

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 WRIT PETITION NO. 9960 OF 2019
WITH
CIVIL APPLICATION NO.13119 OF 2021

BEBI EKNATH BICHKULE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Applicant : Mr. Ajay Shinde
AGP for Respondent No.1: Mr. S.G. Karlekar
Advocate for Respondents 2 and 3: Mr. S.W. Munde

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 13th JANUARY, 2023.**

PER COURT :-

1. We have considered the strenuous submissions of the learned advocates for the respective sides and have gone through the record with their assistance.

2. The litigation history of this petitioner relates back to the judgment of this Court (Coram: S.S. Shinde [as His Lordship then was] and S. M. Gavhane, JJ.) dated 25.01.2018, in writ petition No. 5435 of 2014. It would be apposite to reproduce the directions issued by this Court, in paragraph Nos. 16 to 20, as under:-

“16. Keeping in view these observations of the Supreme Court, Respondent No.2 - the District Health Officer, Aurangabad and Respondent No.3 - the Chief Executive Officer, Zilla Parishad, Aurangabad are directed to prepare the

proposal of the employees similarly situated like the Petitioner and who have served for more than ten years before the pronouncement of the Judgment in the case of Secretary, State of Karnataka and others vs. Umadevi (3) and others, cited supra, and who are not made permanent, within the period of ten weeks from today mentioning therein the necessary details of their dates of joining, nature of duties performed by them and the salary being paid to them. Such proposal shall be forwarded to the Health Department of the Government of Maharashtra.

17. On receipt of such proposal, the concerned Department shall consider the cases of the Petitioner as well as the similarly situated employees serving on the establishment of Zilla Parishad, Aurangabad, and take a policy decision, whether the posts can be created with Aurangabad Zilla Parishad and whether such employees could be accommodated on such posts and whether their services could be regularized.

18. The Health Department, Government of Maharashtra shall take such decision within the period of SIX MONTHS from the date of receipt of the proposal. The decision so taken shall be communicated to the Zilla Parishad, and the Zilla Parishad shall convey the said decision to the Petitioner and similarly situated employees.

19. In case any adverse decision is taken, the Petitioner will be at liberty to avail of an appropriate remedy as available in law to seek redressal of her grievances.

20. In the mean time, Respondent Nos.2 and 3 shall continue the Petitioner in employment on the same terms and conditions subject to revision in the amount of salary and shall not terminate her services only on the ground that she

is a Temporary Sister. Respondent Nos.2 and 3 shall continue to pay the Petitioner the salary on monthly basis. Such continuance in employment will be as per the scheme applicable.”

3. The petitioner has approached this court in view of the communication dated 26.4.2019, which is addressed by the Under Secretary, Public Health Department, State of Maharashtra, to the Chief Executive Officer, Zilla Parishad, Aurangabad informing that the proposal of the petitioner for regularization is not accepted since it is in respect of creation of posts.

4. This Court had expressed a view that as the petitioner was working for a long time, since 1984, as a temporary sister (Health Worker), such candidates need to be given some service benefits, keeping in view the sheer length of service rendered to the Health Department.

5. The learned A.G.P. submits that the Government had passed the impugned order, as it was not possible to create posts. He, therefore, submits that any direction for creation of posts may upset the planning of the Government.

6. We find that the petitioner has been working since 1984, as a Health Worker and this contention has not been disputed. Even today, she is performing the duties. It is stated that she is due for

retirement within a short time. So also, under the Right to Information Act, 2005, the District Health Officer, Zilla Parishad, Aurangabad, has addressed a letter to her son, dated 16.11.2021 as regards the available posts of Health Workers (female) which are vacant and available. The said data is placed at page No.15, in the civil application No.13119 of 2021, which indicates that there were 477 sanctioned posts for Health Workers (female). Out of which, 225 have been filled in and 252 are vacant.

7. In view of the above, merely because the Government earlier was not inclined to create posts finding it to be a cumbersome task, would not mean that all doors are closed for the petitioner and similarly situated temporary female Health Workers. If they have rendered services to the Health Department beyond three decades, their contribution cannot be ignored and they cannot be left in the lurch.

8. In view of the above, this petition as well as the civil applications are disposed off, with the following directions:-

- a) The Zilla Parishad, Aurangabad shall prepare a proposal, complete in all respects, with regard to the temporary female Health Workers, working in various Health Department, in all Talukas under Aurangabad Zilla Parishad, on or before 28.08.2023.

- b) The above proposal shall include the names and dates from which such temporary Health Workers were inducted in the services of the Zilla Parishad and the total tenure of service that has been put in by such Health workers.
- c) This proposal shall be forwarded to the Public Health department, G.T. Hospital, 10th Floor, A. Wing, Mumbai so as to reach the said authority, on or before 15.03.2023.
- d) The said competent authority shall consider the available vacancies of Health Workers under the Zilla Parishad, Aurangabad and shall consider the proposals, as forwarded by the Zilla Parishad. The available vacancies shall be considered and regularization would be granted to the Health Workers by considering their seniority as per the dates of entering in employment.
- e) Let such decision be taken by the competent authority on or before 15.6.2023 and the same be communicated to the Zilla Parishad, Aurangabad, expeditiously.
- f) Thereafter, the Zilla Parishad, shall intimate the individual Health Workers as regards the decision of the competent authority.
- g) Needless to state, if regularization is granted to the petitioner and similarly situated employees, their deemed dates of regularization and their pay fixation would also be carried out expeditiously. Needless to state, monetary benefits would be paid to them expeditiously.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)