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

WRIT PETITION NO.2590 OF 2020

- 1] Shri. Vasant Laxman Shrimandilkar
Age: 57 years, occu. Service,
R/o: At/Post. Parner, Tal. Parner,
Dist. Ahmednagar
- 2] Shri. Ramesh Bapurao Bansode
Age: 57 years, Occu. Service
R/o:
- 3] Shri. Aher Baban Daulatrao
Age: 55 years, Occu: Service
R/o: At/Post. Chande Kasare
Tal. Kopargaon, Dist. Ahmednagar.
- 4] Shri. Ramnath Gangaram Gadekar
Age: 57 years, Occu: Service
R/o: At/Post. Sultanpur (Bk)
Tal. Shevgaon, Dist. Ahmednagar.
- 5] Shri. Dattatray Sampat Aher
Age: 56 years, Occu: Service
R/o: At/Post. Davande,
Tal. Kopargaon, Dist. Ahmednagar.
- 6] Shri. Rajendra Murlidhar Bhangе
Age: 56 years, Occu: Service
R/o: At/Post. Samtanagar, Kopargaon
Tal. Kopargaon, Dist. Ahmednagar.
- 7] Shri. Burhade Chandrakant Baburao
Age: 54 years, Occu: Service
R/o: At/Post. Aardgaon, Rahuri
Tal. Rahuri, Dist. Ahmednagar.
- 8] Shri. Babulal Damodhar Chandanshiv
Age: 57 years, Occu: Service

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R/o: At/Post. Rahata, Tal. Rahuri,
Dist. Ahmednagar.

- 9] Shri. Inde Rajesh Dagdu
Age: 44 years, Occu: Service
R/o: At/Post. Shri Ram Colony,
Datta Nagar, Tal. Shevgaon,
Dist. Ahmednagar.
- 10) Shri. Tagad Arjun Bhanudas
Age: 55 years, Occu: Service
R/o: At/Post. Renuka Nagar (Bolhegaon)
MIDC, Tal & Dist. Ahmednagar.
- 11] Shri. Ramdas Janardhan Badhathe
Age: 57 years, Occu: Service
R/o: At. Khamgaon Post. Joharapur,
Tal. Shevgaon, Dist. Ahmednagar.
- 12] Shri. Sakharam Rangnath Kasbe
Age: 54 years, Occu: Service
R/o: At/Post. Aardgaon, Rahuri
Tal. Rahuri, Dist. Ahmednagar.
- 13] Shri. Balkrushna Shrirang Wakade
Age: 54 years, Occu: Service
R/o: At/Post. Aardgaon, Rahuri
Tal. Rahuri, Dist. Ahmednagar.
- 14] Shri. Sampat Limbaji Kale
Age: 56 years, Occu: Service
R/o: At/Post. Salabatpur Primary
Health Center, Tal. Nevasa,
Dist. Ahmednagar.
- 15) Shri. Fatangare Balu Ramnath
Age: 45 years, Occu: Service
R/o: At/Post. Dhumalwadi (Shivaji Nagar)
Near Pir Sai Mandir, Tal. Akole
Dist. Ahmednagar.

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- 16] Shri. Mohan Sakharam Pathave
Age: 48 years, Occu: Service
R/o: At/Post. Sambhaji Nagar,
Saraswati Colony, New Navlewadi
Near Pir Sai Mandir, Tal. Akole
Dist. Ahmednagar.
- 17] Shri. Borade Narayan Laxman
Age: 48 years, Occu: Service
R/o: At/Post. Bhushan Nagar,
Kadegaon, Ahmednagar,
Tal & Dist. Ahmednagar.
- 18) Shri. Datir Sopan Baburao
Age: 55 years, Occu: Service
R/o: At/Post. Pimpri Lauki Ajampur
Tal. Sangamner, Dist. Ahmednagar,
- 19] Shri. Sanjiv Ramesh Dussa
Age: 55 years, Occu: Service
R/o: At/Post. Walki
Tal. & Dist. Ahmednagar,
- 20] Shri. Javane Dyandeo Bhagwan
Age: 54 years, Occu: Service
R/o: At/Post. Girajgaon, Tal. Karjat,
Dist. Ahmednagar,
- 21] Shri. Babasaheb Gangadhar Pandit
Age: 55 years, Occu: Service
R/o: At/Post. Visapur, Tal. Shrigonda,
Dist. Ahmednagar,
- 22] Shri. Borude Sitaram Raghunath
Age: 48 years, Occu: Service
R/o: At/Post. Ghogargaon,
Tal. Shrigonda, Dist. Ahmednagar,
- 23] Shri. Gade Radhakisan Shamrao
Age: 57 years, Occu: Service
R/o: At/Post. Rashi, Tal. Shevgaon,

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Dist. Ahmednagar.

....PETITIONERS

VERSUS

- 1] The State of Maharashtra
Through its Secretary,
Health Department,
Mantralaya, Mumbai-32.
- 2] The Chief Executive Officer,
Zilha Parishad, Ahmednagar.
- 3] Divisional Commissioner,
Nashik Division Nashik

....RESPONDENTS

....

Mr D. G. Nagode, Advocate for petitioners

Mr Neha B. Kamble, A.G.P. for respondent Nos.1 & 3

Ms Manjushri Shendage-Narwade, Advocate for respondent No.2

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CORAM : MANGESH S. PATIL**AND****PRAFULLA S. KHUBALKAR, JJ.****Reserved on : 4th December, 2024****Pronounced on : 6th January, 2025****JUDGMENT (Per Prafulla S. Khubalkar, J.) :**

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

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2. The petitioners are a group of employees who challenge the order dated 13/08/2019, passed by Respondent No.3/Divisional Commissioner, Nashik, thereby refusing them permanency from the date of their initial appointments on the post of 'Multi Purpose Health Worker (Male)'. The grievance of the petitioners is that, although they have been appointed in the year 1999 on permanent establishment, their earlier temporary service of the period from 1992-1997 on contract basis is not being counted for the purpose of continuity and permanency.

3. Factual set up of the instant petition is as follows :-

The petitioners are working as 'Multi Purpose Health Workers (Male)' in the office of respondent No.2/Zilla Parishad, Ahmednagar. Their case is that they have been earlier employed during the period from 1992-1997 by way of a selection process through employment exchange, which was a temporary appointment on contract basis and subject to appointment of candidates duly selected by a selection board. Since these appointments of the petitioners were for temporary period on contract basis, they apprehended termination of their services on expiry of the initial period of two years and hence some of the petitioners had approached this Court vide Writ Petition

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No.3105/1996 praying for directions to continue their services till regularly selected candidates become available. Accordingly, the petitioners continued to work on their respective posts by virtue of the orders passed by this Court.

4. By an order dated 20/06/1999, the petitioners were given permanent appointment on the post of 'Multi Purpose Health Worker (Male)' which was an appointment after following the procedure of appointment, through District Selection Committee. Pursuant to this order of appointment, the petitioners joined their respective services and are working on their posts.

5. It is the petitioners' case that in the year 2007, when the provisional seniority list of the employees was published, it was revealed to them that few other junior employees were regularized from the date of their initial appointment. Feeling aggrieved by this provisional seniority list, petitioner No.1 again approached this Court vide Writ Petition No.8346/2010. This writ petition was decided by an order dated 04/07/2012 by directing the State Government to consider the proposal/communication dated 17/12/2007 forwarded by the Zilla Parishad in accordance with law and within a period of six months.

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6. Since there was no decision by the respondents, petitioner No.1 submitted representations in 2014 and 2016 requesting for consideration of his earlier service from the period from 02.07.1994. The petitioners' further case is that, although respondent No.2 submitted a revised proposal dated 03/12/2018 with an opinion/recommendation about regularization of the services of 29 employees, respondent No.3/Divisional Commissioner, Nashik rejected their proposal by order dated 13/08/2019.

7. The petitioners are aggrieved by the decision of respondent No.3, rejecting their claim for consideration of their earlier service period for permanency. The basic contention of the petitioners is that their earlier service although was temporary, the same ought to have been considered for granting them permanency since their appointment was not a backdoor entry.

8. In response to the present petition, respondent Nos. 2 and 3 have filed their affidavit-in-reply dated 07/01/2021, opposing the petition on several grounds including relying upon Clause 12 of the appointment order of the petitioners, which mentions that the earlier service period could not be counted for the purpose of regularization. Respondent No.3/Divisional Commissioner, Nashik also filed a

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separate affidavit-in-reply dated 26/02/2022 and justified the impugned order by referring to various Government Resolutions and also condition No.12 of the appointment order.

9. We have heard the learned counsels for the respective sides, perused the record and considered the rival contentions.

10. Advocate Shri Nagode, the learned counsel for the petitioners, took us through various documents filed on record, including the orders passed in earlier writ petitions. He submitted that in view of the consideration of earlier service period of employees of Kolhapur Zilla Parishad the same benefit should be extended to the petitioners herein, who are the employees of Zilla Parishad Ahmednagar. In support of his submissions, he relied upon an unreported judgment dated 28.04.2016 delivered in Writ Petition No.9051/2023 (*The State of Maharashtra vs. Smt. Meena A. Kuwalekar*) with other connected petitions at the Principal Seat.

11. Per contra, Advocate Ms. Neha Kamble, the learned AGP strongly opposed the petition by referring to condition no. 12 of the appointment orders of the petitioners. By referring to the additional affidavit in reply dated 03-02-2022 filed by respondent no2, it is

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pointed out that there was no such condition like condition no.12, in the appointment order of the employees of Zilla Parishad Kolhapur. In support of her submissions, she relied upon the judgments in the matters of ***Mayuresh Mangesh Bhatkar vs. Union of India and others***, Writ Petition Nos.2894/2021, 2909/2021 and 2862/2021 (Principal Seat) decided on 12.04.2024 and ***Pramod V. Bhatre vs. The Life Insurance Corporation of India and others***, 2022(4) BomCR 784. Apart from pointing out the legal position, the learned AGP submitted that since the petitioners were continued in employment pursuant to the orders of this Court, they are not entitled to claim the benefit of the directions in ***Umadevi (supra)***.

12. Before we delve into the controversy, a brief reference to the crucial factual aspects as revealed from the documents is necessary:-

(a) The petitioners have worked as temporary employees during the period from 1992 to 1997.

(b) The appointment order dated 20.06.1999 by which, the petitioners were appointed by regular recruitment process through the District Selection Committee, was subject to various terms and conditions including condition No.12, which is reproduced below:-

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“१२) यापुर्वी केलेल्या बंधपत्रीत अथवा तातपुरती सहा महिन्यासाठी केलेली नियुक्ती आदेशाच्या निर्गमित केलेल्या दिनांकापासुन संपुष्टात आली आहे. पुर्वीची सेवा सलग करण्यांत येणार नाही.”

(English Translation :- “12) The appointment made earlier on bond or temporary basis for six months has been terminated from the date of issuance of the order. Previous service will not be considered for continuity.”)

(c) Before the regular appointments of the petitioners through the District Selection Committee, their services were continued on the basis of the orders passed by this Court in Writ Petition No.8346/2010.

(d) By impugned order dated 13.08.2019, respondent No.3 has rejected their claim of regularization from their initial dates of appointment (from 1992 to 1997) by specifically mentioning following four reasons :-

i. As per letter dated 04.05.2019 issued by the Zilla Parishad, Ahmednagar, the petitioners' initial employment was not through the Selection Committee.

ii. Government Resolution dated 05.05.2018 prohibits regularization of services of temporary health workers.

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iii. By virtue of condition No.12 in the appointment order dated 20.06.1999, the earlier period of service cannot be considered for the purpose of continuity and permanency, and

iv. By virtue of the Government Resolution dated 25.08.2005, regularization cannot be granted since the initial appointments were not by following regular recruitment process.

13. It is thus evident that the petitioners have accepted the appointment order in the year 1999 which contained condition No.12 reproduced above. It is not disputed that initial appointments of the petitioners were made till regularly selected candidates became available. They continued in their employment on the basis of the orders passed by this Court. As such, since their initial appointments were not through Selection Board and in view of the categorical condition in their appointment order referred to above, their claim for permanency by counting earlier services, has no foundation. Since the petitioners have accepted their appointment with condition no.12 in their appointment order without any demur, they are now estopped from raising any claim for counting their earlier services for the purpose of permanency. In view of the disparity of the terms and

conditions in the appointment orders, the petitioners cannot even claim similar treatment like the employees of Zilla Parishad, Kolhapur.

14. As regards the judgments relied upon, it has to be noted that the judgment in ***State of Maharashtra vs. Meena (supra)*** deals with a situation where the employees, who were initially appointed on temporary basis, were appointed against permanent, clear, substantive and sanctioned vacancies and their services were treated for all purposes as regular employment. The employees in that case had relied on the Government Resolution dated 01.12.1994, which had mentioned that the employees were to be treated as regularized and in view of the factual aspect of that case, the Court had held that the intention of the employer was always to treat the past services as regular services. After considering the factual aspects of that case and in view of the law laid down in ***Secretary, State of Karnataka vs Umadevi, (2006) 4 SCC 1***, the Division Bench of this Court had refused to interfere under Article 226 of the Constitution of India in the impugned orders of the State Government which had granted the benefits under Time Bound Promotion Scheme and Assured Career Progression Scheme by taking into consideration the earlier services of those employees.

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15. We are of the considered view that reliance placed on the judgment in *State of Maharashtra vs. Meena (supra)* is misplaced since the facts of the case in hand are entirely different inasmuch as, in the case in hand the initial appointments of the petitioners were not treated by the Government as regular employment for any purpose, rather their initial appointments were specifically made for the period till the regularly selected candidates became available. It is also important to note that the petitioners herein had continued in their employment on the basis of the orders passed by this Court. As such they cannot claim benefit of the law laid down in *Umadevi (supra)*.

16. Reliance placed by the learned AGP on the judgments mentioned above is to highlight the position of law that for claiming regularization and permanency, crucial factor is the requirement of initial appointment being made strictly in accordance with the recruitment rules and by a selection committee.

17. In view of overall factual and legal aspects as mentioned above, we are of the considered view that the petitioners are not entitled to claim permanency by counting their initial period of appointments from 1992 to 1997 as claimed by them. The Writ

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Petition is, therefore, liable to be dismissed. Hence, it is dismissed with no order as to costs.

18. Rule is discharged.

(PRAFULLA S. KHUBALKAR, J.) (MANGESH S. PATIL, J.)

sjk