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

WRIT PETITION No.37 OF 2015

Samadhan Kashiram Burkul

-Vrs.-

State of Maharashtra, through its Secretary, Technical Education Department,
 Mantralaya, Mumbai and 4 others.

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

Court's or Judge's orders.

Mr. A.A. Naik, counsel for petitioner.

Mr. C.A. Lokhande, AGP for respondent nos.1 to 4.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : 17th March, 2016

Heard finally.

On 7.1.2015, this court while issuing notice in the
 matter has passed following order -

“Issue notice to the respondents,
 returnable on 4.2.2015.

Assistant Government Pleader Shri
 H.D. Dubey waives notice on behalf of the
 respondents – State.

The petitioner is stated to be in
 service since more than 20 years. It is stated
 that he is in service today also. Therefore, no
 coercive steps be taken, based upon the
 impugned order, till next date.

Steno copy of this order is
 granted.”

2. On 5th February, 2015 interim order was continued.
 Thereafter on 11.1.2016, this Court has passed following order-

“Heard the learned Counsel for the parties some time.

The learned Counsel for the petitioner invited our attention to the Government Resolution dated 19.03.1999 which deals with the regularization of 1061 temporary employees. The learned counsel for the petitioner also invited our attention to page no. 37 of the compilation which shows that the name of the present petitioner is at 758 out of that 1061 employees.

The learned APP could not point out whether the department has considered the said aspect or not. Hence, it will be necessary on the part of the respondent to file necessary affidavit to show that after the termination of the petitioner from 26.08.1997 and his appointment on 18.08.1997 subsequently this aspect was considered or not.

Time of two weeks is granted to the respondents to file necessary affidavit.”

3. The respondents have accordingly filed an affidavit of one Purushottam s/o Tulsiramji Deotale, Joint Director, Vocational Education and Training, Regional Office, Amravati on 9.2.2016. He has pointed out that there was no appointment on 18.8.1997. As per that affidavit, as petitioner had completed three months 9 days only after his appointment on 17.12.1998 and joining date 22.12.1998 till cut off date of 1.4.1999, the petitioner could not be extended benefit of regularization.

4. The basic resolution for regularization is dated 19.3.1999 and it envisages that the employees who have completed continuous service of one year as on 31.12.1997

with good work are to be regularised. The number of such employees as on 31.12.1996 was 1061. In preamble State Government have taken note of fact that recruitment through prescribed procedure through regional selection boards was taking time and hence temporary recruitments were being made. Those temporary recruitment were being continued till availability of such regularly selected candidates. This fact is not in dispute.

5. Petitioner before this court accordingly joined employment on 25.10.1993 and on the strength of various orders issued to him continued to work till 26.8.1997. Thus, he was in service on 31.12.1996. It is the date on which total number of employees like him was ascertained by State. He is one of those 1061 employees as envisaged in Govt. Resolution dated 19.3.1999 and he had also put in service much more than one year as on that date.

6. The certificate dated 27.5.2008 issued to petitioner by respondent no. 4 shows his continuous service for two months from 22.12.1998 to 20.2.1999. For ready reference dates given therein with period are reproduced below.

From	To	Period.
22.12.1998	20.02.1999	2 months.
24.2.1999	23.04.1999	2 months.
03.05.1999	02.07.1999	2 months.
06.07.1999	03.08.1999	29 days.
05.08.1999	03.09.1999	29 day.
08.09.1999	06.10.1999	29 days.
11.10.1999	08.11.1999	29 days.
19.11.1999	17.12.1999	29 days.
21.12.1999	18.01.2000	29 days.
21.1.2000	18.02.2000	29 days.

22.2.2000	21.03.2000	29 days.
24.3.2000	04.04.2000	12 days.

7. Thus, between 22.12.1998 to 21.12.1999 petitioner got about 7 appointment orders; three were for period of 2 months while remaining four were for duration of about 29 days. The certificate in its last item mentions that from 2.1.2001 till date i.e. till 27.5.2008 because of Court's order he was being continued for 29 days each after giving him technical break of two days.

8. This is the situation which is also envisaged in Govt. Resolution dated 19.3.1999. This certificate does not look into service put in by petitioner before 22.12.1998 or between September 1993 to 21.12.1998.

9 In the backdrop of orders passed by this court and reproduced supra in affidavit filed on 9.2.2016 respondent no.4 has in paragraph 6 & 7 stated thus -

“6. Thereafter the Petitioner has given appointment order on 17.12.1998 i.e. after gap of more than one year and he joined on 22.12.1998 and thereafter he was continued . As the petitioner was working on a temporary basis when Government Resolution dated 19.3.1999, Corrigendum dt. 25.03.1999 and 8.3.1999 came to be issued therefore his name was included in the list of temporary employees.

7. That in both the Government Resolution cut-off date is given as 1.4.1999 on that date concerned temporary employee must have completed one year service and present Petition has completed 3 months 9 days from the date of his appointment order i.e.

17.12.1998 joining date 22.12.1998 and therefore benefit of aforesaid Government Resolution cannot be extended to the present Petitioner.”

10. This affidavit, therefore, ignores the facts that petitioner was in continuous service with technical break, in any case, before 26.8.1997. The Corrigendum dated 19.3.1999, 25.3.1999 and 8.3.1999 bring forward the cut off date to 1.4.1999. It is observed that as on that date employees must have put in one year of service. It is further stated that because of his appointment on 17.12.1998 and joining on 22.12.1998 petitioner had put in only 3 months and 9 days of service as on 1.4.1999.

11. Adhoc appointments by respondents could not have been controlled by petitioner. He had worked from 1993 continuously and even according to respondents, upto August, 1997. Respondents points out that he was not in employment on 31.12.1997. In present facts, when the petitioner is continuing since 1993 and has worked as and when appointment orders were given to him, it cannot be said that when break has been given to him and he is not responsible for that break, the benefit of welfare measure of regularization can be denied to him.

12. State has determined number of temporary employees as on 31.12.1996 and petitioner is obviously included in it. He was discontinued as duly selected candidate joined on 26.8.1997. On 18.8.1998 State again appointed employees like petitioner and petitioner as disclosed by

respondent nos. 4 & 5 in their affidavit dated 22.6.2015 in para 5. The break in his service was an involuntary break. Keeping in mind the welfare nature of arrangement and spirit behind it, its benefit cannot be declined to petitioner.

13. In this situation, we direct respondents to regularize petitioner treating him as if he has completed one year of service on 1.4.1999 and he be given the consequential benefits.

14. If his salary is to be revised or fixed, notional increments shall be released for the period from 1.4.1999 or then in terms of government policy till 1.1.2016 and his current salary shall accordingly be arrived at. He shall be paid salary but shall not be entitled to any arrears. However, service put in by him shall be treated as continuous for all other purposes as envisaged in government policy.

15. Writ petition is thus partly allowed and disposed of. No costs.

JUDGE

JUDGE

Hirekhan