. )

2. Smt. Lata D. Tirlotkar. )  
Age : 40 Yrs, Occu.: Servant, R/at )  
Gurawali Pada No.1, Ekveera Chawl, )  
Room No.2, Titwala (E), Dist : Thane. )

3. Shri Sanjay K. Ghate. )  
Age : 39 Yrs, Occu.: Servant, R/at )  
Darshan Darbar Road, Evershine Society )  
A/3, Room No.7, Sector-6, Nerul (W), )  
Navi Mumbai. )

4. Smt. Jyoti P. Ambare. )  
Age : 36 Yrs, Occu.: Servant, R/at )  
F/9, Sidhartha Nagar, BMC Chawl, )  
P.P. Marg, Byculla, Mumbai - 8. )

5. Shri Nagesh D. Ovhal. )



Age : 39 Yrs, Occu.: Servant, R/at )  
Parvati Nagar Chawl No.5, Room No.1, )  
Vitthalwadi, Kalyan (E). )

6. Smt. Vaishali R. Jadhav. )  
Age : 39 Yrs, Occu.: Servant, R/at )  
Parnakuti CHS, B-Wing, Room No.201, )  
Mukundrao Ambedkar Road, Sardar No.4,) )  
Sion Koliwada, Mumbai – 37. )

7. Shri Deepak K. Solanki. )  
Age : 38 Yrs, Occu.: Sweeper, R/at )  
Old Boys Hostel, Servant Chawl, Room )  
No.8, J.J. Hospital, Byculla, Mumbai-8. )

8. Shri Hemant P. Solanki. )  
Age : 38 Yrs, Occu.: Sweeper, R/at )  
Old Hostel Servant Chawl, Room No.5, )  
J.J. Hospital Compound, Mumbai – 8. )

9. Shri Jitu K. Solanki. )  
Age : 36 Yrs, Occu.: Sweeper, R/at )  
Vini Residency 2, Hanuman Nagar, )  
Nalasopara (W), Dist : Palghar. )

10. Shri Pravin A. Solanki. )  
Age : 40 Yrs, Occu.: Sweeper, R/at )



E-Block, Cement Chawl, 2<sup>nd</sup> Floor, )  
 Room No.22, J.J. Hospital Compound, )  
 Mumbai – 400 008. )

11. Smt. Kalavati J. Solanki. )  
 Age : 36 Yrs, Occu.: Sweeper, R/at )  
 Dadar Kasararawadi, BMC Chaw, J-Block,) )  
 Room No.11, P.V. Road, Dadar, )  
 Mumbai 400 008. )

12. Shri Ramesh M. Solanki. )  
 Age : 43 Yrs, Occu.: Sweeper, R/at )  
 E-Block, Cenment Chawl, 2<sup>nd</sup> Floor, )  
 Room No.21, J.J. Hospital Compound, )  
 Mumbai 400 008. )

)...**Applicants**

**Versus**

1. The State of Maharashtra. )  
 Through Principal Secretary, )  
 Medical Education & Drugs Dept., )  
 Mantralaya, Mumbai - 400 032. )

2. The Director of Medical Education )  
 and Research, having office at )  
 Govt. Dental College and Hospital )  
 Building, 4<sup>th</sup> Floor St. George's )  
 Hospital Compound, Mumbai -1. )

3. The Dean. )  
 Grant Government Medical College )  
 and Sir J.J. Group of Hospitals, )  
 Buculla, Mumbai 400 008. )

)...**Respondents**



**Mr. A.V. Bandiwadekar, Advocate for Applicants.**

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

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 15.06.2017**

### **JUDGMENT**

1. This Original Application (OA) is brought by 12 Applicants who are working in Group 'D' posts, some of them as servants and others as Sweepers in the Grant Government Medical College, Mumbai seeking regularization of their service which is of long durationS.

2. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicants and Mrs. K.S. Gaikwad, the learned Presenting Officer (PO) for the Respondents.

3. The 1<sup>st</sup> Respondent is the State of Maharashtra through Principal Secretary, the 2<sup>nd</sup> Respondent is Director of Medical Education and Research and the 3<sup>rd</sup> Respondent is the Dean, Grant Government Medical College and Sir J.J. Group of Hospitals, Mumbai.



4. The order herein impugned came to be issued on 7<sup>th</sup> December, 2015 by the 1<sup>st</sup> Respondent – State Government. It will be necessary at this stage itself to read it. It is stated there in the preface that, there were 14 Government Medical Colleges and Hospitals and 3 Dental Colleges and Hospitals. In all, there were 47 establishments functioning therein. Over a long period of time, temporary employees (Badali Karmachari) were working. In this order, they shall be called “Badali Workers” in English. It is further mentioned in the impugned order that, various Courts and Tribunals were seized of the matters for regularization of their services. A Cabinet meeting took place on 16.6.2015 and a decision was taken that the Group ‘D’ Class-IV employees under the various Government Medical Colleges and Hospitals were functioning on the regular vacant posts for what has been described as “29 days basis”. They were working on temporary basis and as a ‘one-time measure’, a G.R. was issued on 23.7.2015 to regularize under the Rules and Regulations, the services of the eligible employees from out of 774. In that behalf, those who completed 10 years of service on 31.3.2007 would be regularized and they should as on 23.7.2015 fulfill the requirement and it will be scrutinized, if they did it. In order to scrutinize the eligibility of these 774 Badali Servants, a Committee was



constituted chaired by the 2<sup>nd</sup> Respondent and its Members were the concerned Joint Directors, Deans, Chief Administrative Officers and Administrative Officers. The said Committee laid down the eligibility criterion as per the G.R. of 23.7.2015 after going through the available documents and submitted the report. The terms and conditions to be presently noted in case of regularizing 626 Badali Servants were decided upon. The 1<sup>st</sup> condition was that, on the day of their first appointment on temporary basis, they should have answered the minimum eligibility criterion with regard to the educational qualification and those, who did not do so, would be accommodated in some other posts. The 2<sup>nd</sup> condition was that the requirement of the reservations should have been complied with and in that connection, there is a reference to the word in Marathi, "आरक्षण". There was another condition of submission of the Caste Validity Certificate. The services would be liable to be terminated, if it was found that false information was furnished in the Affidavit. Their seniority would be counted from the date of their regular appointment and the earlier service would not be counted for any purpose mentioned in the Condition No.6 pertaining to the service condition, etc. The regularized employees would start getting governed by the relevant

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rules and regulations and Government instruments. Conditions 8 and in fact need to be reproduced in Marathi.

“८. सदर बदली कर्मचा-याने प्रत्येक आर्थिक वर्षात किमान २४० दिवस इतकी सेवा केलेली असली पाहिजे.

९. सदर बदली कर्मचा-याने दि.३१/३/२००७ रोजी १० वर्षांच्या सेवेचा निकष पूर्ण केलेला असला पाहिजे.”

5. The G.R. mentions that, the services of 626 Badali Servants out of 774 would be regularized. Those in the group of 626 who may have become age barred, would be entitled to age relaxation. The decision was subject to the Writ Petition No.246/2015. The GR concluded by a direction to the heads of the departments to maintain all the records pertaining to eligible and ineligible employees. There is a list which is a part of this G.R. (Exh. 'A'). In that list, the names of the Applicants were not there. These details are to be found in Exh. 'L' (Page 80 of the PB).

6. It is pleaded by the Applicants in the OA that, they came to be appointed in permanent, substantive, clear and sanctioned vacancies though on temporary basis by the 3<sup>rd</sup> Respondent – Dean of Sir J.J. Group of Hospitals. Their dates of appointments are 05.05.1993, 10.09.1993, 01.02.1995, 02.07.1995, 02.08.1995, 17.09.1996, 12.05.1995, 17.10.1995, 06.11.1997, 02.12.1998,

05.05.1999 and 30.11.1998 respectively. I shall elaborate hereon presently. Their names had been sponsored at that time by the Employment Exchange.

7. It is further pleaded by the Applicants that the Dean prepared a list of Badali Servants in the year 2006 and a seniority list came to be prepared on 07.11.2006 which list was operated from time to time. According to the Applicants, there were 97 Badali Servants in the above seniority list out of which, candidates upto Serial No.44 were accommodated and given the jobs leaving behind the candidates from Serial Nos.45 to 97. The Applicants claim that, Applicants Nos.1 to 6 fell in that group of 97 Badali Servants. It is further pleaded that in so far as the Sweepers in Group 'D' posts were concerned, the Applicants Nos.7 to 12 fell therewithin. There were 28 Sweepers, whose seniority list had been prepared and the first 13 were accommodated on what has been described as '29 days basis', subject to the availability of vacancies by rotation system. Those from Serial Nos.14 to 28 could not be given the appointments.

8. Record shows that a meeting of the State Cabinet took place on 16.6.2015 and a number of employees, so similarly placed as the Applicant came to be regularized.



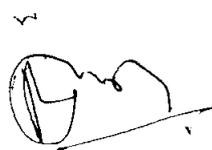
As already alluded to, the criteria applied was 10 years service and 240 days per year of actual work. Those who did not answer, the requirement about the educational qualifications, etc. could be accommodated in some other posts.

9. In Para 6.3 of the OA, it is pleaded that the Dean – Respondent No.3 prepared the list of Badali servants who were available for such appointments and the seniority list came to be prepared on 7.11.2006. The Affidavit-in-reply on behalf of the Respondents Nos.1, 2 & 3 (All the Respondents) came to be filed by Shri Chandrakant A. Anekar, Administrative Officer in the office of the 3<sup>rd</sup> Respondent – Dean, Government Medical College. He has clearly admitted in Para 5 of the said Affidavit-in-reply while dealing with Para 6.3 of the OA that the list was prepared by the 3<sup>rd</sup> Respondent in the year 2006 of Badali Workers available for such appointments. The names of the Petitioners were there in the list prepared on 7.11.2006 and the said seniority list was operated as per availability of vacant posts and availability of concerned candidates by rotation. This for all one knows, is recording of the substance of the averments in Para 6.3 of the OA itself.



10. At this stage, in the background of what has been found in the preceding Paragraph, it is clear in my view, that when these averments are held in *juxta-position* with the terms and conditions that have been set out, it does not appear possible that the requirement of 10 years of service and 240 days of yearly actual performance was practically possible. After-all, one cannot force an impossibility before any party and then take advantage thereof. The reason why I have observed that it was an instance of impossibility is that, by the very nature of things, these requirements would make it impossible for any worker to put in 240 days of work in a year because the availability of work was completely uncertain. The vacancies in the posts and the further fact that, it would be in accordance with the rotation would further make it quite clear that, no single person would necessarily get a job for those many days. I still have some discussion in store, but then at this stage, it can be stated quite safely that the requirement of 10 years and 240 days per year was not really possible, if one were to go by the record such as it is.

11. At this stage, I may also mention that this particular OA came to be placed before this Tribunal presided over by the Hon'ble Vice-Chairman on 25.2.2016 for interim orders. The perusal of the said order would

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make it quite clear that this OA was for regularization of the services of the Applicants in the context of a policy decision to regularize the services of those Badali Servants who had put in 10 years of service as on 31.3.2007. Another condition was that, they should have worked for 230 days every year. The names of three ladies Smt. K.K. Pardhi, Smt. K.S. Supat and Smt. M.K. Pardhi were referred to. Their services had been regularized as Sweepers. They having been appointed on 4.11.1997, 5.11.1998 and 4.5.1998 respectively, had obviously not completed 10 years of service on the cut-off date which was 31.3.2007. Henceforth, a reference to these three employees would be as the said three ladies. The Tribunal was further told that, many of the Applicants had also put in more than 10 years of service and I shall elaborate on this aspect of the matter with facts and figures presently. The Tribunal was, therefore, requested to let the Applicant work as before without being terminated till the disposal of the OA. The Tribunal was told on behalf of the Respondents by the learned CPO that, a scrutiny had been made of all cases of eligible persons and those that answered the requirements of the G.R. of 7.12.2015 had been regularized. If there was any mistake, the Court cannot order that the same mistake be repeated in case of Applicants also. In Para 5, the Hon'ble Vice-Chairman



made the observations, which need to be fully reproduced along with Para 6.

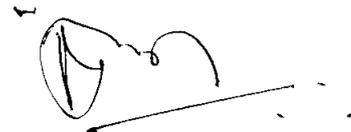
**5.** It is seen that the Applicants are very low in the office hierarchy. It is very unlikely that they will have detail information about the persons whose services have been regularized. However, on a bare perusal of the list it appears that three persons did not fulfill the condition of having completed 10 years as Badli Karmachari as on 31.3.2007. This is definitely in violation of what is provided in G.R dated 7.12.2015. Learned Advocate Shri Bandiwadekar also stated that the Committee has ignored the condition of such persons having worked for 240 days in each of the 10 years. However, that remains to be scrutinized.

**6.** In view of the fact that prima facie there are mistakes or violation of the provisions of the G.R dated 7.12.2015, the Applicants are entitled to interim relief that the Respondents will not terminate the services of the Applicant and they will be allowed to continue to work as they were doing so far.”

12. It is, therefore, very clear that, despite all the high-sounding assertions, the Respondents could not possibly succeed in establishing that they had a fool proof

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process in place. Mr. Bandiwadekar, the learned Advocate for the Applicants took me through the OA as well as separate compilation and it does appear that, there is substance in his contention as far as the requirement of 240 days per year is concerned. In the first place, there are several instances where these eligibility criteria did not meet and in any case, the discrimination appears writ large on the record. A very meticulous delve into that factual aspect will in fact be out of place. The gist has been noted and commented upon. In this behalf, at this stage itself, I may mention that, I shall have occasion presently to take guidance from a Judgment of a Division Bench of the Hon'ble the Chief Justice of the Bombay High Court in **Writ Petition No.9051/2013 (The State of Maharashtra Vs. Smt. Meena A. Kuwalekar and other Writ Petitions, dated 20<sup>th</sup> April, 2016** (to be hereinafter referred to as **Meena Kuwalekar's** case). Proceeding further, in Para 6.6 of the OA, there was a plea about a policy decision discussed hereinabove to regularize the Badali Servants who were there as on 31.3.2007. In that behalf, the State called for information from the Dean through the Director of Medical Education. In Para 6.7 of the OA, it was pleaded that the Dean submitted such a list to the 2<sup>nd</sup> Respondent on 1.9.2007 which is at Exh. 'B' to the OA (Pages 31 and thereafter). Therein, admittedly, the



names of the Applicants were there. The Applicant No.1 was at Serial No.29, Page 34, Applicant No.2 was at Serial No.34, Page 35, Applicant No.3 was at Serial No.39, Page 36, Applicant No.4 was at Serial No.48, Page 37, Applicant No.5 was at Serial No.49, Page 37, Applicant No.6 was at Serial No.64, Page 37. Then, there was a list of Sweepers. The Applicant No.7 was at Serial No.9, Page 39, Applicant No.8 was at Serial No.10, Page 39, Applicant No.9 was at Serial No.15, Page 39, Applicant No.10 was at Serial No.19, Page 40, Applicant No.11 was at Serial No.27, Page 41 and Applicant No.12 was at Serial No.18, Page 40. On Page 40, the names of the said three ladies were also there. The names of the said three ladies also appear in the order issued from the Office of the 3<sup>rd</sup> Respondent at Exh. 'M' (Page 81 of the PB). Now, these significant pleas which came to be raised in Para 6.6. and 6.7 and especially, in Para 6.7 were met with in Para 9 of the Affidavit-in-reply. A five line response was as follows :

“With reference to para 6.7, I say that the petitioners were not working the period of 2001-2005 with the Respondent No.3. They have not fulfilled the criteria mentioned in the G.R. dated 7.12.2015. Therefore, petitioners’ names would



not be considered for regularization of their services.”

13. The instrument of 7.12.2015 which is referred to in this particular Paragraph is the impugned order, which is under challenge. The manner in which the significant plea in Para 6.7 of the OA has been met with, would make it very clear that the Respondents, even with a thin veil for all practical purposes wanted to admit this fact. I am at complete loss to understand the purport of the plea that the petitioners were not working, “the period of 2001-2005”. That is because by the very nature of things pertaining to the employment, it might not be possible for them to work continuously and again, I must say that, we cannot force the state of impossibility on somebody and then turn around and try to take advantage thereof.

14. At this stage, it will be most appropriate in my view to refer to a document Exh. ‘D’ at Page 46 of the PB. That is a communication from the 2<sup>nd</sup> Respondent to the Government – Respondent No.1 and is dated 11<sup>th</sup>/15<sup>th</sup> April, 2014. It is in Marathi. The sum and substance thereof was that there were posts of Group ‘D’ employees which were sanctioned. In view of the vacancies arising out of the various reasons, local arrangements on 29 days



basis or on daily basis was being made, so that the institution could function. A number of such temporary employees had been functioning for 15-20 years on 29 days basis. It needs to be mentioned at this stage itself, even at the cost of repetition that, in actual fact situation, all the Applicants and at least all the Applicants except 3 have been working from 1993-1997 on that basis and even those three can seek parity with the said three ladies. Proceeding further, in Exh. 'D', it was mentioned that, all the temporary employees had long before crossed the maximum age of appointment and they would not be able to get Government service elsewhere. If, unfortunately, an employee were to pass away, it would result in drying the source of income in so far as his family was concerned, and therefore, it was necessary to consider their regularization. The exact Marathi words were, "या पार्श्वभूमीवर या कर्मचा-यांच्या सेवा नियमित करण्याबाबत विचार होणे गरजेचे आहे".

15. It was further mentioned in Exh. 'D' that the temporary employees working under the 2<sup>nd</sup> Respondent had moved the Courts for redressal. The opinion of the Advocate General was sought and based thereon, those employees who had put in 10 years of service were proposed to be regularized. Based thereon, the proposal contained in Exh. 'D' was submitted. It was further stated



that, in the original proposal, 268 Badali Servants from Class-IV category of J.J. Hospital were included, but inadvertently, the names of 124 Sweepers were not included. The Dean was informed accordingly, and therefore, the names of those 124 Sweepers were separately listed. I am not herein concerned with the Hospitals at Pune, Nagpur, etc., and therefore, I need not discuss the facts pertaining to them. As far as the educational qualification was concerned, the proposal was that, it should be 4<sup>th</sup> standard, but it was also provided that even that could be relaxed in view of the orders of the Hon'ble Courts, which were already in the field. In as much as those who should be regularized were already working on 29 days basis, there was no apprehension of heavy financial burden getting entailed upon. There were then the proposals with regard to the pension, etc. The letter concluded by a request for sympathetic consideration of the cases of such employees. For all one knows, the Applicants were included therein.

16. At Exh. 'G' (Page 62 of the PB), there is a Circular of 23<sup>rd</sup> July, 2015 issued by the Government in Medical Education and Drugs Department. For all practical purposes, recitals therein were more or less similar to the recitals in the impugned order at Exh. 'A'.



17. In Para 6.9 of the OA, there was a reference to the just noted Exh. 'D'. Thereafter, a revised list came to be submitted which is at Exh. 'E' (Pages 48 and thereafter). It is mentioned in the said Paragraph and is also found from the list annexed to Exh. 'E' that the names of the Applicants figured therein at Serial Nos.29, 34, 39, 48, 49 and 64 and another list at Serial Nos.9, 10, 15, 18, 19 and 27. Again the names of the said three ladies also appeared herein.

18. It is, therefore, highly significant that the names of the Applicants did quite clearly figure in the two earlier lists. However, for some obscure reason, in the impugned list dated 7<sup>th</sup> December, 2015, their names did not appear. Quite pertinently, in Para 11 of the Affidavit-in-reply above referred to, at Page 87 of the PB, this very vital fact has not at all been traversed. All that has been pleaded in a 9 line Paragraph was that, the issuance of the Govt. order of 23<sup>rd</sup> July, 2015, completion of 10 years, etc. but the very vital fact that the names of the Applicants having been there earlier has not been traversed at all and in a roundabout manner at a few places in the Affidavit-in-reply, it is pleaded that they had not worked continuously, etc. which is in the manner of speaking neither here nor there.



19. In Para 6.10, there is a reference to what is Exh. 'F' (Page 59 of the PB, dated 9.3.2015) issued by the 2<sup>nd</sup> Respondent – Director to the Government in the concerned Department. It was stated therein that a proposal had been submitted to regularize the services of the employees like the Applicants. A list was prepared and submitted to the Government. Therein, in so far as the Grant Medical College was concerned, a list of 37 employees was submitted and a proposal was that, though they did not complete 10 years of service, but their names had been included, and therefore, the fact of inclusion of their names be considered. Later on, there was a reference to the other Colleges at various other places which I am concerned herein. But very pertinently, even those that did not complete 10 years like the three Applicants of the total of 12 herein, there was a proposal to consider inclusion of even their names.

20. Some other Paragraphs referred to certain facts which are not necessary for me to discuss. They inter-alia referred to the move on behalf of the Applicants under Right to Information Act, etc.

21. Turning to ground 6.20 of the OA, it is highlighted again that, in the very first report submitted on



1.9.2007, there might have been the workers, who had not been working continuously though they may have been there for the past 10 years. In Para 6.21 of the OA, it is pleaded that in so far as the condition of 240 days of service every financial year was concerned, there were two reports dated 11.9.2007 and 21.6.2014 which I have already discussed above. According to the Applicants, it was the case of the Dean – Respondent No.3 that they answered that requirement. These Paragraphs have been dealt with in the Affidavit-in-reply in Paras 21 and 22 at Page 90 of the PB. The vital aspect of the matters was not traversed at all and the usual plea that the criteria laid down was not fulfilled by the Applicants was mentioned. In Para 22, it was pleaded, “the petitioners were working as Badali Karmacharies as and when the services were available”. It is, therefore, quite clear that, if the Respondents insist on the Applicants having not completed the criteria of 240 days, the said fact has to be studied in the context of what has been quoted just now. Very pertinently, in Para 6.21 of the OA, it was pleaded as to how the Applicants fulfilled the criteria of 240 days and in Para 23 of the reply, a three line response was that they were not fulfilling the criteria. Needless to say that, when significant and important facts which have clear bearing on the facts at issue are pleaded, then the answering party

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has to meet with it head on rather than running away at a tangent with less than half important statement. If that was so, then it goes without saying in my view that, there is a clear struggle in the mind of the Respondents and they somehow or the other wanted to avoid meeting with the said significant pleas.

22. In Para 6.23 of the OA, it is in effect pleaded that, though the Respondents laid down the terms and conditions of 10 years and 240 days, etc. but they themselves did not seriously apply the same. The response to this plea is in Para 25 of the Affidavit-in-reply at Page 91 of the PB. That was in the context of the Respondents having ignored the fact that, Applicants 9 to 12 may have completed less than 10 years. In a five line reply, it is merely stated that they did not fulfill the criteria. This again is not sufficient as already mentioned above.

23. In Para 6.24 of the OA, a plea is raised about the said three ladies whose names appeared at Serial Nos.63, 64 and 65. It was pleaded that, it was clear that they did not complete 10 years of service on the cut-off date of 31.3.2007 in view of the dates that they had joined on and despite that, their names appeared in the impugned order. This plea is traversed in Para 26 of the Affidavit-in-reply

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(Page 91 of the PB). The same needs to be fully quoted hereinbelow.

“**26.** With reference to Para 6.24, I say that the original process of Regularization was started in 2007 after obtaining the opinion of Hon. Advocate General. In that the seniority list of 2004 was considered as basis of the process. The names of these three are there in seniority list of 2004. The Respondent No.3 has submitted the names of all Badli Karmacharis working under him time to time for regularization of service. Finally the cases were decided on individual case wise basis as one time measure.”

24. Apart from the fact that the manner in which the said averments have been met with is by itself significant pointer to the nervousness of the Respondents, but then one quite plainly fails to see as to why then the Applicants herein including those who may not have completed 10 years should have been singled out for discriminatory treatment.

25. Both the parties have annexed to their pleadings the lists, etc. which aspect of the matter has been already



discussed in *extenso* hereinabove. Mrs. K.S. Gaikwad, the learned P.O. invited reference to those Charts from Pages 94 to 105 and contended that, based thereon, it was not possible to categorically confirm that the Applicants actually worked for all those years. She pointed out that the list of 2004 did not contain the names of the Applicants. As to this submission of the learned PO, I find that instead of whatever is not there, one should concentrate on whatever is there. The lists of 2007 and 2014 would quite clearly show that the names of the Applicants were very much there and there is supporting material on record to show as to the precise point of time that they had been there and if that be so, then in my opinion, the Respondents have really no answer to the question as to why they have discriminated against the Applicants while several similarly placed persons and persons who were inferiorly placed like the said three ladies could make it and the Applicants failed.

26. I had an occasion to decide a fasciculus of several OAs, the leading one being **OA 732/2011 (Dr. Shankar B. Kasabe Vs. The Secretary, Public Health Department and 20 other OAs)** by a common Judgment of 8<sup>th</sup> June, 2016. Therein, I took guidance from **Meena Kuwalekar** (supra). **Meena Kuwalekar** as well as



fasciculus of OAs above referred to, arose out of the facts pertaining to the grant of Time Bound Promotions. Here, that issue is not involved. However, even in **Meena Kuwalekar** and the OAs that I decided, the issue centered around the fact as to whether the dates of appointment for the purposes of counting in the matter of the Time Bound Promotion was from the first date of appointment or the date of confirmation. That was the issue which will be significant herein as well. Like **Meena Kuwalekar** before the Hon'ble High Court, here also the Applicants cannot be assailed of any sharp practice, etc. Like **Meena Kuwalekar**, here also, whatever be the nomenclature of appointment of the Applicants, but the posts that they had been appointed to, were not temporary or created temporarily, but they were permanent and the detailed reasoning given in the communication. Exh. 'D' from the 2<sup>nd</sup> Respondent to the 1<sup>st</sup> Respondent clearly mentions those circumstances. Therefore, that can hardly be held against the Applicants. The concept of regular service, temporary or ad-hoc service, etc. was dealt with in **Meena Kuwalekar** (supra). In my Judgment, in the fasciculus of the OAs above referred to, in Para 12, I dealt with that aspect of the matter. It will be proper in my view to reproduce the said Paragraph 12 from my Judgment which would give a clearly idea that it was based on the mandate



of the Division Bench of the Hon'ble Bombay High Court in **Meena Kuwalekar** (supra).

27. In Para 14, I reproduced two Paragraphs from **Meena Kuwalekar's** case itself. The said Para 14 also needs to be reproduced.

“14. Very pertinently, in Paras 33 and 34, Their Lordships were pleased to find that in such matters, the practice adopted by the Government and as manifested by the official instruments are very significant for a proper interpretation of the said Government instruments. I can usefully quote both the Paragraphs.

“33. The record also suggests that the past services of the employees covered under the GR dated 1 December 1994 have been taken into consideration by the State Government for extending the benefits of increment, pay fixation, pension and several other matters, except perhaps seniority. This practice is also not an irrelevant circumstance. In case of any ambiguity, actual practice or contemporary official statements throwing light on construction of a statute or a statutory instruments is a permissible exercise. In a case relating to construction of service rule which enabled section officers possessing a recognised Degree in Civil Engineering or equivalent to claim eligibility for promotion if they had put in three years service in the grade (six years' service in case of Diploma Holder), the question



arose as to the point of time from which the period of three years was to be counted in a case, where the section officer obtained the degree during the course of service. The practice in the department was to count the period of three years from the date the officer obtained the degree and this practice was relied upon in construing the statutory rule. The Hon'ble Supreme Court in **N. Suresh Nathan Vs. Union of India**<sup>14</sup>, held that the past practice, if based on one of the possible constructions which can be made of the rules, is an useful tool in the matter of interpretation of such rule. In effect therefore, the doctrine of *contemporanea ex-positio* was applied even in the matter of construction of recent statute or statutory instruments.

34. Besides, when it comes to interpretation of the expression '*regular service*', it is necessary to keep in mind that such expression takes colour of the context in which the same is employed. As noted earlier, entire purpose and objective of TBPS and ACPS is to relieve the employees of the frustration which they face on account of stagnation. Therefore, the expression '*regular service*' will have to be construed and interpreted in the light of such purpose and such objective having regard no doubts to the phraseology employed in GRs dated 8 June 1995 and 20 July 2001."

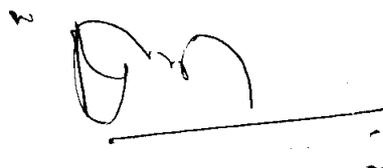
28. I, then noted as to how in **Meena Kuwalekar's** case, the Hon'ble Bombay High Court was pleased to discuss in detail the plea of the so called mistake having been committed by the State implying probably that the same mistake does not have to be repeated. Their



Lordships took note of the fact that the State was not always consistent in its approach.

29. Another significant aspect of the matter is that of discrimination. At this stage, of the evolution of the constitutional law, I think, it needs hardly be mentioned that the Constitution frowns upon discrimination between two similarly placed persons. The burden was heavy on the Respondents to justify their stand of excluding the names of the Applicants in the impugned list after having included their names in the earlier list and more particularly, the holes that they seek to pick in the case of the Applicants are, granting all latitude to them, the same as they were there in case of several others and in this behalf, I may repeat the case of the said three ladies. Therefore, in my opinion, the necessary directions will have to be given to the Respondents.

30. It is hereby held and declared that the Applicants are eligible for being regularized in the category of Class IV servants or Sweeper, depending upon their individual cases. The Respondents are directed to make appropriate modification in the GR of 7<sup>th</sup> December, 2015 (Exh. 'A', Page 24 of the PB) and include the names of the Applicants therein at proper places. It is clarified that, this order does

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not mandate the deletion of the names of any candidate. Compliance within four weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**15.06.2017**

15.06.17

Mumbai

Date : 15.06.2017

Dictation taken by :

S.K. Wamanse.

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