

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14510 OF 2023

Roma Ramesh Kamble ... Petitioner

Versus

The State of Maharashtra & Ors ... Respondents

WITH

WRIT PETITION NO. 14512 OF 2023

Bhoye Priyanka Ananda ... Petitioner

Versus

The State of Maharashtra & Ors ... Respondents

WITH

WRIT PETITION NO. 14514 OF 2023

Ganesh Ashok Yadav ... Petitioner

Versus

The State of Maharashtra & Ors ... Respondents

WITH

WRIT PETITION NO. 14515 OF 2023

Archana Balaso Sakat ... Petitioner

Versus

The State of Maharashtra & Ors ... Respondents

WITH

WRIT PETITION NO. 14516 OF 2023

Rupali Sarang Powar ... Petitioner

Versus

The State of Maharashtra & Ors ... Respondents

WITH
WRIT PETITION NO. 14517 OF 2023

Lakhan Tukaram Kamble ... Petitioner

Versus

The State of Maharashtra & Ors ... Respondents

WITH
WRIT PETITION NO. 14518 OF 2023

Jayashri Tanaji Kamble ... Petitioner

Versus

The State of Maharashtra & Ors ... Respondents

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Mr. S. B. Talekar a/w Ms. Madhavi Ayyappan, Mr. Shubham Gurav & Mr. Krishna Tarde i/b Talekar & Associates for the Petitioners in all Petitions.

Mr. P. G. Sawant, AGP for State, Respondents in all Petitions.

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CORAM	: SANDEEP V. MARNE J.
RESERVED ON	: 6 MARCH 2024.
PRONOUNCED ON	: 27 MARCH 2024.

JUDGMENT :-

1) These Petitions are filed by seven contract workers engaged in the Minority Girls Hostel of Rajaram College, Kolhapur challenging the Judgments and Orders passed by Industrial Court, Kolhapur dismissing their respective complaints in which they had sought permanent status and other consequential reliefs.

2) The details of each of the seven Petitions are as under:

WRIT PETITION NO.	PETITIONER NAME	COMPLAINT (ULP) NO.	JUDGMENT DATE
14510 of 2023	Roma Ramesh Kamble	174 of 2017	13 October 2023
14512 of 2023	Bhoye Priyanka Ananda	177 of 2017	10 October 2023
14514 of 2023	Ganesh Ashok Yadav	173 of 2017	6 October 2023
14515 of 2023	Archana Balaso Sakat	175 of 2017	7 October 2023
14516 of 2023	Rupali Saranag Powar	176 of 2017	13 October 2023
14517 of 2023	Lakhan Tukaram Kamble	171 of 2017	6 October 2023
14518 of 2023	Jayashri Tanaji Kamble	172 of 2017	10 October 2023

3) Briefly stated, facts of the case are that, the Government of India had appointed a committee under the Chairmanship of retired Chief Justice of Delhi High Court to study conditions of minorities in India and to submit a report. The Committee submitted the report in the year 2005 and one of the recommendations of the committee was to establish hostels for girl students of minorities communities. The Government of Maharashtra accordingly issued Government Regulation dated 2 March 2010 for setting hostels for girls belonging to minority communities of Muslim, Jain, Buddh, Christian, Sikh and Parsi in 25 districts. Under the GR, it was proposed to set up hostels with capacity of 100 or 200 girls out of which 70% of the rooms were to be reserved for girls belonging to minority community and balance 30% rooms were to be reserved for girls not belonging to minorities but as per prevailing reservation. The Government proposed to carry out construction of hostels through CIDCO/Public Works Department/MHADA for girls taking higher education. The GR contemplated construction of hostels on lands belonging to universities and colleges.

4) In furtherance of the GR dated 2 March 2010, the Government of Maharashtra issued further GR dated 21 June 2013 providing for management of hostels for girl students belonging to minority communities. The GR dated 21 June 2013 *inter alia* provided for engagement of 9 personnel on contract basis on stipulated honorarium.

5) It appears that Rajaram College, Kolhapur (Respondent No.3) set up a hostel for girl students belonging to minority communities and the hostel was inaugurated on 26 June 2014. Respondent No.3-College issued advertisement in local newspapers on 25 July 2014 for filling up nine posts (Safai Kamgar-2, watchman-4, Clerk -1, Peon-1 and Superintendent-1) in its hostel on contract basis. Interviews were conducted on 30 August 2014. Petitioners were found successful in the selection process and were issued appointment Orders dated 5 September 2014. The appointments were effected on temporary contract basis for a period upto 31 January 2015 on payment of honorarium as directed under the GR dated 21 June 2013. Petitioners were made to execute bonds for joining the services, under which they accepted the terms and conditions of engagement and agreed that they shall have no right to claim regular appointments. At the end of the first tenure of appointment on 31 January 2015, the services were terminated by issuing office Order dated 28 February 2015 with effect from 31 January 2015. However, immediately, on 1 February 2015 fresh appointment orders were issued on same terms for a period upto 31 May 2015. Later there was gap in appointments as the fresh appointment orders were issued on 6 July 2015 for period upto 30 November 2015. This is how the appointments were continued by further orders dated 3 December 2015 (up to 31 May 2016), 30 June 2016 (up to 31 October 2016) and lastly on 9 November 2016 (up to 31 May 2017).

6) It appears that after 31 May 2017, no further appointment letters were issued in favour of Petitioners. It appears that Respondent No. 3 - College issued advertisement in newspapers on 5 July 2017 inviting applications for filling up of the said 9 posts on contract basis. Issuance of such advertisement ensured that services of the Petitioners were not to be continued. With this cause of action, Petitioners instituted their respective complaints before Industrial Court at Kolhapur seeking the status of permanent employees as well as direction to the State Government for grant sanction for their permanent employees. Petitioners also sought interim relief to restrain the college from appointing any fresh candidate in pursuance of advertisement dated 5 July 2017. By ad-interim Order dated 14 July 2017, the Industrial Court restrained the Respondents from acting on advertisement dated 5 July 2017.

7) The application for Interim Relief under Exhibit-U-2 came to be allowed by Order dated 30 August 2017 and the Respondents were restrained from refusing work and wages to the Petitioners without following due process of law during pendency of the complaints. The Industrial Court further restrained the Respondents from appointing any new candidates in place of Petitioners as per advertisement dated 5 July 2017 during pendency of the complaints.

8) The Industrial Court thereafter proceeded to decide the complaints finally by delivering separate Judgments and Orders as detailed above. The Industrial Court has dismissed all the complaints of the Petitioners. However, the Respondent No.3-College is restrained from terminating the services of the Petitioners without following due process of law. Petitioners filed applications for keeping the final Orders of Industrial Court in abeyance. By different Orders passed in each complaint, the

Industrial Court directed that the final Orders passed by it would be kept in abeyance for one month.

9) By Orders dated 8 November 2023, Respondent No.3-College terminated the services of Petitioners by separate Order dated 9/10 December 2023. Petitioners were given further appointments for the period from 1 February 2015 to 31 May 2015 till completion of the selection process. Petitioners filed Miscellaneous Applications in their respective complaints seeking further reliefs from Industrial Court. By Orders dated 10 November 2023, the Industrial Court extended the protection by keeping the final Orders in abeyance up to 25 November 2023.

10) Petitioners have filed their present Petitions challenging the final Orders on the Industrial Court dismissing their complaints. It appears that by Order dated 19 December 2023 this Court has stayed the final Orders passed by the Industrial Court as well as the subsequent termination Order dated 8 November 2023. The said Interim Order continues to operate till date.

11) Mr. Talekar, the learned counsel appearing for Petitioners would submit that the Industrial Court has erred in dismissing the complaints filed by Petitioners. That Petitioners have right to be regularised in services. That their initial appointments are made against sanctioned vacant posts after following due process of selection. They held eligibility criteria prescribed in the advertisement and competed with other eligible candidates. Relying on the GR dated 21 June 2013, Mr. Talekar would submit that posts have been created on permanent basis but the same are directed to be filled on contract basis. That the Industrial Court has erred in holding that the posts were sanctioned on contract basis. That the hostels are permanently established

and that therefore it cannot be that post are sanctioned for temporary period. That since hostel would continue on permanent basis, the posts are also permanent.

12) Mr. Talekar would further submit that each of the Petitioners have completed more than 240 days of service. That Model Standing Orders formulated under the provisions of the Industrial Employment (Model Standing Orders) Act 1946 read with Maharashtra Industrial Employment (Standing Orders) Rules 1959 are applicable to Respondent No. 3 - College. That under the Model Standing Orders (**MSO**), Petitioners are entitled for status of permanency on completion of 240 days of service in a year.

13) Mr. Talekar would further submit that Industrial Tribunal is empowered to order regularization of a temporary employees by applying the provisions of MSO. That the Judgment of the Apex Court in ***Secretary, State Karnataka & Ors. Vs. Umadevi & Ors.***¹ does not circumscribe the powers of Industrial Court to grant relief under provisions of Maharashtra Recognition of Trade Union and Prevention of Unfair Trade Practices, 1971 (**MRTU and PULP Act**). In support of his contention, he would rely upon the Judgments of the Apex Court in ***Maharashtra State Road Transport Corporation Vs. Casteribe Rajya Parivahan Karmchari Sanghatana***², ***Harinandan Prasad and Anr. Vs. Employer I/R To Management of Food Corporation of India and Anr.***³ and ***Oil And Natural Gas Corporation Limited Vs. Petroleum Coal Labour Union And Ors.***⁴ He would further submit that the Judgment of Division Bench of this Court in ***Municipal***

1 (2006) 4 SCC 1

2 (2009) 8 SCC 556

3 (2014) 7 SCC 190

4 (2015) 6 SCC 494

Council, Tirora and Anr. Vs. Tulsidas Baliram Bindhade⁵ and Single Judge in ***Raigad Zilla Parishad & Ors. Vs. Kailash Balu Mhatre & Ors***⁶. does not apply in the present case as the regularization is sought in the service of the State Government, which has all powers of creation of posts. That the said two judgments are applicable only in case of state instrumentalities and local authorities, who do not have power of creation of posts. Relying on judgment of the Apex Court in ***Nihal Singh & Ors. Vs. State of Punjab & Ors.***⁷ Mr. Talekar would submit that in appropriate cases, Courts and Tribunals have power to direct creation of posts. He would rely upon Judgment of the Apex Court in ***State of Jammu and Kashmir and Ors. Vs. District Bar Association, Bandipora***⁸ In support of his contention that Labour Court and Industrial Court are not denuded of their authority to direct regularization pursuant to Labour enactments. He would also place reliance on judgments of this Court in ***Deputy Conservator of Forest and Ors. Vs. Nasik Zilla Van Shramik Sangh, Chief Officer, Alibag Municipal Council and Anr. Vs. Mamta N. Patil***⁹ and ***City and Industrial Development Corporation Ltd. Thr. Manager & Ors. Vs. Sarva Shramik Sangh Neelkanth Apartment***¹¹.

14) Mr. Talekar would further submit that the MSO are not in conflict with any statutory provisions and therefore regularization of services cannot be denied to the Petitioners. That the MSO must prevail and applied in the present case. Lastly, Mr. Talekar would further submit that services of

5 2016 (6) Mh.L.J. 867

6 Writ Petition No. 4307 of 2018 decided on 5 January 2022

7 (2013) 14 SCC 65.

8 (2017) 3 SCC 410.

9 2023 SCC Online Bom 2529

10 2024 SCC Online Bom 602

11 Writ Petition No. 4694 of 2022 decided on 10 November 2023

the Petitioners are being exploited on payment of meagre amounts of honorarium. That Petitioners have by now completed more than nine years of service and are entitled to the regularized in service.

15) Mr. Sawant, the learned AGP appearing for Respondents would oppose the Petitions and support the Orders passed by Industrial Court. He would submit that Petitioners do not have any right of regularization as their initial appointments were made purely on contract basis. That Petitioners have accepted the terms and conditions of their appointments and have executed bonds agreeing not to claim regularization. That their services were terminated at the end of each tenure of appointment. This shows that their services were not continuous.

16) Mr. Sawant would further submit that posts, against which Petitioners were engaged, are not permanent. That hostels for minority girl students are set up under a scheme formulated by the State Government and the scheme itself contemplates filling up of nine posts in each hostel on a pure contract basis. That the Industrial Court has rightly held that the post against which Petitioners were engaged are not permanently sanctioned.

17) Mr. Sawant would rely upon judgment of the Apex Court in ***State of Maharashtra Vs. Anita and Anr***¹². He would submit that in ***Anita***, legal advisers, law officers and law instructors engaged in similar manner on contract basis have been denied regularization by the Apex Court. That the Judgment in ***Anita*** is implemented by issuance of GR dated 9 February 2018. Mr. Sawant would pray for dismissal of the Petitions.

12 (2016) 8 SCC 293

18) Rival contentions of the parties now fall for my consideration.

19) Petitioners claim status of permanency in their complaints filed before the Industrial Court. The prayers made by one of the Petitioners *Roma Ramesh Kamble* in her Complaint (ULP) No. 174 of 2017 reads thus:

"a. declared that the Respondents above named have engaged in unfair labour practices under item Nos. 6, 9 and 10 of Schedule IV of the Act;

b. declared that the Complainant is a deemed to be a permanent employee of the Respondent No.2;

c. direct the Respondent No2 Minority Girl's Hostel be directed to classify the Complainant as a permanent employee from the date of completion of his first 241 days in the employment and give him all the incidental monetary benefits flowing there from;

d. the Respondent No.1 & 3 be directed to give sanction to the absorption of the Complainant as permanent employee on the post on which presently he is appointed and is working with retrospective effect ;

e. declared that the Respondents have prima facie indulged in to unfair labour practices and the Respondents be perpetually restrained from terminating the services of the Complainant illegally pending final disposal of the main Complaint.

f. the Respondent No.2 be restrained from appointing new candidate on the post and place of the Complainant in view of an advertisement published in daily Pudhari dated 5/72017 and be further direct the Respondent No.2 to not to refuse work and wages as provided and paid earlier by continuing her on the said post pending hearing and disposal of main Complaint:

g. ad interim relief in terms of prayer clause (e) & (f) above be granted;

h. Costs and compensation of this proceeding be awarded to the Complainant.

i. Any other reliefs as this Hon'ble court deem fit and proper be passed."

20) There is no dispute to the position that the initial engagements of Petitioners were made on contract basis for a short duration from 5 September 2014 to 31 January 2015. The engagements were made pursuant to advertisement issued by Respondent No. 3-College for filling up the Posts on contract basis. All the candidates, including Petitioners, were aware that the posts were to be filled on purely contract basis. Therefore, the

selection convened for making appointments on contract basis in the present case cannot be confused with selection convened for making regular appointments. This is because all eligible candidates do not participate in selection process where the advertisement is issued for filling up posts on contract basis. Furthermore, upon being engaged, appointees were to be paid fixed honorarium as provided in the GR dated 21 June 2013 and not the pay scales applicable in Government service. Thus, the selection convened at the time of making initial engagements of Petitioners cannot be treated on par with a regular selection for making regular appointments.

21) The appointments of the Petitioners have been continued from time to time as under:

5 September 2014 to 31 January 2015,
1 February 2015 to 31 May 2015,
6 July 2015 to 30 November 2015,
3 December 2015 to 31 May 2016,
30 June 2016 to 31 October 2016,
9 November 2016 to 31 May 2017.

The appointment of the Petitioners were thus not continuous and except the first appointment, all other appointments were after giving breaks.

22) The moot question that arises for consideration is whether vacancies against which Petitioners were engaged are regularly sanctioned permanent vacancies or not. The answer to this question it would be necessary to make reference to the scheme under which the hostels are set up and posts are created. By Government Resolution dated 2 March 2010, the Government of Maharashtra decided to implement the recommendations of Sachar Committee for setting up hostels for girls belonging to minority

communities of Muslim, Jain, Budh, Christian, Sikh, Parsi. It appears that out of the 25 districts, 43 cities were declared by the Central Government as 'minority - areas'. The State Government decided to set up hostels for girls belonging to minority community initially in 25 districts either on Government lands or of universities. The GR laid down the procedure for setting up hostels for girls of minority communities. After construction of the hostels on Government / University lands, Minority Non-Government Organization (NGO) of repute or other NGOs were to be allowed to operate the hostels on contract basis for 5 years with further provision to renew their contracts. Certain eligibility criteria was prescribed for selection of NGOs for operation of the hostels.

23) After formulation of scheme for construction of hostels vide GR dated 2 March 2010, the Government of Maharashtra thereafter issued GR dated 21 June 2013 for management of such hostels. It is proved in the GR that the hostels constructed on lands of Government Colleges, Polytechnics/ Industrial training centers etc. should be operated through the concerned university/Government educational institutions. That admissions to such hostels would be for girl students not studding in those universities/institutions also. For the hostels constructed in the campus of Government Colleges/ Polytechnic/ Industrial training institutes, the State Government directed that total 9 employees be appointed on contract basis as under:

Sr. No.	Name of the Post	Number of Posts	Monthly Honorarium (in Rs.)
1.	Superintendent	1	15,000
2.	Clerk	1	8,000

3.	Peon	1	6,500
4.	Cleaner	2	6,000 each
5	Watchman	4	9,000 each
		9	

24) The GR further directed that the nine personnel sanctioned for each hostel be engaged either through the concerned Educational Institution or through Collector. That a Committee constituted under Collector would take decision about contractual engagements of such personnel. That while making such appointments, the guidelines issued under circular dated 2 February 2013 be followed. Additionally, the GR directs that a Lady Professor/ Assistant Professor working in the institution be nominated as Rector, who should permanently reside in the hostel. That girl students residing in the hostel are to be accorded priority for the post of peon on '*earn and learn*' basis. If the girl students are not interested in such engagements, the post of peon to filled on contract basis. The GR thereafter lays down guidelines for admission of girl students and charges payable for each academic session. The GR grants financial approval of Rs. 50.30 Lakh (Rs.6 Lakh for electricity, water and office expense + Rs. 9.30 Lakh for honorarium) per hostel.

25) In the present case, Respondent No. 3 - Rajaram College is a Government College, who has apparently set up hostel for minority girls students within its campus. By letter dated 24 June 2014, the Collector Kolhapur directed Respondent No. 3 College to fill up posts contractual basis as per GR dated 21 June 2013. Accordingly, Respondent No.3-College issued advertisement on 25 July 2014 for filling up 9 posts as per GR dated 21 June 2013 on contract basis. Petitioners have been engaged in pursuance of the said advertisement.

26) Perusal of Government Resolution dated 21 June 2013 would indicate that the State Government has not created 9 posts on each hostel establishment on permanent basis. In fact, the earlier GR dated 2 March 2010 provided for operation of hostel through NGOs on contract basis for 5 years. However subsequently, the government decided to set up hostels for minority girl students within the campus of government colleges by GR dated 21 June 2013. This was apparently done for ensuring safety of girl students as well as problems likely to be faced while operating the hostels. In addition to the hostels established in the campus of Government Colleges, the hostels established at other places are also to be managed by Government Colleges/ Polytechnic/ Industrial Training Centers / Universities etc. In the event of non-availability of any Government Educational Institution in the vicinity, the hostels are to be operated through the minority development department by Collector by constitution of a committee.

27) Though nine posts are sanctioned for each such hostels, the GR specifically directs that appointment against the said 9 posts must be made only on contract basis. It is Mr. Talekar's submission that though the direction is issued to make appointments on contract basis, the posts are sanctioned permanently. I am unable to agree. The GR nowhere creates 9 posts in respect of each of the hostels on permanent basis. It must be borne in mind here that such hostels are to be set up either in the campus of government educational institutions or even outside such campus. The hostels which are set up outside the campus were to be earlier operated on contract basis by NGOs and now the same are to be operated through committee constituted by Collector. Thus, the establishment of each hostel is not of permanent nature. There is no mandatory direction to a government educational institute or university to continue to operate the hostel within its

premises on permanent basis. In a given case, a particular university, polytechnic or Industrial training institute may decide to discontinue operation of hostel in its premises. Therefore, it cannot be stated that any permanent establishment is created mandating creation of permanent posts.

28) Even if it is to be assumed that hostels set up for minority girl students are of permanent nature, (on account of they being set up and /or operated through Government agencies), it cannot be assumed that the hostels are to be operated through permanent staff. The Government has sanctioned limited budget for operation of such hostels. It has sanctioned budget of only Rs.15.30 lakh for each of the hostel out of which Rs.6 Lakh is allotted for electricity, water and office expenses and Rs.9.30 Lakh is allotted for payment of honorarium. It is conscious decision taken by the State Government to man the hostels set up for minority girl students only through contractual employees. It would be outside the scope of either industrial adjudicator or of this Court to issue a mandatory direction to operate such hostels by creating permanent posts.

29) I am therefore of the view that 9 posts for each of the hostels are not permanently sanctioned. The Industrial Court has not committed any error in holding that the posts are sanctioned on contract basis.

30) The issue involved in the present case appears to be squarely covered by the judgment of the Apex Court in **Anita**. In that case Government of Maharashtra issued GR dated 21 August 2006 creating 471 posts in various cadres of legal advisors, law officers and law instructors under the establishment of Director General of Police and Commissioner of Police, Greater Mumbai. All those 471 posts were to be filled only on contract basis on payment of consolidated pay as per subsequent GR dated

15 September 2006. It appears that the Petitioners in **Anita** were engaged on contractual basis on the posts so created and continued for three terms. On expiry of the third term, they were directed to participate in fresh selection process which resulted in automatic termination of their tenures. The employees approached Maharashtra Administrative Tribunal challenging the conditions of GR dated 21 August 2006 and 15 September 2006 to the extent it provided for making contractual appointments. The Tribunal partly allowed the Original Applications holding that provision for making contractual appointments in the said GR suffered from arbitrariness and unreasonableness. The Tribunal however did not issue directions for regularization of services. Both employees, as well as, State Government challenged the decision of the Tribunal by filing Writ Petitions before this Court. Division bench of this Court dismissed the Petitions filed by State Government and allowed the ones filed by employees holding that 471 posts created by the State Government were permanent in nature. However, considering the fact that the appointments of the employees were not made in regular manner as per constitutional scheme, this Court refused the relief of permanency. Aggrieved by the decision of this Court, both State Government as well as the employees approached the Apex Court. During the pendency of the Appeals, the employees were permitted to continue in service.

31) In the above factual background, the Apex Court decided the issue whether the 471 posts created vide GR dated 21 August 2006 were permanent in nature. The Apex Court held in para 12 to 17 as under.

12. Subsequently, the said Resolution was modified by Government Resolution dated 15.09.2006. In the said Resolution, the column specifying "Pay Scale" was substituted with column "Combined Permissible Monthly Pay + Telephone & Travel Expenses". However, there was no change in the decision of the government on filling up the posts on contractual basis. Government

Resolution dated 15.09.2006 stipulates the terms and conditions of the contractual appointments. Clauses 'A', 'B', 'C' and 'D' read as under:-

“A) The appointment of the said posts would be completely on contractual basis. These officers/employees would not be counted as government employees.

B) The said appointments should be made on contract basis firstly for 11 months. After 11 months the term of the agreement could be increased from time to time if necessary. Whereas, the appointing authority would take the precaution while extending the terms in this manner that, at one time this term should not be more than 11 months. The appointment in this way could be made maximum three times. Thereafter, if the competent authority is of the opinion that the reappointment of such candidate is necessary then such candidate would have to again face the selection process.

C) The appointing authority concerned at the time of the appointment would execute an agreement with the concerned candidate in the prescribed format. The prescribed format of the agreement is given in Appendix 'B'. It would be the responsibility of the concerned office to preserve all the documents of the agreement.

D) Except for the combined pay and permissible telephone and travel expenses (more than the above mentioned limit) any other allowances would not be admissible for the officers/employees being appointed on contract basis.”

13. The intention of the State Government to fill up the posts of Legal Advisors, Law Officers and Law Instructors on contractual basis is manifest from the above clauses in Government Resolutions dated 21.08.2006 and 15.09.2006. While creating 471 posts vide Resolution dated 21.08.2006, the Government made it clear that the posts should be filled up on contractual basis as per terms and conditions prescribed by the Government. As per clause 'B' of the Government Resolution dated 15.09.2006, the initial contractual period of appointment is eleven months and there is a provision for extension of contract for further eleven months. Clause 'B' makes it clear that the appointment could be made maximum three times and extension of contract beyond the third term is not allowed. If the competent authority is of the opinion that the reappointment of such candidates is necessary then such candidates would again have to face the selection process.

14. It is relevant to note that the respondents at the time of appointment have accepted an agreement in accordance with Appendix 'B' attached to the Government Resolution dated 15.09.2006. The terms of the agreement specifically lay down that the appointment is purely contractual and that the respondents will not be entitled to claim any rights, interest and benefits whatsoever of the permanent service in the government. We may usefully refer to the relevant clauses in the format of the agreement which read as under:-

“1. The First Party hereby agrees to appoint Shri/Smt. _____ (Party No. II) as a _____ on contract basis for a period of 11 months commencing from _____ to _____ (mention date) on consolidated remuneration of Rs. _____ (Rupees _____ only) per month, and said remuneration will be payable at the end of each calendar month according to British Calendar. It is agreed that IIInd party shall not be entitled for separate T.A. and D.A. during the contract period....

2.

3.

4.

5. Assignment of 11 months contract is renewable for a further two terms of 11 months (i.e. total 3 terms), subject to the satisfaction of Competent Authority, and on its recommendations.

6. Party II will not be entitled to claim any rights, interest, benefits whatsoever of the permanent service in the Government.”

15. The above terms of the agreement further reiterate the stand of the State that the appointments were purely contractual and that the respondents shall not be entitled to claim any right or interest of permanent service in the government. The appointments of respondents were made initially for eleven months but were renewed twice and after serving the maximum contractual period, the services of the respondents came to an end and the Government initiated a fresh process of selection. Conditions of respondents' engagement is governed by the terms of agreement. After having accepted contractual appointment, the respondents are estopped from challenging the terms of their appointment. Furthermore, respondents are not precluded from applying for the said posts afresh subject to the satisfaction of other eligibility criteria.

16. The High Court did not keep in view the various clauses in the Government Resolutions dated 21.08.2006 and 15.09.2006 and also the terms of the agreement entered into by the respondents with the government. Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred but merely because the posts were created, they cannot be held to be permanent in nature. When the government has taken a policy decision to fill up 471 posts of Legal Advisors, Law Officers and Law Instructors on contractual basis, the tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature.

17. In the result, the impugned judgment of the High Court is set aside and these appeals are allowed.

32) In my view, the present Petitions are squarely covered by the judgment of the Apex Court **Anita** where the fact situation were almost identical. The Apex Court has held that mere creation of posts does not mean that they are permanent in nature as the same involves the issue of expenditure. The Apex Court further held that the employees in **Anita** accepted contractual appointments and that they were estopped from challenging the terms of their appointments. In the present case also, all the Petitioners not just accepted their contractual appointments but submitted bonds on stamp papers not to claim permanency. In this regard a sample bonds executed by one of the Petitioners reads thus:

"प्रति,
मा.प्राचार्य
राजाराम महाविद्यालय, कोल्हापूर
अध्यक्ष, अल्पसंख्यांक मुलींचे वसतीगृह
कोल्हापूर - ४१६००४

ज्याअर्थी प्राचार्य राजाराम महाविद्यालय, कोल्हापूर अध्यक्ष, अल्पसंख्यांक मुलींचे वसतीगृह, कोल्हापूर ४१६००४ यांनी त्यांच्या कार्यालयीन आदेश क्रमाक आस्था/अल्पसं/कनि/२०१४/०१ नुसार कु.रोमा रमेश कांबळे, राहणार मु.पो. नेली, ता.करवीर, जि. कोल्हापूर, यांची नियुक्ती पत्रात नमुद केलेल्या अटी व सततवार अधीक्षक या पदावर कंत्राटी पध्दतीने दि. ०९ सप्टेंबर २०१४ ते ३१ जानेवारी २०१५ या कालावधीकरिता नियुक्ती केली आहे. त्याअर्थी मी, कु.रोमा रमेश कांबळे लिहून देते की,
१. मला प्राप्त झालेल्या नियुक्ती पत्रातील सर्व अटी व शर्ती मी वाचल्या आहेत आणि त्या मला समजल्या आहेत. त्या सर्व अटी व शर्ती मला मान्य आहेत.
२. जर माझ्याकडून एखाद्या अटी/शर्तीचा भंग झाला तर सदरच्या पदावरील माझी नियुक्ती रद्द केली जाईल यांची मला जाणीव आहे.
३. मी या संदर्भात सर्व माहिती जाणून घेतल्यानंतर जाणीवपूर्वक व स्वेच्छेने सदर कंत्राटी नियुक्ती स्विकारत आहे.
४. या कंत्राटी नियुक्तीनंतर मला कायमस्वरूपी नियुक्ती मिळण्याचा हक्क राहणार नाही. तसे या करारपत्राच्या कालावधीनंतर शासनावर कोणतीही जबाबदारी राहणार नाही व कंत्राटी सेवेशी निगडीत कोणत्याही प्रकारची मागणी मी करणार नाही अशी या करारपत्राद्वारे हमी देत आहे.
५. माझे कामकाज असमाधानकारक आढळून आल्यास माझी नियुक्ती तात्काळ रद्द करण्यात येईल. याबद्दल माझी कोणतीही तक्रार राहणार नाही.

दि.

समक्ष १)
२)

स्वाक्षरी

(कु.रोमा रमेश कांबळे)

मा. प्राचार्य, राजाराम महाविद्यालय, कोल्हापूर, अध्यक्ष, अल्पसंख्यांक मुलींचे वसतीगृह, कोल्हापूर, यांच्यासाठी"

33) In my view therefore, following the judgment of the Apex Court in **Anita**, it cannot be held that the posts created by GR dated 21 June 2013 are permanent in nature nor Petitioners have any right to claim permanency in Government Service.

34) What remains now is to deal with various judgments relied upon by Mr. Talekar :-

i) In **MSRTC Vs. Casteribe, Hari Nandan Prasad and State of Jammu and Kashmir** (supra) the Apex Court has held that an industrial ad-judicator is not denuded of authority to direct regularization pursuant to labour enactments. There can be no dispute about this proposition. However, in **Hari Nandan Prasad** the Apex Court following the judgment in **MSRTC Vs. Casteribe** has held regularization can be direct only when sanctioned posts exists. The Apex Court held in para 13 and 14 in Hari Nandan Prasad and Anr. (supra) as under:

"13. We may record here that the Division Bench accepted that there was infraction of Section 25-F of the ID Act in both the cases. However, they were held not entitled to reinstatement because of the reason that they were employed strictly as temporary workers, without any stipulation or promise that they would be made permanent and therefore reinstatement of such workers was not warranted and they were entitled to get monetary compensation only. As far as compensation is concerned, since both the appellants were paid the money equivalent to wages last drawn, for number of years when the Writ Petitions were pending, under Section 17-B of the ID Act, the High Court felt that the appellants were duly compensated and no further amount was payable.

14. Challenging the validity of the approach of the High Court, the learned counsel for the appellants submitted that the entire thrust of the judgment of the High Court rests on the decision of this Court in Umadevi (3) case which was impermissible as the said judgment is clarified by this Court subsequently in Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchari Sanghatana, wherein it is held, in categorical terms, that in so far as the Industrial and Labour Courts are concerned, they enjoy wide powers under Section 30(1)(b) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (1 of 1972) (the MRTU and PULP Act) to take

affirmative action in case of unfair labour practice and these powers include power to order regularization/permanency. The Court has, further, clarified that decision in Umadevi (3) limits the scope of powers of the Supreme Court under Article 32 and High Courts under Article 226 of the Constitution to issue directions for regularization in the matter of public employment, but power to take affirmative action under Section 30(1)(b) of the ID Act which rests with the Industrial/Labour Courts, remains intact. It was, thus, argued that entire edifice of the impugned judgment of the High Court erected on the foundation of Umadevi (3) crumbles."

True it is that in ***Hari Nandan Prasad*** the Apex Court is held that if similarly situated workmen are regularized by the employer under some scheme, the Industrial Court / Labour Court can direct regularization as per Article 14 of Constitution of India. In the present case, no such illustration of regularization of similarly placed employee or existence of any scheme for regularization is pointed out. In my view therefore the judgments of the Apex Court in ***MSRTC Vs. Casteribe, Hari Nandan Prasad and State of Jammu and Kashmir*** do not assist the case of Petitioners. In ***ONGC Vs. Petroleum Coal Labour Union*** the issue was about applicability of certified standing orders of ONGC to contract security guards.

ii) ***Nihal Singh*** is relied upon by Mr. Talekar in support of his contention that Labour Court / Industrial Court in a given case can even direct creation of posts for ordering regularization. In my view, the Judgment in ***Nihal Singh*** is rendered in view of peculiar facts and circumstance of the case, where banks were directed to recruit security personnel Sub-Police Officers with a view to tackle large scale disturbance in the State of Punjab in 1980's. The Judgment therefore cannot be cited in support of an absolute proposition that in every case where temporary / contract appointment is made in absence of sanctioned posts, Labour Court/ Industrial Court can direct creation of posts.

iii) Judgment of this Court in ***Municipal Council, Tirora*** and ***Raigad Zilla Parishad*** are cited by Mr. Talekar mainly to distinguish them. In those cases, this Court held that Labour Court/ Industrial Court cannot direct grant of permanency in absence of vacant sanctioned posts on the basis of Clause 4 (C) of model standing Orders on completion of 240 days of service. True it is that both the judgments relate to local bodies such as Zilla Parishad, Municipal Council, Municipal Corporation etc, who do not have power to create posts and on whose establishments, posts can be sanctioned only by the State Government. In my view, the posts have been sanctioned by the State Government in the present case to be filled only on contract basis. Following the judgment of the Apex Court in ***Anita***, the said posts cannot be treated as having been sanctioned permanently by this Court.

iv) Judgment of this Court in ***Chief Officer Alibag Municipal Council*** is rendered in the peculiar facts and circumstances of that case where the appointments of employees therein were made by the Municipal Council and thereafter they were regularized against sanctioned regular posts. The Director of Municipal Administration had rescinded the regular appointments and converted them back as temporary appointees. In the light of these peculiar facts and circumstance of this case, this Court directed regularization of three employees who had infact expired during pendency of litigation, to ensure payment of pension to their family members.

v) Judgment of this Court in ***CIDCO*** is again rendered in the facts of that case where CIDCO had powers to create posts on its establishment. It desired to create posts for regularization of the canteen employees but was not creating the same under a misconception that State

Government had authority to sanction the same. It is in the light of those peculiar facts, this Court directed regularization of the canteen employees as CIDCO was not opposed to the idea creation of posts on its establishments.

vi) Judgment of this Court in *Deputy Conservator of Forest* is again rendered in the facts of that case where the issue of creation of posts was not involved. The case related to regularization of services of labourers engaged by the Forest Department, where there is a specific Scheme sanctioned by the State Government for regularization of Van Majoor. Therefore, the judgment would have no application to the facts and circumstances of the present case.

35) After considering the overall conspectus of the case, I am of the view that no patent error can be traced in the Orders passed by the Industrial Court rejecting the relief of permanency to Petitioners. The plea that they have worked for nine long years would not cut any ice as their continuance is in pursuance of Interim Orders passed by Industrial Court and this Court. If their service rendered in pursuance of interim Orders are to be ignored, Petitioners have rendered services hardly for a period of three years. In my view, no case was made out by Petitioners for grant of relief of permanency in absence of their appointments being made against permanent posts.

36) I therefore find the Orders passed by the Industrial Court to be unexceptionable. Writ Petitions, being devoid of merits, are dismissed without any Orders as to costs.

[SANDEEP V. MARNE J.]

After the judgment is pronounced, the learned counsel appearing for Petitioners would pray for continuation of the Interim Order for a period of 8 weeks. Considering that the Interim Order is operational, for a considerable period of time, the same would continue to operate for a period of 8 weeks from today.

[SANDEEP V. MARNE J.]