IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 19TH DAY OF DECEMBER , 2024

BEFORE

HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.200865 OF 2022 (S-RES)

BETWEEN

1. JYOTHI JOSHI W/O DHANANJAY JOSHI,
   AGED ABOUT 31 YEARS,
   WORKING AS ACCOUNTANT,
   TOWN MUNICIPAL COUNCIL,
   HUMNABAD, DISTRICT BIDAR-585330.

2. GURURAJ MAGAI S/O GIRIMALLAPPA MAGAI,
   AGED ABOUT 39 YEARS,
   WORKING AS ACCOUNTANT,
   TOWN MUNICIPAL COUNCIL,
   BASAVANABAGEWADI,
   DISTRICT: VIJAYAPURA-586203.

3. ASLAM N. KHADIM S/O N. J. KHADIM,
   AGED ABOUT 32 YEARS,
   WORKING AS ACCOUNTANT,
   TOWN MUNICIPAL COUNCIL,
   INDI, DISTRICT: VIJAYAPURA -586209.

4. ARSHIYANAAZ M. GANGANALLI
   W/O SAIFUL HAMEED TIKOTIKAR,
   AGED ABOUT 29 YEARS,
   WORKING AS ACCOUNTANT,
   TOWN MUNICIPAL COUNCIL,
   SINDAGI, DISTRICT: VIJAYAPURA -586128.

5. PALLAVI GURURAJA RAO
   W/O SANTHOSH S. DESHPANDE

AGED ABOUT 40 YEARS,
WORKING AS ACCOUNTANT,
TOWN MUNICIPAL COUNCIL,
ALAND, KALABURAGI-585302

6. MAMATHA SHIVAKUMAR GUTTEDAR
W/O SHIVAKUMAR GUTTEDAR,
AGED ABOUT 36 YEARS,
WORKING AS ACCOUNTANT,
CITY MUNICIPAL COUNCIL,
SHAHABAD, KALABURAGI-585228.

7. KUM. SHOBARANI A. R.
D/O A. V. RAJAGOPAL,
AGED ABOUT 36 YEARS,
WORKING AS ACCOUNTANT,
TOWN MUNICIPAL COUNCIL,
CHINCHOLI, DISTRICT: KALABURAGI -585307.

8. MANISHA S. GHATAGE
W/O SHINDE VISHWAS RAJARAM,
AGED ABOUT 40 YEARS,
WORKING AS ACCOUNTANT,
TOWN MUNICIPAL COUNCIL,
JEWARGI, KALABURAGI-585310.

9. KRANTIDEVI W/O SANGAMESHWAR CHAROLLI,
AGED ABOUT 39 YEARS,
WORKING AS ACCOUNTANT,
TOWN MUNICIPAL COUNCIL,
CHITTAPUR, KALABURAGI-585211.

10. HANAMANTA S/O SAIBANNA KUSMARTY,
AGED ABOUT 37 YEARS,
WORKING AS ACCOUNTANT,
TOWN MUNICIPAL COUNCIL,
SEDAM, DISTRICT: KALABURAGI -585102.

11. IMRAN KHAN S/O: KHADER KHAN
AGED ABOUT 33 YEARS,
WORKING AS ACCOUNTANT,
CITY MUNICIPAL CORPORATION,

KALABURAGI-585101.

12. NASEER AHMED S/O MD. SALEEM,
AGED ABOUT 34 YEARS,
WORKING AS ACCOUNTANT,
CITY MUNICIPAL CORPORATION,
DISTRICT: KALABURAGI -585101

13. ANAND B. GOURE S/O BABURAO,
AGED ABOUT 38 YEARS,
WORKING AS ACCOUNTANT,
CITY MUNICIPAL CORPORATION,
DISTRICT KALABURAGI -585101.

14. BASAVARAJ C. BIRADAR
S/O BASAVARAJ B CHANDRAKANTH,
AGED ABOUT 40 YEARS,
WORKING AS ACCOUNTANT,
CITY MUNICIPAL COUNCIL,
BIDAR-585401.

15. NARESH S/O BALAJI RAO GHANATE,
AGED ABOUT 36 YEARS,
WORKING AS ACCOUNTANT,
TOWN MUNICIPAL COUNCIL,
CHITAGUPPA, DISTRICT BIDAR -585412.

16. SUNIL S/O BABURAO,
AGED ABOUT 32 YEARS,
WORKING AS ACCOUNTANT,
TOWN MUNICIPAL COUNCIL,
BASAVAKALYAN,
DISTRICT: BIDAR -585327.

17. RAVIDAS S/O KOTU RATHOD
AGED ABOUT 37 YEARS,
WORKING AS ACCOUNTANT,
CITY MUNICIPAL COUNCIL,
SHORAPURA,
YADGIRI-585224.

18. ISMAIL KHAN S/O KHADAR KHAN,
AGED ABOUT 38 YEARS,
WORKING AS ACCOUNTANT,

TOWN MUNICIPAL COUNCIL,
DISTRICT YADGIRI -585201.

19. ANIL KUMAR S/O SHIVASHRANAPPA,
AGED ABOUT 35 YEARS,
WORKING AS ACCOUNTANT,
TOWN MUNICIPAL COUNCIL,
GURUMITKAL,
DISTRICT: YADGIRI -585224.

20. SURENDRA S/O SIDDANNA,
AGED ABOUT 36 YEARS,
WORKING AS ACCOUNTANT,
TOWN MUNICIPAL COUNCIL,
SHAHAPUR, YADGIRI-585223.

21. SHAMBHAVI
W/O BRAHMANANDA MATAPATHI
AGED ABOUT 41 YEARS,
WORKING AS ACCOUNTANT,
TOWN MUNICIPAL COUNCIL,
BHALKI, BIDAR-585401.

22. RAJANALE SUHASINI
W/O SANTOSH KUMAR,
AGED ABOUT 33 YEARS,
WORKING AS ACCOUNT,
TOWN PANCHAYATH,
AURAD (B), BIDAR,
DISTRICT BIDAR-585421.

23. ASHWINI D/O SHIVAKANTHAYYA,
AGED ABOUT 29 YEARS,
WORKING AS ACCOUNTANT,
CITY MUNICIPAL CORPORATION,
KALABURAGI-585101.

...PETITIONERS

(BY SRI RAVI B. PATIL, ADVOCATE)

AND

1. STATE OF KARNATAKA
DEPARTMENT OF URBAN DEVELOPMENT,
REPRESENTED BY ITS
PRINCIPAL SECRETARY,
VIKASA SOUDHA,
BENGALURU-560001.

2. DIRECTOR OF MUNICIPAL ADMINISTRATION,
V.V. TOWERS, DR. AMBEDKAR ROAD,
BENGALURU-560001.

3. THE DEPUTY COMMISSIONER,
BIDAR DISTRICT, BIDAR-585401.

4. THE DEPUTY COMMISSIONER,
VIJAYAPURA DISTRICT, VIJAYAPURA-586101.

5. THE DEPUTY COMMISSIONER,
KALABURAGI DISTRICT, KALABURAGI—585101

6. THE DEPUTY COMMISSIONER,
YADGIRI DISTRICT,
YADGIRI-585201.

...RESPONDENTS

(By SMT. ARATI PATIL, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS FROM THE RESPONDENTS, ISSUE WRIT OR ORDER QUASHING THE IMPUGNED ENDORSEMENT DATED 18.2.2022 BEARING NO. 19603 DMA 62 ETRF 2019-20/4882 ISSUED BY THE RESPONDENT NO. 2 (ANNEXURE - AC TO AC22), ISSUE WRIT OF MANDAMUS DIRECTING THE RESPONDENTS TO REGULARIZE THE SERVICE OF THE PETITIONERS IN THE CADRE OF ACCOUNTANT WITH EFFECT FROM THE DUE DATE AND EXTEND ALL CONSEQUENTIAL BENEFITS TO THE PETITIONERS, INCLUDING MONETARY BENEFITS, IN THE LIGHT OF THE DECISIONS RENDERED IN WRIT APPEAL NO. 2578/2019 DATED 4.3.2021 (ANNEXURE – AA) ISSUE

WRIT OF MANDAMUS DIRECTING THE RESPONDENTS TO EXTEND THE MINIMUM PAY SCALE ATTACHED TO THE POST OF ACCOUNTANT IN THE PAY SCALE OF 16.000 - 29.600 (8.000 - 14.800) TO THESE PETITIONERS FROM THE DATE OF THEIR INITIAL APPOINTMENT TO THESE PETITIONERS TO TILL DATE. ORDER INCLUDING THE COST OF THIS WRIT PETITION ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 16.12.2024, THIS DAY ORDER WAS PRONOUNCED THEREIN, AS UNDER:

CORAM: HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

C.A.V. ORDER

(PER: HON’BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

The petitioners, who are serving as accountants on contract basis are aggrieved by the impugned endorsements issued by respondent No.2 evidenced at Annexures – AC to AC22. Consequently, mandamus is sought to direct the respondents to regularize service of petitioners in the cadre of accountant with effect from due date and extend all consequential benefits to the petitioners including mandatory benefits aligning with the principles laid down by the Division Bench in W.A.No.2578/2019 evidenced at Annexure – AA. Similarly, mandamus is also sought to direct the respondents

to extend the minimum pay scale attached to the post of accountant to the petitioners from the date of initial appointment till date.

2. The State Government proposed the absorption of all Community Affairs Officers and Community Organizers employed under the Swarna Jayanthi Shahari Rozgar Yojana scheme into Urban Local Bodies. This proposal culminated in the enactment of the Karnataka Municipalities (Absorption of Employees Appointed Under the Scheme of Swarna Jayanthi Shahari Rozgar Yojana in Urban Local Bodies) Rules, 2005. Subsequently, the State Government, through its resolution dated 03.12.2005, as evidenced in Annexure – AE, decided to absorb all employees working under this scheme. In furtherance of this decision, the Karnataka Municipalities (Accounting and Budgeting) Rules, 2006, were promulgated. These Rules mandated that all municipalities adopt a double-entry system of bookkeeping. Additionally, municipalities were required to adhere to a specified chart of accounts,

accounting, and budgeting procedures, and to maintain books of accounts as outlined in the Rules.

3. Under the Karnataka Municipal Reforms Project, the Deputy Commissioners of respective districts were authorized to recruit candidates with a Bachelor of Commerce (B.Com.) degree on a contractual basis. Acting upon the directives issued by the State Government, the Deputy Commissioner of the concerned district issued a notification inviting applications for the post of accountants. The petitioners assert that they responded to these notifications, applying for the advertised posts between 2007 and 2013. They further contend that they participated in interviews and were selected based on their fulfillment of the requisite eligibility criteria stipulated in the notification.

4. The petitioners have been serving as accountants in various municipalities since their appointments, spanning the years 2008 to 2014. According to the petitioners, the recruitment process adhered to roster points, and merit lists

were prepared to select candidates among those most qualified. Despite their designation as contractual employees in their appointment orders, the petitioners claim that their selection was tantamount to direct recruitment, given the structured and merit-based process. Furthermore, the respondents extended the petitioners' contractual terms repeatedly, ensuring their continued service from the date of appointment to the present.

5. Aggrieved by the notification dated 03.03.2016, which called for direct recruitment to the same positions, the petitioners filed W.P. No. 201231/2017 before this Court. In this writ petition, they challenged the notification and sought a mandamus for the regularization of their services as accountants. This Court, by its order dated 28.03.2017, as evidenced in Annexure – R, allowed the petition and directed Respondent Nos. 1 and 2 to consider the petitioners' cases for regularization. However, Respondent No. 2, in compliance with the Court's directive, issued an endorsement dated 28.04.2017, as evidenced in Annexure–S, refusing

regularization on the grounds that no sanctioned posts were available.

6. Despite this endorsement, Respondent No. 2 issued a notice on 19.05.2017, directing the petitioners to submit requisite documents to substantiate their claims for regularization. However, Respondent No. 2 later issued a circular dated 30.06.2017, evidenced in Annexure – U, seeking to relieve the petitioners from their positions. This compelled the petitioners to approach this Court again in W.P. Nos. 24547-24641/2017. This Court allowed the petitions, directing the respondents to withdraw the circular dated 22.05.2017. The circular was subsequently withdrawn, as evidenced in Annexure – V, leading to the disposal of the writ petitions.

7. Following these developments, the petitioners submitted detailed representations asserting that their appointments were against sanctioned posts and preceded by recruitment notifications. The recruitment process

allegedly set a high eligibility benchmark, requiring a minimum of 60% in a B.Com. degree. The petitioners contended that the recruitment adhered to the roster points and that a merit list was prepared, ensuring that only the most qualified candidates were selected. In their representations, the petitioners argued that their eligibility criteria exceeded those required for permanent appointment to the post of accountants. Accordingly, they sought the regularization of their services, asserting their qualifications and the merit-based nature of their selection.

8. However, Respondent No. 2 issued endorsements, evidenced by Annexures – AC to AC22, rejecting the petitioners' claims for regularization. The rejections were premised on the argument that the petitioners had worked for over ten years under the protection of interim orders issued by this Court. The endorsements further cited the principles laid down by the Supreme Court in the case of ***State of Karnataka & Others v. Umadevi & Others***[1]**,**

[1] (2006) 4 SCC 1

asserting that the petitioners were not entitled to regularization under the prevailing legal framework.

9. Learned Senior Counsel reiterating the grounds urged in the writ petition has vehemently argued and contended that the petitioners' appointments were made following a transparent selection process and the petitioners do meet requisite qualifications and their appointments were admittedly against the sanctioned posts. Therefore, he would point out that the impugned order is not sustainable. He would further vehemently argue and contend that respondent No.2's reliance on ***Umadevi's*** *case* is misplaced, as the petitioners' appointments are neither irregular nor illegal but substantive and in compliance with prescribed procedure. Reliance is placed on the following judgments:

1. Ganesh Digamber Jambhrunkar & Ors. Vs. The State of Maharashtra & Ors. (2023 LiveLaw (SC) 801)
2. Union of India Vs. Ilmo Devi & Anr. (AIR 2021 SC 4855)
3. University of Delhi Vs. Delhi University Contract Employees (AIR 2021 SC 3305)

4. Vibhuti Shankar Pandey Vs. The State of Madhya Pradesh

5. Kendriya Vidyalaya Sangathan & Ors Vs. L.V. Subramanyeswara & Anr. (2007 AIR SCW 3228)

6. Rajasthan State Road Development and Construction Corporation Ltd. Vs. Piyush Kant Sharma & Ors. (AIR 2020 SC 5036)

7. National Fertilizers Ltd. & Ors Vs. Somvir Singh (AIR 2006 SC 2319)

8. State of Madhya Pradesh & Ors. Vs. Rajeev Singh & Ors. (W.A.No.607/2023 DD 12.08.2024)

9. Vinod Kumar and Others Vs. Union of India and Others ((2024) 9 SCC 327)

10. Somesh Thapliyal and another Vs. Vice Chancellor, H.N.B. Garhwal University and Another ((2021) 10 SCC 116

11. B.J. Rani and Others Vs. State of Karnataka and Others (W.P.No.12683/2023 DD 25.09.2024)

10. *Per contra*, learned High Court Government Pleader countering the petitioners' contentions would point out that the principles laid down by the Apex Court in the case of ***Umadevi*** are squarely applicable to the present case on hand. She would vehemently argue to contend that the petitioners' continuation in service is based on interim order passed by this Court. Therefore, she would point out that

the petitioners' assertion that they are entitled for regularization cannot be acceded to, as it would contravene the principles laid down in ***Umadevi's*** case, which restricts regularization of employees appointed on adhoc or temporary basis.

11. Learned Additional Advocate General sought leave to argue in this case and leave was granted. Reiterating the grounds urged in the statement of objections, she has vehemently argued and contended that the petitioners' appointments were admittedly contrary to the recruitment notification and appointments were also made to some City Municipal Councils which do not find place in the recruitment notification. Therefore, she would also point out that some of the petitioners have resigned and few are relieved and some are dead and the present petition is filed even in respect of those petitioners. While arguing specifically in regard to postings given to few CMC which were not initially notified in the recruitment notification, a detailed synopsis is filed.

12. *Per contra*, learned Senior Counsel appearing for the petitioners has filed a memo seeking dismissal of the petition against petitioner Nos.5, 6, 16 and 21 as withdrawn.

13. Heard learned counsel on record. This Court has given its anxious consideration to the documents Annexed to the writ petition. This Court has also given its anxious consideration to the judgments cited by the parties to the petition.

14. In the present case, the appointments of the petitioners to the post of accountants are clearly substantive in nature. The petitioners were though appointed on contract basis, were obviously against the sanctioned posts. A notification was floated fixing the eligibility criteria. It is quite interesting to note that for contract employment, the notification has clearly fixed a high eligibility of minimum first class in B.Com. As rightly pointed out by the learned Senior Counsel, the eligibility to the post of accountant on permanent basis, the qualification is minimum B.Com. pass. This is clearly evident from the Government notification

dated 13.01.2011 evidenced at Annexure – C, wherein for direct recruitment, the notification clearly contemplates that the aspiring candidates should have passed bachelor decree in commerce with accountancy and commerce. Therefore, for permanent post, the notification clearly contemplates that minimum pass is the qualification. While the petitioners were not only B.Com. Graduates but have secured more than 60% and the fact that they were appointed against the sanctioned posts. The records also reveal that the selection process was transparent and the petitioners meet requisite qualifications. The differential eligibility criteria for permanent and contractual appointment further underscore the significance of considering the petitioners to be regularized to the posts of accountants. All these petitioners are found to be meritorious candidates and therefore the earlier recruitment notification calling upon the notification to fill up the posts permanently clearly defies logic insofar as these posts to which the petitioners are presently serving which is also

based on a properly floated recruitment notification setting up a higher eligibility criteria.

15. This Court having noticed that the petitioners were appointed through proper recruitment process, allowed the writ petition and directed respondent Nos.1 and 2 to consider the case of the petitioners for regularization.

16. The petitioners' case for regularization is compelling due to their merit, experience, and the lawful nature of their appointments. First, their academic qualifications securing a first-class degree in B.Com reflect their competence and diligence, exceeding the minimum eligibility criteria of merely passing B.Com prescribed for permanent appointments. This higher benchmark, imposed at the time of their selection for contractual appointments, underscores their merit and suitability for the roles they currently occupy. Second, the petitioners have rendered over a decade of uninterrupted and satisfactory service in sanctioned posts, demonstrating their indispensability to the functioning of the department. Their appointments were

made through a transparent and competitive process, and there is no allegation of irregularity or backdoor entry, distinguishing their case from the principles outlined ***Umadevi's*** case. Furthermore, the interim orders of protection granted by this Court were necessitated by the respondents' attempt to displace the petitioners through fresh recruitment, an action that would have undermined the legitimate expectations of the petitioners, who have devoted years to their roles. Regularizing their services would not only uphold the principles of equity and justice but also prevent the unfair exploitation of employees who have proven their merit and sustained their roles under higher qualifying standards than those set for permanent appointees. Their continued service as contractual employees, despite their qualifications and contributions, perpetuates a discriminatory and arbitrary distinction, contrary to constitutional values of equality and fairness enshrined in Article 14. Regularization, in this context, is not

a concession but a rightful recognition of their merit, experience, and dedication.

17. The Government's contention that the petitioners' appointments and subsequent postings were delegated to local authorities, which was not explicitly indicated in the recruitment notification, cannot be sustained. At the time of issuing the recruitment notification, there were 176 sanctioned vacant posts across the State. The petitioners were unequivocally appointed to these sanctioned posts after a rigorous recruitment process that involved a wider notification and strict eligibility criteria. Only candidates who secured first-class marks in commerce were deemed eligible for consideration, ensuring that only the most meritorious candidates were selected. This was a higher benchmark than the eligibility criteria for permanent posts, which merely required passing marks in graduation in commerce.

18. After thorough scrutiny, the petitioners were appointed to the positions of accountants/accountant

consultants. Their appointments were based on their exceptional merit and qualifications. Over the years, they have rendered valuable services to the department, contributing significantly to its functioning. Considering the considerable length of their service, the merit-based nature of their appointments, and the fact that many of the petitioners have now crossed the age limit for re-employment, it is evident that this is a fit case for the issuance of a writ of mandamus. The Court recognizes the hardship that the petitioners would face if their appointments were annulled at this stage, especially as they have faithfully served the department for an extended period.

19. In this context, the principles laid down by the Hon'ble Supreme Court in ***Somesh Thapliyal & Another v. Vice Chancellor, H.N.B. Garhwal University & Another***[2] become directly applicable. This precedent emphasizes the importance of safeguarding the rights of employees who have served for significant periods and were

[2] (2021) 10 SCC 116

appointed based on merit against sanctioned posts. The case highlights the necessity of recognizing substantive appointments, even when designated as contractual, particularly when the appointments follow due process and fulfill eligibility criteria far exceeding the minimum required standards.

20. The petitioners in the present case were appointed through a structured and merit-based recruitment process pursuant to a public notification that explicitly prescribed first-class in B.Com. as the eligibility criterion. This high threshold underscores the substantive nature of the petitioners' appointments. Additionally, the claim that the petitioners' acceptance of the contractual terms and conditions negates their right to seek regularization has been explicitly rejected by the Hon'ble Supreme Court in the aforementioned case. The petitioners' continued service for substantial periods, coupled with their qualifications and adherence to the recruitment process, establish their eligibility for regularization.

21. The attempt by the respondents to displace the petitioners by issuing a fresh recruitment notification is both illogical and contrary to public interest. The petitioners have demonstrated their capabilities and have been assets to their respective departments. Replacing them with new recruits, after years of valuable service, would not only undermine their legitimate expectations but also disrupt the operational efficiency of the municipalities. Moreover, the petitioners' continued service under interim protection reflects the necessity of their roles and their indispensability in the system.

22. Considering the above, the petitioners' representations for regularization merit a positive response from the respondents. Any contrary action would not only violate the principles laid down by the Hon'ble Supreme Court but also result in injustice to employees who have dutifully served for years under the expectation of eventual regularization.

23. For the foregoing reasons, this Court passes the following:

ORDER

(i) The Writ Petition is hereby allowed.

(ii) Impugned endorsements dated 18-02-2022 bearing No. 19603 DMA 62 ETRF 2019-20/4882 issued by Respondent No.2 vide Annexure-AC to AC22 are hereby quashed.

(iii) The respondents are directed to consider the petitioners' case for regularization of service in the cadre of accountants, in accordance with the decision rendered in Writ Appeal No. 2578/2019 dated 04.03.2021 (Annexure-AA) and the principles laid down by the Hon'ble Supreme Court in ***Somesh Thapliyal v. Union of India*****,** within a period of four months from the date of receipt of a certified copy of this order.

(iv) The petition, insofar as it pertains to petitioner Nos. 5, 6, 16, and 21, is dismissed as withdrawn.

SD/-
(SACHIN SHANKAR MAGADUM)
JUDGE

RSP/List No.: 19 Sl No.: 1
CT-SW