

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 82 OF 2019

DISTRICT : JALNA

1. Devendra Ramesh Dandgavhal,
Age : 37 years, Occu. : Service,
(Lecturer, Government Polytechnic)
R/o : Shri Swami Krupa 463/6,
Plot No. 50 Mauli Nagar, Ambad Road,
Jalna 431203.
2. Yogesh Manohar Dandale,
Age 40 Year, Occupation - Service
(Lecturer, Government Polytechnic),
Resident Of: 28-A, Prabhat Nagar
Deopur Dhule 424005
3. Nitin Nanasaheb Thakare,
Age - 37 Year, Occupation - Service
(Lecturer, Government Polytechnic),
Resident Of: Space Orion C603 Behind Hotel
Vishwambhar, Near vidyut Bhavan,
Datta Mandir Chowk, Nashik Road,
Nashik-422101.
4. Prafulla Prabhakar Khedekar,
Age 48 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: 1182/186,187 Maitery Heights,
Mail Colony Takala, Kolhapur 416008
5. Raju Bakaram Tirpude,
Age 42 Year, Occupation Service
(Lecturer, Government Polytechnic).
Resident Of: 14/15 Shri- Hari App.
Harihar Nagar, Beltodi Road,
Besa Nagpur-34 (M.S.)
6. Prasad Dinkarrao Deshpande,
Age -37 Year, Occupation - Service
(Lecturer, Government Polytechnic),
Resident Of: Bal Ganpati Rh 08,
Shri Gajanan Park, Kharjul Mala,
Chehedi, Nashik Road, Nashik- 422101

7. Farida B. Siddique,
Age: 36 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: Plot No. 12, Silk Mill Colony,
Behind Majidiya Hall, Paithan Road,
Railway Station. Aurangabad 431005
8. Sujata Baswantrao Patil,
Age- 34 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: C/O Siddhesh Hawale,
T4 Krishnangan Park Vakhan Roas
Karad Dist: Satara 415110.
9. Arvind Kishanrao Rathode,
Age 37 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of Swami Vivekanand Nagar,
Selu Tq. Selu Dist: Parbhani.
10. Vaishali Vitthal Tekam (Vaishali
Narayan Nitnaware),
Age 40 Year Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: C/o Ashok Brahmankar,
Pragati Colony Canel Road Sendurwafa
Sakoli Dist: Bhandra 441802
11. Karanjule Dadabhau Baban,
Age 36 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: 277/5 Ramkrushana Ekdant
Colony, Lendkar Mala, Balikashram
Road Ahmednagar 414001.
12. Smita Surendra Gore (Smita
Amit Sarwade),
Age 37 Year, Occupation - Service
(Lecturer, Government Polytechnic),
Resident Of: Plot No. 11/A, Flat No. 4
Ganga Apartment, Professor Colony,
Jalgaon 425001.

13. Pooja Laxmandas Chelani,
Age 36 Year, Occupation - Service
(Lecturer, Government Polytechnic),
Resident Of: 15/52, Triveni Co Op Society
Opp Infiniti Malln Link Road
Andheri West Mumbai 400102.
14. Salunke Hitesh Mangula,
Age 35 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: Plot No. 75, Oswalnagar
Nagaon Bari, Deopur Dhule Dist - Dhule.
15. Rupali Bahaskar Patil,
Age 30 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: Balganpati Rh 08,
Shri Gajanan Park, Kharjul Mala,
Chehedhi, Nashik Road Nashik-422101.
16. Suvidha Milind Patil
(Pingale Suvidha Sudhakar),
Age 39 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: Shiv Smruti
At Ramwadi Tal Pen, Dist Raigad 402107.
17. Shambhavi Sudhakar Shirsavkar,
Age 38 Year, Occupation Service
(Lecturer, Government Polytechnic).
Resident Of Yeshodhan Gurukrupa
Housing Society Navgan College Road
Beed 431122
18. Archana Suryakant Paike,
Age 37 Year, Occupation-Service
(Lecturer, Government Polytechnic),
Resident Of: Sushilp App. Shankudo
Wasti, Near Sky Gym Baner, Pune 411045
19. Varsha G Palatse,
Age 32 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: 803/B, Reelicon Felicia
Baner Pashan Link Road, Pashan, Pune 411021

20. Kamna M. Yewale,
Age 35 Year, Occupation Service
(Lecturer, - Government Polytechnic),
Resident Of: C/O Shri Shivraj N. Komble
42 A, Shri Kulswamini Yashomagal
Colony, Behind Meghe Complex
Vmv Road Amaravati 444604
21. Sangita Bhimrao Chavan,
Age 31 Year, Occupation - Service
(Lecturer, Government Polytechnic),
Resident Of: C/O Shri Ashok Palve.
Flat No. 5 Giridhar Apartment,
Bhavani Nagar Ahmednagar 414001
22. Anita Digambar Kshirsagar,
Age 34 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: Flat No 12, Abhinandan
Housing Society Society,
Mohannagar Chinchwad, Pune 411019
23. Yadav Anuradh Naryan,
Age 42 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: Nivas Agroya Nagar
Old Midic Road Agroya Nagar
Barshi Road Latur 413512
24. Dr. Monika Shankerrao Rathode,
Age 36 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: Plot No 34 Dinprajahit
Society Narendra Nagar Nagpur 440015
25. Ajay Vasantrya Londhe,
Age 39 Year, Occupation - Service
(Lecturer, Government Polytechnic),
Resident Of: Pooja Shilpa, Swapnavihar
Colony, Varudha Road,
Samarhnagar, Osmanabad Pin 413501

26. Vinita Vijay Kumar Palsingankar,
Age: 37 Year, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: A2, Atharwa Classic,
Beed Bypass Road, Aurangabad.
27. Rupali Dhanyakumar Kasar,
Age 34 Year, Occupation Service
(Lecturer, - Government Polytechnic),
Resident Of: C/o D.N. Kasar,
Behind Garad Garden, Near Pilley
Niwas Vishal Nagar, Barshi Road
Latur 413512
28. Vandana Shivaji Lokhande,
Age 36 Years, Occupation – Service
(Lecturer, Government Polytechnic),
Resident Of: A 104, First Floor,
A Wing DNS Villa, Bhatwadi Ghatkopar
West, Mumbai 84
29. Meera Kisanrao Anserwadekar,
Age 40 Years, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: 19/52 Bandra Reclamation,
Bandra West, Mumbai
30. Varsha Balkishan Kundalikar,
Age 32 Years, Occupation - Service
(Lecturer, Government Polytechnic),
Resident Of: Kishankuj Pt No 15,
Ashoknagar, Laxmi Colony,
Chawani, Aurangabad
31. Prafulla balbhim Gavde,
Age 35 Years, Occupation Service
(Lecturer, Government Polytechnic),
Resident Of: Sankalp Colony Oppsite
to postman colony Canol Road,
Shahu Nagar Beed.
32. Prakash Suresh Shirahatti,
Age 36 Year, Occ: Service,
R/o. Kumbharnat, Ta. Malvan
Dist. Sindhudurge-416606

33. Sanjay Hulgirao Talware,
Age 36 Years, Occ: Service,
R/o. Kumbharnat, Ta. Malvan
Dist. Sindhudurge-416606
34. Sital Harichandra Chincholkar,
Age 31 Years, Occ: Service,
R/o. Old Kazi Galli, Miskinspura
Chowk Latur.

.. **APPLICANTS**

V E R S U S

1. **The State of Maharashtra,**)
Through its Principal Secretary,)
Dept. of Higher & Technical Education,))
State Secretariat of Maharashtra,)
Mumbai-400032.)
2. **Directorate of Technical Education (DTE))**
Of the State of Maharashtra through the)
Director of DTE, 3 Municipal Corporation)
Road, POB 1967, Near the Cama & Albles)
Hospital, Mumbai 400001.)

.. **RESPONDENTS**

APPEARANCE : Shri Ajay Deshpande, Advocate holding for
Shri Shankar Borkute, Advocate for
Applicants.

: Smt. S.K. Ghate-Deshmukh, P.O. for
respondent Authorities.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **25.04.2023**

Pronounced on : **23.06.2023**

O R D E R
(Per : Shri Bijay Kumar, Member (A))

1. This Original Application (Stamp) No. 3021 of 2021 had been filed jointly by one Shri Devendra R. Dandgavhal and 33 others on 15.12.2018. Along with this, a Miscellaneous Application (St.) No. 3020 of 2018 in O.A. (St.) No. 3021 of 2018 for permission to sue jointly too, had been filed. This Tribunal allowed the aforementioned miscellaneous application vide Oral Order dated 24.01.2019 without any cost.

2. It is being mentioned that the applicants have not mentioned the full particulars of the Polytechnic where they had been working at the time of filing this application; instead, they have mentioned their residential addresses which show that the applicants had been residing at various places spread all over the State of Maharashtra falling under territorial jurisdiction of all the three benches of this Tribunal. On the other hand, the applicants have sought relief against the respondents who are based in Mumbai which falls under territorial jurisdiction of the Principal Bench of this Tribunal. Provisions of rule 6 of the Maharashtra Administrative Tribunals (Procedure) Rules, 1988

which deals with *Place of Filing Application* is quoted for ready reference as follows :-

“6. Place of filing application-

The application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction-

- i. the applicant is posted for the time being, or*
- ii. the cause of action has arisen, or*
- iii. the respondent or any of the respondents against whom relief is sought, ordinarily resides:*

Provided that the application may be filed with the Registrar of the Principal Bench and subject to Sec. 25 of the Act, such application may be transmitted to be heard and disposed of by the Bench which has jurisdiction over the matter.”

3. As a reference has appeared to Section 25 of the Maharashtra Administrative Tribunals Act, 1985, for ready reference, text of the said section is reproduced as follows-

“25 On the application of any of the parties and after notice to the other parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.”

4. Overruling office objection, this Tribunal [**CORAM:** Justice M.T. Joshi, Vice Chairman and Shri Atul Raj Chadha, Member (A)] allowed the miscellaneous application (St.) No. 3020 of 2018 in O.A. (St.) No. 3021 of 2018 with O.A. (St.) No. 3021 of 2018 to be heard by this bench as per Oral Orders dated 24.01.2019 operating part in para (2) of the said Oral Order is as follows:-

“2. Since majority of the applicants in the present O.A. reside within the territorial jurisdiction of this Bench of the Tribunal and

cause of action is similar, office objection waived. O.A. be registered in due course.”

5. Facts of the Matter- From the submissions made by the two sides of the dispute following important facts emerge:-

(a) The applicants constitute a group of contractual employees who had been appointed as lecturers on contractual basis in government polytechnics in different districts of Maharashtra State during period extending from year 2003 to 2009.

(b) The applicants, subsequently participated in selection process carried out by Maharashtra Public Service Commission (in short, **MPSC**) vide advertisement dated 20.04.2009 and were duly selected.

(c) Contractual services of the applicants were regularized by government resolutions issued on various dates during period from 14.02.2010 till 05.01.2012.

(d) The applicants have filed this O.A. seeking seniority w.e.f. the first day of their appointments on contractual basis as lecturers in government polytechnics; back wages from date of their first appointment on contractual basis till their regularization treating them as regular employees and

for grant of pensionary benefits under Maharashtra Civil Services (Pension) Rules, 1982 (in brief, *Pension Rules, 1982*).

(e) The applicants have claimed that their selection as lecturers on contractual basis was done by a committee headed by Joint Director, Technical Education Department following prescribed procedure and after inviting applications from eligible candidates after issuing public notice/ advertisement. Thus the applicants were not '*back-door entrants*' in service. Moreover, their selection as lecturers on contractual basis was against clear and substantive vacancies for which all rules of reservations were followed.

(f) The applicants had first filed Writ Petition No. 10611 of 2016, which was disposed of by Hon'ble High Court on 19.10.2016 (CORAM : R.M. BORDE & K.K. SONAWANE, JJ) by giving direction to the respondents to decide the representations made by applicants dated 06.10.2016 within four months. The respondents considered the said representation made by the applicants and finally passed order rejecting claimed reliefs.

(g) Thereafter, the applicants had filed Writ Petition No. 15106/2017 before Hon'ble Bombay High Court (Aurangabad Bench). Hon'ble High Court, vide its order passed on 01.02.2018 disposed of the matter requiring the petitioners to exhaust alternative remedy available to them (CORAM : S.V. GANGAPURWALA & A.M. DHAVALA, JJ). The Order of Hon'ble High Court is quoted below for ready reference :-

“PER COURT :

- 1. Learned A.G.P. raises a preliminary objection that the petitioners have remedy before the Maharashtra Administrative Tribunal.*
- 2. It is not disputed that petitioners are Government Employees and are claiming seniority from the date of their first appointment on contract basis.*
- 3. The learned advocate for the petitioner submits that this court can entertain the present writ petition being a service matter and as some service matters are entertained by this court and other Benches of this court.*
- 4. Rule of alternate remedy is a rule of self restraint. It is in exceptional cases this court invokes its jurisdiction under Article 226 of the Constitution of India in spite of availability of alternate remedy, but the same is not as a matter of course.*
- 5. Considering the above, the writ petition is disposed of with liberty to the petitioners to avail the alternate remedy. All contentions are kept open. No costs.”*

(h) Therefore, this original application has been filed before this Tribunal.

6. Pleadings and Final Hearing- Details regarding filing of pleadings etc. are being summed up as follows; -

(a) Learned Chief Presenting Officer filed affidavit in reply on behalf of both the respondents Nos. 1 and 2, which was taken on record vide Oral Order dated 21.08.219 and copy thereof served on the other side.

(b) In response, the learned Advocate for the applicants made a submission on 03.09.2021 i.e. after a lapse of about two years, that the applicants did not wish to file rejoinder affidavit. Therefore, the matter was fixed for Final Hearing on 21.10.2021 vide Oral Order dated 03.09.2021.

(c) The arguments of learned counsel for the applicants were concluded on 28.09.2022 and the matter was fixed vide Oral Order passed on the same day, for arguments by the learned Presenting Officer on 13.10.2022.

(d) *Filing of Miscellaneous Application for Amendment in Prayer Clause-* At this advance stage of Final Hearing, the learned Counsel for the applicants filed M.A. No. 458 of 2022 in O.A. No. 22 of 2019 seeking leave to amend the said O.A. and add following prayer clause :-

“(i-a) This Hon’ble Tribunal be pleased to hold and declare that, the service rendered by the applicants during their contractual employment deserves to be treated as regular employees by regularizing their service from initial date of appointment; and grant continuity of service from their first date of appointment for all the processes including back wages in the interest of justice.”

(e) Overruling the strong objection taken by the learned Presenting Officer to the proposed amendment to the prayer clause, this Tribunal allowed the M.A. No. 458 of 2022 in OA. No. 82 of 2019 and passed following Oral Order dated 14.10.2022:-

“3. It is true that the amendment could have been sought at the earlier stage. However, since the amendment is in consonance with the prayers made in the O.A., only on ground that the amendment is sought at the fag-end of hearing of the O.A., it cannot be rejected. Hence we pass the following order:-

ORDER

- (i) *M.A. No. 458/2022 is allowed with no costs.*
- (ii) *The applicant to carry out the necessary amendment in O.A. within one week from the date of this order and supply amended copy of O.A. to the other side.*
- (iii) *It would be open for the respondents to file additional reply, if they so desire, to the amended portion of O.A.*
- (iv) *O.A. to come on board on 22.11.2022 for filing additional reply, if any, and for hearing.”*

(f) *Filing of Pleadings to Amended O.A.-* Learned Presenting Officer filed affidavit in reply to the amended original application which was taken on record vide Oral

Order dated 05.04.2023 and a copy thereof served on the other side. The learned Advocate for applicants filed an affidavit on 21.04.2023 which was taken on record a copy thereof served on the other side. Learned Advocate for the applicants filed notes of submissions made during Final Hearing which was taken on record and the matter was reserved for order.

7. Relief Sought: The applicants prayed for relief in terms of para 10 of the O.A., which is being reproduced verbatim for ready reference as follows:-

“10. RELIEFS SOUGHT: *In view of the facts and grounds mentioned in the application, the applicants pray for the following reliefs :-*

(i) *Pass or issue any directions, orders or writs under Article 226 of the Constitution commanding the Respondents to grant seniority to the applicants from their first day of appointment on contract service as Lecturers of the Government Polytechnics.*

i)(a) This Hon'ble Tribunal be pleased to hold and declare that, the service rendered by applicants during their contractual employment deserves to be treated as regular employees by regularizing their service from initial date of appointment and grant continuity of service from their first date of appointment for all the processes including back wages in the interest of justice.

(ii) *Pass or issue any directions, orders or writs under Article 226 of the Constitution commanding the Respondents to grant the pensionary benefits to the applicants by passing an appropriate order or government resolution under Maharashtra Civil Services Pension (Rules), 1982.*

(iii) *Grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, in the interest of justice.”*

8. Analysis of Facts: -

(a) First of all, the applicants have relied on judgment of Nagpur Bench of Hon'ble Bombay High Court in Writ Petition No. 2046 of 2010, decided on 19.10.2013 (*Sachin Ambadas Dawale & 90 Ors. Vs. State of Maharashtra and Anr.*). The applicants are seeking parity with other similarly situated peers of the applicants, who were initially appointed as lecturers in government polytechnics on contractual basis and who had filed Writ Petition No. 2046 of 2010 on 27.04.2010 before Nagpur Bench of Hon'ble Bombay High Court for grant of regularization and permanency to their services with consequential benefits of their contract services. Hon'ble High Court delivered judgment on 19.10.2013 which is reported as 2014 (2) Mh. L. J. 36 in the matter of Sachin Ambadadas Dawale & Ors. Vs. The State of Maharashtra and Anr. Operating part of the judgment delivered by Hon'ble High Court in that matter is as quoted below:-

"21. The writ petition is partly allowed.

22. The respondents are directed to regularize the services of such of the petitioners and confer permanency on such petitioners who have completed three years of service with technical breaks. The respondents shall absorb the petitioners within a period of six weeks. Needless to state that the petitioners, who are in continuous employment till

15.10.2013, shall be continued in service as regular employees.

However, in the facts and circumstances of the case, we direct that the petitioners shall be entitled to regular salary from 1st November, 2013 and would not be entitled to claim any monetary benefits for the past services rendered by them in spite of their regularization. Needless to state that since the petitioners' services are regularized, they shall be entitled to the continuity in service for all other purposes except monetary purposes, from the date of their first appointment."

(b) The judgment of Hon'ble Bombay High Court (Nagpur Bench) was challenged by the state authorities by filing Civil Leave Petition (C) No. 39014 of 2013 before Hon'ble Supreme Court which was finally, dismissed.

(c) Following above developments, the respondents had communicated to the applicants vide letter No. संकीर्ण-१११६/प्र. क्र.२४२/१६/तंशि-७, उच्च व तंत्रशिक्षण विभाग, मंत्रालय, मुंबई-४०० ०३२, dated 01.02.2017, (appended at page 254 and marked as Annexure A-6) about action taken in in compliance with the order passed by Aurangabad Bench of Hon'ble Bombay High Court in Writ Petition No. 10611/2016 filed by the applicants. As per action taken report the respondents had rejected claims of those applicants, who had resigned from contractual service before joining as lecturers after selection by MPSC. In addition, the respondents also informed the applicants the claims of the applicants for

grant of seniority w.e.f. date of their first joining as Lecturer on contractual basis had been kept pending until the decision of Nagpur Bench of Hon'ble Bombay High Court in writ petition No. 1212 of 2016 in the matter of Dnyaneshwar Ghode Vs. State of Maharashtra and Ors., is received on the issue of fixing seniority to the contractual lecturers regularized subsequently.

(d) The learned Advocate for the applicants has raised the issue of hardship faced by and injustice caused to the applicants in respect of service benefits as compared to their counter-parts who did not get selected through MPSC and whose services were regularized by the respondents in view of judgment of Hon'ble Bombay High Court (Nagpur Bench) in writ petition No. 2046 of 2010.

(e) Upon detailed examination of the above mentioned issue pointed out by learned Advocate for the applicants, it is observed that most of the judicial pronouncements require treating the first date of appointments on contractual/ ad hoc basis as reference date for counting period of regular and continuous service. In some cases, the date of first appointment is mandated to be taken into

account for assigning seniority to the contractual employees upon regularization of their services; which results into injustice to the candidates duly recruited through MPSC and whose cases fall under any one of the following two types :-

(i) When MPSC has initiated process of recruitment in accordance with provisions of Recruitment Rules before policy decision is taken by government or, the Court order is passed regularizing the services of contractual employee and the contractual employee does not participate in recruitment process initiated by MPSC in accordance with Recruitment Rules

(ii) When MPSC has initiated process of recruitment in accordance with provisions of Recruitment Rules before policy decision is taken by government or, the Court order is passed regularizing the services of contractual employee and the contractual employee participates in recruitment process initiated by MPSC in accordance with Recruitment Rules but fails to qualify under selection process.

(f) Therefore, in our considered opinion, while passing order in the present matter, such aspects which may be termed as hitherto grey areas need to be taken into account in the interest of equity and justice.

(g) In view of above facts, following critical issues emerge to be decided:-

Issue No. 1: Whether *resigning* from the post of contractual service for the purpose of joining the post in the same establishment of government does not qualify to be treated as *Technical Resignation* instead of as *break in service*?

Analysis- Only because a contractual employee, upon his/her selection through MPSC, tenders '*Resignation*' instead of mentioning '*Technical Resignation*' for the purpose of joining the same post upon regularization by policy decision of government or, under any judicial pronouncement, if treated as disqualified for getting benefit of continuous service, that may amount to unfair and unreasonable condition imposed on such employees. Time gap between tendering resignation from contractual service and in joining on the same post upon selection through MPSC/ regularization may be correct determining factor instead of taking hyper-technical view regarding phrase used in this regard.

Inference- In our considered opinion, the resignation tendered by applicants from contractual service followed by joining on the same post on selection through MPSC, within a reasonable / prescribed time should be treated as the applicants having given '*Technical Resignation*' only which will not debar them from seeking benefit of continuity of their past services on contractual basis.

Issue No. 2- With effect from which date a contractual service employee be entitled for regularization on regular selection through MPSC?

Analysis- It is observed that the contractual employees who do not undergo due recruitment process or fail in due recruitment process from qualifying for selection and are regularized in service under policy decision of Government or under judicial pronouncements, get bestowed with higher service benefits as compared to those who are recruited through due process prescribed by applicable Recruitment Rules. This could happen only because the adversaries before a judicial forum have not brought the fact of prejudice being caused to the duly recruited candidates, who are selected by MPSC as per the provisions of Recruitment Rules.

Inference- In order to settle this issue, in our considered opinion, if the due selection process has been initiated by MPSC before the date of policy decision for regularization of contractual employees, then the contractual employees should be regularized w.e.f. the date which is not earlier than the date of regularization of services of the last person who is duly recruited through recruitment process initiated by MPSC in that case.

Issue No. 3 –How the seniority of a regularized contractual employee be determined without causing prejudice to their counter-parts duly selected through MPSC?

Analysis - This issue is said to be pending for adjudication before Nagpur Bench of Hon'ble Bombay High Court in writ petition No. 1212/2019 in the matter of Dnyaneshwar Ghode Vs. The State of Maharashtra & Ors. Therefore, we are proceeding to decide this issue subject to the judgment/ order passed by Hon'ble High Court. Going by the principle of eliminating prejudice caused to duly recruited candidates as per the provisions of Recruitment Rules, we draw following inference.

Inference- In our considered opinion, if the due selection process has been initiated by MPSC prior to the date of policy decision for regularization of contractual employees, the contractual employees regularized on a post as per policy decision of Government, which is not in accordance with the Recruitment Rules, should be placed below in seniority position compared to the person duly recruited by MPSC in that case.

Issue No. 4- Which pension scheme should be made applicable to a regularized employee?

Analysis and Inference - Once the date of regularization is determined as per inference recorded against Issue No. 2, the pension scheme applicable to government servants as on date of regularization should be made applicable.

9. **Conclusions**- In our considered opinion, there is merit in this Original Application as elaborated in preceding paras.

Therefore, the following order:-

ORDER

The Original Application No. 82/2019 is partly allowed in following terms:-

(I) As the recruitment process in accordance with provisions of applicable Recruitment Rules had been initiated by MPSC before the respondents took policy decision to regularize services of lecturers continuing on contractual basis, the persons recruited through MPSC shall be granted date of regularization which is not later than the date of first order issued by respondents for regularization of services of persons who continued on the post of lecturers on contractual basis for whatsoever reasons.

(II) Likewise, inter-se seniority position of the applicants who are duly recruited through MPSC in accordance with applicable Recruitment Rules shall be fixed to be higher than the seniority of lecturers on contractual basis whose services were regularized by policy decision of respondents as they could not be recruited through MPSC in accordance with the provisions of applicable Recruitment Rules, for whatsoever reasons.

(III) Appropriate pension scheme shall be applicable to the applicants as per his /her date of regularization as per para (I) above which shall not be to disadvantage to the applicants as compared to the scheme made available to the contractual lecturers whose services had ben regularized as per government policy.

(IV) The applicants shall be paid monetary benefits of regular salary and increment w.e.f. date of regularization in service and not for period prior to regularization as per para (I) above. The respondents shall pay the amount determined to be payable in this manner within a period not exceeding eight weeks from receipt of certified copy of this order.

(V) Likewise, the determined date of regularization shall be taken into account for grant of benefits of non-functional promotion schemes/ time bound promotion schemes and counting qualifying services for pension, if the pension admissible under Maharashtra Civil Services (Pension) Rules, 1982 as determined as per para (III) above.

(VI) No order as to costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 82/2019 Seniority/pensionary benefits