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

WRIT PETITION NO.4599 OF 2019

Madhukar s/o Maroti Khamkar,
Age : 48 years, Occu. Service,
R/o Flat No.202, Shriram Apartment,
Nagar Manmad Road, Ahmednagar,
Tq. & Dist. Ahmednagar ..PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Home Development Mantralaya,
Mumbai-32
2. The Secretary,
Health Department Mantralaya,
Mumbai – 32
3. The Inspector General of Police,
Nashik Division, Nashik
4. The Superintendent of Police,
Ahmednagar
5. The Deputy Director,
Health Service,
Nashik Division, Nashik
6. The Collector,
Ahmednagar ..RESPONDENTS

Mr. H.V. Dhage, Advocate for petitioner;
Mrs. M.A. Deshpande, A.G.P. for respondents

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**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 4th March, 2022

P.C.

1. By this petition, the petitioner has put-forth prayer clause

(B) and (C) which read as under:-

“(B) To issue writ of mandamus or other writ of like nature or order, to set aside the order passed by Maharashtra Administrative Tribunal Mumbai Bench at Aurangabad in Original Application No.175 of 2017 dated 06.04.2018 and be directed the respondents to regularize the service of petitioner with all consequential benefits and for that purpose issue necessary orders.

(C) Pending hearing and final disposal of this writ petition to direct the respondents to regularize the services of the petitioner with all consequential benefits and for that purpose issue necessary orders.”

2. On 24.2.2020, this Court had passed the following order:-

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“1. The petitioner shall file complete copy of Government Resolution dated 8th March, 1999 along-with Annexure “A” to the said G.R. Learned AGP shall take instructions whether the post of Compounder was at any time advertised for filling in through M.P.S.C. If the same was not advertised, then the reasons for not advertising the post.

2. The petitioner is working for almost 25 years. The petition is seeking regularization. In the earlier original application No.430/1998 filed by the petitioner, the petitioner was granted reinstatement and was directed to be continued till the MPSC selected candidate is available. The said order was passed on 31.03.2000, almost 20 years back.

3. At the request of parties, place the matter on 23.03.2020.”

3. The petitioner had been appointed as a Compounder on temporary basis by the then Superintendent of Police, Ahmednagar in 1995. He was disengaged on 6.3.1998. He challenged the said termination order by preferring Original Application No.430 of 1998 seeking a limited relief of reinstatement and continuation in service. The learned Maharashtra Administrative Tribunal disposed off the Original

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Application on 31.3.2000 by directing that the petitioner should be continued till a regularly selected candidate is made available.

4. On 8.3.1999, the Government had issued a Government Resolution in respect of regularization of services of the employees appointed for occasional purposes and those who were working without breaks. It is the contention of the petitioner that, by Government Resolution dated 8.3.1999, similarly situated employees are getting benefits of regularization from 8.7.2003. The petitioner, therefore, made a representation on 24.2.2017. As no response was forthcoming, the petitioner approached the learned Tribunal with Original Application No.175 of 2017. By the impugned judgment dated 6.4.2018, the Original Application was rejected by the Tribunal on the ground that the relief claimed by the petitioner was already granted when the earlier Original Application was disposed off by order dated 31.3.2000.

5. It is quite obvious that this petitioner had not prayed for the prayers set out in Original Application No.175 of 2017, in

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his earlier Original Application No.430 of 1998. Moreover, by the first order of the Tribunal, the petitioner was to be continued as a temporary until a regularly selected candidate was appointed. It is 22 years post the said order of the Tribunal and neither did a regularly selected candidate arrive, nor has the petitioner been regularized in employment. He is 27 years in employment. Yet, the petitioner's future hangs in the balance and there is no job security. It would be in a couple of years that he would attain the age of superannuation and though having spent his life being a Compounder in the Health Centre in the office of the District Superintendent of Police, Ahmednagar, he would retire as a distraught person with no retiral benefits and no financial support to take care of his old age and his spouse.

6. The learned A.G.P. has placed before us a compilation of documents (9 pages). Page nos.2 to 9 are certain Circulars and Recruitment Rules annexed to the covering letter dated 3.3.2022. The same are taken on record and collectively marked as "X-1" for identification.

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7. The learned A.G.P. points out that the District Superintendent of Police, Ahmednagar is contemplating making a request through the District Collector to the Competent Authorities for granting permission to fill up the post of Compounder. He is also likely to apply to the Deputy Director of Health Services, Nasik Division, Nasik to fill in the post by deputation.

8. The learned A.G.P. clarifies that the Authorities cannot, by themselves, pass any orders as they do not have any authority to deal with the case of the petitioner, more so in the light of the fact that they do not have any Recruitment Rules which can permit recruitment through the District Superintendent of Police or the District Collector, Ahmednagar. She relies upon the Government Resolution of the Public Health Department dated 31.7.1990.

9. The Government Resolution dated 9.7.1973 indicates that a Hospital with six beds is established at the Police Headquarters at Satara, Sangli, Ahmednagar, Dhule, Aurangabad, Beed, Osmanabad and Parbhani. For such

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Hospitals at the District Police Headquarters, there are nine posts of Compounders; one for each Hospital. As such, one post of a Compounder at Ahmednagar pursuant to the Government Resolution dated 9.7.1973, which is 49 years old, was available. This one post at Ahmednagar is presently occupied by the petitioner.

10. Considering the above and taking into account that the sanctioned vacant post of Compounder at Ahmednagar District Police Headquarter's Hospital is occupied by the petitioner and no regularly selected candidate is yet to be appointed despite the learned Tribunal having observed that the petitioner can continue till a regularly selected candidate is appointed, we do not find any reason to deprive the petitioner of the benefit of permanency.

11. We also find on page 8 (internal page 4 of the Government Resolution dated 9.7.1973) as under:-

“The posts of Medical Officer (Class II) and (Class III) should be treated as temporary additions to the respective cadres in the Medical Department. The remaining posts should be borne on the

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establishment of the Police Department.”

12. Considering the above, this petition is allowed. The impugned order dated 6.4.2018 delivered by the learned Tribunal, is quashed and set aside. Original Application No.175 of 2017 stands allowed.

13. We, therefore, direct as under:-

- a) Respondent no.4 to forward the proposal of the petitioner for absorption on the post of Compounder (presently known as a Pharmacist) at the District Police Hospital at Ahmednagar, to respondent no.5, on or before 21.3.2022.
- b) Thereafter, respondent no.5 would proceed to grant regularization to the petitioner with all consequential benefits with effect from 1.4.2000, keeping in view that the learned Tribunal had passed an order on 31.3.2000 permitting the Government to fill in the post and yet the said post was neither filled in, nor the petitioner was absorbed/regularized.

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- c) We expect respondent no.5 to pass necessary orders as expeditiously as possible and preferably on or before 30th June, 2022.
- d) Needless to state, insofar as the pensionary benefits are concerned, his service shall be computed from 1.4.2000 and the earlier temporary service would be reckoned with in accordance with the provisions of law, to the extent it is permissible.

(S. G. MEHARE, J.)**(RAVINDRA V. GHUGE, J.)**

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