

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 687 OF 2018

The Chief Secretary & ors. ...Petitioners

Vs.

Ms. Sneha Subodh Pradhan ...Respondent

WITH
WRIT PETITION NO. 688 OF 2018

The Chief Secretary & ors. ...Petitioners

Vs.

Ms. Medha Vasant Shringarpure ...Respondent

WITH
WRIT PETITION NO. 689 OF 2018

The Chief Secretary & ors. ...Petitioners

Vs.

Ms. Vandana Nagesh Chaudhari ...Respondent

WITH
WRIT PETITION NO. 690 OF 2018

The Chief Secretary & ors. ...Petitioners

Vs.

Mr. Dayanand Baburao Navgire ...Respondent

.....
Mr. Dinesh Khaire, Spl. P.P. along with Mr. O.M. Kulkarni, AAGP
for the State / Petitioners.

Mr. Vikram V. Pai, Advocate for the respondent No.1.

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**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 23rd FEBRUARY, 2018.

ORDER (PER M.S.KARNIK, J.) :-

Rule. Rule made returnable forthwith by consent.

2. The petitioners – State of Maharashtra by filing this petition under Article 226 of the Constitution of India challenges the order dated 17th January, 2017 passed by the Maharashtra Administrative Tribunal, Mumbai Bench, in O.A. No.483 of 2015 to O.A.No. 486 of 2015.

3. The respondents filed O.As. before the Tribunal for regularisation of their services. The respondents are working as clerks since long. The respondent in O.A.No. 483 is working since 23rd November, 1984. As on the date of the filing of the

O.A. she had put in 31 years of service. It is not in dispute that all the respondents have put in more than 30 years of service. The respondents approached the Tribunal by an earlier round of litigation by filing O.As. being O.A.No. 315 of 2012 and others. The Tribunal was pleased to issue directions to the petitioners that in so far as the respondents are concerned, the petitioners have deliberately or otherwise not properly implemented the directions issued in the case of **Secretary, State of Karnataka and ors. Vs. Umadevi & ors. reported in (2006) 4 SCC 1**. The Tribunal referring to the case of **Umadevi (supra)** and the decision of the Apex Court in the case of **State of Karnataka & ors. Vs. M.L. Kesari & ors. reported in (2010) 9 SCC 247** was pleased to direct the petitioners to consider the case of the respondents for regularization in the post of clerk.

4. By an order dated 2/12/2014 passed by the Collector, Bombay Suburb District, which order is impugned in the O.As., the Collector proceeded to hold that it is not possible to regularise the services of the respondents. It is, however,

observed that the respondents possess the requisite qualifications essential for the said post and that appointment of the respondents are against sanctioned posts. However, as the said posts are within the purview of the Maharashtra Public Service Commission ('MPSC' for short), the respondents' initial appointment itself is illegal as the respondents are not recommended by the MPSC.

5. The Tribunal by the order impugned held that though the respondents were not appointed by the MPSC, having regard to the directions of the Apex Court in para 53 of **Umadevi's** case (*supra*) read with **M.L. Kesari's** case (*supra*), the initial appointment of the respondents will have to be regarded as irregular and not illegal appointment.

6. Learned Counsel appearing on behalf of the petitioners – State of Maharashtra was at pains to point out that admittedly the respondents' appointment was not through the MPSC. Relying on the decision of the Apex Court in the case of **State of Karnataka Vs. G.V. Chandrashekhar** reported in

(2009) 4 SCC 342 he submitted that the regularization is not permissible where initial recruitment itself is illegal and contrary to the constitutional scheme.

7. Learned Counsel invited our attention to GR dated 1st December, 1994 whereby the State of Maharashtra had decided to consider the cases of all those clerks for regularization who were not sponsored through the MPSC. As per said GR the candidates are required to fulfill three conditions, first being the employee must possess requisite educational qualifications essential for the appointment to the post. Second that the appointments have to be made through the Collector's office, Employment Exchange, Social Welfare Division or by an equivalent authority authorised to make such appointments. It is further clarified that if the appointment is through any other means the services of the employees not sponsored by the MPSC cannot be regularized. Third condition in the said GR is that the service record of the employee has to be satisfactory.

8. Learned Counsel for the petitioners – State of Maharashtra submitted that in terms of the said GR the cases of the respondents were considered. However, no specific orders were issued as to whether they are entitled for regularization in terms of the said GR dated 1st December, 1994 till the directions were issued by the Tribunal to consider the case of the Respondents for regularisation. Learned Counsel therefore submits that initial appointment of the respondents is dehors the recruitment rules in as much as the respondents are candidates not sponsored by the MPSC. The respondents were locally appointed by the Collector and therefore the respondents are not entitled for regularization.

9. Learned Counsel for the respondents on the other hand invited our attention to the order passed by the Tribunal. He invited our attention to the findings of the Tribunal. In his submission, the respondents are appointed through the Collector's office. According to him, his case is squarely covered by GR dated 1st December, 1994. Learned Counsel submits that

in the light of the decision of the Apex Court in the case of **Umadevi** and **M.L. Kesari**, the Tribunal was justified in coming to the conclusion that appointment of the respondents was irregular and not illegal. Learned Counsel contends that admittedly the respondents have worked continuously for more than 30 years and some of the employees are now on the verge of retirement. Learned Counsel invited our attention to the averments in OA that the respondents were granted increments upto 1990. In his submission the respondents were treated as regular employees for all purposes.

10. Learned Counsel further submits that the Tribunal in the earlier round of litigation in the light of the decision of the Apex Court in the case of **Umadevi** and **M.L. Kesari** has clearly observed that the only issue involved in OA is to direct the petitioners to consider the case of the respondents for regularization. In the submission of the learned Counsel for the respondents the order dated 22nd December, 2013 passed by the Tribunal was not challenged by the petitioners and has thus

attained finality. The Tribunal having directed the petitioners to consider the case of the respondents for regularization in the post of clerks, the petitioners could not then have proceeded to reject the case of the respondents on the ground that initial appointment of the respondents being not through MPSC the same is illegal. Learned Counsel therefore submits that the order dated 2/12/2014 rejecting the claim of the respondents for regularization is unsustainable in the teeth of the order passed by the Tribunal in O.A.No.315 of 2012 and others.

11. We have heard learned Counsel for the petitioners and learned Counsel for the respondents at some length. It is not in dispute that all the respondents are discharging their duties in the post of clerk for more than 30 years. In fact the respondent in W.P. No. 687/2018 has completed more than 34 years of service. The respondent in W.P.No. 688/2018 has also completed more than 34 years of service. The respondent in W.P. No.689/2018 has completed 35 years of service and the respondent in W.P. No. 690/2018 has completed 36 years of

service. Some of the respondents are on the verge of retirement. It is not disputed that initially the break in service was condoned and upto 1990 the respondents were granted increments. In terms of GR dated 1/12/1994, though the respondents were considered for regularization, no specific order was passed as to the reason for not granting the benefit of the said GR. Even after issuance of the GR the petitioners permitted the respondents to discharge their duties. It is also not in dispute that the respondents are working against vacant and the sanctioned posts of clerks.

12. The Tribunal in the earlier round of litigation resorted to by the respondents in O.A.No.315 of 2012 and other O.As., in the light of the decision of the Apex Court in the case of Umadevi and M.L. Kesari directed the petitioners to consider the case of the respondents for regularization for the post of clerks. In fact the Tribunal was pleased to record the stand of the petitioners that the matter of regularization was still under consideration and no final decision was taken at that stage. The

petitioners, however, by the order dated 2nd December, 2012 rejected the case of the respondents for regularization as the respondents' candidature was not sponsored by the MPSC and therefore, their initial appointment itself is illegal and dehors the recruitment rules.

13. As indicated earlier there is no dispute that technical breaks in service of the respondents were condoned by the petitioners. The respondents have rendered continuous service right from the date of their initial appointment. The respondents are discharging their duties in the said post for the period ranging from 30 to 33 years as on the date of rejection of their cases for regularization as on 2/12/2014.

14. We have given our anxious consideration to the submissions made on behalf of the petitioners that the respondents are not entitled for regularization of their services as their initial entry into the services is dehors the recruitment rules. It is not disputed that the respondents are candidates not sponsored by the MPSC. By GR dated 1st December 1994 a

decision was taken by the petitioners to regularise the services of clerks who were not sponsored by the MPSC. The services of those candidates not sponsored through the MPSC were to be regularized subject to fulfillment of following conditions :-

- (a) The candidates must possess requisite educational qualification and must be within age limit at the time of the initial entry in the service as per the Rules ;
- (b) The appointment of the candidates must have been through the Collector's office, Employment Exchange, Social Welfare Division or equivalent authority authorized to make such appointment. It is clarified that if the appointment is through any other means the same cannot be regularized ; and
- (c) The record of the concerned candidate has to be satisfactory.

15. In accordance with GR dated 1st December, 1994, the services of several clerks were regularized. However, though the claim of the respondents was under consideration no specific order was passed. The Tribunal while disposing OA 315 of 2012

and others recorded the stand of the petitioners that the matter is still under consideration and no final decision has been taken. The Tribunal while directing the petitioners to consider the cases of the respondents clearly observed that their cases have to be considered in the light of the law laid down by the Apex Court in Umadevi and M.L. Kesari. The decision of the Tribunal was not challenged by the petitioners and thus attained finality.

16. In our opinion, having regard to the directions of the Tribunal in O.A.No.315 of 2012 and others, without challenging the decision of the Tribunal, it was not open for the petitioners to have rejected the cases of the respondents on the ground that initial appointment of the petitioners being illegal the case of the respondents does not warrant regularization.

17. The Tribunal having directed the petitioners to consider the cases of the respondents for regularization, the petitioners ought to have considered the cases of the respondents for regularization in the context of what was considered by the Tribunal while issuing the directions. As

indicated earlier the petitioners have not challenged the decision of the Tribunal in O.A.No.315 of 2012 and others and the said order therefore attained finality.

18. In our opinion, having regard to the directions of the Tribunal in O.A.No.315 of 2012 and others, the petitioners ought to have considered the cases of the respondents for regularization in the light of para 7 and 11 of the decision of the Apex Court in the case of M.L. Kesari which have been quoted by the Tribunal. It was not open for the petitioners to have gone beyond the order passed by the Tribunal without challenging the Tribunal's order.

19. In any case it is not in dispute that the respondents were locally appointed by the Collector's office during the period between 1981 to 1984. They have continuously worked in the said post since then and even technical breaks in service have been condoned. Admittedly, the respondents were drawing increments upto year 1990. The petitioners themselves issued GR dated 1/12/1994 for regularization of services of the clerks

not sponsored through the MPSC. As per the GR dated 1st December, 1994, though the cases of the respondents were put up for consideration, it is only on 2/12/2014 pursuant to the directions of the Tribunal that the decision was taken not to regularize the services of the respondents on the ground that they were not sponsored by the MPSC. Having regard to GR dated 1/12/1994, it is clear that a decision was taken by the petitioners to regularise the services of the clerks who are working for substantial period by relaxing the condition of sponsorship through MPSC. In the present fact situation, therefore, rejecting the cases of the respondents for regularization only on the ground that their initial appointment is not through the MPSC is untenable. It is not in dispute that the respondents possess necessary educational qualifications and were within age limit prescribed at the time of initial entry in the service. It is also not in dispute that the services rendered by the respondents for period ranging between 30 to 33 years have been satisfactory. As of 1st December, 2014 when the order rejecting the case for regularization was passed the petitioners

had rendered continuous service of more than 30 to 33 years. Some of the respondents are on the verge of retirement. Once the petitioners have taken a decision to relax the condition of sponsorship through MPSC at the time of initial entry into the service and thereby regularized services of similar situate clerks, the action on the part of the petitioners in rejecting the cases of the respondents for regularization only on the ground that they are not sponsored by MPSC at the time of initial appointment is wholly unjustified and arbitrary.

20. Having regard to this fact situation if the Tribunal has set aside the order dated 2/12/2014 passed by the petitioners and held that the respondents are entitled for regularisation of their services, we do not find any infirmity in the view taken by the Tribunal.

21. In this view of the matter, the impugned order passed by the Tribunal does not warrant any interference in the exercise of our writ jurisdiction under Article 226 of the Constitution of India.

22. The Writ Petition is accordingly dismissed.
23. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)