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

1028 WRIT PETITION NO.1851 OF 2007

Madhavsing s/o Shivsing Bainade,
Age: 38 years, Occu: Service as Peon,
R/o N-6, M-2, 14/6, Sinhgad Colony,
CIDCO, Aurangabad
Dist. Aurangabad

...PETITIONER

VERSUS

1. The State of Maharashtra
Through : The Secretary,
Finance Department,
Mantralaya, Mumbai-32
2. The Commissioner of Sales Tax,
Maharashtra State,
Sales Tax Bhavan, 8th Floor,
Majgaon, Mumbai
3. The Deputy Commissioner
(Establishment), Sales Tax,
Aurangabad, Aurangabad Region,
Aurangabad
4. The Sales Tax Officer
(Administration), Latur,
District : Latur
5. The Additional Sales Tax
Commissioner, Nagpur Region,
Nagpur

...RESPONDENTS

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Mr S. D. Joshi, Advocate for Petitioner;
Mr S. G. Karlekar, A.G.P. for Respondents/State

AND

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WRIT PETITION NO.1935 OF 2007
WITH CA/4940/2014 IN WP/1935/2007

Miss. Shamsunnisa Basiroddin,
Age:35 years, Occu: Service as
Clerk-cum-Typist, R/o Sale Galli,
Old Jalna, Dist. Jalna

...PETITIONER

VERSUS

1. The State of Maharashtra
Through : The Secretary,
Home Department,
Mantralaya, Mumbai-32
2. The Additional Sales Tax
Commissioner, Nagpur Zone,
Nagpur
3. The Deputy Commissioner
Sales Tax, Aurangabad Division,
Aurangabad

...RESPONDENTS

....

Mr S. S. Kazi, Advocate for Petitioner;
Mr S. G. Karlekar, A.G.P. for Respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 11th April, 2023

ORAL JUDGMENT (PER : Ravindra V. Ghuge, J.)

1. In the first petition i.e. Writ Petition No.1851/2007,
the Petitioner has put forth his prayers at clauses (B) to (E), which
read as under :-

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“B) By issue of Writ of certiorari or any other appropriate Writ, Order or direction in the like nature, the impugned order bearing No. EST-2/93 dated 22.1.1998, issued by the respondent No.5 herein (which is at Exh.F) may kindly be quashed and set aside.

C) By issue of Writ of certiorari or any other appropriate writ, order or direction in the like nature, the impugned judgment and order dated 21.2.2007, passed by the M.A.T. Aurangabad in O.A. no. 800 of 1998 may kindly be quashed and set aside.

D) Pending the hearing and final disposal of this Writ Petition, the impugned judgment and order dated 21.2.2007, passed by M.A.T. Aurangabad in O.A. No. 800 of 1998, thereby confirming the order dated 22.1.1998 passed by the respondent No.5, thereby terminating the services of the petitioner may kindly be stayed.

E) Pending the hearing and final disposal of this Writ Petition, the respondents be restrained from relieving the petitioner from the post of peon presently held by him at Sales Tax Office, Parbhani.”

2. In the second petition i.e. Writ Petition No.1935/2007, the Petitioner has put forth her prayers at clauses (B), (C), (C-1), (C-2), (D) and (E), which read as under :-

“B) By issue of Writ of certiorari or any other appropriate Writ, Order or direction in the like nature, the impugned order bearing No. EST-2/8 dated 5.2.1997, issued by the respondent No.2 herein may kindly be quashed and set aside.

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C) By issue of Writ of certiorari or any other appropriate writ, order or direction in the like nature, the impugned judgment and order dated 13.2.2007, passed by the M.A.T. Aurangabad in O.A. no. 443 of 1997 may kindly be quashed and set aside.

(C-1) The respondent nos.1 to 3 be directed to grant deemed continuation and deemed permanency of service of petitioner since her date of appointment 03.03.1994 as Clerk-cum-Typist.

(C-2) The respondents be directed to submit the proposal for pension in accordance with deemed continuation and deemed permanency in favour of petitioner as per rules.

D) Pending the hearing and final disposal of this Writ Petition, the impugned judgment and order dated 13.2.2007, passed by M.A.T. Aurangabad in O.A. No. 443 of 1997, thereby confirming the order dated 5.2.1997 passed by the respondent No.2, thereby terminating the services of the petitioner may kindly be stayed.

E) Pending the hearing and final disposal of this Writ Petition, the respondents be restrained from relieving the petitioner from the post of clerk-cum-typist presently held by him at Sales Tax Office, Jalna.

3. We have considered the strenuous submissions of the learned Advocate for the Petitioners and the learned A.G.P. appearing on behalf of the State Authorities.

4. In both these petitions, an order was passed by this Court on 10/01/2018, vide which, both these petitions were

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dismissed on 2 grounds. The first ground is, that the learned Advocates for the Petitioners were not present. The second ground was, that no interim relief was granted by this Court after the learned Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad (for short 'Tribunal'), dismissed their Original Application Nos.800/1998 and 443/1997, respectively, on a conclusion that their first appointment was not made by following the due procedure of law and that it amounted to a backdoor entry.

5. Both these Petitioners approached the Hon'ble Supreme Court and by an order dated 11/10/2022, Civil Appeal Nos.7151/2022 and 7152/2022 were allowed. The matters were expedited so as to be decided within six months. Pursuant thereto, this Court has passed orders on 02/01/2023, when the matters were listed suo-moto, taking into accounts the observations of the Hon'ble Supreme Court.

WRIT PETITION NO.1851/2007

(Petitioner - Madhavsing Shivsing Bainade)

6. The Petitioner Madhavsing passed the 9th Standard examination and registered his name with the office of Employment Exchange, Aurangabad in 1992. He filed an

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application with Respondent No.3/Authority and was appointed on 16/07/1994 as a 'Peon' with Respondent No.4, at Latur. He was granted a pay-scale of 750-940. He started receiving his annual increments. On 4/11/1997, he was transferred to Osmanabad. On 22/01/1998, he was terminated from service on the ground that his name was not forwarded by the Employment Exchange or the Social Welfare Office.

WRIT PETITION NO.1935/2007

(Petitioner – Shamsunnisa Basiroddin)

7. The Petitioner Shamsunnisa suffers from physical disability to the extent of 54%. She passed her S.S.C. and then typing examination in Marathi and English. Her name was registered in the office of Employment Exchange, as well as in the District Social Welfare Office on 08/08/1991. Pursuant to her application tendered with Respondent No.3, she was subjected to an interview by the Competent Selection Committee, and by an order dated 03/03/1994, she was initially posted as Clerk-cum-Typist at Jalna. She started receiving her annual increments. On 05/02/1997, she was issued with an order of termination on the ground that her selection and appointment was without following the due procedure.

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8. Both these Petitioners approached the Maharashtra Administrative Tribunal by preferring Original Applications. Both were granted ad interim protection, and by the interim orders dated 23/04/1999 and 09/07/1998, respectively, both were reinstated in service. By Judgments dated 21/02/2007 and 13/02/2007, respectively, both the Original Applications were dismissed primarily on the ground that the appointment of these Petitioners was not through the proper channel, since they were not recommended by the Employment Exchange and continuance in employment under the orders of the Court, would not create any equities in their favour in the light of **Indian Airlines Ltd. Vs. Prabha D. Kanan, (2006) 11 SCC 67.**

9. Both the Petitioners approached this Court by preferring present Writ Petition Nos.1851/2007 and 1935/2007. By the first order of this Court, dated 28/03/2007, this Court admitted the petitions by issuing Rule *Nisi* and observed that, even if these Petitioners have been terminated from service, they shall not be replaced by another ad-hoc appointee, till further orders. It needs clarification in the case of Madhavsing, that the Tribunal had dismissed his Original Application in its entirety and in the case of Shamsunnisa, she was given the liberty to apply

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for recruitment whenever the State Government undertakes a drive for recruitment of handicapped persons and her case would be considered on its own merits.

10. There is no dispute that, after Petitioner Madhavsing was reinstated in service as a 'Peon' on account of the interim orders of the Tribunal, he continued in service and was granted various pay-scales. Presently, he is in employment. He is receiving the pay-scale as per the 6th and the 7th Pay Commission recommendations. His date of superannuation would be 31/07/2029 by which time, he would be completing 34 years in employment, out of which 32 years are in continuance employment.

11. In the case of Shamsunnisa, she has also continued in employment on account of the interim orders of the Tribunal and despite there being no protective order of this Court, she continued in employment till her superannuation on 31/12/2019.

12. The issue before this Court is, as to whether the appointment of these 2 Petitioners was in tune with the prescribed procedure of recruitment. Apparently, the answer would be in the negative, since the names of both the Petitioners, though

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registered with the Employment Exchange Office and the Social Welfare Office, were not called for by the Department and, therefore, there was no occasion for the Employment Exchange Office or the Social Welfare Department to recommend their names to the concerned Sales Tax Department, so as to be considered for recruitment. However, the record indicates that the posts, on which these Petitioners were appointed, were sanctioned posts, as is set out in their first appointment orders. They were also granted particular pay-scales, though the appointment orders clearly mentioned that, they are appointed temporarily. The second Petitioner Shamsunnisa was interviewed by the Competent Committee before she was appointed.

13. The learned A.G.P. submits that the appointment orders of these Petitioners do not indicate the interviews faced by either of them.

14. In the above backdrop, it cannot be lost sight of, that both these Petitioners initially worked from 16/07/1994 till 22/01/1998 and 03/03/1994 till 05/02/1997, respectively. After their termination and the orders of the Tribunal, both were reinstated on 23/04/1999 and 12/08/1998, respectively. Since

their reinstatement, they are now in employment, though they did not have the protection of the High Court when the writ petitions were filed for challenging the judgments of the Tribunal, dismissing their applications. The second Petitioner Shamsunnisa has already superannuated. The first Petitioner Madhavsing has six more years for superannuation. Both of them have put in more than 20 years in service after their reinstatement.

15. Both these cases turn upon the recruitment process, having not been followed by the Department. It is, however, the case of the Department, as is visible from the termination order, that both the Petitioners were eligible to be appointed as a 'Peon' and as a 'Clerk-cum-Typist, considering their respective qualifications. Had it been a normal recruitment procedure, both these Petitioners would be eligible for appointments in their respective categories.

16. The learned A.G.P. has strenuously canvassed that, merely because these Petitioners continued in employment under fortuitous circumstances, they cannot be regularized in employment.

17. We are of the view that, both these Petitioners can be said to be the beneficiaries of irregular appointments. Both were eligible for appointment. As such, their entry in employment can be said to be an irregular appointment. Their appointments would not amount to illegal appointments, since an illegal appointment would mean such a candidate, who would otherwise never be eligible for appointment though a prescribed procedure for recruitment has been followed.

18. The Hon'ble Supreme Court has laid down law in **Secretary, State of Karnataka and others v/s Umadevi (3) and others, (2006) 4 Supreme Court Cases 1**, wherein the Department was directed to frame a scheme for regularization of those candidates, who had worked for more than 10 years. Nevertheless, the Hon'ble Supreme Court did not direct the regularization of an illegal appointment. It was their irregular appointments which led to the candidates putting in more than a decade in employment. This was, therefore, a ground for regularizing their appointments/services as a one time measure.

19. Insofar as the issue of termination of these Petitioners without an opportunity of hearing and adhering to the principles

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of natural justice, the learned Advocates for the Petitioners submit on instructions, that both the Petitioners would be satisfied if their appointment/reinstatement in service is taken into account from the dates, on which they were reinstated, pursuant to the orders of the Tribunal. Since they have not worked in the interregnum, they are willing to waive the said period to the extent of back-wages and would also not seek continuity insofar as their first entry as temporary appointment is concerned, until the dates of their reinstatement.

20. The learned A.G.P. has vehemently opposed the regularization of these Petitioners. He submits that, though the Petitioners have been working for over two decades, irregular appointments can never be legitimized.

21. Though the submissions of the learned A.G.P. would appear to be well placed, the fact remains that, this Court is a Court of equity and equities will have to be balanced in the peculiar facts and circumstances of these cases. One Petitioner has superannuated from employment and is awaiting pension for the last 3 years. One Petitioner is to retire in 2029. Both, apparently have crossed their prime and Madhavsing is

approaching old age. Having worked for more than 2 decades and still being in employment, we do not deem it appropriate to hold a view that, because their appointments were irregular, Madhavsing should now be discontinued from service on the ground of irregular appointment, that has occurred 30 years ago, and Shamsunnisa be deprived of retiral benefits for the same reasons.

22. In the peculiar facts and circumstances of these cases, both these petitions are partly allowed. The judgments of the Tribunal are quashed and set aside. We direct the concerned department, to initiate an appropriate proposal to Respondent No.1/Department within 30 days, for seeking orders of regularization in service. Respondent No.1 shall complete the formalities of passing an order, declaring that both the Petitioners are regularized in employment, within 30 days. Both the Petitioners would, therefore, be entitled for all consequential monetary benefits, including retiral/pensionary benefits. The pension papers of Shamsunnisa would be processed within 60 days from today and the pension of the said Petitioner be commenced within 60 days from the date of the order of regularization issued by Respondent No.1.

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23. Needless to state, the regularization order of these Petitioners would render them entitled for all monetary benefits after 2 years of their reinstatement in service, treating the said period as a period of probation. Needless to state, since the Petitioners have been granted the above benefits in the peculiar facts and circumstances of these cases, there would be no claim for compassionate appointment by any dependent, relative, kith and kin of these Petitioners.

24. Rule is made partly absolute in the above terms.

25. The pending Civil Application does not survive and stands disposed off.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)

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