

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8554 OF 2017

State of Maharashtra and ors.	.. Petitioners
Vs.	
Jasmine Divyesh Mehta	.. Respondent

**ALONG WITH
WRIT PETITION NO. 8555 OF 2017**

State of Maharashtra and ors.	.. Petitioners
Vs.	
Urvish Gunvantlal Parikh	.. Respondent

**ALONG WITH
WRIT PETITION NO. 8556 OF 2017**

State of Maharashtra and ors.	.. Petitioners
Vs.	
Ketan Pravin Shah	.. Respondent

**ALONG WITH
WRIT PETITION NO. 8557 OF 2017**

State of Maharashtra and ors.	.. Petitioners
Vs.	
Rajesh G. Kukreja	.. Respondent

**ALONG WITH
WRIT PETITION NO. 8558 OF 2017**

State of Maharashtra and ors.	.. Petitioners
-------------------------------	----------------

Vs.
Ashok Dhirajlal Mehta .. Respondent

**ALONG WITH
WRIT PETITION NO. 8559 OF 2017**

State of Maharashtra and ors. .. Petitioners
Vs.
Ghanshyam Chimanlal Lalka .. Respondent

**ALONG WITH
WRIT PETITION NO. 8560 OF 2017**

State of Maharashtra and ors. .. Petitioners
Vs.
Manoj Mehta .. Respondent

**ALONG WITH
WRIT PETITION NO. 8562 OF 2017**

State of Maharashtra and ors. .. Petitioners
Vs.
Anjali Sunil Dalvi .. Respondent

Mr.L.M. Acharya, Spl. Counsel a/w Mr.O.M. Kulkarni, AAGP for the petitioners in all matters.

Mr.C.R. Sadashivan i/b Mr.N.M. Ganguli, for Respondents in all matters.

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

DATE : 22th JANUARY, 2018

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

1. Rule. Rule is made returnable forthwith by consent.
2. These Petitions are filed by the State of Maharashtra under Article 226 of the Constitution of India challenging the common judgment and order dated 27/04/2015 passed by the Maharashtra Administrative Tribunal, Mumbai in OA Nos.340, 341, 342, 343, 344, 687, 757, 875 of 2011.
3. The Tribunal by the impugned order directed the petitioners to treat the status of the respondents as claimed by them in the OAs since the date of their respective appointments. The Tribunal further held that the respondents are entitled for the continuity of service from the said dates. Consequential directions also came to be issued by the Tribunal.
4. The respondents are Commerce Graduates and Chartered Accountants. They are teaching part time in Sydenham College of Commerce and Economics at Mumbai. All of them are teaching for a period more than 15 years. The claim

in the OAs is for benefits of status of permanent part time lecturers from the date of their first appointment, revision of pay scale as per 5th and 6th Pay Commission recommendations and arrears. The Tribunal was pleased to allow the OAs by extensively relying upon the decision of this Court in the case of **Arun Zurmure Vs. Presiding Officer, University & College Tribunal and 4 others in Writ Petition 2376 of 1999** and also in the case of **Dr.Mahesh B. Swami Vs. State of Maharashtra & 5 others in Writ Petition No. 5271 of 2013.**

5. Learned Counsel for the petitioners submitted that the decision rendered in Arun Zurmure's case is no longer a good law as the Apex Court has set aside the decision of this Court in Zurmure's case. He relied upon the decision of the Apex Court in the case of **Pragati Mahila Samaj and another Vs. Arun s/o Laxman Zurmure and ors. (2016) 9 Supreme Court Cases 255** in support of his contention.

6. Learned Counsel for the petitioners further pointed

out that part time lecturer's post on which the respondents are claiming regularization are not sanctioned posts. According to him, the Tribunal committed error in allowing the OAs in as much as the Apex Court in the case of **State of Tamil Nadu and anr. Vs. A.Singamuthu (2017) 4 Supreme Court Cases 113** in paragraph 8 has held thus :

“8. Part-time or casual employment is meant to serve the exigencies of administration. It is a settled principle of law that continuance in service for long period on part-time or temporary basis confers no right to seek regularization in service. The person who is engaged on temporary or casual basis is well aware of the nature of his employment and he consciously accepted the same at the time of seeking employment. Generally, while directing that temporary or part-time appointments be regularized or made permanent, the courts are swayed by the long period of service rendered by the employees. However, this may not be always a correct approach to adopt especially when the scheme of regularization is missing from the rule book and regularization casts huge financial implications on public exchequer.”

7. Learned Counsel for the respondents on the other hand invited our attention to the order passed by the Tribunal. In his submission apart from Arun Zurmure's case, the Tribunal has also relied upon other decisions of this Court while allowing the OAs. In his submission, there is no dispute that respondents have put in more than 15 years of service and therefore it would

be unfair and unreasonable to deny them the benefits of regularization as granted by the Tribunal.

8. We have heard learned Counsel for the parties at some length. We have perused the order passed by the Tribunal. We find that the Tribunal has extensively relied upon the decision of this Court in case of **Arun Zurmure** (*supra*) while allowing the OAs. The Apex Court did not concur with the view taken by this Court in Arun Zurmure's case. The decision was rendered by the Apex Court on 19/07/2016. The Tribunal decided the OAs on 27/04/2015 when the decision of this Court in Arun Zurmure's case was holding the field.

9. We find substance in the contention advanced by learned Counsel for the State that OAs need to be remitted back to the Tribunal for a fresh consideration in the light of setting aside of the order of this Court in Arun Zurmure's case by the Apex Court. We find the Tribunal has extensively relied upon the decision in **Arun Zurmure's** case (*supra*) while allowing the

OAs. In this view of the matter, in our opinion, OAs need to be remitted back to the Tribunal for a fresh decision on merits. Hence, the following order.

ORDER

- i) The impugned order passed by the Tribunal on 27/04/2015 in OA Nos.340, 341, 342, 343, 344, 687, 757, 875 of 2011 are quashed and set aside.
- ii) The OAs are remitted back to the Tribunal for a fresh decision on merits and in accordance with law.
- iii) The Tribunal to decide the matter on its own merits without being influenced by the observations made by us in this order.
- iv) The Tribunal is requested to decide the OAs as expeditiously as possible and preferably within a period of 6 months from today.

10. Writ Petitions are partly allowed. Rule is partly made absolute with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)