

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10929 OF 2016

State of Maharashtra and others

Petitioners

versus

Lalosa Ganpati Sawant and another

Respondents

Mr.V.M.Thorat, Special Counsel, for Petitioners-State, with
Adv.M.V.Thorat.

Mr.K.S.Bapat i/by Mr.A.R.Belge for Respondent nos.1 and 2.

CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.

DATE : 30th September 2016

PC :

1. The Petitioners challenge judgment and order of Maharashtra Administrative Tribunal, Mumbai ('Tribunal') in Original Application No.1086 of 2012, dated 18 March 2014. Learned counsel for Petitioners submits that the Respondents were not appointed on regular basis by following recruitment rules. They were not appointed by Regional Subordinate Services Selection Board. They do not fulfill prescribed criteria for selection. The Tribunal erred in allowing the petition.

2. Learned counsel for Respondents submits that Respondent no.1 was appointed in the year 1988 and Respondent no.2 was appointed in the year 1999 respectively as Generator Operator in Saint Georges Hospital and since then their services have been

continued from time to time. Some times they have been given breaks after 29 days continuous work. It is submitted that continuous working of the Respondents show that work was available in the prescribed post. He submitted that both the Respondents were working in the vacant posts. He submitted that pursuant to Government Resolution dated 8 March 1999 issued by General Administration Department, Government of Maharashtra, the Respondents ought to have been regularized in the services along with 3,761 other similarly situated employees. But unfortunately they were left out.

3. It is submitted that they had filed Writ Petition No.918 of 1999 which came to be withdrawn on 1st August 2006, as the State authorities impressed upon the Respondents that due to the issue being subjudice it was not possible to take any decision. The State did not take any action after withdrawal of above petition.

4. We have perused the record and the order passed by the Tribunal. The Tribunal has observed in the order that under GR dated 8 March 1999 issued by GAD, services of 3,761 employees, who were appointed on ad-hoc/temporary basis without recourse to the Regional Subordinate Services Selection Board, were regularized. The State did not finalise the recruitment rules for appointment to the post of Generator Operator, though a draft was prepared. The Tribunal had referred to Apex Court judgment in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others**¹. After taking into consideration the facts and attending

¹ (2006)4-SCC-1

circumstances, G.R. and stand adopted by the parties, the Tribunal was of the view that petition deserved to be allowed and accordingly the Petitioners were granted relief and accordingly Tribunal allowed Original Application 1086 of 2012 in terms of prayer clause 9(a). Prayer clause 9(a) of Original Application No.1086 of 2012 reads as under :

"9(a) To declare as arbitrary, unjust, illegal and in gross violation of doctrine of equality as guaranteed by the Constitution, the failure/refusal on the part of the respondents to treat their services as regular and further to issue appropriate mandatory directions to the respondents to treat the Applicants' services from the date of their initial appointment as regular for all purposes and with all consequential benefits."

5. The substantive prayer of the Respondents herein before the Tribunal was to issue a mandatory direction to the State to treat their services from the date of their initial appointment as regular for all purposes and with all consequential benefits. Learned counsel for Respondents, on instructions of the Respondents who are present in the Court, submits that the Respondents would be restricting their claim to *"continuity of service for the purposes of computation of pension and terminal benefits on the basis of fixation of regular pay to the post from the date of order of Tribunal"*. We clarify that the Respondents would be entitled, under the order of Tribunal, for continuity of service for the purposes of computation of pension and terminal benefits. Their regular pay shall be fixed from the date of order passed by Tribunal, in accordance with policy of State published in GR dated 8 March 1999.

6. We are of the view that no interference is warranted in the impugned order passed by the Tribunal. With the above clarification, the petition is disposed of.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

MST