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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4731 OF 2021

Santosh Tukaram Tiware,
Age : 44 years,
Occ: Service, Working as Driver
having his office at Sendrun,
Taluka Shahapur, District Thane

...Petitioner

Versus

1. Primary Health Centre,
Sendrun, Taluka Shahapur,
District Thane.
2. Block Development Officer,
Panchayat Samiti, Shahapur,
District Thane.
3. Taluka Health Officer,
Taluka Shahapur, District
Thane.
4. District Health Officer,
Zilla Parishad, Thane,
District Thane.
5. Chief Executive Officer,
Zilla Parishad, Thane,
District Thane.
6. The Secretary,
Department of Health,
Mantralaya, Mumbai.
7. The State of Maharashtra

...Respondents

Mr. Mahadeo A. Choudhari for the Petitioner.
Mr. Ashish Gaikwad for Respondent Nos. 3 to 5.
Mrs. M.S. Bane, AGP, for the Respondent – State.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATE : DECEMBER 16, 2021.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. **Rule.** Rule made returnable forthwith. With the consent of learned Counsel appearing for the respective parties, matter is taken up for hearing and disposal, at admission stage.

2. In the present Petition the question raised before this Court is, as to whether the Petitioner who was appointed as a ambulance driver in a Primary Health Center, at village Shendurn, in the year 2010 on contractual basis and whose services were continued from more than 11 years and 8 months by giving certain technical breaks, is entitled for the benefit of regularization.

3. Certain necessary facts giving rise to the present Petition can be summarized as under:

 The Respondent – Zilla Parishad, Thane issued a communication to Block Development Officer, Panchayat Samiti on 29.03.2010. It would be necessary to refer to the contents of the said document. The document states

that the new vehicles i.e. the ambulances are provided to the Primary Health Centers in the jurisdiction of the Health Department of Zilla Parishad and the post of drivers at certain Primary Health Centers are lying vacant, and though the process for engaging the drivers is initiated by tender process, it would require at least 2 months period for completing the process. As there is a need of ambulance driver, the authority at the local level may initiate the process for appointment of a driver on fixed amount of monthly honorarium and the said honorarium is to the tune of Rs. 7,600/- only. The communication further states that certain vehicles were obtained on an agreement contract basis for period of a year i.e., 2009-2010 and as the contract expires on 31.03.2010 the services of vehicle to these centers are withdrawn or closed. Then the permission is granted for initiation of process to appoint drivers at local level at certain centers. The list is at page 32 and Shendurn finds place at serial No. 7.

4. It is also stated in the communication that the local authority may call applications from the

desirous candidates along with the necessary documents such as, driving license, insurance of the vehicle, if any etc. In pursuant to the communication, the process was initiated at the local level through the Block Development Officer of the Panchayat Samiti. The Petitioner was appointed on 24.05.2010 subject to certain conditions. The copy of the same is placed on record at Exhibit 'B', page 34.

5. Petitioner joined the services at the Primary Health Centre, Shendurn on 28.05.2010. The joining report is also forwarded to the Taluka Health Officer, Panchayat Samiti through the Medical Officer attached to Primary Health Center, Tq. Sendurn, Tq. Shahapur. The Petitioner in compliance of the condition submitted his willingness accepting the condition through an affidavit. The services of the Petitioner were continued by giving further extension orders. The copies of such orders are placed on record at page nos. 38 to 40.

6. It is interesting to note that these appointment orders specifically makes mention of two days technical break. The Petitioner's services were

continued for more than 8 years. On 29.07.2021 Petitioner submitted representation to the Chief Executive Officer, Zilla Parishad, Thane. It is stated in the representation that the Petitioner is working with the Zilla Parishad, Thane as a contractual employee, receiving the extension by technical brakes and as the Petitioner is receiving a very small amount as an honorarium, he be made permanent or his services be regularized.

7. The Petitioner has also placed on record the experience certificate issued in his favour by the medical officer. The first certificate is of 26.12.2018, the second certificate is of 27.01.2020 and in both these certificates it is stated that the Petitioner's services are satisfactory. Then there is a latest certificate issued on 09.07.2021 and it is stated that the Petitioner is working as an ambulance driver in the Primary Health Centre, Sendrun from 25.08.2010 to 09.07.2021, meaning thereby the Petitioner also extended his services in the pandemic period of 2019-2020.

8. The Petitioner's latest extension was by an

order dated 18.08.2020, the copy of the same is placed on record at page 42-B and reference is made to the extension period of 11 months i.e. 01.11.2019 to 13.09.2020 and it is stated in the appointment order that this appointment is with retrospective effect. This order also refers to the factual aspect that in view of the peculiar circumstances i.e. unforeseen outbreak of Covid 19 pandemic, it will not be possible to undertake the exercise of selection through the tender process or appoint service provider, the petitioner's service is continued.

9. Learned Counsel for the Petitioner by placing heavy reliance on these documents as well as on the judgment of the Division Bench at Nagpur bench in Writ Petition No. 2046 of 2010, vehemently submitted that the action of the Respondent – Zilla Parishad is extracting the work from Petitioner for more than 10 years with a paltry payment of 7,600/- as a honorarium and then subsequently post filing of the Petition issued the order of termination is wholly untenable.

10. Learned Counsel for the Petitioner further submitted that the ambulance is an essential and

integral part of the health services. Learned Counsel by inviting our attention to the statement made in the Petition submitted that the Petitioner was appointed by following due procedure namely, he submitted application along with documents and as per the requirement his claim was considered along with other candidates and as the Petitioner was suitable candidate in the opinion of authority an appointment order though on contractual basis was issued in favour of the Petitioner. Learned Counsel for the Petitioner further submitted that though the entry of Petitioner in services of the Zilla Parishad is on contract basis but it cannot be termed as a backdoor entry.

11. Learned Counsel for the Petitioner then invited our attention to the observations of the Division bench in the matter of Sachin Dawale and others Vs. State of Maharashtra and Ors in Writ Petition No. 2046 of 2010 decided on 19.10.2013. The perusal of the judgment show that the Petitioners were appointed as lecturer in different departments of Government Polytechnic in State of Maharashtra. The Petitioners were working in these technical institutes

for nearly 10 years and their appointments were also on contractual basis.

12. To oppose the claim of the Petitioners for regularization the State Government placed heavy reliance on the judgment of the Apex Court in the matter of Secretary, State of Karnataka vs. Uma Devi reported in AIR 2006 SC 1806 (1). While dealing with the issues which were nearly identical, the Division bench was pleased to observed that the appointment of those Petitioners were not backdoor or illegal. It is further observed that "it cannot be said that the petitioners are appointed arbitrarily or haphazardly or clandestinely without issuing advertisement and without giving an opportunity to all the eligible candidates to participate in the selection process. It is also not the case of the respondents that any illegalities took place during the selection process of the candidates and then on considering the issue of continuation of services of candidates appointed by following due process." The Division Bench made a reference to the observations in the judgment of the Apex Court in the case of Radha Dubey vs. Government of NCT of Delhi and

Ors, dated 16th August, 2010 in Special Leave to Appeal (Civil) No. CC10388/2010, which reads thus:

"We are prima facie of the view that appointment of a person on contract basis for an uninterrupted period of ten years amounts to exploitation. The State, as a model employer in a welfare State, is not expected to take advantage of its position and impose wholly unequitable and unreasonable condition of employment on the prospective employees, who do not have the choice but to accept the appointment on terms and conditions offered by the employer. This practice seems to be contrary to the ratio of the judgments of this Court in Central Inland Water Transport Corporation Ltd. and another versus Brojo Nath Ganguly and another [AIR 1986 SC 1571] and Delhi Transport Corporation versus D.T.C. Mazdoor Congress [AIR 1991 SC 101]."

13. Learned Counsel for Respondent – Zilla Parishad, Thane made submissions before this Court that the Petitioner has accepted the appointment with open eyes and accepted the conditions. It would be necessary for us to refer to these conditions. Learned Counsel for Respondent – Zilla Parishad, Thane submitted that

the first condition itself was apprising the candidate that his appointment is on contract basis and for a temporary period. Then learned Counsel for Respondent – Zilla Parishad, Thane submitted that the condition no. 4 also makes it clear that in case of the closure of the project for any reason the appointment of the candidate would come to an end automatically. Then condition no. 7 deals with a situation where the candidate who is willing to resign and in such eventuality, the candidate shall give 1 month notice to the office or to pay one month salary or one month salary of the candidate would be recovered as a arrears of land revenue. Condition no. 9 states that as the appointment is on temporary basis, the candidate is not entitled to any benefits as a regular appointee.

14. Learned Counsel for Respondent – Zilla Parishad, Thane submitted that Zilla Parishad is bound by the directions of the State Government which flow from the Government Resolutions. The Counsel for Respondent – Zilla Parishad firstly invited our attention to the policy of the State Government reflected in Government Resolution dated 10th September,

2001. It is stated in the said Government Resolution that as the State Government is of an opinion that though there is a large increase in the number of vehicles utilized in various departments of Government the expenses are also increasing for the maintenance of the vehicle on one hand and on the other hand there is no optimal use of these vehicles. It is stated in the Government Resolution that the Government has to incur large expenses on account of payment of salary to the drivers and to limit such expenses the Government has framed a policy. In this policy it is decided not to purchase new vehicle, optimal use of the vehicles permitting, the Government Officials to use their private vehicles and to obtain the vehicles on hire basis and on need basis. The approach of the Government reflected in the Government Resolution dated 10th September, 2001, the least we can say is mechanical approach. The resolution refers to all type of vehicles including an ambulance. We failed to understand as to how an optimal utility of an ambulance can be equated with an optimal utility of other vehicles.

15. Learned Counsel for Respondent – Zilla

Parishad, Thane then invited our attention to the clause 6 of the said Government Resolution. The caption of clause 6 reads as “(६) वाहन चालकांची रिक्त होणारी पदे न भरणे.” Then our attention was also invited to sub-clause 3 of clause 2 and the same reads thus:

“(३) सध्या वापरात असलेल्या वाहनांचा ती निरुपयोगी ठरवून निकाली काढेपर्यंत वापर

सध्या वापरात असलेली वाहने ती निरुपयोगी ठरवेपर्यंत सध्या आहेत त्याच कार्यालयाच्या वापरात ठेवण्यात यावीत व जसजशी ती वाहने निरुपयोगी ठरविली जातील तसतशी ती मोडीत काढावीत.

मात्र त्याबदली नवीन वाहने खरेदी करू नयेत.”

16. The submissions of the learned Counsel for the Zilla Parishad, Thane on the basis of this Government Resolution and the reliance being placed on the conditions, in our opinion, is not acceptable.

17. The very fact of the matter is, this is a vehicle which cannot be equated with the vehicles which being utilized in the other Government Departments. The vehicle in question is an ambulance attached to an Primary Health Centre. The Primary Health Centre is in a rural area and it can safely be said that the need of an ambulance in Primary Health Centre and need of vehicle in other Government department is on different pedestals.

18. The submission of learned Counsel for Zilla Parishad that the clause 4 also refers to an exigency of closure of project, for any reason, we failed to understand how this condition can be pressed into service in a matter of health services in general and health at Primary Health Centre in particular. The closure of a project of Primary Health Centre is leading to situation where there is a denial of health services to an entire rural area. This situation is not at all accepted in any welfare state.

19. Now apart from this facts, there is also communication placed on record at the instance of the learned Counsel for Respondent – Zilla Parishad. Perusal of the communication show that there was a query made by the District Health Officer, Zilla Parishad, Thane and that was in respect of fixing the amount to be paid to the driver sought to be engaged by following the tender process. It is very interesting to note that while putting up the query a proposal was also submitted by the District Health Officer, Zilla Parishad, Thane so as to grant the amount on temporary basis and while replying to this query by the said

communication dated 18.11.2010, the Assistant Director, Health Services, Mumbai specifically stated that as it will take sometime to provide necessary guidance and this delay would result in a delay for making the ambulance available to the patient in case of emergency as such, the proposal submitted by the Zilla Parishad, Thane for a temporary arrangement is granted. Thus, there cannot be any dispute on the fact that the ambulance services is one of the most important health services for the patient requiring the medical assistance.

20. Now coming back to the sequence of events, the perusal of the material placed on record show that in the year 2000 itself when the Petitioner was appointed a ground was taken that the engagement of a driver by an outsource method i.e. undertaking a tender process and completing the same, would require at least two months time. This was a scenario in the year 2010. Till the last extension granted to the Petitioner, the Petitioner then approached to this Court i.e. nearly for many 10 years the process could not see light of the day and again very interestingly enough the process

was initiated by Respondent – Zilla Parishad in month of July 2021 and this fact is brought to the notice of this Court in the reply filed by the Respondent – Zilla Parishad in the Contempt Petition No. 349 of 2021. In the order dated 30th August, 2021, the Division bench of this Court briefly referred to the grievance raised by the Petitioner. Then observations that the Petitioner had approached this Court immediately and the Petitioner has given undertaking to medical officer and has submitted that he is joining the duty on the same day i.e. 17th August, 2021 and further observed that his continuation in service would subject to the result of the Petition.

Thus, the Petitioner was in continued in service till 30th August, 2021 and by order dated September 29, 2021, the Respondents No. 1 to 5 were directed to permit the Petitioner to sign the muster roll until further orders.

21. The Respondent – Zilla Parishad annexed an order dated 15th July, 2021 to the reply affidavit in Contempt Petition and it is stated that by the said order the services of the Petitioner is terminated

along with other drivers and the Petitioner has not raised any challenge to this order. It is very interesting to note the reason assigned in this order. The order refers to one agency namely, Rakshak Security Services and System Private Ltd. It states that vide order dated 06.07.2021 the agency was selected. Again interestingly enough, the Petitioner's services are terminated by giving reason of engaging private agency and on 28.09.2021 the Petitioner is informed to provide his documents to that private agency and it is stated in the communication further that the Petitioner's services were terminated on 15.07.2021 and the Petitioner was directed to approach the private agency to submit necessary documents and as such, the Petitioner failed to submit the necessary document to the private agency, the joining report submitted by the Petitioner to the authority cannot be accepted.

22. It is then submitted that as the Petitioner was terminated and he failed to join, the private agency engaged another person at his place namely, Harshad Gholap. The copy of an order issued by the said private agency to Harshad Gholap is placed on record at

Exhibit D, page 250 of the reply in the Contempt Petition. Then it is submitted that Shri. Gholap joined the duties on 13.10.2021 and then there is a photograph placed on record shows that Shri. Gholap is standing nearby the ambulance and the same is at page 259.

23. We are surprised to see the approach of the Zilla Parishad, Thane. On one hand, the Zilla Parishad itself placed on record that Zilla Parishad was to complete the process of engaging the drivers by completing the tender formalities within two months and on other hand, the ground raised in the opposition of Petition referring to the Government Resolution dated 10th September, 2001 and on the other hand the Zilla Parishad required 10 long years to complete the process issuing tender notice and when it initiated the tender process for engaging the drivers by outsource method, it was done in an electrifying speed. The said Zilla Parishad on one hand take long 10 years to complete the process but when the Petitioner approached this Court an interim order are passed by this Court, the Respondent – Zilla Parishad probably completed the entire process within 1 months. As there are no details

before this court, we can only refer to the document i.e. an order dated 15.07.2021, wherein reference is made of selection of the private agency.

24. At this stage, learned Counsel for Zilla Parishad submitted that the process was initiated sometime in the month of March, 2021 and was completed in the month of July, 2021. Even taking into consideration this chronology of events or sequence of events, the entire process was completed within four months post filing the Petition whereas, it was pending for 10 long years.

25. The approach of the Respondent – Zilla Parishad is also not appreciable on another count that there are two orders of the Division bench of this court dated 30th August, 2021 and 29th September, 2021, whereby the Respondents No. 1 to 5 were directed to permit the Petitioner to sign the muster roll. The Respondents No. 1 to 5 are the Zilla Parishad authorities. The Respondent No. 5 is the Chief Executive Officer who is senior most officer in the administration of Zilla Parishad in its hierarchy whereas, the Respondents No. 1 to 4 are the other

officers who are under the control of Respondent No. 5. When these authorities were specifically directed by this Court to permit the Petitioner to sing the muster roll, the Respondent – Zilla Parishad comes up before this Court that a private agency is engaged and the private agency has undertaken the process of selection of the persons and as the Petitioner failed to submit the necessary documents to the private agency, the termination of the Petitioner under order dated 15.07.2021 and confirmed by communication dated 28.09.2021, requires no indulgence of this Court. This certainly cannot be an approach of the public body.

26. Least to say that, a private entity or contractor is certainly under the control of the public body if there is some process of issuing the tender notice and selecting the agency by following the tender process and the selected agency is to act as per the guidelines or the directions issued by the public body but here the facts laid us to make an impression as if the Zilla Parishad authorities are acting as a puppet under the control of a private entity.

27. Now considering these facts, 1. The Petitioner

was engaged by process staking his claim along with other candidates, 2. selection of the Petitioner by due process, 3. in spite of having sufficient opportunity the Respondent – Zilla Parishad, Thane for completing the process took 10 long years to complete the process, 4. post filing of the Petition in this Court and post the orders of this Court the Zilla Parishad came up before this Court taking up a stand that the private entity is engaged and has undertaken a work of engaging the manpower including the driver on ambulance, 5. The Health Authorities of the State Government i.e. the Directorate of the Health Services and the Zilla Parishad were on an equal footing to submit that the services of ambulance driver is a most essential service for a Primary Health Centre and 6. an insistence being placed on the judgment of the Secretary, the State of Karnataka vs. Uma Devi (supra).

28. It will be useful for our purposes to refer order of the Hon'ble the Apex Court in the matter of Sheo Narain Nagar & Ors Versus State of Uttar Pradesh & Ors¹. The Hon'ble the Apex Court observed thus:

7. *Learned Counsel appearing on behalf*

1 Civil Appeal No. 18510 of 2017 arising out of SLP(C) No. 6183 of 2015

of the respondent had relied upon paragraph 44 of the decision in Uma Devi (Supra), so as to content that it was not the case of irregular appointment but of illegal appointment; there was no post available on which the services of the appellants could have been regularized and appointment were in contravention of the reservation policy also; thus, termination order was rightly issued and, in no case, the appellants were entitled for regularization of their services.

8. When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that the incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in

exploitative forms. This situation was not envisaged by Uma Devi (Supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Uma Devi (Supra) has been ignored and conveniently over looked by various State Governments /authorities. We regretfully make the observations that Uma Devi (Supra) has not be implemented in its true spirit and has not be followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, 16 read with Article 34 (1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India, AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there are being no provision for pension, retiral benefits etc. There is clear contravention of constitutional provision and aspiration of down trodeen class. They do not have

equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Uma Devi (Supra). Thus, the time has come to stop the situation where Uma Devi (Supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, where as Uma Devi (Supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract basis/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in Uma Devi (Supra)

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The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of

Uma Devi (Supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 2.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 2.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today.

29. Considering all the above referred aspect, as well as in view of the judgment of this Court at Nagpur bench in the matter of Sachin Dawale & Ors (supra) and observations of the Hon'ble the Apex Court in the matter of Sheo Narain Nagar (supra), we are of the opinion, that the learned Counsel for the Petitioner has made out case for allowing the Petition.

30. Though, it was submitted by the learned Counsel for the Zilla Parishad that the Petitioner has not raised any challenge to the said termination order dated 15.07.2021, for the reasons assigned by us above referred, we hold that the issuance of said termination notice itself was an unsustainable act of Respondent – Zilla Parishad and we see no reason to hold that the

said termination is legal.

31. Learned Counsel for Respondent – Zilla Parishad made a submission as per the Government Resolution dated 16.01.2001 and more particularly annexures to the said Government Resolution, that there is a specific requirement of the staffing pattern and in view of that particular Government Resolution post of the driver is a dying post.

It gives us pain than surprise to consider the submission with respect of an ambulance driver and when the submission is made that the post of an ambulance driver is a dead post, it would only result in an apathy towards the health services in the State of Maharashtra.

32. We may not hesitate at this stage to state that on one hand, we came across with the news paper items where the patients are required to shift from one village or a Primary Health Centre to taluka place by making a local arrangements such as "पालखी" or bullock-cart due to non availability of ambulances particularly in rural areas and on the other hand, the State Government is taking a specific plea that the post of

ambulance driver is a dead post.

33. We hope that the higher authorities of State of Maharashtra, shall consider the aspect of the post of driver is whether dead or alive with a humane, sensitive and progressive approach and not only by a commercial mind, considering the financial burden on the State.

34. Providing health services to the citizens is a responsibility of the State the term "right of life" is being extended by judicial pronouncements, meaning thereby, life with dignity. A citizen who is waiting for an ambulance and some arrangement is made so as to shift the patient by some local means because of non-availability of the ambulances, is certainly not a life with dignity.

35. We may only express our deep concern for the citizens and once again we expect that the State Government or an the Health and other concern Departments of the State Government shall consider this aspects with a sensitive and humane approach.

36. Considering all the above aspects, we quash

and set aside the termination order issued to Petitioner on 15.07.2021. We direct the Respondent – Zilla Parishad, Thane to grant benefits to the Petitioner as regular employee from the date of quashing and setting aside termination order i.e. 15.07.2021.

37. We further make it clear that the Petitioner would not be entitled for any monetary benefits for his past services, in view of the judgment and order of this Court at Nagpur Bench. Resultantly, the Petitioner be granted continuity of services for other purposes except for the monetary purposes from the date of his initial appointment.

38. Rule made absolute in above terms. With these directions, the Writ Petition is disposed of.

39. In view of disposal of Writ Petition, nothing survives in pending Interim Application(s), if any, the same is accordingly disposed of.

40. At this stage, learned Counsel for Respondent – Zilla Parishad orally prayed for stay to the present judgment of this Court and submitted that as the

financial implications are involved in the matter and as the Zilla Parishad is dependent upon finances supplied by the State Government and for that the State Government will have to form a policy. As such the Respondent is desirous of challenging the order of this Court before Hon'ble the Apex Court, stay be granted to the order of this Court.

41. Learned Counsel appearing for the Petitioner vehemently opposed to stay the judgment.

42. Considering the submission of the learned Counsel for Respondent – Zilla Parishad, Thane, the judgment of this Court is stayed for period of 6 weeks only.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)