



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

WRIT PETITION NO.6138 OF 2016

Meenakshi w/o Ajay Pande

... **PETITIONER**

VERSUS

The State of Maharashtra & ors.

... **RESPONDENTS**

.....
Mr. S.V. Deshmukh, Advocate for petitioner
Mr. S.R. Yadav Lonikar, A.G.P. for State
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving order : 23rd June, 2025

Date of pronouncing order : 15th July, 2025

ORDER :

This Petition, under Article 226 of the Constitution of India, takes exception to the judgment and order dated 6/8/2015, passed by the Maharashtra Administrative Tribunal (MAT), Bench at Aurangabad, in Transfer application (TA), No.2/2015 with Misc. Application (MA) No.355/2015. Vide impugned judgment and order, the original Writ Petition

(converted into T.A.) filed by the petitioner, for her absorption in service and consequential grant of pension and benefits incidental thereto has been dismissed.

2. The facts giving rise to the present Writ Petition are as follows :-

The petitioner did graduation in Arts Stream (B.A.). She earned postgraduation in the very stream with the special subject Sociology. It was also the special subject for degree in B.A. She then registered herself with the Employment Bureau of University and the Government Employees Scheme in January 1982. The petitioner claimed to have worked as Medical Social Worker on vacant sanctioned post by Indian Council of Medical Research (ICMR). Her appointment was for a fixed period. Many a time, she was given appointments on temporary basis. She, therefore, made several representations for her absorption on a vacant post. The ICMR issued a letter dated 15/8/1989. The Dean of Government Medical College, Aurangabad (respondent No.2), directed to absorb the petitioner on suitable post. Since the petitioner was not absorbed, she filed Writ Petition (Writ

Petition No.2747/1990) before this Court. This Court, vide order dated 4/4/1991, granted interim relief directing the petitioner to be reinstated. The petitioner thus came to be reinstated on the post of Medical Social Worker with respondent No.2. The Petition later on came to be transferred to MAT. It was numbered as T.A. No.2407/1991. Since the Advocate representing the petitioner in the Writ Petition passed away, and the petitioner was unaware thereof, the Petition was dismissed in default way back in 2002. The petitioner continued to serve until she attained the age of superannuation in the month of June 2012. She then realised her Application to have been dismissed in default. She, therefore, approached the MAT and moved an application for restoration. Her restoration application was allowed. It was, however, dismissed on merits after hearing the parties thereto. The said order is under challenge before us, in this Writ Petition.

3. We have heard the learned Advocate for the petitioner and the learned A.G.P. for the respondents. It was submitted that, the petitioner rendered continuous service for

more than 12 years. She thus became entitled for grant of pensionary benefits. The petitioner was granted time bound promotional pay-scale. She has also been granted revision in her pay in terms of recommendations of respective Pay Commissions. Even on her superannuation, the Head of the Department called upon her to submit necessary papers for processing her pension case. All the documents in that regard were referred to. The learned Advocate for the petitioner also relied on certain authorities to submit the petitioner to have served continuously for a long period. She was qualified. Her recruitment was by following due procedure. It was on a sanctioned, vacant and permanent post. He would further submit that, the MAT erred in relying on the Apex Court judgment in case of **Secretary, State of Karnataka & ors. Vs. Umadevi (3) & ors. [2006) 4 SCC 1**. According to him, since the dismissal of the petitioner's original Writ Petition (T.A.) in default, the interim order came to be vacated automatically. She, therefore, continued to serve for a period entitling her to pension and related benefits. The petitioner, therefore, could not be said to have been in service on the basis of Court's interim order. The learned Advocate ultimately urged for at

least grant of half of the pension. He relied on the following authorities :-

- (1) State of Karnataka & ors. Vs. M.L. Kesari & ors.
(2010) 9 SCC 247
- (2) State of Jharkhand & ors. Vs. Kamal Prasad & ors.
(2014) 7 SCC 223
- (3) Amarkant Rai Vs. State of Bihar & ors.
(2015) 8 SCC 265
- (4) Mrs. Kunda w/o Ramchandra Lakhkar (Nee Kunda d/o Shriram Varudkar Vs. State of Maharashtra & ors.
(Writ Petition No.8327/2013)
- (5) Mahatma Phule Krishi Vidyapeeth Vs. Ganpat Kisan Karle [2016 DGLS (Bom) 191
- (6) Waliuddin s/o Pashasaheb Vs. State of Maharashtra & ors. [Writ Petition No.1542/2008]

4. The learned A.G.P. supports the order impugned herein.

5. We have considered the submissions advanced. Perused the order impugned herein and the documents relied on. Admittedly, the petitioner was initially appointed as a Medical Social Worker on 16/3/1982. Her appointment was for duration of only 29 days. Thereafter, she was continued in service with regular breaks. She was terminated from service

in the year 1987. After about a period of three and half years was over, the petitioner approached this Court in Writ Petition (No.2747/1990). This Court, vide interim order, dated 4/4/1991, directed the concerned respondents to reinstate the petitioner in service. The said petition thereafter was transferred to the MAT. It was converted into a T.A. (No.2407/1991). The petitioner attained the age of superannuation in June 2012. Even steps for preparing her pension case were also taken. During her continuance in service, she was admittedly granted time bound promotional scale. She was extended with the pay-scale as was recommended by the respective Pay Commissions.

6. Admittedly, the petitioner's application (Original Writ Petition) before the MAT was dismissed in default, meaning thereby the interim order of her reinstatement in service stood vacated. It is only after long, that too post her attaining superannuation she realised the same. It is true that, the MAT restored her application and decided the same on merits. The MAT has observed in its order that the petitioner did not make out a case to have been appointed by following due procedure.

She also failed to make out a case to have requisite qualification. Nor was it made out that her appointment was on vacant and permanent post. It is true that, the petitioner did B.A. and M.A. with special subject, 'Sociology'. For the post held by her, the requisite qualification was graduate in Social Science. We need not advert to the aspect of the petitioner's educational qualification for the reason that, on other grounds, no interference with the order impugned herein is warranted. Admittedly, the petitioner was appointed on a post under a special scheme. On the said scheme to have come to an end, her appointment necessarily came to an end. She continued in service only on the strength of the interim order passed by this Court. True, on dismissal of the petition, the interim order stood vacated. The petitioner, however, cannot be benefited thereby to contend that she continued to serve for little over 12 years without orders of a Court. Such submission was advanced with a view to come out of the observations of the Apex Court in the case of Umadevi (supra). The MAT has reproduced the observations of the Apex Court in the said judgment. We, therefore, need not reproduce the same herein. The MAT has also adverted to Rule 33 of the

Maharashtra Civil Services (Pension) Rules, which reads :

“33. A Government servant who holds a permanent post substantively or holds a lien or a suspended lien or a certificate of permanency on the date of his retirement, the entire temporary or officiating service rendered under Government followed without interruption by confirmation in the same or another post, shall count in full as service qualifying for pension, except the service rendered against one of the posts mentioned in Rule 57.”

7. Although the petitioner relied on the above various authorities, it needs no mention that, those have no bearing on the fate of this Writ Petition in view of the Apex Court judgment in Umadevi's case (supra), being a Constitutional Bench judgment and it has been specifically observed that when a person enters a temporary employment or gets engagement as contractual or casual work and is not based on proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature.

8. It has further been observed in Umadevi's case that, decision which run counter to the principle settled in Umadevi's case or in which direction running counter to what

has been laid down therein, will stand denuded as their status as precedent. For this very reason, the authorities relied on by the petitioner are of no help at all.

9. It needs no mention that, factual observation in judgment and order are presumed to be correct unless otherwise shown. At the cost of repetition, it is stated that, the MAT has observed the petitioner to have not claimed that she was duly qualified for the post as per the recruitment rules and was appointed in a sanctioned vacant post. We need not dilate on the issue involved in this Writ Petition, since the order impugned herein is well reasoned and we are in complete agreement therewith.

10. For all the aforesaid reasons, we find no merit in the Writ Petition. The same is, therefore, dismissed.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-