

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 529 OF 2019****Satappa Krushnath Powar****..... Petitioner****VERSUS****The State of Maharashtra & Ors.****..... Respondents****WITH****WRIT PETITION NO.2722 OF 2019****Sandesh K. Kadam****..... Petitioner****VERSUS****The State of Maharashtra & Ors.****.....Respondents****WITH****WRIT PETITION NO.3274 OF 2019****Santosh B. Warang & Anr.****.....Petitioners****VERSUS****The State of Maharashtra & Ors.****.....Respondents****WITH****WRIT PETITION NO.3275 OF 2019****Bhaskar R. Patil & Anr.****.....Petitioners****VERSUS****The State of Maharashtra & Ors.****.....Respondents****WITH****WRIT PETITION (STAMP) NO.37023 OF 2018****Devidas S. Gawali & Ors.****.....Petitioners****VERSUS****The State of Maharashtra & Ors.****.....Respondents****WITH****WRIT PETITION (STAMP) NO.5323 OF 2020****Sanjay Chhabu Pawar & Ors.****.....Petitioners****VERSUS****The State of Maharashtra & Ors.****.....Respondents**

Mr.Vivek V. Salunke, a/w. Mr.N.L.Chaudhari for the Petitioners in all the Writ Petitions.

Mr.Vikas M. Mali, AGP for the State in all writ petitions.

**CORAM: R. D. DHANUKA AND
MADHAV J.JAMDAR, JJ.
DATE : 16th DECEMBER, 2020.
(THROUGH VIDEO CONFERENCE)**

P.C:-

Rule. Mr.Mali, learned A.G.P. waives service for the respondents.

2. Learned counsel for the parties jointly state that the facts in this batch of petitions being identical, the arguments advanced in the lead matter i.e. Writ Petition No.529 of 2019 and the reasons thereof would be applicable in other connected matters. Statement is accepted.

3. We therefore deal with the facts and the submissions advanced by the parties in the lead matter i.e. Writ Petition No.529 of 2019 filed by Mr. Satappa Krushnath Power against State of Maharashtra and others. The petitioner in the said writ petition has prayed for directions against the respondents to regularize and make the service of the petitioner permanent in the Government Ashram School in view of the judgment and order dated 31st October, 2018 passed by this court (Aurangabad Bench) in Writ Petition Nos. 5867 of 2015, 7351 of 2012, 2194 of 2013 and 2196 of 2013.

4. It is the case of the petitioner that the petitioner has been working as a teacher on a temporary and daily wages basis with the respondent no.5 since 2005 till today under the control of other respondent authorities. There is no complaint of any nature whatsoever against the petitioner by any of the respondents or from any concerned authorities. The petitioner has completed more than 10 years service on the said post on the date of the writ petition. The respondent authorities however had been issuing appointment orders to the petitioner by maintaining gap of some days keeping in mind that the petitioner would not claim benefit of permanent employees though the petitioner is qualified and had been appointed from time to time on the sanctioned post on clock hour basis/daily wages.

5. Mr.Salunke, learned counsel for the petitioner submits that similarly situated other teachers had filed various writ petitions before the Aurangabad Bench of this Court on 31st October, 2018 *inter alia* praying for identical relief. He invited our attention to the judgment delivered by Aurangabad Bench of this court in batch of petitions and would submit that in identical facts, the Aurangabad Bench of this court had allowed those petitions by directing the respondents to regularize the services of the petitioners therein who had completed 10 years of service with effect from the dates they had completed 10 years

or the date of filing of the writ petition whichever is later. He submits that the Special Leave Petition filed by the State Government (Special Leave Petition (C) Diary No(s) 12338 of 2020) against the said decision are rejected by an order dated 20th August, 2020. The State Government had prayed for three months time for implementation of the judgment of the Aurangabad Bench of this court. The Hon'ble Supreme Court directed the State Government to regularize the service of the original petitioners therein before the Aurangabad Bench within three months from the date of the said order. Supreme Court has dismissed the Special Leave Petition filed by the State of Maharashtra.

6. Learned counsel for the petitioner invited our attention to one of the appointment letter i.e. letter dated 5th September, 2006 issued by the respondents appointing the petitioner on temporary basis on the vacant post of Assistant Teacher till the regular appointment was made on the said post. He states that in the said appointment letter it was made clear that there was need for appointment of teacher to avoid any loss of education to the students in absence of such teachers. He invited our attention to clause (4) of the said appointment letter and would submit that it was made clear that the said appointment would come to an end on filling up of the said post on regular appointment. He submits that the said judgment of Aurangabad Bench of this court clearly applies to

the facts of this case and is binding on this court.

7. Mr.Mali, learned A.G.P. on behalf of the respondents on the other hand invited our attention to some of the averments made in the affidavit in reply and would submit that each of these petitioners were appointed on temporary basis i.e. on clock hour basis without following the requisite procedure required to be followed for the recruitment on permanent basis. He submits that the appointment of the petitioners was subject to the availability of regular candidate and on availability of the regular candidate on filling up the regular post, the appointment of the petitioner would have stood cancelled automatically. Learned A.G.P. submits that the respondents had published advertisement for appointment on the regular post in the year 2003-04, 2007-08, 2011-12 and 2018-19 and had conducted the recruitment process as per the rules and regulations. None of the petitioners however availed of the said opportunity for seeking appointment on the regular post throughout the process of recruitment. The appointment of the petitioners thus cannot be regularized by this court.

8. A perusal of the appointment letter, a sample copy whereof is annexed to the petition clearly indicates that though the petitioner was

appointed on temporary basis by the respondents, it is not in dispute that the said appointment was made on the sanctioned post till the regular appointment was made by the respondents. The letter of appointment further indicates that there was a requirement for appointment of teachers to avoid any loss of education of the students when such temporary appointments were made. Clause (4) of the said appointment letter clearly provided that the appointments would be cancelled on the respondent making regular appointment.

9. Similar letter of appointments have been issued from time to time however with a break of some days. Though the respondents had issued advertisement for filling up the regular post in the year 2003-04, 2007-08, 2011-12 and 2018-19, the fact remains that the respondents could not get any suitable candidates for filling of those posts on regular basis. Learned A.G.P. does not dispute that even after issuing of those advertisements, the petitioners continued to work pursuant to various subsequent appointment orders issued by the respondents from time to time.

10. Learned A.G.P. does not dispute that except the petitioner in Writ Petition (Stamp) No.5323 of 2020, i.e. Sanjay Chhabu Pawar, other petitioners have already completed 10 years on the date of filing

petition. He does not dispute that the said petitioner in Writ Petition (Stamp) No.5323 of 2020 also has completed 10 years now.

11. A perusal of the judgment delivered by Aurangabad Bench in case of ***Madhukar Bhavanrao Sadgir & Ors. vs. The State of Maharashtra & Ors.*** in ***Writ Petition Nos. 5867 of 2015*** and in connected matters clearly indicates that the petitioners in those petitions also had prayed for regularization. The petitioners were working as members of teaching and non teaching staff in Post Basic Government Ashram Schools. The petitioners in those matters also were appointed on temporary basis for a long period of time and had completed more than 10 years of service. After advertng to the judgment of Supreme Court in case of ***Sheo Narain Nagar & Ors. Vs. State of Uttar Pradesh & Ors. reported in AIR 2018 SC 233***, in case of ***Secretary, State of Karnataka and Others Vs. Umadevi and Others reported in (2006) 4 SCC 1***, this court held that considering the loss of education of ashram school students, the petitioners had been appointed on temporary basis.

12. This court held that the though the posts were sanctioned and the work load was available, the posts were not filled in. It was clear that the respondent-State was not in a position to get the candidates to teach

and so also to work on Class-III and Class-V posts in the ashram schools situated in remote tribal areas. It is at the time the respondent-State was not getting the man power to officiate in the ashram schools run by the Tribal Development Department in remote tribal areas, those petitioners had performed their duties. None of the respondents have disputed the qualification for the posts in which the petitioners had been officiating. This court accordingly held that keeping the petitioners for a long period on honorarium would certainly amount to their exploitation.

13. In this case the respondents do not dispute that the petitioners were appointed on sanctioned posts. The work load was available. The petitioners had agreed to officiate at the time when the teaching the students in the remote not non-tribal areas were required and not available. The petitioners are working continuously for ten years or more on meager honorarium. Asking the petitioners to continue to work on meager honorarium for such a long period would tantamount to their exploitation not expected from the welfare State. The State is expected to be a model litigant. This court accordingly directed the respondents to regularize the service of the petitioners who had completed 10 years of service with effect from the date they have completed 10 years or the date of filing of the writ petition whichever

is later. This court also considered the case of the petitioners who have completed the 10 years of service during the pendency of the writ petition and directed that those employees also shall be reinstated and shall be granted regularization on the date they have filed the petition or after completion of the 10 years of service whichever is later.

14. This court however clarified that the petitioners in that matter were not granted actual financial benefit for the period prior to the date of the said order and that the petitioners would be entitled for the regular pay scale from 01.01.2018.

15. In our view, the principles laid down by the Division Bench of Aurangabad Bench of this court in case of ***Madhukar Bhavanrao Sadgir & Ors. vs. The State of Maharashtra & Ors. in Writ Petition Nos. 5867 of 2015*** and in the connected matters squarely applies to the facts of this case. In our view, the petitioners having completed 10 years in each of the matters cannot be exploited by the respondents and cannot be made to work on payment of meager amount of honorarium. The respondents having failed to appoint any employee on the regular basis on the sanctioned post even during this period more than 10 years cannot be allowed to now urge that the petitioners having been appointed on temporary basis on clock hour basis though worked for

10 years, cannot be granted regularization.

16. We, therefore, pass the following order :-

(a) The respondents shall regularize the services of the petitioners who have completed 10 years of service with effect from their date they have completed 10 years or the date of filing writ petition whichever is later.

(b) Those petitioners who have completed 10 years, for all practical purpose their service shall be considered regular from the date mentioned in clause (a) above. However it is made clear that none of the petitioners would be entitled to actual financial benefit for the period prior to the date of this order except the honorarium which was already paid all these years to the petitioners. They will be however entitled for the regular pay scale from the date of this order.

(c) The respondents shall count the services of the petitioners from the date of appointment

continuously for counting 10 years of their service.

(d) It is made clear that the petitioners who are appointed and are regularized as primary teachers as the case may be shall complete Teacher Eligibility Test (TET) qualification within a period of five years from today and in case of default in completing the said qualification within the time prescribed in this order, the State Government in that event shall be empowered to terminate their services on that ground.

(e) The respondents shall implement this order to regularize the services of the petitioners within three months of from today.

17. Rule is made absolute in the aforesaid terms. There shall be no orders as to costs.

[MADHAV J. JAMDAR, J.]

[R. D. DHANUKA, J.]