

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 374 OF 2014

DISTRICT : MUMBAI

1. Shri Sunil Thomas Tuskano)
2. Shri Sanjay Thomas Tuskano)
3. Shri Nandakumar Anant Sane)
4. Shri Dinesh Baliram Adlikar)
5. Shri Anil Anant Talekar)
6. Shri Prabhakar Chetan Guada)
7. Shri Vasant Shantaram Bhogate)
8. Shri Bhaskat Vinoba Parte)
9. Shri Ujjwal Vishnu Shinde)
10. Shri Narayan Bhavani Sahu)
11. Shri Ajay Ratan Wawhl)
12. Shri Raju Vithal More)
13. Shri Anil Dhonu Powle)
14. Shri Dhananjay Ankush Jamdade)
15. Shri Haibat Bhagwan Vichare)
16. Shri Nitin Bhaskar Rane)
17. Shri Rajesh Aatmaram Kadam)
18. Shri Santosh Aatmaram Raut)
19. Shri Dyaneshwar Raghunath Rane)
20. Shri Nitin Vishnu Bagul)

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21. Shri Amit Bhagirath Shelke)
22. Shri Dinesh Jagannath Thosare)
23. Shri Chandrashekhar S. Salve)
24. Shri Pradeep Tatoba Lokhande)
25. Shri Suresh Panduran Rege)
26. Shri Nitin Krushna Palkar)
27. Shri Dattaram Sudhakar Patil,)
28. Shri Hemant Vishnu Davane)
29. Shri Girish Balkrushna Kadam,)
30. Shri Santosh G. Tambe)
31. Shri Munavar Kasam Khan,)
Add for service of notice:)
C/o: Mr. Ashish Gaikwad,)
Advocate, High Court, Off. R-8,F-2,)
Machinery House, Kalaghoda,)
B. Barucha Marg, Fort,)
Mumbai 400 001.)...**Applicant**

Versus

1. The Public Works Department,)
Through its Secretary,)
Mantralaya, Mumbai 400 032.)
2. The Chief Engineer,)
Public Works Department [Civil],)
5th floor, Badhkam Bhavan,)
Mumbai.)



3. The Chief Engineer,)
P.W.D [Electric], 3rd floor,)
Bandhkam Bhavan, Mumbai.)
 4. The Superintending Engineer,)
Public Works [Electric], Circle,)
Public Works Department,)
3rd floor, Bandhkan Bhavan,)
Mumbai.)
 5. The Superintending Engineer,)
Public Works [Civil],)
5th floor, Bandhkan Bhavan,)
Mumbai.)
 6. The Executive Engineer,)
Public Works Department,)
[Electrician], Division No. 5,)
3rd floor, Bandhkam Bhavan,)
Mumbai.)
-)...Respondents**

Shri Ashish Gaikwad, learned advocate for the Applicants.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 05.08.2016

ORDER

1. Heard Shri Ashish Gaikwad, learned advocate for the Applicants and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by 31 Group 'D' employees of the Public Works Department (P.W.D) challenging the G.R dated 13.2.2014 by which 378 posts in Civil and 60 posts in Electrical Wing of Manora M.L.A's Hostel and Sahyadri Guest House in Mumbai were converted from Daily rated establishment to converted Temporary establishment. The Applicants' who are from Electric Wing were regularized in service with effect from 21.9.2010, along with other employees as per clause 28 of the Kalelkar agreement. The Applicants are claiming that they are entitled to be regularized in service with effect from the date of initial appointment on daily wages by order dated 15.11.1996.

3. Learned Counsel for the Applicants stated that the Applicants were selected after their names were called from Employment Exchange and after they were duly interviewed and appointed by order dated 15.11.1996 on the basic pay of Rs. 775/- on the post of Majdoor/Asst. Wiremen for 14 days. They were continued after giving technical breaks. Learned Counsel for the Applicants stated that the Applicants continued to

discharge the duties of Helper, Liftman, Boiler-operator, Wiremen, Pum Operator etc. The Applicants had technical qualifications for the posts on which they were working. They have continued to work on these posts till date. The Applicants were appointed on daily wages in the pay scale of Rs. 2610-4000 for Liftmen, Rs. 3050-4590 for the post of Wiremen and Rs. 3200-4900 for the post of Firemen from 7.10.2005 for 26 days at a time. The Applicants worked continuously for more than 340 days after order in 2005 was issued. Learned Counsel for the Applicants argued that the Applicants were selected in a regular selection procedure and have worked for 18 years on the post of Majdoor/Assistant Wiremen, though they were actually working on technical posts. Learned Counsel for the Applicants stated that a G.R dated 16.9.2005 was issued to create posts on Daily Rated Establishment and the Applicants were absorbed on that establishment. A Committee called 'Chari Committee', was appointed to look into the requirement of posts for M.L.A Hostel, Manora which has recommended staffing pattern for the new M.L.A Hostel, Manora. However, that recommendation was not accepted and the Applicants were given jobs on Daily Rated Establishment though they should have been absorbed on regular basis. As the Applicants were serving in M.L.A Hostel, many M.L.As had written to the Government about regularizing their services. However, no reply was received. The Respondent no. 1 issued G.R dated 13.2.2014, which has caused

grave prejudice to the Applicants, who were appointed in 1996 and are entitled to be given regular pay scales etc. from the date of the initial appointment.

4. Learned Counsel for the Applicants argued that the G.R dated 13.2.2014 is discriminatory and arbitrary and violative of the fundamental rights of the employees. The Applicants are part of 58 employees, who were sponsored by the Employment Exchange and who were appointed after following due procedure. The Applicants' case is different from other employees, whose services were regularized, as they (other employees) were probably not appointed after following the due procedure of selection. The Applicants had sent legal notices to the Respondents through their Advocate on 22.3.2014 and 28.2.2014. However, the Applicants did not receive any reply. Learned Counsel for the Applicants argued that there is no question of Kalelkar Award (Agreement) being applicable in their case, as they were appointed after due procedure was followed in regular service as per provisions of the Maharashtra Civil Services Rules.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Original Application is totally vague and does not disclose the legal basis on which the Applicants are seeking regularization of their service from the date of initial appointment. The Applicants were appointed by order dated 11.10.1996 as

Majdoor/Liftmen for 14 days only. They were not appointed on regular or permanent vacancies in P.W.D. The Applicants were appointed on daily wages and after completion of 240 days of work, have approached the Industrial Court, Mumbai, for regularization of their services. This fact, itself shows that the Applicants were not appointed under any of the Maharashtra Civil Services Rules. There was a compromise reached between the parties in complaint no. ULP 347/2000. On the basis of the compromise, G.R dated 16.9.2005 was issued and 444 Civil and 64 Electrical posts were created on Daily Wages Establishment for Manora MLA Hostel and Sahyadri Guest House in Mumbai. All the Applicants were accordingly absorbed. 8 posts of Wiremen, 10 posts of Firemen and 40 posts of Liftmen were created on Daily Wages Establishment and all the Applicants were absorbed in these posts. Learned Presenting Officer argued that the Applicants are seeking regularization since 1996 but have not sought condonation of delay and on that ground alone this Original Application deserves to be dismissed. Learned Presenting Officer stated that the documents at Exhibit 'B' and 'C' may not be genuine. Exhibit 'C', in any case, is a computer generated document without any authenticity. No proposal was sent to Finance Department for approval to give appointment to the Applicants in 1996 or 2005. There is no material in support of this contention. Learned Presenting Officer argued that the Applicants were

appointed on non-technical posts except (Wiremen) and they did not have any technical qualifications except those appointed as Wiremen. The Applicants have been working on non-technical posts on which they were appointed. Learned Presenting Officer argued that as per Kalelkar Award, clause 28, the employees working on Daily Wages Establishment were taken on Converted Regular Temporary Establishment (CRTE) by G.R dated 13.2.2014, which is challenged in the present Original Application. Learned Presenting Officer argued that G.R dated 13.2.2014 is eminently fair and is not discriminatory at all. All the employees brought on CRTE are similarly placed. Even the present Applicants were not selected on clear and permanent vacancies by following proper procedure. If that was the case, a regular advertisement inviting applications from open market would have been issued and there would have been a written test as per Government Resolution in the field. However, in 1996, no clear and permanent vacancies were in existence. The Applicants were given appointment on daily wages initially and as per the compromise reached in the Industrial Court, they were taken on Daily Rated Establishment by G.R dated 16.9.2005 as per Kalelkar Award. The Applicants have enjoyed the benefit of G.R dated 16.9.2005 and now they cannot turn around and claim that they had not approached the Industrial Court or wrongly approached that Court. Learned Presenting Officer argued that the

Applicants have, by their conduct, having taken the same matter before the Industrial Court, have acquiesced and cannot challenge the jurisdiction of that Court now. Now the same issue is raised before this Tribunal. As the Applicants are not governed by Maharashtra Civil Service Rules, they have no right to approach this Tribunal. This sort of Forum-Shopping should be discouraged. Learned Presenting Officer referred to the judgment of the Hon'ble Supreme Court in the case of **SECRETARY, STATE OF KARNATAKA & ORS Vs. UMADEVI (3) & ORS : (2006) 4 SCC 1**, in which Hon'ble Supreme Court has held that daily wage employees like the Applicants cannot claim regularization of their services.

6. The Applicants have made a lot of averments in this Original Application and most have been denied by the Respondents in their affidavit in reply dated 25.7.2014. I will, therefore, rely on the material which is placed on record by the parties. Documents at Exhibit 'A' is the letter given to the Applicant no. 1 dated 27.9.1996, calling him for interview on 9.10.1996. His name was received from Employment Exchange for appointment to the post of Majdoor/Liftmen for 14 days on daily wages. The documents in Exhibit 'B' are denied by the Respondents. Documents as Exhibit 'C' is a computer statement which gives details about the Applicants. This document does not disclose that any of the Applicants has any technical qualifications. The highest educational

qualification is possessed by one Ajay R. Vavhal, who is 11th Pass (or 12th Pass). The claim of the Applicants that they had technical qualification and were actually working on such posts which will make them eligible to work on technical posts is not borne out by the factual information, supplied by themselves. Exhibit 'D' is the office order dated 11.10.1996, appointing 25 persons, 11 as Majdoor and 14 as Liftmen on daily wages for 14 days. The Applicants have not indicated, how many of the Applicants' names are included in that office order. Names of first four Applicants are seen, though there may be other Applicants also in the list as I have not scrutinized it thoroughly. It is presumed that other Applicants must have been given similar orders to work as Majdoor/Liftmen. This order clearly mentions that the services of the Applicants were liable to be terminated without notice after 14 days. This is an important fact, which has to be kept in mind.

7. The Respondents have placed on record an agreement in the Industrial Court, Mumbai, in U.L.P no 347/2000 between, Secretary, P.W.D & Others and Maharashtra State Public Works Employees Union at Exhibit R-1 (Page 168 of the Paper Book). This is not denied by the Applicants. In para (1) of the agreement, it is stated that:-

“अर्जदार हे रजिस्टर युनियन असून त्यांनी नवीन आमदार निवास मनोरा येथील रोजंदारी मजुरांबाबत विद्यमान न्यायालयात केस दाखल केलेली आहे. त्या अनुषंगाने अर्जदार यांनी अर्जासोबत शेड्युल दिलेले आहे व त्यान कर्मचा-यांचे नांव, पदनाम, शैक्षणिक अर्हता, नियुक्ती दयावयाचे पद तसेच सेवाभरतीचा दिनांक नमूद केला आहे. आता अर्जदार युनियन शेड्युलमध्ये नमूद केलेल्या कर्मचा-यांबाबत व गैरअर्जदारामध्ये खालीलप्रमाणे तडजोड केलेली आहे. महाराष्ट्र राज्य सार्वजनिक बांधकाम कर्मचारी संघातर्फे शेड्युलमधील कर्मचा-यांकरीता कम्मलैट यु.एल.पी.३४७/२००० दाखल करणेकरीता व तडजोडीकरीता, तडजोड अर्जावर सही करणेकरीता संघाने श्री. बृजपालसिंह सरचिटणीस यांना अधिकारी दिले आहेत.”

It is clearly mentioned that the Applicants in ULP/Labourer will be deemed to have worked on Daily Wages Establishment from the date of their appointment. The list of 57 persons working in Electrical Wing of the P.W.D in Manora M.L.A Hostel is attached. I have verified that names of all the Applicants are included in that list. Applicants nos 25 & 26 are Wiremen and the rest are Liftmen. For the persons appointed as Wiremen, they have necessary Certificates obtained in 1999 and 2000 respectively for the Applicants no 25 & 26 respectively. Office order dated 1.10.2005, (Exhibit 'E') has been issued after G.R dated 16.9.2005 was issued by the Government (Exhibit 'F') to give effect to the compromise reached in ULP no 347/2000. The Applicants were deemed to have been taken on Daily Wages Establishment with effect from 16.9.2005. There is nothing on record that any of the employees protested regarding this G.R dated 16.9.2005. The Applicants

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claim that the G.R dated 16.9.2005 had the following conditions viz.

“(२) संबंधित पदासाठी लागू असणारी वय, शिक्षण, व सेवायोजन कार्यालयाची आवश्यकते नुसार अट शिथिल करून त्यांना रोजंदारी आस्थापनेवर नेमणक देण्यात येईल.

(३) सार्वजनिक बांधकाम विभागातील अ रोजंदारी आस्थापने वरील कर्मचा-याप्रमाणे या कर्मचा-यांना नियुक्ती नंतर कालेलकर करारानुसार सेवानियम व सवलती चालु राहतील”.

Learned Counsel for the Applicants argued that this condition no. 2 was not applicable to the Applicants as their names were sent by the Employment Exchange and they had already fulfilled the requirement of age and educational qualification. From the material on record, it is difficult to accept this contention of the Applicants. From Exhibit 'D' which is order of appointment of some of the Applicants dated 11.10.1996, it cannot be inferred that all the 31 present Applicants were sponsored by the Employment Exchange. Some of the Applicants, however, were sponsored by the Employment Exchange. Except Exhibit 'D' and Exhibit 'A', there is no other material on record in this regard. The claim of the Applicants in this regard is, at best, partially correct. However, even if the claim of the Applicants, for the sake of arguments, is accepted as correct, the facts that they were sponsored by the Employment Exchange and fulfilled the requirement of age and educational qualification will not

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entitle them to be given regular employment, when there were no sanctioned posts available to appoint them. From condition no. 3, it is clear that there were other Daily Wage Establishments in P.W.D and such establishments were sanctioned as per Kalelkar Agreement. The Applicants were thus fully aware in 2005 that they were brought on Daily Wages Establishment as per Kalelkar Award. Learned Counsel for the Applicants stated that a Committee headed by the then Principal Secretary, Finance Department was appointed to recommend posts required for running Manora M.L.A Hostel. (Chari Committee) The Committee had recommended creation of 543 posts. However, the recommendations of the Committee were not accepted by the Government. The Applicants have placed a copy of Cabinet Note also on record, during the course of oral arguments. These documents are not authenticated and no reliance can be placed on them. We have to strictly go as per the contents of G.R dated 16.9.2005 (Exhibit 'F') which does mention that 'Chari Committee' was appointed and made certain recommendations. It also mentions that the recommendations were not accepted by the Government. No decision can be taken by this Tribunal on mere recommendation of a Committee, that too after more than 11 years. Exhibit 'G' contains recommendations of various M.L.A/M.L.Cs. There is a cut motion dated 12.4.2010, on the budget demands in support of regularization of services of daily wage workers

in Manora M.L.A Hostel. Exhibit 'H' (page 104 of the Paper Book) is a representation from Rashtravadi General Kamgar Sangh dated 9.9.2011 where this issue of 58 employees of the Electrical Wing working in Manora M.L.A Hostel is raised for the first time and demand for amending G.R dated 16.9.2005 is made. It is quite evident that till 2011, the Applicants had fully accepted the G.R dated 16.9.2005 and enjoyed the benefits. It is not clear whether the Applicants are members of this Rashtravadi General Kamgar Sangh. However, from 6.15 of the Original Application, it can be inferred that they are members of that Union. It is already noted that the Applicants had never stated that all of them were not a party to the agreement in ULP no. 347/2000 before the Industrial Court, Mumbai. They have enjoyed the benefit of this agreement and thus constructively admitted validity of this agreement. As per their own admission, till 2011, they had not demanded modification in the G.R dated 16.9.2005.

8. The Respondent no. 1 has issued G.R dated 13.2.2014 bringing a total of (378 + 60) 438 posts on Converted Regular Temporary Establishment as per clause 28 of the Kalelkar Agreement. This clause reads:-

“२८. श्रोजंदारी कामगारांना काळेलकर करारानुसार मिळणा-या सवलती (नियमित आस्थापनेवर नेमणूक मिळण्याबाबत) : जो रोजंदारीवरील कामगार सतत पांचवर्षे त्या आस्थापनेवर सेवा करीत असेल अशा कामगारा ने पांच वर्षे पूर्ण झालेल्या काळानंतर हे पद

धारण केलेले असेल ते पद रूपांतरित आस्थायी अस्थापनेवर रूपांतरित करण्यात येते व अशा रूपांतरित पदावर त्या रोजंदारी कामगारीची नेमणूक करण्यात येते. कपांतरित आस्थापनेवर निर्माण केलेले पद धारणकती व्यक्तीच वैशक्तिक पद असते व त्याने ते कोणत्याही कारणास्तव सोडले तर ते नष्ट होते. रूपा अस्थाहि आस्थापनेवर कामागार नेमला गेला की त्याला मुंबई. मुंबई सेवा नियम लागू होतात”.

There is no doubt that Daily Wages Establishment is recognized under Kalelkar agreement and after a person has worked for five years on that establishment, he is taken on 'Converted Regular Temporary Establishment' (CRTE). After a person is taken on CRTE, he is governed by Mumbai Civil Services Rules (now Maharashtra Civil Services Rules). It is clear that the Applicants were taken on Daily Wages Establishment by G.R dated 16.9.2005, as per compromise in ULP no. 347/2000 in the Industrial Court, Mumbai. Now by G.R dated 13.2.2014, their services are transferred to CRTE from 21.9.2010, i.e. 5 years, after they were taken on Daily Wages Establishment. There cannot be any doubt that the Applicants are bound by compromise in ULP no. 347/2000 and therefore, they are in no position to challenge the validity of G.R dated 16.9.2005. G.R dated 13.2.2014 has been issued strictly as per clause 28 of Kalelkar Agreement and I do not see as to how the Applicant can challenge the same.

9. Learned Counsel for the Applicants has place on record order dated 7.3.2014 in U.L.P no 98/2008

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pending before the Industrial Court at Mumbai. Applicants no 1 to 9 were allowed to withdraw their claim. These nine persons are the Applicants no 9, 24, 25, 26, 27, 28, 29, 30 & 31 in the present Original Application. They have resigned the membership of Maharashtra Rajya Sarvajanik Bandhkam Karmachari Sangh on 6.3.2014. The same Sangh was the complainant in U.L.P no 347/2000. This is a clear proof that those Applicants were party of the compromise in ULP no. 347/2000 which resulted in issuance of G.R dated 16.9.2005. These 9 Applicants had given a legal notice dated 15.3.2014 to the Respondents through their advocate (P. 135 of the Paper Book). It is admitted that Maharashtra Rajya Sarvajanik Bandhakam Karmachari Sangh had approached the Industrial Court, Mumbai in ULP no 98/2008 for implementation of Kalelkar Award. Now that the Respondents have implemented the Kalelkar Award, it is not understood as to how these Applicants can change their demands altogether and claim that they are not bound by Kalelkar Award. Rest of the Applicants numbering 22 had given notice dated 28.2.2014 (p. 126 of the Paper Book). It appears that they were not a party to ULP no.98/2008. However, they had constructively agreed to abide by the Kalelkar Award by agreeing to be governed by G.R dated 16.9.2005, which was issued after a compromise between the Workers Union and the Government. They cannot now turn around and claim that they are not workers and

from 1996 governed by Maharashtra Civil Services Rules. This claim has to be rejected.

10. Learned Counsel for the Applicants relied on the judgment of Hon'ble Supreme Court in the case of **A.R ANTULE Vs. R.S. NAYAK** and another reported in **AIR 1988 SC 1531**. Learned Counsel for the Applicants argued that Hon'ble Supreme Court has held that the judgment of a Court having no proper jurisdiction is a nullity. It is mentioned in para 181 of the judgment which reads:-

“The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction and what the effect of Section 1 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be

determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non iudice, and that its judgments and decree would be nullities.”

Learned Counsel for the Applicants argued that the Applicants are seeking remedy under Maharashtra Civil Services Rules as State Government employees and therefore, this Tribunal has exclusive jurisdiction. Industrial Court has no jurisdiction in the matter and any judgment given by that Court is a nullity in the eyes of law. I am afraid that this contention cannot be accepted. From the perusal of Kalelkar Award, it is clear that workers in P.W.D till they are taken on Converted-Regular Temporary Establishment are in the jurisdiction of Labour / Industrial Courts. Only after such workers are taken on CRTE, Maharashtra Civil Service Rules are applicable to them. Whether this Tribunal can declare a judgment of Industrial Court at nullity? The answer is a categorical 'No'. In the present case, the Applicants have been enjoying the fruits of litigation before the Industrial Court, Mumbai in ULP no. 347/2000 since 2005. This judgment cited by the Applicants is clearly not applicable in the present Original Application.

11. Learned Presenting Officer has relied on the judgment of Hon'ble Supreme Court in UMADEVI (3)

supra. Hon'ble Supreme Court has held in para 43 of the judgment that:-

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding violation of Article 14 in ordering overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court, while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer rights on the appointee.”

12. Two things are important, viz. that the appointment must be as per relevant rules and it should be after a proper competition among qualified persons. In the present case, both these facts are absent. For employment under the Government calling names from Employment Exchange is not enough (it is one of the several modes to invite applications). Hon'ble Supreme Court in many cases has held that it is imperative to issue a public notice, so that all those who are qualified get opportunity to compete. In the present case, it is not

established that all the Applicants were sponsored through Employment Exchange. It is an established fact that no advertisement was issued to fill up these posts. Another important fact is that the Applicants were not appointed against clear and sanctioned posts. In fact, these are no sanctioned posts even now. The Applicants have no case on merit. They cannot be allowed to approach different Courts for the same reliefs ~~for~~ at different times. They had already enjoyed the fruits of decision of Industrial Court, Mumbai. They cannot be now allowed to approach this Tribunal with a request to declare the decision of Industrial Court as nullity. This is rank opportunism and cannot be allowed.

13. The Applicants have not been able to challenge the veracity of G.R dated 13.2.2014, and as a result this Original Application must fail. This Original Application is accordingly dismissed with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 05.08.2016

Dictation taken by : A.K. Nair.