

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 57/2006 & 64/2006

DISTRICT : THANE

1. ORIGINAL APPLICATION NO 57 OF 2006

Shri Abhiman Maruti Sarvade,)
Govt. service as Clerk-cum-Typist,)
In the office of Government Post-basic)
Ashram School, At Post-Sakur,)
Taluka – Javhar, Dist-Thane.)
C/o: Rambhau Gawale,)
Panchasheel Nagar, At H.N. Colony,)
Mohone, Tal-Kalyan, Dist-Thane.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Principal Secretary,)
Tribal Development Department,)
Mantralaya, Mumbai 400 032.)

2. The Addl. Commissioner,)
Tribal Development, Thane.)...**Respondents**

2. ORIGINAL APPLICATION NO 64 OF 2006

Shri Prafulla Damodar Thakare,)
Govt. service as Clerk-cum-Typist,)
In the office of Government Post-basic)
Ashram School, At Post-Murbad,)
Taluka – Dahanu, Dist-Thane.)
At Nane, Post-Gorhe, Tal-Wada,)
Dist-Thane.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Principal Secretary,)
Tribal Development Department,)
Mantralaya, Mumbai 400 032.)
2. The Addl. Commissioner,)
Tribal Development, Thane.)...**Respondents**

Shri A.V. Bandiwadekar, learned advocate for the Applicants.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Dr Justice S. Radhakrishnan (CHAIRMAN)

Shri Rajiv Agarwal (VICE-CHAIRMAN)

DATE : 13.06.2013

PER : Shri Rajiv Agarwal (VICE-CHAIRMAN)

ORDER

1. Heard Shri A.V. Bandiwadekar, learned advocate for the Applicants and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. These two Original Applications are heard together and are being disposed of by a common order as the facts in both the Original Applications are identical.

3. The Applicants in both the Original Applications are seeking regularization of their temporary services in the post of Clerk-cum-typist in terms of G.R dated 18.6.1983.

4. Learned Advocate Shri A.V. Bandiwadekar, contended on behalf of the Applicants that the Applicant in O.A No 57 of 2006 joined the Government service on 30.11.1995 while the Applicant in O.A No 64 of 2006 did so on 4.12.1995. The initial appointments were for a period of six months. After giving a technical break services of the Applicants were continued. The appointment was valid till availability of candidate from

the Selection Board or six month whichever was earlier. The appointment of the Applicant in O.A 57/2006 continued up to 1.6.1997 and then there was a break of two years. Similarly, the Applicant in O.A 64/2006 was continued up to 2.6.1997 when there was a break of two years. In both cases, there were another break of more than 2 years from 2000 to 2002. The learned Counsel for the Applicants argued that the Applicants have been working from 1995/1996 for the Respondent No. 2 and are entitled to be given benefit of regularization in terms of G.R dated 18.6.1983. Learned counsel for the Applicants argued that the Respondent No. 2 has in fact, sent a proposal to the Respondent no. 1 on 20.12.1999 proposing regularization of service of the Applicants and others from the dates of their initial appointment. However, the Respondent No. 1 by letter dated 3.2.2000 asked the Respondent No. 2 to take action if the Applicants fulfilled the condition No 10(A) in G.R dated 18.6.1983. The learned counsel for the Applicants claimed that the Applicants satisfy the condition 10(A) of the G.R dated 18.6.1983 and the Respondent No. 2 was bound to regularize their services in view of the directive of the Respondent No. 1 by letter dated 3.2.2000. Learned Counsel for the Applicants further contended that the Respondent No. 1 has regularized the services of some other persons who were appointed after the applicants. Two such persons, viz. Shri K.M. Kodape and Shri D.N. Choudhari were first given temporary

appointment on 15.12.1997 and later their services were regularized. Similarly, Shri K.D. Gavit was first appointed Clerk-typist on 1.4.1999 and his services were regularized by order dated 17.2.2000. However, the Respondents are not taking any action to regularize the services of the Applicants.

5. Learned Presenting Officer (P.O) Shri N.K. Rajpurohit, on behalf of the Respondents argued that the Applicants are not entitled to be given the benefit of the regularization as they were appointed on ad hoc basis for periods up to six months or till the appointment of candidates recommended by the Selection Boards (fuMeaMG). The Applicants were never recommended by the Selection Boards, and their appointments were purely ad hoc and temporary. This fact was fully known to them. Learned Presenting Officer relied on judgment of the Apex Court in Secretary, State of Karnataka & Others Vs. Umadevi & others reported in 2006 AIR SCW 1991, wherein it is held that appointment de hors due process of selection envisaged by Constitutional scheme confers no right on appointee. Learned Presenting Officer further relied on the judgment of the Hon. Bombay High Court in Writ Petition No. 632 of 1989 wherein it is held that the appointing authority (here the Respondent No. 2) would be competent to give appointments on purely temporary basis to the posts specified in the Government Resolution dated 22.2.1988 until the candidates recommended by

the Regional Subordinate Selection Board becomes available and those appointed on temporary basis will have no legal right of continuance of their services. This decision was upheld by Hon. Apex Court. Learned Presenting Officer cited other judgments also in support of his contention that those who are appointed on purely temporary / ad hoc basis have no right to have their services regularized.

6. It is seen that the Applicant's case is based mainly on the fact that services of some employees who were appointed later in time, were regularized. If the rules and law as laid down in the judgments of Hon. Apex Court and Bombay High Court did not confer any right to the Applicants to get their services regularized, the same principle should have been applied in the case of other employees also. It is seen that in the affidavit in reply filed on behalf of the Respondents, in para 15, it is stated that:

“So far as Shri K.D Gavit is concerned, he was initially appointed on 5.7.1996. He has been considered to be regularized in services with effect from 1.4.1999 against the quota reserved for candidates belonging to Scheduled Tribes and the orders dated 17.2.2000 were issued to that effect. Similarly, Shri M.M. Kodape and Shri D.N Choudhary were appointed on 15.12.1997 on

temporary basis consequent upon the decision to fill up the backlog of Scheduled Tribe candidates taken by the Selection Committee in its meeting held on 15.12.1997.

In the facts and circumstances under which the services of Shri K.D. Gavit, Shri M.M. Kodape and Shri D.N. Choudhary were regularized are found to be quite different with that of the applicants”.

7. The Respondents have clearly admitted that services of three employees who were appointed in 1997 and 1999 were regularized. Let us now examine the reasons for non-regularization of services of the applicants. Some portions from para 14 of the affidavit in reply of the Respondent No. 2 are reproduced below:-

“However, to be more precise, it is submitted that in pursuance to the directions issued by the Respondent No. 1 under Government letter dated 3.2.2000, the Respondent No. 2 has considered the services of the applicants for regularization and rejected the claim of the applicants on the ground that they were neither appointed on or before the day of the issuance of G.R dated 18.6.1983 nor they could satisfy the condition of one year continuous services as on 1st April, 1999 as contemplated under

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9. It is not the case of the Respondents that the services of Applicants were not regularized on any of the above grounds except that at (B), i.e. on 1.4.1999, they did not have one year's continuous service. Service particulars of the Applicant Shri Sarvade in O.A 57/2006 and Shri Thakre in O.A 64/2006 are provided by the Respondent No. 2 in paragraph 6 of its affidavit in reply. It is seen that Applicant in O.A 57/2006 was in service from 1.12.1995 to 1.6.1997 as Clerk-typist. There were 2 days technical break on two occasions, which have to be ignored as similar breaks in respect of S/Shri Gavit, Kodape and Chaudhari must have been condoned. Similarly, Applicant in O.A 64/2006 was in service from 1.12.1995 to 2.6.1997 with two technical breaks, one of one day and another of two days duration. The period of service of the Applicants is more than one year and both the Applicants fulfill the condition 'B' of the G.R dated 8.3.1999. It is true that they were not in service as Clerk-typist on 1.4.1999, but that is not the stipulation in the aforesaid G.R. The Respondent No. 1 regularized services

of 43 employees by G.R dated 8.4.1999. Again by G.R dated 3.7.1999 services of 43 more employees were regularized. These facts are given in paragraph 10 of the affidavit in reply.

10. The Applicants have filed copy of order dated 23.7.1997 passed by the Respondent No. 2 whereby they were again appointed for two months. Again by order dated 14.6.1999, both the Applicants were appointed for six months as Clerk-typists. It is noted that all subsequent appointments of the Applicants are without holding any fresh test/interview, while the first appointment by letter dated 18.11.1995 was after written or oral tests. The conclusion is inevitable that the subsequent appointments were in continuation of earlier appointments. The initial appointments of the Applicants were fully in consonance with the Government instructions, so they cannot be called 'back door' appointments. Hon. Apex Court's judgment in Umadevi's case will not be applicable. Similarly, the Applicants are not claiming continuation in service by virtue of initial appointment. They are claiming the benefit based on the Government policy enunciated in G.R dated 8.3.1999. They fulfill the condition of the said G.R for continuation of their services. On the ground that other employees viz. S/Shri Kodape, Choudhari & Gavit who were appointed on ad hoc /temporary basis later in time got the benefit of regularization of their services is another

fact in support of the claim of the Applicants for similar treatment. The Respondents have not given any satisfactory explanation as to how the services of S/Shri Gavit, Kodape and Choudhari were regularized. The only explanation is that they belong to Scheduled Tribe. However, the Respondents especially learned Presenting Officer could not produce any document to support the claim that employees belonging to S.T category were entitled to be given a special dispensation in this regard by the Respondents.

11. In view of the above facts and circumstances of the case, the Respondents are directed to consider the case of the Applicants in both the Original Applications to regularize their services in terms of G.R dated 8.3.1999. There will be no order as to costs.

(Dr. S. Radhakrishnan.J)
Chairman

Place : Mumbai
Date : 13.06.2013
Typed by : A.K. Nair.

(Rajiv Agarwal)
Vice-Chairman.