



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

WRIT PETITION NO.6302 OF 2018

Smt. Vanmala w/o Shivling Mathpati ... **PETITIONER**

VERSUS

The State of Maharashtra & ors. ... **RESPONDENTS**

.....
Mr. N.P. Patil Jamalpurkar, Advocate for Petitioner
Mr. S.B. Pulkundwar, A.G.P. for State
Mr. V.C. Patil, Advocate holding for
Mr. U.B. Bondar, Advocate for R.No.4 and 5
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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

DATE : 2nd JULY, 2025

ORDER :

The Petitioner has rendered the service as Arogya Sevika (Auxiliary Nurse) with the Respondent No.4 Zilla Parishad, Latur. The said services was from 30/8/1988 on temporary basis. The Petitioner was given intermittent breaks and fresh orders of temporary appointments were issued from time to time till 2/2/1994. Thereafter the services of the

Petitioner were regularized w.e.f. 5/2/1994. The Petitioner made representation on 21/8/2009 to the Respondent No.4 Chief Executive Officer, Zilla Parishad, Latur for regularising her services from her first appointment by condoning the breaks. The services of similarly placed Auxiliary Nurses were regularised by the Respondent No.4 by order dated 12/6/2009 by exercising the powers under the Maharashtra Civil Services (Leave) Rules, 1981. As no decision was taken on the Petitioner's representation, she she has approached this Court with the following main prayer :

- B) Issue writ of mandamus or any other writ in the like nature, thereto direct the Respondents to regularize her services w.e.f. 30/8/1988 (initial date of appointment) by condoning the break period in service during the period between 30/8/1988 upto 2/2/1994 and extend all the monetary and pensionary benefits with arrears in favour of the Petitioner.

2. It is submitted by learned Advocate for the Petitioner that, when the services of the similarly placed Auxiliary Nurses have been regularised by the Respondent No.4 Zilla Parishad and the Petitioner is left out, it is nothing

but discrimination. He submits that, though the reply has been filed by the Respondent No.4 Zilla Parishad, there is no justification why the services of the Petitioner was not regularised since her first date of appointment and why she was not continued in service from her first appointment. He submits that, this Court, by order dated 3/9/2021, had directed the Respondent No.1 and Respondent No.5 to enter specific replies to paragraphs 8, 9 and 10 of the Petition. He submits that, on the ground of parity, the Petition be allowed.

3. It is submitted by learned Advocate for the Zilla Parishad that, initially the powers to regularise the services of the Auxiliary Nurses were with the Zilla Parishad and subsequently the powers vested with the Divisional Commissioner and, therefore, no decision could be taken by Respondent No.4 Zilla Parishad. He submits that, the proposal of the Petitioner along with other Auxiliary Nurses was forwarded to the Divisional Commissioner, Aurangabad for regularisation on 2/12/2016, showing some discrepancies. He submits that, in the meanwhile, the Government of Maharashtra has issued the Government Resolution dated

5/5/2018 not to regularise the services of the temporary/ contractual employees in view of the decision of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi & ors. [2006 AIR SCW 1991] and, therefore, the Petitioner's services were not regularised with effect from her first appointment. He submits that, the Petition may be dismissed.

4. It is submitted by learned A.G.P. for Respondents No.1 to 3 that, the Petitioner was working on contractual basis and in view of the above referred Government Resolution dated 5/5/2018 issued by the Government, the Petitioner was not entitled for the relief of regularisation of her services from the first date of her appointment. He further submits that, the Maharashtra Civil Services (Pension) Rules are not applicable to the Petitioner as she was not the Government employee. He submits that, the Petitioner is not entitled for the prayers made in the Petition.

5. We have heard learned Advocates for all the sides and have perused the papers on record. There is no dispute that, the Petitioner has rendered the services as Auxiliary

Nurse from August 1988 to February 1994 on contractual basis with intermittent breaks. It is also not in dispute that the Petitioner was regularised on the said post w.e.f. 5/2/1994.

This Court, on 3/9/2021, has passed the following order :

“1. We have briefly heard the learned Advocate for the petitioner, the learned A.G.P. on behalf of respondent Nos.1, 2 and 3 and the learned Advocate representing respondent Nos.4 and 5.

2. The petitioner has now superannuated as on 31st July 2017. She was appointed as an Auxiliary nurse midwife (ANM) on 30th August 1988 for temporary periods upto 2nd February 1994. By an order dated 3rd February 1994 issued by the Zilla Parishad, Latur, the petitioner has been regularized from 5th February 1994.

3. In the above backdrop, the petitioner has specifically contended in paragraph 8 that ten Arogya Sevaks have been regularized by condoning different breaks in service introduced during their temporary engagements as per Rule 50, 60 and 63 of the Maharashtra Civil Services (Leave) Rules, 1981. Copy of the order has been placed on record at Annexure “F”. Based on such pleadings, the petitioner prays that she should be treated equally with the similarly situated 10 employees. We find from the affidavit-in-reply filed by respondent No. 1 and by respondent Nos.4 and 5 that none of them have contradicted the contents of paragraphs 8, 9 and 10 of the petition.

4. We are of the prima facie view that if the petitioner is equally placed with the 10 Arogya Sevaks, the law will have to be made applicable equally and there ought not to be discrimination.

5. We, therefore, direct respondent No.1 and respondent No.5 to enter specific replies to paragraphs 8, 9 and 10 of the petition. Let such replies be filed on or before 23rd September 2021.”

6. Though the Respondent No.1 has filed reply affidavit pursuant to said order dated 3/9/2021, the affidavit-in-reply is totally silent in respect of specific reply on the paragraphs which were quoted in the above referred order. At Exhibit F to the Petition is the order issued by the Respondent No.4 Zilla Parishad, regularising the services of the Auxiliary Nurses from the date of initial appointment on contractual basis, by condoning the break by exercising the powers under Rules 50, 60 and 63 of the Maharashtra Civil Services (Leave) Rules, 1981. There is no dispute that the Petitioner and the aforesaid Auxiliary Nurses are similarly placed. A copy of the communication at Exhibit E, Page 18 of the Petition shows that, the similarly placed Auxiliary Nurses working with the Kolhapur Zilla Parishad were also given the benefit of regularisation in the services from the period of their first appointment as contractual employees. The claim of the Petitioner, as can be seen from the representation, was made

on 21/8/2009 and the order of the Zilla Parishad, Latur and that of the Government in respect of Zilla Parishad, Kolhapur are of June 2009 and August 2009 respectively. There is no reply as to why the Petitioner was left out when similarly placed Auxiliary Nurses were given the benefit of regularisation from the date of their initial appointment on contractual basis. This amounts to discrimination. The contention of learned A.G.P. that the Maharashtra Civil Services (Leave) Rules will not be applicable to the Petitioner falls down since the Zilla Parishad, Latur, by order dated 12/6/2009, has regularised the services of the similarly placed Auxiliary Nurses by exercising the powers under the Maharashtra Civil Services (Leave) Rules. Thus, on the ground of parity, we allow the Writ Petition in terms of prayer clause (B), except monetary benefits, which shall be paid to the Petitioner from the date of filing of the Writ Petition i.e. 4/6/2018.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-