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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10263 OF 2014

Bhairavnath Tulshiram Zanje,
Age : 40 years, Occ : Labour,
R/o Kapurwadi,
Taluka and District Ahmednagar.

...PETITIONER

-VERSUS-

1 Maharashtra State Sports & Youth
Services, Central Building,
Pune-1.
Through Director.

2 Deputy Director,
Sports & Youth Services,
Pune Division, Kolhapur,
Central Administrative Building,
Kasaba, Bawada,
Near Police Headquarter,
Kolhapur-3, Maharashtra.

3 District Sports Officer,
Sports & Youth Services,
Maharashtra State,
Abhishek Apartment,
2nd Floor, Tilak Road,
Ahmednagar.

...RESPONDENTS

...
Advocate for Petitioner : Shri Barde Parag Vijay.

AGP for Respondents: Shri P.G.Borade.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th November, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is aggrieved by the judgment and order dated
22.07.2014 delivered by the Industrial Court, Ahmednagar by which
Complaint (ULP) No.16/2002 filed by the Petitioner has been dismissed.

3 Shri Barde, learned Advocate for the Petitioner, has
strenuously criticized the impugned judgment. He submits that this
complaint was filed on 29.01.2002 under Section 28 r/w Items 5, 6, 9 and
10 of Schedule IV of the MRTU & PULP Act, 1971.

4 The grievance of the Petitioner was that the Sports and Youth
Services Department is an integral part of the Government of Maharashtra
and the services are rendered by the said Department in respect of the
sport activities especially keeping in view the students from schools and
educational institutions. The Department provides grants for sport
activities to such institutions. Various competitions are arranged under the
aegis of the Department.

5 Shri Barde further submits that the Fifth Pay Commission is applicable to the Petitioner and the Respondent/ Department. The Petitioner was qualified upto 11th standard and had qualified Marathi and English typing examinations at the speed of 40 and 30 words per minute, respectively. His name is also registered with the Employment Exchange.

6 He further submits that a Junior Clerk/ Typist was working with Respondent No.3 and he was promoted and later on, transferred. The post of Junior Clerk/ Typist was vacant. The Respondent appointed the Petitioner on the post of Junior Clerk/ Typist and he was assigned the work of clerk typist like typing, inward/outward and other clerical works. He was, however, paid at the rate of daily-wages in each month. He was not paid for the weekly holiday, public holiday or leave.

7 He further submits that the Petitioner had worked continuously with the Respondent. However, after May, 2001 he was not allotted any work and consequentially, was not granted any daily-wage. He had put in five years in employment with the Respondent.

8 He submits that he had led evidence before the Industrial Court and on the basis of the documents, he had prayed for the reliefs set out in the complaint. By the impugned judgment and order dated

22.07.2014, his complaint has been dismissed. Nevertheless, if the post of a Junior Clerk/ Typist is again advertised, the Respondent/ Department was granted liberty to consider the claim of the Petitioner for the said post, even if he is age barred, considering the fact that the Petitioner possesses requisite qualification and experience.

9 Shri Barde submits that the Respondent/ Department has not assailed the judgment of the Industrial Court dated 22.07.2014 which has been impugned in this petition.

10 I have considered the submissions of the learned Advocate for the Petitioner.

11 Certain documents have been brought on record before the Industrial Court. By virtue of the interim order below Exhibit U/2, the Petitioner had worked on daily-wages from 01.07.2001 to 29.07.2001. Considering the documents placed on record, it is revealed that even he had worked continuously from 03.03.1998 to 01.07.2001.

12 The Industrial Court has noted that the appointment orders were issued for specific periods of 29 days. The Petitioner is not in employment from 01.07.2001. It has not come before the Industrial Court

that the post was advertised as a measure of carrying out recruitment in public employment. Naturally, the Petitioner had not applied in response to any such advertisement. He has worked for 05 years. His mode of recruitment is under a cloud considering the fact that the procedure required to be followed while carrying out recruitment in public employment, has not been followed.

13 Considering the observations of the Industrial Court especially in Clause (2) of the operative part of the order, it has been proved that the Petitioner is qualified for being appointed on the post of Junior Clerk and has acquired requisite qualification. These conclusions have not been questioned by the Respondent/ Department.

14 The Apex Court in the case of *Secretary, State of Karnataka v/s Umadevi* reported at **AIR 2006 SC 1806 : 2006(4) SCC 1** has considered similar cases and has distinguished between illegal appointments and irregular appointments. No doubt, the Apex Court has not given a free hand to the Employer to dispense with the services of the Employees merely on the ground that their recruitment was irregular and they have entered employment in an irregular manner.

15 The observations in Paragraph 44 in the case of Umadevi

(supra) read as under:-

“44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V.Narayanappa (supra)* [AIR 1967 SC 1071], *R.N.Nanjundappa (supra)* [AIR 1972 SC 1767], and *B.N.Nagrajan (supra)* [AIR 1979 SC 1676], and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts 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. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

16 Considering the observations of the Apex Court as reproduced above in Umadevi (supra), had the Petitioner completed 10 years in employment, he could have gained the benefit of the view taken by the

Apex Court in paragraph 44. Since he had worked only for 05 years and since the Industrial Court has safeguarded the interest of the Petitioner in clause (2) of the impugned order, I do not find that grave injustice is caused to the Petitioner so as to cause an interference in the impugned judgment.

17 Needless to state, in the event the post of Junior Clerk/ Typist is again advertised, the Petitioner would be entitled to apply for the said position, notwithstanding whether, he is age barred, and the Respondents in the light of the observations of the Industrial Court, are obliged to consider the claim of the Petitioner ahead of other applicants unless there is any specific legal impediment.

18 The Writ Petition is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)