

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

910 WRIT PETITION NO. 2487 OF 2013

- 1) Arjun s/o Bhimrao Sabale,
- 2) Bhausahab s/o Tukaram Avhad,
- 3) Prabhakar s/o Kishanrao Jaitmal,
- 4) Bhaskar s/o Asaram Hivrare,
- 5) Deorao s/o Shripat Gaikwad,
- 6) Jagannath s/o Bhagaji Tambe,
- 7) Ahilaji s/o Rakhmaji Gunjal,
- 8) Dhanaji s/o Dhansing Rathod,
- 9) Madhusudan s/o Namdeorao Petkar,
- 10) Kishor s/o Atmaram Salve,
All Major, Occupation Service,
R/o Government Milk Scheme,
Jalna Road, Aurangabad,
Tal. & District Aurangabad.

...Applicants.

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
Agriculture, Horticulture,
Animal Husbandry, Fisheries
& Dairy Development Dept.,
Mantralaya, Mumbai -32.
- 2) The Commissioner for
Dairy Development,
Maharashtra State,

Administrative Building,
Abdul Gaffar Khan Marg,
Worli Sea-Face, Mumbai.

- 3) Regional Dairy Development
Officer, Jalna Road, Aurangabad. **...Respondents.**

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Advocate for Petitioners : Mr. S. S. Thombre.
AGP for Respondents No.1 to 3 : Mr. A. V. Deshmukh.

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**[CORAM : SUNIL P. DESHMUKH AND
SMT. VIBHA KANKANWADI, JJ.]**

DATE : 05th DECEMBER, 2019.

ORAL JUDGMENT : (Per SUNIL P. DESHMUKH, J.)

1. It appears to be the case of the petitioners that, a few similarly situated employees had earlier on approached principal seat at Mumbai, in Writ Petitions No. 313 of 1998, 4544 of 1998, 4545 of 1998 and 4546 of 1998 on completion of 240 days continuous service in a year, claiming regularization, and reliefs had been granted by High Court to them. Attempt of the State Government to challenge said relief granted by High Court before the Apex Court had failed. Thereafter, the State Government had issued resolution dated 24-01-2002 extending benefit of regularization to those

employees.

2. Petitioners have also referred to that, a Government Resolution dated 20-05-1991 had been issued requiring regularization of services of the employees who have completed five years service up to 30-06-1989. Learned counsel for the petitioners submits that, the benefit of this resolution ought to ensue in favour of petitioners.

3. There is no dispute about that the petitioners were selected and appointed as sponsored candidates through Employment Exchange Office and had joined services on daily wages on the establishment of Regional Dairy Development Officer, Aurangabad. After joining they had completed 240 days of the continuous service, in a year.

4. There is also no dispute on that in the case of similarly placed employees in the same department, employees working as daily wagers were regularized by the State Government.

5. While present petitioners as well were eligible to regularization of their service, the establishment has not given similar treatment to the petitioners. Therefore petitioners had approached Maharashtra

Administrative Tribunal under Original Application No.604 of 2003 for regularization. During pendency of the original application, certain information had been called and communication has been received that, from the dates of initial appointments of petitioners, they had completed 240 days of service and chart accordingly had been prepared.

6. Learned counsel purports to point out that in the original application filed by petitioners, in affidavit on behalf of the State, there is a reference to that petitioners' regularization had been recommended. On 26-09-2008 the Maharashtra Administrative Tribunal Aurangabad directed that, Government should take a decision on the pending proposal within six months from the date of receipt of their order as per rules and has given liberty to the applicants to file original application in case of any adverse order. In view of the same, the original application had been disposed of.

7. However, subsequently, a negative decision had been given under a communication dated 18-03-2009 declining regularization of the petitioners. Thus, the petitioners were once again before the Maharashtra Administrative Tribunal, Aurangabad in original Application No.748 of 2009. The Tribunal, had declined the reliefs in

the original application referring to the Judgment of Apex Court in the case of, *State of Karnataka V. Umadevi*, reported in (2006) 4 SCC 1.

8. On perusal of the impugned order passed, it appears, the Tribunal has considered that petitioners were only sponsored by employment exchange and were not required to compete under a regular recruitment process and has referred to some observations from *Umadevi's case (Supra)*.

9. Learned counsel for the petitioners refers to that while a few other dairy development employees had been before Tribunal in a group of original applications, the Tribunal in those cases had decided in favour of the original applicants who were similarly situated as present petitioners. The State had approached this Court against decision of Maharashtra Administrative Tribunal in said original applications in group of Writ petitions bearing No.6963 of 2005, 6964 of 2005 and 6965 of 2005, however, high court had dismissed the writ petitions observing, as under ;

“4. The respondents herein are also employees of Dairy Development Corporation. In Civil Appeal No.3070 of 1999 also those were employees working in Dairy Development Corporation of the State of Maharashtra. Before the Apex Court, it was conceded by the counsel for the State of Maharashtra that after completion of 240 days service,

employees are entitled for the post held by them and appeals were dismissed. As in the present case also, the petitions are based on the same set of facts, judgment of the Maharashtra Administrative Tribunal does not require any interference.”

10. He also refers to paragraph 8 from the Judgment of Apex Court in, *State of Karnataka and Others Versus M. L. Kesari and Others*, in Civil Appeal No. of 2010 [Arising out of SLP (C) No.15774/2006] . Paragraph No.8 therefrom reads thus,

“8. The object behind the said direction in para 53 of Umadevi is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts of tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/ instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for

regularization in terms of the above directions in Umadevi as a one-time measure.”

11. During the course of submissions, learned counsel for the petitioners purports to point out that, decision in Civil Appeals No. 10064 – 10075 / 2010, dated 25-09-2019, (*Pandurang Sitaram Jadhav Etc. Etc. Versus The State of Maharashtra Through its Dairy Manager & Anr.*), wherein the Supreme Court, according to him has ruled that, ratio of Judgment in the case of *State of Karnataka Versus Umadevi (Supra)* has to be understood in its proper perspective. Continuance of employment under the cover of interim relief by court, would not entitle an employee to right of regularization in service. The Supreme Court in aforesaid *Pandurang Sitaram Jadhav Etc. Etc (Supra)*, according to him has considered the factual position properly.

12. He has referred to that employees are made to work for a longer period on temporary basis, no regular recruitment process is followed. He also points out that in the absence of regular process in respect of employees in the same department working in different units are benefitted from orders passed by industrial court up to the Apex Court. Such a benefit should ensue to the petitioners while the facts in petitioners' case are not at all different from the point

involved in those cases.

13. Learned counsel for the petitioners submits that, in this case the petitioners would not be required to undergo the rigmarole of approaching industrial court, for, law on very same factual position stands decided up to the Apex Court.

14. Learned AGP purports to resist the claim in writ petition referring to that, the petitioners have not filed complaints before industrial court and the Judgment relied on has arisen from orders passed by the industrial court.

15. Though he has submitted so, he has not been in a position to say that relevant factual position involved in the case of present petitioners is in any way different from the one involved in the decision given by the Supreme Court, save the employees had approached industrial court.

16. There is no dispute that the petitioners were working continuously from more than ten years without cover of any interim relief from any tribunal or Court. It is not disputed that, the petitioners are in employment from 1985 and before. Cumulative effect of orders passed by the Maharashtra Administrative Tribunal,

High Court and Supreme Court referred to above in paragraphs No.10, 11 and 12 goads on to consider that present petitioners' case requires a similar approach and consideration as reflected in them. In the circumstances, the impugned order passed by Maharashtra Administrative Tribunal at Aurangabad is rendered untenable and is accordingly, set aside.

17. Having regard to aforesaid, we deem it appropriate particularly that, proper order about regularization of petitioners services be passed in accordance of the decisions by referred to in paragraphs No.10, 11 and 12 herein above. Present petitioners' services be given similar treatment and the dates of regularization be accorded having regard to relevant facts and circumstances. Rule is made absolute accordingly. Writ petitions disposed of accordingly.

[SMT. VIBHA KANKANWADI]
JUDGE

[SUNIL P.DESHMUKH]
JUDGE

vjg/-.