

(2024) 04 BOM CK 0034

In the Bombay High Court

Case No : Writpetition No. 2862, 2894, 2909 Of 2021

Mayuresh Mangesh Bhatkar And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 12-04-2024

Acts Referred:

Citation : (2024) 04 BOM CK 0034

Hon'ble Judges : Devendra Kumar Upadhyaya, CJ; Arif S. Doctor, J

Bench : Division Bench

Advocate : Jane Cox, Rahil Fazelbhoy, Neel Helekar, Karishma Rao, A. A. Garge, Anand Pai, Rahul Sanghvi, Sanjay Udeshi

Final Decision : Dismissed

Judgement

@JUDGEMENTTAG- JUDGEMENT

Devendra Kumar Upadhyaya, CJ

1. Heard learned counsel for the parties and perused the records available before us on this writ petition.

2. Since challenge in these petitions has been made to the judgment and order dated 18th December 2019 passed by Mumbai Bench of Central Administrative Tribunal (hereafter referred to as "the Tribunal") passed in Original Application Nos.426, 427 and 428 of 2013 filed by the respective petitioners, the same are being decided by the common judgement as follows:

CLAIM PUT-FORTH BY THE PETITIONERS:

3. The claim put-forth by the petitioners before the Tribunal was in respect of regularization of their services against their respective posts, which has not been acceded to by the Tribunal. Primary contention of Ms. Jane Cox, learned counsel for the petitioners, in all these matters is that they were appointed to their respective posts on contract basis, having been subjected to selection by a duly constituted Selection Committee after an advertisement and since the relevant

Rule envisages regular appointment of such contractual employees after completion of initial period of contract of three years, as such, the action on the part of the respondents in not considering them for regularization in service; rather terminating their services, amounts to infringement of their vested right of regularization in service.

4. Petitioners Mayuresh Bhatkar and Swapnil Patil were appointed on contract basis as Scientist 'B' with the respondent organization, namely, Society for Applied Microwave Electronics Engineering and Research (Autonomous R & D Institute) (hereafter referred to as "SAMEER") on 5th November 2007.

Petitioner Yogesh Bhagat was initially appointed on contract basis as Project Assistant on 13th April 2004 and later on as Scientist 'B' on 20th November 2007. The initial term of appointment of the petitioners, as per the appointment order, was three years from the date of their joining with a further stipulation in the appointment order that they shall be given continued appointment thereafter if their performance was found to be satisfactory. Accordingly, petitioner Mayuresh Bhatkar was given extension on 22nd November 2010 and thereafter on 9th May 2011 and again on 30th November 2011, however, his services were terminated on 14th September 2012. Thereafter, he continued on the strength of the interim order passed by the Tribunal and finally his services have been terminated on 10th January 2020. Similarly, Swapnil Patil was given extension on 24th November 2010 and 30th November 2011 and his services have also been finally terminated on 10th January 2020. As far as petitioner Yogesh Bhagat is concerned, he was given extension on 22nd November 2010 and his services were firstly terminated on 14th September 2012, however, he continued to work on the strength of the interim order passed by the Tribunal and finally, his services have been terminated on 10th January 2020.

5. The appointment orders of the petitioners are on record. For clarity, we shall be referring to the facts in respect of the petitioner Mayuresh Bhatkar, who is the petitioner in Writ Petition No. 2894 of 2021. The appointment order dated 5th November 2007 clearly stipulates that his appointment was made on contract basis for a period of three years with a further stipulation that he shall be given continued appointment on completion of three years if his performance was found to be satisfactory. Similar stipulations are available in the appointment orders of other petitioners.

6. The appointment of the petitioners was made on the post of Scientist 'B' on the basis of the selection pursuant to Advertisement No. 03/07 issued in the month of July 2007. A perusal of the said advertisement clearly shows that the advertisement was issued for making appointment on contractual basis. The advertisement clearly stipulated that the appointment was to be made on contractual basis initially for a period of three years, which was likely to be continued subsequently. As stated above, the petitioners were subjected to a selection process pursuant to the said advertisement and accordingly, they were appointed on 5th November 2007 and 20th November 2007 respectively. The

appointment order of the petitioners also stipulated that their services shall be governed by the Rules and Regulations, by-laws and service conditions of SAMEER and also by amendments/modifications which may be made from time to time.

7. It is the case of the petitioners that in terms of by-laws 24 and 25 of the by-laws of SAMEER, every appointment in the said organization is initially made on temporary basis and that all categories of the staff are initially appointed on contract basis for a period of three years, whose services may be considered for regularization in due consideration of the past performance and subject to availability of vacancy. By-law 24 further provides that regularization shall be considered by duly constituted committee. By-law 25 provides that all fresh appointments to the society shall initially be on contract for a period of three years and that performance of the employee shall be monitored and he/she shall be considered for regularization in service on the basis of satisfactory performance. It further stipulates that on completion of probation period and issue of orders in writing to that effect, an employee would be treated as a regular employee unless otherwise provided under the terms and conditions of appointment. By-laws 24 and 25 of the by-laws of the respondent organization/ SAMEER are extracted hereunder: -

"24. Appointments

All appointments are initially on temporary basis. All categories of staff of the Society shall initially be appointed on contract basis for a period of 3 years, whose services may be considered for regularization in the services of the Society in due consideration to the past performance and subject to availability of vacancy. Regularisation could be considered by duly constituted Committee.

25. Regularization in Service:

All fresh appointments to the Society shall initially be on contract for a period of 3 years. The performance of the employee during the initial period of three years shall be monitored and he/she will be considered for regularization in the services of the Society only on the basis of satisfactory performance. On completion of probation period and issue of orders in writing to that effect, an employee would be treated as a regular employee unless otherwise provided under the terms & conditions of appointment. The relative seniority shall be determined with respect to the actual date of joining the Society on a particular grade."

8. Thus, on the strength of the aforesaid provisions contained in by-laws 24 and 25, it has been urged on behalf of the petitioners that on completion of contractual period of three years, their cases ought to have been considered for regularization of their services in the society, however, the respondents, instead of considering them for being regularized in services on the basis of evaluation of their past services, illegally terminated their services resulting in ouster of the petitioners from employment.

CASE SET UP BY THE RESPONDENT ORGANIZATION-SAMEER:

9. On the other hand, opposing the claim of the petitioners, learned counsel representing the respondent organization-SAMEER has submitted that appointment of the petitioners was admittedly made on contractual basis and that they were not appointed against a regular post. Reliance has been placed by the respondent organization-SAMEER in this regard on the Recruitment Rules and Career Progression Policy of SAMEER (hereafter referred to as "the Recruitment Rules"). Rule 3 describes 'permanent post' to mean a post carrying a definite rate of pay sanctioned without limit of time. 'Temporary post' has been defined to mean a post carrying a definite rate of pay sanctioned for a limited time, whereas 'tenure post' means a permanent post which an individual employee may not hold for more than a limited period.

10. Rule 6.3 of the Recruitment Rules provides that recruitment to various posts shall be made by (a) direct recruitment from the open market through advertisement; (b) by promotion; (c) direct recruitment of specialists on a tenure or short-term consultancy or on contract basis; (d) on deputation/permanent absorption basis from amongst the DIT officers/employees; (e) on deputation of suitable staff from the Central/PSU/Semi Government and Autonomous bodies or other authorities; (f) through campus selection from reputed academic institutions; and (g) any other mode of recruitment with the approval of Administrative Ministry.

11. Rule 6.4 of the Recruitment Rules provides for procedure for direct recruitment, according to which a Screening Committee consisting of two members out of the Selection Committee shall screen applications received from the candidates and the candidates as recommended by the Screening Committee will be subjected to interviews/written test.

12. Rule 6.6 provides that a Selection Committee shall be constituted with the approval of the Appointing Authority and selection shall be made on the basis of personal interview and any other method which the Selection Committee may adopt. It further provides that the Selection Committee shall consist of five members, including two members from outside. It provides further that the Selection Committee shall comprise of three internal experts (including one from Department of Information Technology) and two experts from outside in the relevant field. It also provides for reservation to reserved category candidates.

13. Rule 6.21 provides that direct recruits to a post/service shall be on probation for a period of two years and those recruited to a post carrying a pay-scale, the minimum of which is Rs.6,500/- or above or to posts for which the maximum age-limit for recruitment is 35 years or above and where no training is involved, shall be on probation for a period of one year. It also provides that there will be no probation in case of officers appointed to various posts on (a) contractual basis; (b) deputation; (c) tenure basis; (d) re-employment after superannuation; and (e) permanent transfer. Rule 6.21 also prescribes that on expiry of period of

probation, steps shall be taken to assess the performance of the probationer, who shall be confirmed by issuing orders regarding satisfactory termination of probation. The Rule also provides that the probation period can be extended or the probationer can be discharged from service as well.

14. Rules 3, 6.3 and 6.21 of the Recruitment Rules are extracted hereunder:

"3. Creation of Posts:

A post to be created may be a permanent post or a temporary or a tenure post. Permanent post means a post carrying a definite rate of pay sanctioned without limit of time. Temporary post means a post carrying a definite rate of pay sanctioned for a limited time, whereas tenure post means a permanent post which an individual employee may not hold for more than a limited period.

The general provision relating to creation of posts will be as per orders issued by the Administrative ministry from time to time.

6.3 Mode of Recruitment:

Recruitment to the various posts shall be made by any of the following methods:

- (a) Direct Recruitment from the open market through advertisement
- (b) By Promotion
- (c) Direct recruitment of specialists on a tenure or short-term Consultancy or on contract basis
- (d) On Deputation/permanent absorption basis from amongst the DIT officers/employees.
- (e) Deputation of suitable staff from the Central/PSU/Semi Govt. and Autonomous bodies or other authorities.
- (f) Keeping pace with the developments taking place in the recruitment system of Engineers in the country, recruitment of B.E/B.Tech/ ME/M.Tech at Scientist 'B' level through campuses of reputed academic institutions should also be resorted.
- (g) Any other mode of recruitment with the approval of Administrative Ministry.

Notwithstanding any of the above, SAMEER reserves the right at all times to recruit candidates at any level by open market recruitment or by any other approved method as considered necessary.

6.21 Probation

i. Save as provided in clause (ii) below, direct recruits to a post/service shall be on probation for a period of two years.

ii. Direct recruits to posts carrying a pay scale, the minimum of which is Rs.6,500/- or above or to posts which the maximum age-limit for recruitment is 35 years or above and where no training is involved, shall be on probation for a

period of one year only.”

iii. Persons who are inducted into a new service through promotion shall also be placed on probation for two years; but there will be no probation for a person promoted from one grade to another within the same service, except where the promotion involves a change in the Group of posts in the same service e.g. promotion from Group ‘B’ to Group ‘A’ in which case the probation shall be for two years.

iv. Wherever probation includes ‘on the job’ or ‘institutional training’ combined with actual performance on the job, there shall be probation for a period of two years.

v. In the case of those who are re-employed before the age of superannuation, e.g., Ex-Military personnel, there will be probation of two years on their appointment/re-employment to the post except in respect of cases covered by Clause (ii) above.

vi. There will be no probation in the case of Officers appointed to various posts on:-

- Contract basis
- Deputation
- Tenure basis
- Re-employment after superannuation; and
- Permanent transfer.

vii. On the expiry of the period of probation, steps should be taken to obtain the assessment reports on the probationer and to:

Confirm the probationer/issue orders regarding satisfactory termination of probation, as the case may be, if the probation has been completed to the satisfaction of the competent authority; or

Extend the period of probation or discharge the probationer or terminate the services of the probationer, as the case may be, in accordance with the relevant rules and orders, if the probationer has not completed the period of probation satisfactorily.

vii. The date from which confirmation should be given effect to is the date following the date of satisfactory completion of the prescribed period of probation or the extended period of probation, as the case may be.”

15. It is, thus, the submission of the learned counsel for the respondent organization-SAMEER that the appointment orders of the petitioners clearly stipulated that they were appointed on contract basis and no probation was prescribed therein. Accordingly, the submission is that appointment of the

petitioners was not made against a regularly sanctioned post and hence, even after completion of the contractual period, they were not entitled to be considered for regularization of their services in terms of the provisions contained in by-laws 24 and 25 of the by-laws.

16. Learned counsel for the respondent organization-SAMEER also submitted that on the directions issued by the Tribunal, the claim for regularization of services of the petitioners was considered by the Director of the respondent organization-SAMEER, who, by the well discussed and well-reasoned order dated 30th May 2013, rejected the claim and further that the reasons indicated in the said order are unimpeachable.

17. On behalf of the respondents, reliance has been placed on a judgment rendered by the Madras Bench of the Tribunal in case of similarly appointed employees on contract basis by the respondent organization, wherein identical pleas were raised, however, the claim was rejected. The said judgment was challenged by the employees before the Hon'ble High Court of Madras in Writ Petition No. 23355 of 2013, which was dismissed by means of an order dated 19th August 2016. Our attention has also been drawn by learned counsel for the respondents to the fact that the judgements rendered by Madras Bench of the Tribunal and Hon'ble High Court of Madras were subjected to challenge in SLP No. 8891 of 2016 before the Hon'ble Supreme Court, which was disposed of by the Hon'ble Supreme Court by means of an order dated 12th July 2017, whereby the respondents were directed to consider the said employees for regularization of their services in terms of by-laws 24 and 25 of the respondent organization-SAMEER. It is the case of the respondents that in case of the petitioners in these writ petitions as well, the matter for regularization of their services was considered by the Director of the respondent organization- SAMEER, which was rejected by means of an order dated 30th May 2013.

18. In sum and substance, the submission of learned counsel for the respondents is that since the appointment of the petitioners was made on contractual basis for a period of three years not against a regularly sanctioned posts and further that since the constitution of the Selection Committee which the petitioners were subjected to was not the same as the constitution of the Selection Committee meant for regular appointment, the petitioners were not entitled to be regularized in service. Learned counsel for the respondents has also stated that in the respondent organization-SAMEER, in case of regular appointment as well, initially the appointee is placed on contract basis for a period of three years, however, he is given regular appointment if his performance during these three years is found to be satisfactory. The submission, thus, is that the contractual appointment of the petitioners is not akin to placement on contract basis of the regular appointees, as such, in their case, by-laws 24 and 25 do not have any application. Accordingly, it has been submitted on behalf of the respondents that there is no irregularity, much less any illegality in the impugned judgement of the Tribunal which may call for any interference by this Court in its writ

jurisdiction.

DISCUSSION AND CONCLUSION:

19. We have given our thoughtful consideration to the respective submissions made by learned counsel representing the parties.

20. To decipher the exact nature of appointment of the petitioners, the prescriptions and stipulations made in the advertisement, pursuant to which they were initially recruited and also in their appointment orders, need to be referred to.

Advertisement No. 03/07, pursuant to which the petitioners were initially appointed, clearly stipulated that, "the appointments are on contract basis, initially for a period of 3 years and are likely to be continued subsequently".

The stipulation made in Advertisement No.03/07 is extracted hereunder:

".....The appointments are on contract basis, initially for a period of three years and are likely to be continued subsequently."

21. It is also apposite to extract clause (4) of the appointment letter dated 5th November 2007 issued in respect of petitioner-Mayuresh Bhatkar as under:

"4. Your appointment will be on contract basis for a period of three years from the date of your joining duty and you will be given continuing appointment thereafter, if your performance is found to be satisfactory. Though your appointment is for a period of three years, your services are liable to be terminated at 90 days' notice without assigning any reason. If you intend to resign your appointment during this period or thereafter, you will be required to give 90 days' notice of your intention to do so. In the event of failure to give such notice, you will not be entitled to receive your dues from SAMEER, which may have accrued, and due to you. If such dues fall short of your salary for 90 days, the amount by which they fall short shall be payable by you to SAMEER on demand."

22. Thus, from the prescriptions available in the advertisement and the appointment orders of the petitioners, it is explicitly clear that the advertisement issued was not for any regular appointment but for an appointment on contractual basis and accordingly, such stipulations find place in clause (4) of the appointment order of the petitioners, as extracted hereinabove.

23. It is true that even in case of regular appointment, the appointee is initially placed on contract for a period of three years and on completion of this period of three years, he is given regular appointment on evaluation of satisfactory service rendered by such appointee, however, there is a marked difference between placement on contract in case of regular appointment and appointment itself on contractual basis.

24. For arriving at a conclusion as to whether in this matter the appointment was

made on regular basis or contractual basis, the factors which need to be determined are, (a) as to whether the recruitment process as prescribed under the Recruitment Rules was followed; (b) as to whether the appointment was made against a regularly sanctioned post; and (c) as to whether constitution of the Selection Committee was the same as the constitution of the Selection Committee meant for regular appointment. If the initial appointment of the petitioners on contract basis is tested on the aforesaid factors, what we find is that it has consistently been the case of the respondent organization-SAMEER that the petitioners were never recruited or selected against regularly sanctioned posts; rather they were appointed on contractual basis and this fact was always made known to them as the Advertisement No. 03/07 itself clearly stipulated that the appointments were to be made on contractual basis. Thus, in absence of the initial appointment of the petitioners having been made against the regularly sanctioned posts, we are unable to agree with learned counsel for the petitioners that they were appointed on regular basis, as such, their cases for regularization, after completion of three years, ought to have been considered in terms of by-laws 24 and 25 of the by-laws of SAMEER.

25. Our conclusion that the initial appointment of the petitioners was not made against regularly sanctioned posts is fortified by a perusal of advertisement issued in the year 2011 (Advertisement No. 03/2011), which clearly stipulated that all positions are regular; however as per rules of SAMEER the selected candidates will be initially on contract for three years. The performance of the candidate during this period shall be monitored and he/she will be considered for regularization only on the basis of satisfactory performance. Clause (8) of the General Conditions of Advertisement No. 03/2011 is extracted herein below:

"8. All positions are regular; however as per rules of SAMEER the selected candidates will be initially on contract for three years. The performance of the candidate during this period shall be monitored and he/she will be considered for regularization only on the basis of satisfactory performance."

26. If we compare the advertisement issued in the year 2011 for regular appointment with Advertisement No. 03/07, what we find is that no stipulation available in clause (8) of the General Conditions mentioned in advertisement issued in the year 2011 is found in Advertisement No. 03/07. Thus, had the recruitment of the petitioners was made against a regularly sanctioned post, such stipulation would have been made in the Advertisement No. 03/07 as well, against which the petitioners were initially appointed. It is also to be noticed that as per the Recruitment Rules, the Selection Committee ought to include two external members and it has been the case of the respondents all through that the Selection Committee, which selected the petitioners, comprised of only one external member. There is nothing on record which may establish that the Selection Committee in case of the petitioners comprised of two external members and accordingly, since the constitution of the Selection Committee was not as per the Recruitment Rules for regular appointment, any appointment

made by a Selection Committee, composition of which is not as per the Recruitment rules, cannot be termed to be regular appointment. For this reason as well, the appointment of the petitioners cannot be said to be on regular basis and hence, they were rightly not subjected to the procedure for regularization of their services in terms of by-laws 24 and 25 of the by-laws of the respondent organization-SAMEER.

27. We may also refer to the order passed by the Director of the respondent organization-SAMEER dated 30th May 2013, where, after detailed discussion and giving reasons, the claim of the petitioners for regularization in service has been rejected. We do not find any material to disagree with the said reasons.

28. Learned counsel for the petitioners has also placed reliance on a judgment of Hon'ble Supreme Court in the case of Hari Nandan Prasad & Anr. vs. Employer I/ R to Management of Food Corporation of India & Anr. (2014) 7 SCC 190, however, the said judgement does not have any application to the facts of the present case for the reason that the judgement was delivered in respect of a work-man to which the provisions of Industrial Disputes Act, 1947 apply, whereas, the petitioners are not covered by the provisions of the said Act.

29. For the reasons given above, we do not find any illegality in the impugned judgment passed by the Tribunal. Resultantly, the writ petitions are dismissed, however, there will be no order as to costs.