

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7904 OF 2017
WITH
CIVIL APPLICATION NO. 344 OF 2018
IN
WRIT PETITION NO. 7904 OF 2017**

Shri Rajesh A. Bharte & Ors.

...Petitioners

Versus

Union of India & Anr.

...Respondents

Mr. Sandeep Marne for Petitioners

Mr. T. J. Pandian for Respondents.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 26th FEBRUARY 2018

P.C.

1] Heard Mr. Sandeep Marne for the petitioners and Mr.

T.J. Pandian for the respondents.

2] Rule. By consent and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] The petitioners challenge the impugned judgment and order dated 24th June 2014 made by the Central Administrative Tribunal (MAT) in Original Application No. 207 of 2014 instituted by the petitioners seeking for

regularization of their services with the respondent no. 2.

4] The CAT, by the impugned judgment and order declined the relief of regularization, but directed the respondents to consider the case of the petitioners, for regular appointment by waiving the age restriction and further, giving weightage for the service which they have rendered on contractual basis as Health Inspector, Pharmacists, Staff Nurse, Para Medical etc. The petitioners are basically aggrieved by the denial of the relief of regularization. The two petitioners i.e. Rajesh Bharte and Tulsiram Mathankar (petitioner nos. 1 and 12 in the writ petition) have taken out civil application no. 344 of 2018 seeking restraint on the termination of their services as Contract Health Inspectors, pending disposal of this petition. Mr. Marne, the learned counsel for the petitioners submit that at least these two petitioners have completed more than 10 years of service on contract basis.

5] Mr. Marne submits that the petitioners were appointed in pursuance of advertisement and prescribed selection procedures. He submits that there was nothing illegal or

even irregular in the appointments of the petitioners so as to style the same as back door entries. He submits that even if it is assumed that there was irregularity in the appointments of the petitioners, taking into consideration the length of service, the petitioners, are entitled to the benefit of regularization as a one time measure in terms mandated by the Hon'ble Supreme Court in paragraph 53 of **Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.**¹ Mr. Marne submits that this Court, in **Sachin Ambadas Dawale & Ors. vs. The State of Maharashtra & Anr.**² has held that long continuance of employees on contract basis constitutes exploitation and has directed the relief of regularization. Mr. Marne submits that since all these aspects have not been considered by the CAT in their proper perspective, the impugned judgment and order, warrants interference. Mr. Marne submits that pending the disposal of the petition, termination notices served to the two applicants - petitioners, who have already completed contractual service for a period of almost 10 years, deserves to be stayed.

1 2006 (4) SCC 1

2 2014 (2) Mh.L.J. 36

6] Mr. Pandian, the learned counsel for the respondents submits that the appointments of the petitioners were on purely contractual basis. The petitioners have in fact signed declarations that in pursuance of such appointments, they will not claim any benefit of regularization. Mr. Pandian submits that the direction in paragraph 53 of *Umadevi* (supra) is a direction made under Article 142 of the Constitution of India and in any case, the same, can never apply to contractual appointments made even after the judgment of the Supreme Court in *Umadevi* (supra). Mr. Pandian points out that except two petitioners, the others, are yet to complete the period of 10 years. He points out that most of the petitioners have in fact accepted the impugned judgment and order made by the CAT and even participated in the regular selection process. He points out that even otherwise, mere continuance in service on contractual basis for some length of time does not entitle such employees to seek regularization as a matter of right, in the absence of any policy or statute granting such benefit. He relies on ***Surinder Prasad Tiwari vs. U. P. Rajya Krishi Utpadan Mandi Parishad & Ors.***³ and

3 2006 SCC (L & S) 1745

Harminder Kaur & Ors. vs. Union of India & Ors.⁴ in support of this proposition. He submits that the CAT has granted age relaxation as well as opportunity to compete in the regular selection process, which, several of the petitioners have already availed. Taking all these aspects into consideration, Mr. Pandian submits, that the impugned judgment and order made by the CAT warrants no interference and this petition may therefore be dismissed.

7] In the facts of the present case, there is no dispute that all the petitioners came to be appointed on purely contractual basis. The advertisements in pursuance to which they came to be appointed, had also stated that the appointments were on purely contractual basis. The terms and conditions of the contract had also made it clear that the appointment was to be on purely contractual basis with no claim to regularization. The petitioners also signed declarations acknowledging this aspect. No doubt, even if all these aspects are to be overlooked on the basis of the inequality of bargaining power between the employees and the employer, still, the fact remains that the appointments of the petitioners were neither regular nor after due

4 (2009) 13 SCC 90

compliance with the regular recruitment process. Even the advertisement, in pursuance to which the petitioners came to be appointed on contractual basis, had merely offered contractual appointment for one year. Such advertisements must therefore, be presumed to have kept away several qualified applicants who were interested in regular employment or became eligible for appointment after one year. To now grant such petitioners the benefit of regularization, will amount to bypassing the constitutional mandate of Articles 14 and 16 as interpreted by the Hon'ble Supreme Court in the case of *Umadevi* (supra).

8] Since, Mr. Marne has laid great emphasis on paragraph 53 of *Umadevi* (supra), the same is extracted for convenience of reference:-

*"53. 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. Nagarajan** (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 year or more but without 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 instrumentalist should take steps to regularize as a one time measure the service 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 recruitment are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wages 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 subjected, 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.**"*

[Emphasis supplied]

9] Apart from the issue as to whether the direction in paragraph 53 is an exercise under Article 142 of the Constitution of India, it is necessary to note that the Hon'ble Supreme Court in very same paragraph has clarified that

there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme. The one time measure directed by the Hon'ble Supreme court was to apply to employees who have continued to work for 10 years or more without the intervention of the orders of the Courts or Tribunals, at the time when the judgment in *Umadevi* (supra) was delivered on 10th April 2006.

10] In the present case, admittedly, the petitioners came to be appointed on contractual basis in the year 2007 and thereafter. The material on record suggests that at least some of the petitioners, continued on contractual basis on account of protection granted by the Tribunal to restrain the respondents from replacing one contractual appointee by another contractual employee. In such circumstances, the CAT, cannot be faulted for denying the relief of regularization as a one time measure to the petitioners, most of whom, are even yet to complete 10 years of service on contractual basis.

11] The facts and circumstances in *Sachin Dawale* (supra)

offer no parallel whatsoever to the facts and circumstances of the present case. That was a case where the initial appointments of the petitioners were in pursuance of the policy of the Government of Maharashtra incorporated in its resolution dated 25th July 2002. On facts, this court also found that the petitioners were appointed after the posts were advertised and through a selection process by a Committee of Experts duly constituted under the Government Resolution. Taking into consideration these peculiar circumstances, this Court, distinguished *Umadevi* (supra). The position in the present case is quite different, in the sense, the petitioners were appointed on purely contractual basis for a limited tenure of one year in the first instance, which tenure, was renewed from time to time, again, only on contractual basis.

12] In *Surinder Tiwari* (supra) the Supreme Court, after taking into consideration *Umadevi* (supra), has held that in view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it

would be improper for the courts to give directions for regularization of services of the person who is working either as daily-wager, *ad hoc* employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In the constitutional scheme, there is no room for back door entry in the matter of public employment. The Supreme Court, has further held that where contractual employee was appointed *de hors* the constitutional scheme of public employment, but continues in service for 14 years, he was not entitled to any right to be absorbed or made permanent in service on the basis of long continuance in service.

13] In *Harminder Kaur* (supra), the Hon'ble Supreme Court, again, after relying upon *Umadevi* (supra) has held that long service by itself may not be a ground for directing regularization. Further, regularization, as is well known, is not a mode of appointment. When appointments to public office are required to be made, the provisions of Articles 14 and 16 of the Constitution of India are required to be scrupulously followed.

14] In the present case, from the averments in civil application no. 344 of 2018, it is clear that excepting the two applicants - petitioners, the rest have not even completed 10 years of service on contractual basis. Besides it is clear that several of the petitioners have participated in the regular selection process, perhaps, by availing the benefit of age relaxation granted by the CAT in the impugned judgment and order. The termination notice issued to the two applicants - petitioners is in order to appoint regular appointees who have been selected in the regular selection process. This is not a case of substitution of one contractual employee by another.

15] Therefore, taking into consideration all such facts and circumstances as also the law laid down by the Hon'ble Supreme Court, we are unable to fault the view taken by the CAT in making the impugned judgment and order. This petition as also the civil application therein is therefore dismissed. Rule is discharged. There shall however be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA