

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Misc. Civil Application (Review) No. 298/2020 in CIVIL APPLN. (W) NO.
411 OF 2020 (D) IN W.P. NO.17 OF 2019 (D)

Zilla Parishad, Bhandara

-Vs.-

Smt. Kunda D/o Gopichand Gawande and others

WITH

CIVIL APPLN. (CAO) NO. 574 OF 2020

IN

M.C.A. ST. NO. 7449 OF 2020 IN W.P. NO.108 OF 2019 (D)

Smt. Mamta Bhimrao Bhavsagar

-Vs.-

Zilla Parishad, Bhandara and others

WITH

CIVIL APPLN. (CAO) NO. 576 OF 2020

IN

M.C.A. ST. NO. 7455 OF 2020 IN W.P. NO.107 OF 2019 (D)

Sushila D/o Sukhdeo Selote

-Vs.-

Zilla Parishad, Bhandara and others

WITH

CIVIL APPLN. (CAO) NO. 575 OF 2020

IN

M.C.A. ST. NO. 7459 OF 2020 IN W.P. NO.18 OF 2019 (D)

Manisha D/o Khushal Thulkar

-Vs.-

Zilla Parishad, Bhandara and others

WITH

Misc. Civil Application No. 319/2020 IN
W.P. NO. 5967 OF 2018 (D)

Chief Executive Officer, Zilla Parishad Gondia and others
-Vs.-
Sangita Shriram Madavi and others

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

MCA No. 298/2020

Mr. R.V. Bhanarkar, Advocate for the applicants

Mr. R.S. Khobragade, Advocate for the respondent No.1

Mr. S.D. Sirpurkar, AGP for the respondent No.2

CAO No.574/2020

Mr. P.D. Meghe, Advocate for the applicant

Mr. R.S. Khobragade, Advocate for the respondents No.1 and 2

Mr. S.D. Sirpurkar, AGP for the respondents No.3 and 4

CAO No.576/2020

Mr. P.D. Meghe, Advocate for the applicant

Mr. R.S. Khobragade, Advocate for the respondents No.1 and 2

Mr. S.D. Sirpurkar, AGP for the respondents No.3 and 4

CAO No.575/2020

Mr. P.D. Meghe, Advocate for the applicant

Mr. R.S. Khobragade, Advocate for the respondents No.1 and 2

Mr. S.D. Sirpurkar, AGP for the respondents No.3 and 4

MCA No. 319/2020

Mr. A.Y. Kapgate, Advocate for the applicants

Mr. R.V. Bhanarkar, Advocate for the respondent No.1

Mr. S.D. Sirpurkar, AGP for the respondents No.2 and 3

CORAM : MANISH PITALE, J.

RESERVED ON: AUGUST 10, 2021

PRONOUNCED ON: AUGUST 13, 2021

These five review applications have been filed seeking review of common judgment and order dated 19/11/2019, passed by this Court in Writ Petition No. 5967 of 2018 and connected Writ Petitions, as also common judgment and order dated 13/03/2020, passed by this Court in Writ Petition No. 17 of 2019 and connected Writ Petitions.

2. This Court issued notice in the review applications by recording that the learned counsel appearing for the review applicants have relied upon on order dated 11/02/2020, passed by the Division Bench of this Court (Aurangabad Bench), wherein allegedly similarly situated persons were granted relief of regularization, while this Court in the judgments of which review is sought, had declined to uphold directions for regularization passed by the Industrial Court. A reference was also made to order dated 06/07/2020, passed by the Hon'ble Supreme Court in Special Leave Petitions filed against the aforesaid judgment and order dated 19/11/2019, passed by this Court in Writ Petition No. 5967 of 2018 and connected Writ Petitions. It was brought to the notice of this Court that the Hon'ble Supreme Court, while dismissing the Special Leave Petitions, had granted liberty to the review applicants to approach this Court by filing review applications by placing reliance upon the aforesaid order of the Division Bench of this Court (Aurangabad Bench). It is also recorded in the order of the Hon'ble Supreme Court that the review applicants would be at liberty to approach the Hon'ble Supreme Court, if the necessity arose. It is in this backdrop that notices were issued in the review applications. The respondent – Zilla Parishads of Gondia and Bhandara appeared through counsel opposing the present review applications.

3. Mr. P.D. Meghe and Mr. Bhanarkar, learned counsels appearing for the review applicants, submitted that the aforementioned order dated 11/02/2020, passed by the Division Bench of this Court (Aurangabad Bench), had granted relief of regularization to employees of the Zilla Parishads, similarly situated like the applicants herein and that, therefore, the said judgments passed by this Court deserved to be reviewed. On this basis, it was submitted that orders passed by the Industrial Court in favour of the review applicants deserved to be confirmed by dismissal of the Writ Petitions filed by the Zilla Parishad before this Court. It was submitted that Auxiliary Nurse Midwives (ANMs), who were similarly situated like the review applicants herein deserved to be regularized, as held by the Industrial Court in their favour. According to the learned counsel for the review applicants, Government Resolution dated 02/05/2009, was specifically considered by the Division Bench of this Court (Aurangabad Bench), while granting the relief of regularization to the review applicants.

4. Mr. P.D. Meghe, learned counsel appearing for the review applicants specifically submitted that the Zilla Parishads in the Nagpur Division, particularly those of Gondia and Chandrapur had already granted regularization of service to identically situated employees (ANMs) and that, therefore, the review applications deserved to be allowed. It was further submitted that insofar as the review applicants –

Mamta Bhimrao Bhavsagar, Sushila Sukhdeo Selote and Manisha Khushal Thulkar, were concerned, the Zilla Parishad – Bhandara itself had proposed their regularization as per additional documents filed with the review applications, thereby supporting the case of the review applicants. The learned counsel further sought to refer to the written submissions during course of hearing of the Writ Petition in order to buttress the submissions made on behalf of the review applicants.

5. On the other hand, Mr. Kapgate, learned counsel appearing for the Zilla Parishad – Gondia and Mr. Khobragde, learned counsel appearing for the Zilla Parishad – Bhandara submitted that the review applicants had failed to demonstrate any error apparent on the face of the record in the judgments, of which review was sought. It was further submitted that the factual position in the case of petitioners before the Division Bench of this Court (Aurangabad Bench), was clearly distinguishable because the petitioners therein were appointed on contract basis and they had continued as ANMs since the year 1997, while the review applicants herein were admittedly appointed on bonded service for a specific period. The appointment orders of review applicants for bonded service specifically stated the last date of such bonded service and, therefore, this Court had held that the Government Resolution dated 02/05/2009, did not apply to the facts of the present case. It was further submitted that the review applicants were

virtually seeking a rehearing of the matter on merits, which could not be permitted in review jurisdiction. It was further specifically brought to the notice of this Court by the learned counsel for the Zilla Parishad - Bhandara that the contentions raised on behalf of the review applicants that the said Zilla Parishad had proposed regularization of the aforementioned three review applicants, was factually incorrect. This was because information was sought about the employees, who had been appointed on bonded service, if their services were to be regularized. This did not mean that the Zilla Parishad had recommended their regularization. On this basis, it was submitted that the review applications deserved to be dismissed.

6. Heard learned counsel for the rival parties. It is an admitted position that review jurisdiction can be exercised if there is an error apparent on the face of the record and the matter cannot be opened for rehearing on merits at the behest of the review applicants. In the present review applications, the applicants have strongly relied upon order dated 06/07/2020, passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No(s). 4032/2020 along with connected Special Leave Petitions (Sangita Shriram Madavi Etc. Vs. Chief Executive Officer Zilla Parishad Gondia & Ors. Etc.)

7. A perusal of the order passed by the Hon'ble Supreme Court would show that the petitioners were

permitted to withdraw the Special Leave Petitions with liberty to approach this Court by filing review petitions. Reliance placed by the learned counsel appearing for the review applicants on the aforesaid order of the Division Bench of this Court (Aurangabad Bench), was recorded and it was further specifically recorded that the petitioners are given further liberty to approach the Hon'ble Supreme Court, in case of any necessity. Thus, the fulcrum of the arguments on behalf of the review applicants, while seeking review of the judgment of this Court, is the order dated 11/02/2020, passed by the Division Bench of this Court (Aurangabad Bench) in Writ Petition No. 7473 of 2019 (Ashabai Rangnath Bansode & Ors. Vs. The state of Maharashtra & Ors.) and the connected writ Petitions. It is contended that since the Division Bench of this Court granted relief of regularization to similarly situated employees of Zilla Parishad working as ANMs, the judgment of this Court deserved to be reviewed, the Writ Petitions filed by the review applicants deserved to be dismissed and the orders passed by the Industrial Court in favour of the review applicants for regularization deserved to be confirmed.

8. A perusal of the order dated 11/02/2020, passed by the Division Bench of this Court (Aurangabad Bench), in the aforesaid Writ Petition shows that the petitioners therein were appointed on contract basis in the year 1997. It is recorded that the petitioners therein were continuously working as

ANMs since 1997, when they were appointed on contract basis. It is in this factual scenario that the Division Bench of this Court (Aurangabad Bench), applied Government Resolution dated 02/05/2009 to the case of the petitioners therein. It is significant that in the case before the Division Bench of this Court (Aurangabad Bench), the Divisional Commissioner had passed a specific order dated 17/10/2017, directing regularization of services of the petitioners as ANMs. It is specifically recorded by the Division Bench of this Court (Aurangabad Bench), that the factual matrix was not in dispute. It is also recorded that sanction was granted for regularization of services of the 153 appointed candidates. It is then recorded that the petitioners therein were not granted relief of regularization due to issuance of subsequent Government Resolution dated 05/05/2018. It is in the backdrop of such facts that the Division Bench of this Court (Aurangabad Bench), directed that the petitioners therein were entitled for benefit of Government Resolution dated 02/05/2009 and specific order passed by the Divisional Commissioner dated 17/10/2017, granting regularization of services of the petitioners therein as ANMs.

9. The facts in the present case are clearly distinguishable from those in the Writ Petitions decided by the Division Bench of this Court (Aurangabad Bench). In the present case, all the review applicants were appointed specifically for

bond services of only two years and condition No.1 of appointment orders specifically stated that services of the review applicants would come to an end after expiry of period of two years of bond service. This Court recorded in the judgment and order dated 19/11/2019, passed in Writ Petition No.5967/2018 and connected Writ Petitions that much would turn on interpretation of the Government Resolution dated 02/05/2009, in the face of admitted fact that appointment orders issued in favour of the review applicants were only for specific period of two years with a condition stipulating that their services would come to an end upon expiry of the two years period of the bond service. The case of the review applicants is not that they were appointed on contract basis. It is on the basis of such specific appointment orders of bond service that the review applicants had approached the Industrial Court seeking relief of regularization. It is only under interim orders that the review applicants continued in service during the pendency of the proceedings before the Industrial Court.

10. In the judgment and order dated 19/11/2019, passed in Writ Petition No.5967/2018 and connected Writ Petitions, this Court in the context of applicability of Government Resolution dated 02/05/2009, held as follows :

“(15) Having heard the learned counsel for the rival parties, it becomes evident that while on the one hand the petitioners have claimed that the appointments of the contesting respondents

were only for a specific period of two years of bonded service, wherein regular selection process was not followed and hence there was no question of regularization, on the other hand the contesting respondents have claimed that they had vested right of being regularized in service under GR dated 02.05.2009, particularly when such regularization of service had been granted to similarly situated persons. Much would turn on interpretation of GR dated 02.05.2009, keeping in mind the fact that Division Bench of this Court in Writ Petition No.2791/2013 [**Pushpa Matthulal Katre & others vs. Collector, Gondia and others**] has held that a person identically situated like the contesting respondents who was also appointed for bonded service of only two years, was not entitled to claim regularization under the aforesaid GR dated 02.05.2009. Therefore, before discussing the law on the question of right of regularization of employees and the emphasis placed in various judgments on the necessity of filling posts in public employment through regular selection process, rather than back door entry, it would be necessary to advert to the GR dated 02.05.2009, in order to examine the rival claims made by the parties. A perusal of the GR dated 02.05.2009, shows that it is recorded that every year candidates like the contesting respondents herein are appointed for a period of bond of two years in Zilla Parishad of the districts. It is further recorded that upon the completion of the period of bond of two years, the appointments of such candidates come to an end and new set of candidates are appointed on bond for a period of two years in the post of ANM. Thereafter, it is recorded that upon deducting the said posts of ANM, in which candidates are appointed for specific period of two years of bond service, from the total sanctioned posts available of ANM, the number of posts available for appointment by regular procedure can be calculated. It is then provided that such posts to be filled through regular procedure would have to be filled as per the prescribed procedure of selection and

appointment. In paragraph 2 of the said GR it is then recorded that the appointing authorities must follow the aforesaid steps specified in paragraph 1 and that it would be the responsibility of Chief Executive Officer of the Zilla Parishad to ensure that availability of sanctioned posts is ascertained and that regular appointments are made. It is further recorded that the Divisional Commissioner is granted powers to approve such appointments under the Maharashtra Zilla Parishads District Services (Recruitment) Rules 1967.

(16) In this context GR dated 19.10.2007, becomes significant, which specifically provides for procedure to be followed for making appointments. This GR specifically provides seven member District Selection Committee headed by the Collector, of which the Chief Executive Officer of Zilla Parishad is a member and further that Head of the department of the concerned department is also a member of the said committee. Detailed process of written examination and interview with the marks to be allotted is also specified. It is evident that the appointment against available vacancies of sanctioned posts through regular process specified in GR dated 02.05.2009, would mean selection by the aforesaid seven member District Selection Committee, so as to properly implement the scheme envisaged in GR dated 02.05.2009.

(17) In the present case, a perusal of the appointment order dated 19.10.2010, issued in favour of the contesting respondents would show that the appointments were made on the names of the contesting respondents and others being sponsored by the Joint Director of Health Services. The appointment was specifically only for a period of two years of bond service and condition No.1 of the appointment order specifically stated that the service would come to an end upon expiry of period of two years of

bond service. Thus, such appointments, as per paragraph 1 of the GR dated 02.05.2009, were only for posts of bonded service of two years, upon expiry of which, the services would come to an end and a new set of candidates for such bonded service of two years would be appointed. After deducting the number of such posts for which appointments were being made only for a period of two years bonded service, the number of available sanctioned posts of ANM would be ascertained and appointments to such posts would have to be made through regular procedure of issuance of advertising and selection through the procedure specified and elaborated in GR dated 19.10.2007.

(18) It appears that the Industrial Court and the contesting respondents herein have completely misinterpreted GR dated 02.05.2009, to mean that all such persons appointed specifically only for a period of two years bond service were entitled to be regularized upon expiry of the said period, despite the fact that the appointment order stated that the services would come to an end on the expiry of the period of two years. A proper reading of GR dated 02.05.2009 would show that such a contingency is not contemplated. If the findings rendered by the Industrial Court and the contentions raised on behalf of the contesting respondents are to be accepted, candidates appointed for specific period of only two years of bonded service would continue to get regularized and there would be no posts available with passage of time for making appointments through the regular process as noted above. In this context, it is significant that while making appointments for bonded period of two years like that of contesting respondents herein, the procedure of issuing advertisement, inviting applications, conducting written tests and interviews through selection committee, was never undertaken. This is an admitted position, because in the evidence recorded before the Industrial Court,

the contesting respondents admitted that they were not aware as to whether any advertisement was ever issued by the petitioner No.1, before issuing the appointment order dated 19.10.2010. In fact, a perusal of the said order itself shows that the names of the contesting respondents and others were simply sponsored by the Joint Director of Health Services. The claim made by the contesting respondents that interviews were conducted is falsified by the very document itself and it is evident that before sponsoring such names, the Joint Director Health Services merely verified the documents of the contesting respondents. In any case, there is no material on record to show that the contesting respondents were selected through a valid process of selection, involving issuance of advertisement, inviting applications, shortlisting of candidates, evaluation through written test or interviews by duly constituted selection committee, specifically envisaged under GR dated 19.10.2007.

(19) Therefore, it becomes evident that the claim of the contesting respondents that they were entitled to regularization under GR dated 02.05.2009, is wholly misplaced. It appears that the use of the word “regular” in GR dated 02.05.2009 in the context of appointments required to be made through regular process of selection has been confused with the word “regularization” by the contesting respondents. The Industrial Court has also erred in accepting the said contentions of the contesting respondents. In fact, the Industrial Court committed a grave error in holding that GR dated 02.05.2009 was an implied condition in the appointment order dated 19.10.2010, issued by the petitioner further erroneously holding that the GR specifically provided for regularization of candidates like the contesting respondents.”

11. Since the other judgment of which the review is sought i.e. judgment dated 13/03/2020, passed in Writ Petition No.17/2019 and connected Writ Petitions adopts the reasoning of the aforesaid judgment and order dated 19/11/2019, passed in Writ Petition No.5967/2018 and connected Writ Petitions, the above quoted reasoning applies to the case of all the review applicants before this Court.

12. The factual distinction between the case of the petitioners in Writ Petition No. 7473/2019 and connected Writ Petitions decided by order dated 11/02/2020, passed by the Division Bench of this Court (Aurangabad Bench), and the review applicants before this Court is obvious, for the reason that the petitioners therein were appointed on contract basis way back in 1997 and continued thereafter as ANMs, while the review applicants in these cases were specifically appointed for bonded service only for two years in the years 2010, 2012 and 2015, with the aforesaid stipulated condition in their appointment orders. Therefore, the review applicants are not justified in claiming parity with the petitioners before the Division Bench of this Court (Aurangabad Bench), in the aforesaid Writ Petitions.

13. The learned counsel appearing for the review applicants failed to demonstrate any error apparent on the face of the record of the judgments, of which review is sought. An attempt was made to

reargue the matters on merits, which is wholly impermissible under review jurisdiction.

14. Apart from this, the learned counsel appearing for Zilla Parishad – Bhandara is fully justified in contending that the review applicants i.e. Mamta Bhimrao Bhavsagar, Sushila Sukhdeo Selote and Manisha Khushal Thulkar, have not been recommended for regularization of their services. It is only because queries were made from the Ministry at Mumbai about list of bonded service ANMs that such information was provided. The learned counsel for the Zilla Parishad - Bhandara strenuously submitted that the review applicants and other such similarly situated persons have been approaching the State Government and elected representatives claiming that they are entitled for regularization and this has led to queries being issued from the Ministry at Mumbai to the Zilla Parishads, who have merely provided the list of such ANMs, who were appointed on bonded services. It is submitted that such communication cannot have any effect on the interpretation and true purport of Government Resolution dated 02/05/2009 and the fact that the review applicants were appointed only for two years as per their appointment orders on bond service with a specific condition that their service would discontinue on the expiry of the specific period of two years.

15. This Court has also considered all the contentions raised on behalf of the rival parties and it is found that the review applicants have not been able to demonstrate any error apparent on the face of the record on the judgments of which review is sought and, therefore, review applications are found to be without any merit.

16. Accordingly, the review applications are dismissed.

JUDGE

MP Deshpande