

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

WRIT PETITION NO. 8671 OF 2016

Dr. Uma W/o Revansiddh Andhalkar.
Age : 54 Years, Occu. : Govt. Service,
R/o Laxmi Colony, Ram Nagar,
Osmanabad, Tq. & Dist. Osmanabad. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Medical Education & Drugs
Department, Mantralaya-Mumbai – 32.
2. Director of Ayush,
4th Floor, St. George's Hospitals
Compus, D, Mello Road, Fort,
Worali, Mumbai-400 001.
3. The Dean,
Government Ayurveda Hospital,
Osmanabad. .. Respondents

Shri B. L. Sagar Killarikar, Advocate h/f Shri Ajay Shinde,
Advocate for the Petitioner.
Mrs. M. A. Deshpande, Addl.G.P. for Respondent Nos. 1 and 3.
The Respondent No. 2 is served.

**CORAM : S. V. GANGAPURWALA AND
S. M. GAVHANE, JJ.**

Closed for Judgment on : 12.10.2018

Judgment pronounced on : 02.11.2018

JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner assails the judgment and order dated 01st July, 2016 passed by the Maharashtra Administrative Tribunal, Aurangabad thereby dismissing the original application and negating the claim of the petitioner for regularization of service and to accord permanency.

3. Mr. B. L. Sagar Killarikar, the learned advocate for the petitioner submits that, the petitioner as on date has completed more than 27 years and 09 months of service. During the period of these 27 years, the Government has neither finalized the rules, nor any process of recruitment through Maharashtra Public Service Commission (for short "M.P.S.C.") was undertaken. The learned counsel submits that, since the year 2002 no orders protecting the services of the petitioner are in force. The learned counsel submits that, since January 1990 till this date, there is no order of any Court or Tribunal prohibiting the respondents/State from framing final rules of recruitment as well as to fill up the post held by the petitioner through M. P. S. C. By Government Resolution dated 08.03.1999, the General Administration Department of Government of Maharashtra permitted all the departments of Government of Maharashtra to

regularize the services of employees like the petitioner. However, under Government Resolution dated 18.08.2000 only 54 employees from Class III and Class IV are regularized. The petitioner being from Group B Officer has not been considered for the regularization.

4. The learned advocate further submits that, by inter official communication dated 02.04.2013, the respondent No. 2/Director of Ayush communicated to the office of the respondent No. 1 to take steps to fill up the posts by applying the rules meant for similarly situated Group – B Medical Officers. The Government Ayurvedic Hospital and Ayurvedic College, Osmanabad are interconnected and interdependent and co-jointly considered for affiliation by Bhartiya Ayurvednyan Parishad. One of the Assistant Professor from Government Ayurvedic College, Osmanabad filed Writ Petition No. 8118 of 2015 for regularization of services. This Court allowed the writ petition under judgment and order dated 25.02.2016. The learned counsel submits that, under the Government Resolution dated 22.10.2016, the respondent No. 1 regularized services of 192 employees from various categories and places. While taking decision dated 22.10.2016, the Ayurvedic Colleges and Hospitals have been considered as a unit.

5. The learned counsel further submits that, the list of female

Medical Officers annexed with the Government Resolution whose services have been regularized includes the name of Dr. Rajkumar Bhimashankar Sagare, who is working at Rural Hospital Vairag, Dist. Solapur Further Clause (iii) of Schedule – B of the Government Resolution dated 22.10.2016 endorses that, all the posts/services regularized by the said Government resolution dated 22.10.2016 are from Group -B category. The learned counsel submits that, this is a case of clear discrimination. The learned counsel relies on the judgment of the Apex Court in a case of Sheo Narain Nagar and others Vs. State of Uttar Pradesh and others reported in **AIR 2018 SC 233**. The learned counsel also relies on the judgment of the Apex Court in a case of State of Karnataka Vs. M. L. Kesari and others reported in **(2010) 9 SCC 247**. The learned counsel also relies on following judgments of the Apex Court and this Court.

- I. Union of India and others Vs. N. Hargopal and others reported in AIR 1987 SC 1227.**
- II. Secretary, State of Karnataka and others Vs. Uma Devi reported in (2006) 4 SCC 01.**
- III. Nihal Singh and others Vs. State of Punjab and others reported in AIR 2013 SC 3547.**
- IV. Tamil Nadu Terminated Full Time Temporary LIC Employees Vs. LIC reported in 2015 AIR SCW 1906.**
- V. State of Jammu Kashmir and others Vs. District Bar**

Association Bandipora reported in (2017) 3 SCC 410.

VI. Sachin Ambadas Dawale Vs. State of Maharashtra reported in 2014 (2) Mh. L. J. 36.

VII. Varsha Ramesh Chavan Vs. Union of India reported in 2017 (6) All M. R. 309

VIII. Judgment dated 25.02.2016 Mayur Deshmukh Vs. State of Maharashtra in Writ Petition No. 8118 of 2015.

6. According to the learned counsel, respondent/State ought to be a model employer and cannot be permitted to avail differential criteria for regularization of services of similarly situated persons. The respondent Nos. 1 and 2 were party to the Writ Petition No. 8118 of 2015. The Special Leave Petition against the judgment has been dismissed. It has attained finality. The respondents cannot be permitted to take some other view than the principles adopted and applied by this Court for regularization of service in Writ Petition No. 8118 of 2015. Such a practice has been deprecated by the Apex Court in a case of Sheo Narain Nagar and others Vs. State of Uttar Pradesh and others (supra).

7. Mrs. Deshpande, the learned Additional Government Pleader for respondent Nos. 1 and 3 submits that, the recruitment rules with respect to Medical Officer Group – B have

not been finalized as yet and, therefore, the post of Medical Officer working at Government Ayurvedic Hospital, Osmanabad has not been filled in. At present it is a single isolated post under the Directorate of AYUSH, Maharashtra State and under the overall administrative control of Medical Education and Drugs Department, Mumbai. The petitioner's proposal for regularization was submitted to the Government, but the Government has turned down said proposal. Since the petitioner is an employee under Directorate of AYUSH, under Medical Education and Drugs Department, the G R. dated 23.11.2015 for regularizing 15 Medical Officers of that department cannot be made applicable to the petitioner, as both Public Health and Medical Education and Drugs Department are different departments.

8. The learned Addl. G. P. further submits that, the petitioner is not appointed by following due selection process. The petitioner was appointed by conducting interview by the Government Appointed Committee for a period of three months only or till the MPSC selected candidate is available. The petitioner was given ad-hoc and temporary appointment from time to time and break in services was also given. The prayer of the petitioner for regularization has been denied by the Tribunal in the original application filed by the petitioner bearing T. A. No. 2523 of 1991. The petitioner could have applied for other

post, such as Resident Medical Officer. The time bound promotion is not applicable to the petitioner, because the petitioner was not regularly appointed. The G. R. dated 08.03.1999 about regularization of irregular appointment is also a policy decision and it is one time measure. The notification regarding medical officers of Public Health Department has no relevancy with the present petitioner and has no correlation with the posts of Medical Officer at Government Ayurvedic Hospitals. The AYUSH Department is related to Indian System of Medicine and Homeopathy, which is altogether different. The petitioner has not been regularized. The learned Additional Government Pleader relies on the judgment of the Apex Court in a case of **State of Jammu Kashmir and others Vs. District Bar Association Bandipora** reported in (2017) 3 SCC 410.

9. The learned Addl. G. P. further submits that, as prayers for regularization were rejected by the Tribunal in T. A. No. 2523 of 1991 under order dated 28.02.2002, therefore, same prayers of the petitioner in a subsequent proceeding are not maintainable. The post of the petitioner is still temporary post. Therefore, there cannot be any order of regularization of temporary post. The reliance placed by the petitioner on the case of **Sachin Ambadas Dawale Vs. State of Maharashtra** (supra) is misplaced and not applicable to the case in hand on the ground that, the posts which were directed to be regularized were

permanently sanctioned posts on which incumbents were appointed on the temporary basis, but in the present case the post itself is sanctioned temporary. The learned Addl. G. P. relies on the following judgments of the Apex Court.

- I. State of Karnataka Vs. Shri G. V. Dhandrashekar in Civil Appeal No. 1178 of 2009.**
- II. Satya Prakash Vs. State of Bihar and others reported in 2010 DGLS (SC 178).**

10. We have considered the submissions canvassed by the learned counsel for respective parties.

11. The petitioner possesses B.A.M.S. qualification. Two posts of Medical Officer Class II in the respondent No. 3 hospital at Osmanabad were vacant. One was for reserved category and the other post was for open. The petitioner had registered her name with the Employment Exchange Office. The petitioner received call letter from the Director of AYUSH, Worali for remaining present for interview. The selection committee consisted of Director of Ayurveda, Maharashtra State, Mumbai, Assistant Director of Ayurveda, Maharashtra State, Nagpur, Assistant Director of Ayurveda, Maharashtra State, Pune, Dean, Government College of Ayurveda and Hospital, Osmanabad and Dean, College of Ayurveda and Hospital, Nanded. The petitioner

came to be selected by the selection committee for the post of Medical Officer, Class – II in the pay scale of Rs. 2000-3500/-. The appointment of the petitioner was for three months. The petitioner was given technical break and she continued from time to time. On or about 26th February, 1991, the petitioner was issued relieving letter and directed to hand over the charge. The petitioner filed writ petition before this Court. This Court protected services of the petitioner under order dated 15th March, 1991 in Writ Petition No. 943 of 1991. The writ petition was transferred to the Maharashtra Administrative Tribunal, Aurangabad bearing Transfer Application No. 2523 of 1991. On or about 28th February, 2002, the Tribunal disposed of the transfer application with a direction to the respondents not to replace the petitioner with any junior or fresh ad-hoc appointee except the candidate selected through M.P.S.C.

12. It appears that, the respondents did not fill in the post held by the petitioner by a candidate selected through M.P.S.C. It also appears that, after the order is passed by the Tribunal on 28.02.2002, the M.P.S.C. never conducted selection process. Even after the order is passed by the Tribunal on 28.02.2002 till today the rules are not finalized by the State.

13. The post on which the petitioner is working is a sanctioned post. According to respondents, the post is sanctioned every year

temporarily. The post is being sanctioned temporarily for all these fifteen to twenty years.

14. The petitioner has relied on some orders issued by the State Government regularizing services of the employees with the Department of Health.

15. The Apex Court in a case of State of Jammu Kashmir and others Vs. District Bar Association Bandipora (supra) has observed that, the scheme of regularization in order to be held to be legal and valid, must be one which is aimed at validating certain irregular appointments, which may have been made in genuine and legitimate administrative exigencies and that temporary or ad hoc employee cannot seek right of regularization.

16. In a case of Sheo Narain Nagar and others Vs. State of Uttar Pradesh and others (supra) the Apex Court has observed that, the judgment of the Apex Court in a case of Secretary, State of Karnataka Vs. Umadevi reported in (2006) 4 SCC 1 is being used as a tool for not regularizing services of incumbents. It is further observed that, “we have to strike a balance to really implement the ideology of *Uma Devi* (supra). The employment cannot be on exploitative terms.” The Apex Court in a case of Secretary, State of Karnataka Vs.

Umadevi (supra) in para No. 53 has observed thus :

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore v. S. V. Narayanappa*, (1967) 1 SCR 128, *R. N. Nanjundappa v. T. Thimmiah*, (1972) 1 SCC 409, and *B. N. Nagarajan v. State of Karnataka*, (1979) 4 SCC 507, 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 Government 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.”

17. The petitioner herein is appointed prior to 27 years. The post on which the petitioner is appointed, is sanctioned temporarily every year. The petitioner is not protected by any prohibitory orders of the Court at least since the year 2002. The Maharashtra Administrative Tribunal, Aurangabad in the original application filed by the petitioner in the year 2002 had passed an order directing respondents not to replace the

petitioner by other ad-hoc employee or till the M.P.S.C. selected candidate is appointed. It is admitted by respondents that, no selection process through M.P.S.C. was undertaken for all these years. The reason given by respondents is that, the rules are not yet framed. The petitioner is working for these 27 years with the respondents as Medical Officer in the Ayurvedic Medical College, Osmanabad under the Medical Education and Drugs Department.

18. According to respondents, the petitioner is not entitled to the benefit of the Government Resolution dated 02.02.2009 and 23.11.2015 regularizing services of ad-hoc employees on the ground that same was by Public Health Department and the petitioner is working under the Director of Ayush viz the Medical Education and Drugs Department. However, under the Government Resolution dated 22nd October, 2016, issued by the Medical Education and Drugs Department, 05 women Medical Officers in Government Medical College and Hospital have been regularized along with 159 Assistant Professors of Medical College and Hospital, 24 Assistant Professors in Ayurvedic College and Hospital, 4 Junior Assistant Professors Blood Bank department, total 192 temporarily appointed are regularized. They are working under the Medical Education and Drugs Department. The petitioner is also working under the Medical Education and Drugs Department. The petitioner is working since 27 years.

19. It is respondents who have not undertaken selection process through M.P.S.C. We cannot consider the case of the petitioner for regularization prior to 2002 as in the year 2002 the original application filed by the petitioner was disposed of, wherein it was observed that, the petitioner cannot be regularized in service. However, she should not be replaced by any adh-hoc candidate or till M.P.S.C. selected candidate is appointed. Though the petitioner had not prayed for regularization in the said original application, the said order is not assailed. However, after the order is passed in the original application filed by the petitioner, the respondents have not taken any further steps for appointing regularly selected candidate through M.P.S.C. The petitioner was interviewed and selected by the selection committee consisting of (1) Director of Ayurveda, Maharashtra State, Mumbai, (2) Assistant Director of Ayurveda, Maharashtra State, Nagpur, (3) Assistant Director of Ayurveda, Maharashtra State, Pune, (4) Dean, Government College of Ayurveda and Hospital, Osmanabad and (5) Dean, College of Ayurveda and Hospital, Nanded. The petitioner is appointed as Medical Officer Group – B in the pay scale of Rs. 2000 – 3500/-. The petitioner possesses the necessary qualification for the post. The post is sanctioned every year, though temporarily as the rules are not framed. The work load is available. It would be exploitation on the part of the State to keep the petitioner temporary for 27 years and the other lady

Medical Officers under the Medical Education and Drugs Department are regularized under the Government Resolution dated 22nd October, 2016. The petitioner cannot be discriminated. The petitioner deserves the same treatment. The petitioner appears to be similarly situated as the Medical Officers regularized under Government Resolution dated 22nd October, 2016. The petitioner is also working under the same department. The petitioner was appointed on vacant post meant for open category candidate.

20. In the light of the above, we direct the respondents to regularize the services of the petitioner from 22nd October, 2016 viz the date on which other similarly situated Medical Officers and Assistant Professors in Group – B category working under the Medical Education and Drugs Department have been regularized. The petitioner shall be accorded benefit of regular employment with effect from 22nd October, 2016. The petitioner shall be entitled for all consequential benefits pursuant to the present order.

21. Rule accordingly is made absolute in above terms. No costs.

Sd/-

[S. M. GAVHANE, J.]

bsb/Nov. 18

Sd/-

[S. V. GANGAPURWALA, J.]