
(2016) 07 BOM CK 0080
In the Bombay High Court
Case No : Writ Petition No. 4246 of 2016

Shirshal s/o Rajendra Potdukhe

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 ALLMR 754 : (2017) 1 BCR 844 : (2016) 3 CLR 585 : (2016) 6 MhLJ 346

Hon'ble Judges : Smt. Vasanti A Naik and Mrs. Swapna Joshi, JJ.

Bench : Division Bench

Advocate : Shri A.M. Gordey, Sr. Counsel with Mr. P.S. Khubalkar, Advocate, for the Petitioners; Shri A.A. Madiwale, Asst. Government Pleader, for the Respondent No.1

Final Decision : Dismissed

Judgement

1. Since the facts and the issues involved in these Writ Petitions are similar they are heard together and are decided by this common order.
2. By these Writ Petitions, the petitioners challenge the communications of the respondents, dated 28th June, 2016 and 30th June, 2016 to the extent that they put an end to the services of the petitioners as Engineer, Accountant and Data Entry Operator, respectively. The petitioners seek a direction to the respondents to regularise the services of the petitioners as Engineer, Accountant, Data Entry Operator, as the case may be.
3. In pursuance of a scheme framed by the Union of India that was sought to be implemented by the State Government for the development of backward areas in various districts in the State of Maharashtra, by a Government Resolution dated 31st March 2010, it was decided to make temporary appointments in the approved units, either by outsourcing or on contract-basis. Under the Government Resolution the appointments were to be made on temporary basis, on honorarium, which should not exceed a sum of Rs. 40,000/- for all the

employees in a particular unit. In pursuance of the Government Resolution, dated 31.3.2010, advertisements were issued by the respondent nos. 2 and 3 inviting applications for appointment as Engineer, Accountant and Data Entry Operator, for a period of eleven months, on a fixed honorarium. The petitioners applied in pursuance of the advertisement and were appointed as such, for a period of eleven months on a fixed honorarium. By a subsequent Government Resolution dated 2nd September 2013, only the honorarium was sought to be increased to some extent. It is the case of the petitioners that on the expiry of the term of eleven months after each appointment-employment, after giving an artificial break, the petitioners were again appointed as Engineer, Accountant and Data Entry Operator for a period of eleven months on honorarium and on contract-basis. The scheme admittedly was to come to an end on 31st July, 2016 and the said scheme was not to be continued from 1st August, 2016. By the impugned communications, the petitioners were informed that their services would come to an end, in terms of the last appointment orders, on 31st July 2016. After receiving the said communications, the petitioners have filed the instant petitions seeking the regularisation of their services. The petitioners have also challenged the communications by which their services were brought to an end after the expiry of the term of eleven months, as per the last appointment order.

4. Shri A.M. Gordey, the learned senior counsel appearing on behalf of the petitioners, submitted that though the scheme under which the petitioners were appointed, has come to an end, the posts of Engineer, Accountant, Data Entry Operator, on which the petitioners were appointed temporarily, are posts of permanent nature and since some other schemes of the Government are still being implemented by the Zilla Parishad, wherein the posts are available, it is necessary for the Zilla Parishad to absorb the petitioners in the other schemes and regularise their services. It is stated that though the petitioners did not make any grievance about the issuance of the appointment orders for a period of eleven months from time to time, according to the petitioners, technical break ought not have been given to the services of the petitioners and the petitioners should have been appointed on permanent basis in the year 2010, when the scheme was sought to be implemented. It is stated that a grievance in regard to the non-utilization of the services of the petitioners after the expiry of their term on 31st July 2016, was made before the State Government and the High-Power Committee has recommended that the services of the petitioners and other similarly situated persons may be utilised in other schemes as per their experience. It is stated that the petitioners were employed after following the due process of selection, i.e, after issuance of the advertisement and hence the services of the petitioners are liable to be regularised as each of the petitioners have put in more than five years of service, with artificial breaks. It is submitted that in similar Writ Petitions that are filed at Aurangabad Bench, the Aurangabad Bench has issued notices to the respondents and has directed the respondents not to take any coercive action against the petitioners therein, till the next date

of hearing. It is submitted that, on parity, this Court should also protect the services of the petitioners.

5. On hearing the learned counsel for the parties and on a perusal of the documents annexed to the Petition/s, especially the Government Resolution dated 31.3.2010, it appears that the petitioners are not entitled to the relief claimed. Admittedly, the scheme under which the petitioners were appointed temporarily for a period of eleven months, on honorarium, was floated by the Central Government and the State Government is only the implementing authority. Admittedly, the scheme has come to an end on 31st July, 2016. The Government Resolution, dated 31st March 2010, that provides for temporary appointment of employees in the scheme, on honorarium, either through outsourcing or by issuance of an advertisement is not challenged. The petitioners could not have challenged the policy as they had applied in pursuance of the advertisements issued by the respondent nos.1, 2 and 3 in terms of the policy, with the clear knowledge that their appointments could be made under the scheme, for fixed period of eleven months and on honorarium. The petitioners applied in pursuance of the advertisements and accepted the appointments for a period of eleven months on temporary basis, on honorarium and on the other conditions mentioned in the appointment order, without a demur. Now, after the scheme is discontinued the petitioners are seeking the regularisation of their services in any other scheme or in the Departments of the Zilla Parishad. The petitioners do not have any right, whatsoever, to seek their regularisation either in the services of the Zilla Parishad or in the other schemes. It is held by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka v. Umadevi (3) and others reported in (2006) 4 SCC Page 1 and the other judgments of the Hon'ble Supreme Court rendered from time to time; and reported in (2012) 6 SCC 502: (Brij Mohan Lal v. Union of India and others), (2012) 11 SCC 656: (Maheshchandra Verma and others v. State of Jharkhand and others) and 2014 (2) Scale 262 (Renu and others v. District & Sessions Judge, Tis Hazari), that merely because the employees have worked in casual and temporary employment for certain number of years, they would not be entitled to regularisation. In the said judgments, the Hon'ble Supreme Court has observed that there cannot be a total embargo on casual or temporary employment and in the exigency of administration it would be necessary to make appointments temporarily, contractually or casually. In the instant cases also, the appointment of the petitioners was under a scheme and the petitioners had secured the employment for a period of eleven months under the scheme, with the clear knowledge that their employment would come to an end after the period of eleven months and latest, when the scheme is brought to an end. The appointments of the petitioners in the scheme for the past few years have at least brought some succour to the petitioners when innumerable educated people in this country are unemployed and even do not have an opportunity to secure employment on temporary basis for a period of eleven months. We do not find any right in the petitioners to seek their regularisation in service, especially when

they were appointed under the scheme with a clear understanding that their services would come to an end after a period of eleven months. Also, the petitioners had never challenged their appointments for the period of eleven months when such appointments were made during the past five years. They could not have challenged the same as, by the advertisement, the appointments were sought to be made under the scheme, that was not a scheme of a permanent nature. There is nothing in the policy of the Government, at least in the scheme that was implemented in this case that as soon as the scheme comes to an end, the services of the employees that are temporarily employed would be absorbed in some other schemes that are implemented by the State Government. In fact, the scheme itself provides that the appointments were required to be made for a period of eleven months, only on honorarium. We do not find any merit in the submission made on behalf of the petitioners that the posts on which the petitioners were appointed are of permanent nature, in the sense that the posts of Engineer, Accountant and Data Entry Operator are available in the other schemes or in the regular establishment of the Zilla Parishad. Even if we assume that there are some permanent posts of Engineer, Accountant and Data Entry Operator in the Zilla Parishad, the petitioners would not have a right to seek their absorption on the said posts as those posts are liable to be filled by the Zilla Parishad by following the prescribed procedure for selection. Regular vacancies in the establishment of the Zilla Parishad cannot be filled by absorption of candidates that are appointed on contract basis for a temporary scheme, on honorarium. It is observed by the Hon''ble Supreme Court in the case of Umadevi (supra) that a person, though qualified, may not be desirous of applying for appointment for a limited duration though the same person may be desirous of applying for the permanent post. In any case, we do not find that the petitioners have any right to seek their absorption either on the posts available with the Zilla Parishad or on the posts in the other schemes only because they have worked under the scheme for development of backward areas during the past five years. Under the other schemes also, the appointments could be made in accordance with the policy under those schemes and a direction cannot be issued by this Court to directly absorb the petitioners under those schemes. In the circumstances of the case, no case is made out by the petitioners for grant of relief of regularisation. We humbly follow the law laid down by the Hon''ble Supreme Court in the case of Umadevi (supra) and the other judgments that are referred to herein-above, while doing so. Merely because there may be a recommendation by the High Power Committee, a direction to regularise the services cannot be granted.

6. We do not find any merit in the submission made on behalf of the petitioners that as a notice is issued by the Aurangabad Bench of the Bombay High Court in similar matters and some interim relief is granted, this Court should also protect the services of the petitioners, till the said matters are decided. Merely because, a coordinate Bench issues a notice in a similar matter and grants some interim relief, till the returnable date, it would not be necessary for the other coordinate

Bench to follow suit. Such a submission could have been made and parity could have been sought only if the coordinate Bench had issued 'Rule' in the similar matter and had granted stay or had decided the similar matter on merits in favour of the petitioners therein. When a similar issue arises for consideration before different coordinate Benches and when there is no order directing the clubbing of the matters before one Bench, one of the coordinate Benches could decide the petition pending before it and it cannot be said that since the Bench before which the matter was listed first in the point of time has issued notice and stay, the other Benches should also pass similar orders, on parity. An interim order passed by a Bench till the returnable date cannot be binding on the other Bench, more so when the other Bench is deciding the matter finally. We cannot gauge under what circumstances the other coordinate Bench has granted interim relief but, in the circumstances of the case, we are firmly of the view that the petitioners are not entitled to any relief.

7. Hence, we dismiss the Writ Petitions, with no order as to costs.