

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**TRANSFER APPLICATION NO. 02 OF 2015
WITH
MISC. APPLICATION NO.355 OF 2015**

DISTRICT :MUMBAI

TRANSFER APPLICATION NO. 02 OF 2015

Meenakshi W/o Ajay Pande,)
Occupatio: Household,)
R/o Chhawani, Aurangabad.)...**Applicant**

VERSUS

1. The State of Maharashtra, (Copy to)
be served on C.P.O., M.A.T.,)
Mumbai))
2. Dean, Medical College,)
Aurangabad.)....**Respondents**

Shri M.G. Deokate, learned Advocate for the Applicant.

Shri A.S. Wable, learned Presenting Officer for the Respondents.

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WITH**MISC. APPLICATION NO.355 OF 2015**

The Secretary, Finance Department,
Mantralaya, Mumbai

)
). **Applicant**
(Org. Respondent)

VERSUS

Smt. Minakshi Ajay Pande,)
R/o. Chhawani, Tq. & Dist. Aurangabad. **Respondents**
(Org. Applicant)

Shri A.S. Wable, learned Presenting Officer for the
Applicant (Org. Respondent)

Shri M.G. Deokate, learned Advocate for the Respondent
(Org. Applicant)

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik (Member) (J)

DATE : 06.08. 2015

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

Heard Shri M.G. Deokate, learned Advocate
for the Applicant and Shri A.S. Wable. learned



Presenting Officer for the Respondents in T.A.No.2 of 2015.

Heard Shri A.S. Wable, learned Presenting Officer for the Applicant (Org. Respondent) and Shri M.G. Deokate, learned Advocate for the Respondent (Org. Applicant) in Misc. Application No.355 of 2015.

2. The Applicant in this T.A. had filed the Writ Petition No.2747 of 1990 before Hon'ble Bombay High Court, Bench at Aurangabad on 19.6.1990. It was transferred to the Maharashtra Administrative Tribunal, Bench at Aurangabad and was renumbered as T.A.No.2407 of 1991. The T.A.No.2407 was dismissed for default as none appeared for the Applicant, by order dated 8.2.2002. The Applicant filed M.A.No.292 of 2014 with M.A.No.121 of 2012 in T.A.No.2407 of 1991. By order of Hon'ble Chairman, Maharashtra Administrative Tribunal dated 23.1.2015 the matter was transferred to the Principal Bench at M.A.T. at Mumbai. It was renumbered as T.A.No.2 of 2015 and the Misc. Applications for restoration of T.A. and for amending the T.A. were allowed. T.A. was amended on 5.5.2015 as per order dated 5.5.2015 in M.A.No.103 of 2015. Learned Counsel for the Applicant argued that the Applicant was appointed as 'Social Worker' for 29 days on 8.6.1982 in a post reserved for VJ/NT category, though the Applicant belonged to Open category. A project for one year

duration was sanctioned by Indian Council of Medical Research. A post of Social Worker was created under the project and from 12.9.1983, the Applicant was appointed for a period of 6 months on provisional basis to that post. After the aforesaid project was over, the Applicant's services was terminated by order dated 9.4.1984 w.e.f. 1.4.1984. She was asked to work in honorary capacity for the project. The Applicant was again appointed as Social Worker from 2.4.1985 to 31.3.1986 in the pay scale of Rs.345-800. By letter dated 20.3.1986, the Applicant was informed that her services were not required from 1.4.1985. However from 2.4.1986 to 31.3.1987, the Applicant was again appointed as Social Worker in the same grade. By order dated 28.7.1987, services of the Applicant were terminated. Indian Council of Medical Research by various letters asked the Respondent No.2 to accomodate the Applicant in some employment in the Medical College after the project sanctioned by them was over. However, the Applicant was not given any employment and she filed the Writ Petition before High Court which is now being heard as the present T.A. Hon'ble High granted interim relief to the Applicant in terms of reinstatement of the Applicant in the post of Social Worker and she has continued in that post till her retirement.

The order of Hon'ble High Court dated 4.4.1991 reads:-

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“ Heard Counsels. Rule- Interim relief in terms of prayer clause (c-1). Leave to amend. Rule returnable on 23.4.1991.”

Relief (C-1)) reads:-

“Pending final hearing of this Writ Petition Respondent No.2 kindly directed to reinstate the petitioner in the post of Social Worker.”

The Applicant continued to work a Social Worker and retired on superannuation on 30.6.2012. She is seeking pension under Rule 30 of Maharashtra Civil Services (Pension) Rules, 1981.

Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant has filed the Writ Petition No.2747 of 1990 on 19.6.1990. The W.P. was transferred to Aurangabad Bench of this Tribunal and renumbered as T.A.No.2407 of 1991. This T.A. came to be dismissed for default by order dated 8.2.2002. The Applicant didnot take any steps for restoration of the T.A. till she filed M.A.No.121 of 2012 in Auragabad Bench. By her own admission, the Applicant was never selected on the post of Social Worker on regular basis. Her appointments were for short duration with numerous breaks. By order dated 28.7.1987, the Applicant was informed that her services stood terminated with effect from 1.8.1987 as the H.R.R.C. centre, where she was appointed on ad-hoc basis under ICMR project was closed with effect from 1.8.1987. The Applicant was ordered to reinstated by order dated 4.4.1991 of Hon'ble High Court. She was, therefore, out of service from

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1.8.1987 to 4.4.1991. Thereafter also she continued in service as per Court's order. Learned P.O. argued that the Applicant was a backdoor entrant and she continued in service only because of interim relief granted to her by Hon'ble High Court. Learnd P.O. argued that the judgements cited by the learned Counsel for the Applicant viz.

(i) Yeshwant Hari Katakhar Vs. Union of India & Others. (1916) 7 SCC 113, and

(ii) Vasant Gangaramsa Chandan Vs. State of Maharashtra & Others (1996) 7 SCC 148, and

(iii) Shivappa Bhujangappa Bembale Vs. State of Maharashtra and another: 2005 (3) Mh.L.J. 709 have no application in the present case.

Learned P.O. cited the judgement of Hon'ble S.C. in the case of Secretary, State of Karnataka Vs. Umadevi 2006-4 JT 420 and in the case of State of West Bengal Vs. Banibrata Ghogh (2009) 3 SCC 250 and others case laws in support of his claim that the Applicant was not entitled to pensionary benefits as her appointment was not as per prescribed procedure.

We find that the Applicant was given appointment as follows:

Sr.No.	Post	Date of Order	Duration

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(1)	Mecial Social Worker	16.3.1982	3.3.1982 to 31.3.1982 (29 days)
(2)	-- do --	16.4.1982	1.4.1982 to 17.4.1982 (17 days)
(3)	Social Worker	8.6.1982	29 days from date of joining, joined immediately 18.6.1982 to 6.7.1983
(4)	--do--	12.9.1983	6 months from 12.9.1983.
(5)	--do--	9.4.1984	Service terminated w.e.f. 1.4.1984. May continue on honorary basis till completion of project, if desired
(6)	--do--	5.6.1985	2.4.1985 to 31.3.1987
(7)	--do--	30.3.1986	Services no longer required w.e.f. 1.4.1986.
(8)	--do--	8.8.1986	2.4.1986 to 31.3.1987
(9)	--do--	28.7.1987	Service terminated w.e.f. 1.8.1987 as project

		discontinued
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From this, it is clear that the appointment of the Applicant was purely temporary and ad-hoc. The Applicant has nowhere claimed that she was appointed as per recruitment rules for the post of 'Social Worker'. The Respondents have stated in their affidavit in reply dated 22.2.1991 that her appointment was not as per recruitment rules. She has also not claimed that she was appointed pursuant to some advertisement, as she fulfilled the conditions for appointment in terms of the same. Even in this ad-hoc service there were breaks from 7.7.1983 to 11.9.1983, and her services were terminated w.e.f. 1.8.1987. She was reinstated in service pursuant to interim relief granted by Hon'ble H.C. on 4.4.1991. Thereafter the Applicant has continued in service. The main ground on which the Applicant was seeking continuity in service was that "By letter dated 15.12.1982. Indian Council of Medical Research informed Respondent No.2 that petitioner should be continued in service even though the project is closed and. therefore, her application was forwarded to Respondent No.2 for consideration." This is stated in 12 of the T.A. Letter is annexed as Annexure 'K'.

4 This letter dated 15.12.1987 is at page 24 of the Paper Book reads as follows:

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" I am also directed to forward herewith an application of Mrs. M.A. Pande, Ex-Social Worker whose services were terminated from above scheme on closure of Scheme for necessary consideration and disposal at your end."

This letter can hardly be called that the Indian Council of Medical Research (ICMR) informed Respondent No.2 that Petitioner should be continued in service. In fact this is complete misreading of the letter of ICMR. The Applicant continued to make repeated representations to ICMR on 12.2.1988, 21.11.1989, 5.7.1989, as per her own admission. She claims that by letter dated 15.8.1989 ICMR informed the Respondent No.2 that it was obligatory on the part of the Aurangabad Medical College to absorb terminated staff of the project, which was completed and closed.

In para 14 of the T.A., it is stated that:-

"Petitioner submits that by letter dated 15th August, 1989, Indian Council of Medical Research, with copy to the Petitioner, informed Respondent No.2 that as per terms and condition of grants given by them for project to the college, it is obligatory on the part of College to absorb the terminated staff under the Scheme."(emphasis supplied)

We think it is highly unlikely that any Central Government Organisation will write a letter on 15th

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August, i.e. on the Independence day. In his affidavit-in-reply dated 22.2.1991 the Respondent No.2 has stated that:

“Dean. Medical College, Aurangabad is not subordinate authority of ICMR in the matter of giving appointment.”

This is a statement of fact. In any case, how can ICMR direct the Dean, Medical College to give continuity of employment to a person, who was employed on the project related work, after the project is over, is not clear. In absence of budget provision for sanctioned posts, a person cannot be given employment.

5. We are fully in agreement with the stand taken by the Respondent No.2 in this regard. The Applicant was never employed on regular basis as per recruitment rules. She was given casual employment and later employed on a project of ICMR, which stood terminated w.e.f. 1.4.1987. There were breaks in service of the Applicants. She was never employment on a permanent and clear vacancy. The appointment of the Applicant was clearly a case of 'Back door entry.' She was reinstated on the orders of the Court. Hon'ble S.C. has held in Umadevi's case (supra) as follows in para 17 that:

“While directing that appointments, temporary or casual, be regularised or made permanent, Courts are swayed by the fact that the concerned person

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has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment as to take out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has been temporarily or casually got employed should be directed to be continued permanently."

In para 18, Hon'ble S.C. has said that:

"18. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature."

In para 20, it is observed that:

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointment) as explained in S.V. Narayanappa

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(supra) R.N. Nanjundappa (supra) and B.N. Nagarajan (supra), and referred to in paragraph 15 above. of duly qualified persons in duly sanction vacant post might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals.”

In the present case, the Applicant has not claimed that she was duly qualified for the post as per recruitment rules and that she was appointed in a sanctioned vacant post. In fact, the qualification for the post of Medical Social Worker as per recruitment rules framed under Article 309 of the constitution Viz. the Medical Social Worker in the Directorate of Medical Education and Research (Recruitment) Rules 1985 is a Masters degree in Social Science, preferably medical and Psychiatries or family and Child Welfare or both. As per her own admission, she is M.A. in Sociology. She is therefore not qualified for the post. In fact, she was continued in service only by orders of the Court. Her appointment was clearly illegal as she did not have necessary qualifications nor was there any sanctioned post in which she could be appointed.

Hon'ble Supreme Court has held in Umadevi's case (supra) that:

“It is also clarified that those decisions which run counter to the principle settled in this decision, or in

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which directions running counter to what we have laid herein, will stand denuded of their status as precedents.


In view of this finding of the Constitutional Bench of the Hon'ble Supreme Court, the judgments cited by the Applicant regarding regularisation of her service cannot be considered.

6. The Applicant is claiming that she is entitled to pension as she has rendered 21 years of service. It is observed that the Applicant was reinstated in service by order of Hon'ble Court dated 4.4.1991. Before that her services were terminated w.e.f. 1.4.1987. There has been no request from Applicant for condonation of breaks in service. In any case break of about 4 years cannot be condoned as per Rules. After 4.4.1991, the service of the Applicant till superannuation on 30.6.2012 was by virtue of Court order and cannot be regularised as observed above. The Applicant claims that she is entitled to Pension as per Rule 30 of M.C.S. (Pension) Rules, 1980. In the affidavit filed on behalf of the Finance Department of the State Government on 13.7.2015, it is Stated that as per Rule 2 of M.C.S. (Pension) Rules, pensionary benefits are available only to persons who were recruited as per recruitment rules. Rule 33 *ibid* is applicable to persons who are covered by Rule 2. Rule 30 is not applicable in the present case. Rule 2 of M.C.S. (Pension) Rules is applicable to "all members of services and

holders of posts whose conditions of service the Government of Maharashtra are competent to prescribe." For the post of Medical Social Worker, Government of Maharashtra is competent to prescribe conditions of service. However, the Applicant was not appointed under prescribed conditions of service. Rule 33 ibid provides that:

"A Government Servant who holds a permanent post substantively or holds a lien or a suspended lien or a certificate of permanency on the date of his retirement, the entire temporary or officiating service rendered under Government followed without interruption by confirmation in the same or another post, shall count in full as service qualifying for pension, except the service rendered against one of the posts mentioned in rule 57."

The Applicant did not hold any substantive post nor held lien or suspended lien on any post. She was never issued certificate of permanency. She does not qualify for pension under these rules. Rule 30 ibid provides that the qualifying service of a Government servant starts from the date he take charge of a post to which he is first appointed either substantively or in officiating or temporary capacity provided that at the time of retirement he shall hold substantial post in Government service or holds a suspended lien or certificate of permanency. The Applicant never held any substantial



post in Government during service or before retirement. She does not fulfil the conditions of this Rule. The conclusion is inevitable that the Applicant does not fulfil the condition under M.C.S. (Pension) Rules to become eligible for pensionary benefits.

7. Having regard to the aforesaid facts and circumstances, the T.A. is dismissed with no order as to costs.

8. M.A.No.355 of 2015 in T.A.No.2 of 2015 is filed by the Secretary, Finance Department for waiver of costs imposed by this Tribunal order dated 7.7.2015. It is stated that copies of orders of this Tribunal dated 18.6.2015, 2.7.2015 and 7.7.2015 were not given the Finance Department and only on 7.7.2015, after the order imposing costs was passed, Finance Department was informed. From the record, we find that the office of C.P.O. informed Finance Department only by letter dated 7.7.2015 about our order imposing costs and our earlier orders were not communicated to the Finance Department. The Office of the Chief Presenting Officer has clearly been amiss in informing Finance Department of our orders dated 18.6.2015 and 2.7.2015. The M.A. is accordingly allowed. The order imposing costs on Finance Department is recalled. If the amount is already deposited, the same may be refunded to the Finance Department. The Registrar will take action as above on

the Application by the Finance Department. M.A. is disposed of accordingly.

Sd/-

(R.B. MALIK)
MEMBER (J)

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 06.08.2015

Place : Mumbai

Dictation taken by : SBA

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