



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1424 OF 2024

The State of Maharashtra & others .. Petitioners

Versus

Devendra s/o Ramesh Dandgavhal & others .. Respondents

Mr. P. K. Lakhotiya, AGP for the State.

Mr. A. S. Deshpande, Advocate for Respondent Nos. 7 and 26.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

**RESERVED ON : 22nd FEBRUARY, 2024.
PRONOUNCED ON : 18th MARCH, 2024.**

ORDER : (Per R. M. Joshi, J.)

1. In this Petition, the State of Maharashtra and others have taken exception to the judgment and order dated 23rd June, 2023 passed in O.A.No. 82/2019 by Maharashtra Administrative Tribunal (for short 'the Tribunal'), being aggrieved by the grant of relief of continuation of service and seniority from the date of appointment.

2. The Respondents were appointed as Lecturers on contractual basis in Government Polytechnic in different districts of

Maharashtra for the period from 2003 to 2009. They were thereafter selected through the Maharashtra Public Service Commission (for short 'MPSC') and after resigning from contractual employment, they joined the regular post on respective dates since the year 2009. In the meantime, the contractual services of those persons, were regularised by the Government Resolutions issued on various dates during the period from 14th February, 2010 till 5th January, 2012.

3. The Respondents had filed Writ Petition No. 1061/2016 claiming reliefs of continuity in service from the date of joining contractual service. The said Petition was disposed off with liberty to the Respondents herein to exhaust the appropriate remedies as provided by law. The Respondents thereafter filed O.A. No. 82/2019 before the Tribunal, putting forth the following prayers :-

i) Pass or issue any directions, orders or writs under Article 226 of the Constitution commanding the Respondents to grant seniority to the applicants from their first day of appointment on contract service as Lecturers of the Government Polytechnics.

ii) Pass or issue any directions, orders or writs under Article 226 of the Constitution commanding the Respondents to grant the pensionary benefits to the

applicants by passing an appropriate order or government resolution under Maharashtra Civil Services Pension (Rules), 1982.

iii) Grant any other relief which the Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, in the interest of justice.

4. After hearing both the sides, the impugned order came to be passed. The Respondents had prayed for parity with similarly situated lecturers who were initially appointed in Government Polytechnic on contractual basis and who had filed Writ Petition no. 2046/2010 seeking regularisation of their service and permanency with consequential benefits by taking into account their contract service. This Court (Bench at Nagpur), allowed the said Petition which was unsuccessfully carried to the Hon'ble Supreme Court.

5. It is the case of the Petitioner that the Respondents cannot take the order passed in Writ Petition No. 2046/2010 to be a base for seeking reliefs as they were not in service on 15th October, 2013, having resigned from their earlier appointment and joined the subsequent permanent posts. The impugned order is also challenged

with the submission that the said order will put financial burden on the Government.

6. At the outset, the learned AGP raises an objection with regard to the jurisdiction of the Tribunal in entertaining the Application on the ground that in respect of various Applicants therein, the Tribunal at Aurangabad had no jurisdiction to entertain their grievance.

7. In this regard, if the record is perused, it indicates that the issue of jurisdiction was raised before the Tribunal which came to be decided by passing a specific order dated 24th January, 2014 concluding that since majority of applicants in the present Original Application reside within the territorial jurisdiction of this Bench of the Tribunal and cause is similar, office objection waived. The Petitioners herein did not challenge the said order. Now, it is not open for the Petitioners to raise an objection with regard to the jurisdiction unless any prejudice is shown to have been caused to the Petitioners by consideration of the Application by the Tribunal. The Petitioners are not claiming any prejudice, much less irreparable loss being caused on account of the Tribunal entertaining the Application

and passing the impugned order. We, therefore, find no substance in the said objection raised by the Petitioners.

8. The learned AGP further submits that this Court in case of Sachin Ambadas Dawale and others vs. The State and others, in **Writ Petition No. 2046/2010** has issued a clarification to the effect that the said judgment would apply only to those employees who had completed three years of service and were in the service as on 15th October, 2013. It is his further submission that since the Respondents had resigned from their contractual post in order to join regular employment, they cannot seek benefit of the judgment passed in Writ Petition No. 2046/2010.

9. The learned Advocate for the Respondents vehemently opposed the said submission by contending that admittedly, the Respondents were on contractual employment along with others and since the nature of the said employment was permanent, this Court in Writ Petition No. 2046/2010 has granted regularisation to those employees. According to him, merely because the Respondents had taken entry in service through the MPSC by following the due process of selection and appointment, they cannot be denied the

benefits which are granted to those employees who either never chose to appear in the selection process or were unsuccessful therein. According to him, those who have failed to get regularisation in service are given all benefits of the employment from the initial date of appointment whereas those who came in through the due process of selection, are denied the same benefits, which is never justifiable.

10. It is trite that a Writ Petition is not an Appeal and it is akin to the revisional jurisdiction. This Court is required to see as to whether there is a miscarriage of justice caused by the impugned order or the same has been passed in violation of the provisions of law, to cause any interference therein.

11. There is no dispute about the fact that the Respondents were appointed on contractual basis as lecturers in different Government Polytechnic along with others, including the Petitioners in Writ Petition No. 2046/2010 wherein this Court (Division Bench at Nagpur) has granted regularisation to those Petitioners by considering the continuous work of permanent nature done by them. No doubt, the Court has clarified that the grant of regularisation

would apply only to those employees who had completed three years of service and were in service as on 15th October, 2013.

12. There cannot be any dispute about the fact that the Respondents joined initially as contractual employees, as like Petitioners in Writ Petition No. 2046/2010 and that they had worked at least for 3 years. Only condition as per clarification issued by this Court therein is employees being in employment on the relevant date. Now question arises to determine is as to whether they can be said to be in service as on 15th October, 2013 in order to get benefit of the said judgment. After the appointment of the Respondents on contractual basis along with other employees, they applied for regular entry in the service through the MPSC selection process. There is no denial of the fact that till the date of their entry in the service, they were continuously working on contractual employment. In case of some of the Respondents, in order to formally allow them to join the regular post, resignation was obtained from them. There is nothing on record to indicate that there was any discontinuation of service in the sense that actual working by them was discontinued in any manner whatsoever.

13. In this regard, learned Tribunal has observed that the resignations tendered by some of the Respondents were technical in nature as they could not continue as contractual employees and at the same time join duties on their selection through the MPSC. From impugned order, it does not appear that any stand was taken by Petitioners herein to the effect that they were not called upon to tender resignation for the purpose of joining on regular posts. Nor there is any plea raised about Respondents herein not working in contractual employment, till joining on regular posts. We, therefore, do not find any perversity in the said finding recorded by the Tribunal for the simple reason that since some of the Respondents had resigned from their service as they were called upon to do so in order to allow them to join regular service. This would not mean that their previous service was discontinued and they did not perform the duties continuously or that on the relevant date they were not in service.

14. Article 14 of the Constitution of India prohibits discrimination of any kind between two sets of employees. It would not be permitted to the Petitioners to discriminate between the two sets of employees while granting benefits of service and continuity

thereof, moreso, when the High Court has granted regularisation to those who had preferred a Writ Petition. The only condition by this Court was about completion of three years of service and being in employment as on 15th October, 2013. In such circumstances, it is not open for the Petitioners to deny the continuity of service and other benefits as extended to the similarly placed employees on contract basis.

15. At this stage, it would be apposite to refer to the judgment of the Hon'ble Supreme Court in case of Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation, **2022 SCC OnLine SC 641** wherein reference has been made to its previous judgment in case of State of Uttar Pradesh vs. Arvind Kumar Srivastava, **(2015) 1 SCC 347**. The observations made therein are reproduced as under :-

“22.1 The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time

postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply to those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches

upon the policy matters, like scheme of regularisation and the like (see K. C. Shirma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

It is thus clear that the normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike. Though it also deals about the well-recognised exceptions in the form of laches and delays as well as acquiescence. The judgment in case of Sachin Ambadas Dawale (supra) clearly speaks about the persons who are in service and have put in three years of service to be entitled for the benefits thereunder and as such for particular set of employees, the said judgment would be a judgment in rem. We, therefore, find that the present case stands on much better footing than the one before the Supreme Court.

16. We find substance in the contention of the learned Advocate for the Respondents that it is an irony that those who have failed to secure regular service are rewarded by extending all benefits, more than those available to those who have succeeded in the due selection process for getting their entry in the service. In various judgments, the Hon'ble Apex Court has emphasized a need of appointment by following the due selection procedure. Denial of continuity of service from the date of initial appointment of the Respondents would discourage the aspirants to follow such due selection procedure. Once there is no distinction in the type of work, nature of duties and nature of contract between the two sets of employees, any discrimination affecting these Respondents before us, would not sustain in view of Article 14 of the Constitution of India. Though we appreciate that in appropriate case there would be an arguable point as to whether date of regular employment could relate back to previous contractual service, however, in the peculiar facts and circumstances of the case in hand, and having regard to discrimination caused to the one set of employees regardless of merit, we have no hesitation to hold that there would be no justification to set aside the impugned order. Considering the law laid down in Syed Yakoob v/s K. S. Radhakrishnan, **AIR 1964 SC 477** and Surya Dev

Rai v/s Ram Chander Rai, **AIR 2003 SC 3044 : 2003(6) SCC 682**, we do not find that the impugned order could be termed as being perverse or erroneous only because a different view could be possible.

17. We, therefore, find no merit in the Petition. The **Writ Petition stands dismissed**. Rule is discharged.

18. No order as to costs.

(**R. M. JOSHI**)
JUDGE

(**RAVINDRA V. GHUGE**)
JUDGE

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