

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

WRIT PETITION NO. 676 OF 2014

Janabai Vikram Bane

.. Petitioner

Versus

The State of Maharashtra and Others

.. Respondents

Shri Prakash G. Gunale, Advocate for the Petitioner.

Shri K. G. Patil, Addl. G. P. for Respondent Nos. 1 and 2.

Shri A. V. Hon h/f Shri V. D. Hon, Advocate for the Respondent
No. 4.

Respondent Nos. 3, 5 and 6 served.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 11TH AUGUST, 2015.

PER COURT :

1. The petitioner claims regularization of service and or giving permanency benefits of the post of Auxilary Nurse Midwife.

2. Mr. Gunale, the learned counsel submits that, petitioner was appointed in December, 2006 as a bonded A. N. M. Earlier to that also petitioner worked from 1994 to 2002. The

learned counsel submits that, for almost 10 years the petitioner is working with the Respondent Nos. 3 and 4 as A. N. M. In such case as a one time measure, regularization can be done. The learned counsel relies on the judgment of the Apex Court in a case of **Secretary, State of Karnataka and Others V/s Umadevi and Others** reported in **A. I. R. 2006 SC 1806**. The learned counsel submits that, even the State has directed the Municipal Council to regularize the services of bonded A. N. Ms., appointed prior to 16.01.2006. The petitioner has almost completed 10 years, the petitioner could be considered on the same lines. However, the respondent vide the impugned communication refused to consider the case of the petitioner.

3. Mr. Hon, the learned counsel for Respondent Nos. 3 and 4 submits that, the petitioner was not appointed by following selection process. The petitioner has not passed the direct Recruitment Examination. Only those temporary A. N. Ms. Who have passed direct Recruitment Examination have been regularized. The petitioner is appointed on ad-hoc basis without undergoing any selection process, as such, could not be considered for regularization.

4. We have considered the submissions canvassed by the

learned counsel for respective parties.

5. The Apex Court in a case of Secretary, State of Karnataka referred supra relied by the petitioner has observed as under -

“ One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S. V. Narayanappa (supra), R. N. Nanjundappa (supra), and B. N. Nagrajan (supra), 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 sub judice, 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.”

6. The petitioner is not selected by following any selection procedure nor the petitioner has passed any direct Recruitment Examination.

7. In light of that, the case of the petitioner can not be considered.

8. It is open for the respondents to consider the case of the petitioner if they choose for regularization.

9. Writ petition is accordingly disposed of. No costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]