

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.316 OF 2015

[Nandkumar s/o Amrut Borkar .vs. The Honorable Registrar (General), The High Court of Judicature
at Bombay, Fort, Mumbai and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.N. Morande, counsel for the petitioner,
Shri Firdos Mirza, counsel for the respondent no.1,
Shri S.A. Dhawas, counsel for the respondent no.4.

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CORAM : SMT. VASANTI A. NAIK AND
N.W. SAMBRE, JJ.

DATED : SEPTEMBER 21, 2015.

Heard.

By this petition, the petitioner seeks a direction to the respondents - Registrar General, High Court of Judicature at Bombay, The Principal District and Sessions Judge, Bhandara and the Principal District and Sessions Judge, Gondia to treat the services of the petitioner as regular service from the date of his initial appointment on 1.10.2002 and grant the continuity of service to the petitioner with effect from the said date.

The petitioner was appointed as a Stenographer (Lower Grade) on 24.9.2002. The said appointment was temporary, purely on ad-hoc basis and subject to the decision in Writ Petition No.1416/1991. It is not in dispute that regular recruitment procedure was not followed before making the appointment of the petitioner. An advertisement was not issued by the respondents inviting applications from eligible candidates desirous of seeking appointment on the post of Stenographer. Some names were, however, called from the employment exchange and the petitioner came to be appointed on 24.9.2002. After working with the respondents for about a year, the petitioner and certain other employees, that were appointed without

following the due procedure, made a mercy petition to the Hon'ble Registrar, High Court at Bombay, seeking the protection of their services. The case of all the employees, that were appointed without following the due procedure, were considered sympathetically and it was conveyed to the petitioner and the other employees that their services are protected. The services of the petitioner came to be regularised with effect from 7.10.2004, by the order of the District Judge, Gondia, dated 25.1.2005.

By this petition, the petitioner seeks a direction to the respondents to grant continuity of service to the petitioner with effect from 1.10.2002 i.e. the date of his initial appointment. According to the petitioner, once the mercy petition of the petitioner is allowed and the services of the petitioner are directed to be regularized, the same ought to have been regularised with effect from 1.10.2002 only. According to the petitioner, since the services of the petitioner and 56 other employees were regularised, by the order dated 7.10.2004, the learned District Judge considered the said date to be the date for regularisation of the services. The petitioner has sought the regularisation of his service with effect from 1.10.2002.

This is a classic case where the petitioner has taken the benefit of the order passed on a mercy petition filed by the petitioner and has sought undue benefit in respect of regularisation of service with effect from 1.10.2002. The petitioner would not have been entitled to the regularisation of his service at all, in the first place, had the respondent no.1 not considered the request of the petitioner and 56 other employees sympathetically in 2004. Admittedly, the petitioner had put in one year of temporary service on the date on which the mercy petition was filed. Admittedly, the procedure prescribed for recruitment was not followed while appointing the petitioner. The entry of the petitioner in service was not in accordance with law, inasmuch as, other eligible candidates, who could have been entitled to apply and compete for the post, were not granted an opportunity to compete with the petitioner. Only a handful of names were called from the employment exchange and the petitioner was appointed as a Stenographer (Lower Grade) on 1.10.2002 only on ad-hoc and

temporary basis. The petitioner did not have any right whatsoever to claim the protection of his services on the basis of his ad-hoc service for a period of less than one year when he filed the mercy petition. After the High Court considered the case of the petitioner sympathetically and the mercy petition was allowed, the petitioner made a belated representation to the respondent no.1 for regularising the services of the petitioner from 1.10.2002. The respondent no.2 had passed the order regularising the services of the petitioner and other employees with effect from 7.10.2004 on 25.1.2005. At the relevant time, the petitioner must have been pleased that his mercy petition is allowed and hence he had no reason to challenge the order of regularisation, which came to him as a favour. The order of the respondent no.2 was never challenged by the petitioner, till date. The petitioner has accepted the order of the respondent no.2, regularising the services of the petitioner with effect from 7.10.2004. The petitioner has sought the regularisation of his service with effect from 1.10.2002, after nearly ten years from the date on which his services were regularised with effect from 7.10.2004. In stead of being content and satisfied with the order dated 25.1.2005, that was passed on a mercy petition, granting regularisation to the services of the petitioner to which the petitioner was not entitled legally, the petitioner has belatedly sought the regularisation of his service with effect from 1.10.2002. This is a case of showing ingratitude to the employer, who had shown mercy to his employee. We do not find any illegality whatsoever in the rejection of the representation made by the petitioner. The unreported judgment of the Hon'ble Supreme Court, dated 19.2.2014 in Civil Appeal No.8322/2009 and relied on by the counsel for the petitioner, is clearly distinguishable on facts and cannot be made applicable to the facts of this case.

In the circumstances of the case, we dismiss the petition with costs of Rs.5,000/-.

JUDGE

JUDGE