

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

WRIT PETITION NO. 12594 OF 2021

Syed Moin Syed Hasan .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Amol R. Joshi, Advocate for the Petitioner.

Shri S. B. Pulkundwar, A.G.P. for the Respondent No. 1.

Shri Parag V. Barde, Advocate for the Intervenor.

**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.**

DATE : 02ND DECEMBER, 2021.

FINAL ORDER :

. The petitioner assails the Government Resolution dated 30th September, 2021. Under the said Government Resolution, the State Government absorbed and regularized services of sixteen personnel appointed by the respondent No. 2/Municipal Corporation, Parbhani on contractual/temporary basis.

2. Mr. Joshi, the learned advocate for the petitioner strenuously contends that, the sixteen personnel regularized under Government Resolution dated 30th September, 2021 were appointed purely on contractual/temporary basis without following due selection procedure. These sixteen persons were appointed pursuant to an advertisement dated 04th March, 2015. The advertisement was for appointing persons on contractual basis for eleven months. They were to be appointed based on

interviews only. It was specifically mentioned in the advertisement that in the event of regular appointments, the tenure of the concerned persons appointed on contractual basis shall come to an end. The tenure of these persons after appointment was extended from time to time upto 25th July, 2018 without taking efforts to ensure recruitment of regular and permanent staff with the respondent No. 2. The respondent No. 2 on 25th July, 2018 under resolution No. 147 resolved to absorb in regular service of the respondent No. 2 the contractual and temporary employees appointed pursuant to advertisement dated 04th March, 2015. The norms in connection with the reservation of posts of various classes are not followed in the present case. The appointments of persons on contractual basis and regularization of their services is contrary to the principles laid by the Apex Court from time to time. The resolution dated 25th July, 2018 was completely beyond the jurisdiction of the respondent No. 2. The learned advocate for the petitioner relies on the following judgments of the Apex Court.

- I. **Secretary, State of Karnataka and others Vs. Umadevi and others reported in (2006) 4 SCC 1.**
- II. **B. N. Nagarajan and others Vs. State of Karnataka and others reported in (1979) 4 SCC 507.**
- III. **National Fertilizers Ltd. And others Vs. Somvir Singh reported in (2006) 5 SCC 493.**
- IV. **State of Karnataka and others Vs. G. V. Chandrashekar reported in (2009) 4 SCC 342.**
- V. **Union of India and another Vs. Arulmozhi Iniarasu and**

others reported in (2011) 7 SCC 397.

3. The learned advocate further submits that, regularization cannot be a mode of employment. The same would be against the public policy, that would amount to backdoor entry in service and the same is not permissible. According to the learned advocate, the same also would be against the mandate of Section 53 of the Maharashtra Municipal Corporations Act (for short “said Act”)

4. The learned advocate further contends that, because of such illegal regularization, the unemployed youth like the petitioner would be deprived of the opportunities and the same would be violative of Article 14, 16 and 21 of the Constitution of India. The said Government Resolution is bad in law and deserves to be set aside.

5. The learned Assistant Government Pleader for the respondent No. 1 submits that, sixteen persons were working since the year 2015 on temporary/contractual basis and that too on honorarium. The procedure was followed while appointing them. An advertisement was issued, interviews were conducted and deserving persons were appointed. No illegality is committed. The resolution was passed by the Municipal Corporation. Section 53 of the said Act has to be read along with Section 45 and 51 of the said Act. The implementation of circular dated 09.02.2018 is stayed by another circular dated 07.03.2018.

6. We have considered the submissions canvassed by the learned counsel for the respective parties.

7. The sixteen personnel regularized under the impugned Government Resolution are not parties to the present petition. The persons who would be adversely affected, if any, order is passed in favour of the petitioner ought to be made parties. No order detrimental to the interest of such persons can be passed in their absence. On this count petitioner can be non suited.

8. It would appear that the sixteen persons regularized under the impugned Government Resolution were working for more than six years on honorarium continuously. Their entry in service is not a backdoor entry. An advertisement was issued on 04th March, 2015. Pursuant to the advertisement these persons along with others applied, interviews were conducted and selection was made. It cannot be said that their entry in service is through backdoor. They were continuously discharging their functions since the year 2015 on honorarium. The Municipal Corporation took a decision to regularize their services vide its resolution No. 147 dated 25th July, 2018.

9. As per the staffing pattern the sanctioned vacant posts exist and they are regularized/absorbed on the sanctioned vacant posts. It would also not be appropriate to continue the employees for years together on honorarium and temporary basis.

10. In a case of **Secretary, State of Karnataka and others Vs.**

Umadevi and others (*supra*), the Apex Court observed that, there may be cases where irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more, but without the intervention of orders of the courts or of tribunals. The question of regularization of service of such employees may have to be considered on merits in the light of the principles settled by the Apex Court. In the present case, the advertisement was issued. Pursuant to the advertisement applications were invited, the interviews were conducted and on merits the selection was made and appointments were issued. For six years these persons are continuously working on minimum honorarium. No rule is violated while absorbing them.

11. Under Section 53(3) of the said Act, the power of appointing Municipal officers and servants whether permanent or temporary vests with the Commissioner. Proviso to Section 53(1) of the said Act, limits the temporary appointments for loan works to the posts equivalent to or higher in rank than the posts of Assistant Municipal Commissioner for not more than six months. In the present case, personnel regularized in service are appointed as Sectional Engineer, Junior Engineer, Assistant Engineer and Deputy Engineer below the rank of the persons as referred to in proviso to Sub Section 1 of Section 53 of the said act.

12. While absorbing these personnel under the impugned Government Resolution, no new posts were required to be

created. The vacant posts exists, the procedure was followed, the applications were invited from the public at large by issuing an advertisement, interviews were conducted and thereafter appointments are made. It is not case of illegality being committed while initially appointing these persons.

13. It is brought to the notice of this Court that after absorbing these sixteen persons under the impugned government resolution, still twelve posts are vacant. The petitioner at no material point of time had every applied pursuant to the advertisement. The cause title of the petition also demonstrate that the petitioner is a businessman. The petitioner would not have locus standi to assail the same.

14. In the light of the above discussion, the writ petition is dismissed. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]