

SANDHYA

v.

STATE OF MAHARASHTRA & ORS.  
(Civil Appeal Nos. 5887 of 2014)

JULY 01, 2014

[SUDHANSU JYOTI MUKHOPADHAYA AND  
DIPAK MISRA, JJ.]

*Service law: Regularisation – Claim for – Appellant-Terminated employee challenging termination and seeking regularisation of services – Administrative Tribunal directing the authorities to regularise the services in accordance with Government Resolution dated 10th March 2005 – Authorities refusing to regularise the appellant on the ground that he was not working on the date the said Government Resolution came into force – High Court refusing to interfere with the orders of authorities – Held: High Court has misguided itself by holding that the appellant was not working on the date of Government Resolution dated 10th March, 2005 – The order of termination dated 20th April, 1998 was set aside by the Tribunal by its order dated 24th November, 2011 – The order of termination being set aside, in the eye of law the appellant shall be deemed to be continued in service even on 10th March, 2005 i.e. the date when the Government Resolution was issued – The respondents are directed to regularize the services of the appellant with retrospective effect.*

The applications were called for appointment to the post of revenue clerks. Those who could not be adjusted against the post but were kept in the waiting list, were called upon to work on payment of nominal fees and were known as unpaid candidates. The appellant was working as unpaid candidate since 4th July, 1985. The services of certain unpaid candidates were terminated. The appellant's service was also terminated on 20th April,

A 1988. The appellant and others challenged their  
respective orders of termination before the Administrative  
Tribunal and prayed for directions on respondents for  
regularisation of their services. The Tribunal by order  
dated 24th November, 2011 allowed the applications and  
B set aside their orders of termination with directions to the  
respondents to take action for regularisation of services  
of all the applicants including the appellant in accordance  
with GR dated 10th March, 2005. Thereafter, respondent  
no. 3 by letter dated 7th August, 2012, intimated the  
C appellant that her service could not be regularized  
because of non-fulfillment of condition in GR dated 10th  
March, 2005. It was alleged that the appellant was not  
working on the date when GR came into force. The  
appellant filed a writ petition which was dismissed by the  
D High Court on the ground that the appellant did not fulfill  
the requirement laid down under GR dated 10th March,  
2005. The instant appeal was filed challenging the order  
of the High Court.

Allowing the appeal, the Court

E HELD: 1. The High Court has misguided itself by  
holding that the appellant was not in service since July,  
2002 and was not working on the date of Government  
Resolution dated 10th March, 2005. The order of  
F termination dated 20th April, 1998 was set aside by the  
Tribunal by its order dated 24th November, 2011. The  
Tribunal directed the respondents to consider the case of  
appellant for regularization in terms of Government  
Resolution dated 10th March, 2005. The order of  
G termination being set aside, in the eye of law the appellant  
shall be deemed to be continued in service even on 10th  
March, 2005 i.e. the date when the Government Resolution  
was issued. Such being the position of law, the appellant  
is entitled for regularization. But the High Court was not  
H correct in holding that the appellant was not in service on

10th March, 2005 and wrongly rejected her claim for regularization. The respondents are directed to regularize the services of the appellant with retrospective effect. [Paras 17, 18 and 19] [261-F-H; 262-A-C]

*Shivashankar Gundu Jawanlal and Anr. vs. State of Maharashtra and Ors.* 2007 (3) Mh.L.J. 43 – referred to.

**Case Law Reference:**

2007 (3) Mh.L.J. 43 referred to Para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5887 of 2014.

From the Judgment and Order dated 15.03.2013 in WP No. 1047/2013, of the High Court of Bombay at Aurangabad.

P.V. Daware, Dr. Kailash Chand for the Appellant.

Atul B. Dakh (for A.P. Mayee) for the Respondents.

The Judgment of the Court was delivered by

**SUDHANSU JYOTI MUKHOPADHAYA, J.** 1. Leave granted.

2. This appeal is directed against the judgment and order dated 15th March, 2013 passed by the Division Bench of the High Court of Judicature of Bombay, Bench at Aurangabad in Writ Petition No.1047 of 2013 whereby the High Court held that the appellant is not entitled for regularization of her service as per Government Resolution dated 10th March, 2005 and dismissed the writ petition.

• 3. The factual matrix of the case is as follows:

The Government of Maharashtra vide GR dated 30th June, 1961 framed recruitment rules of revenue clerks from amongst persons having qualification S.S.C. and within the age limit of

A 23 years (relaxable upto 26 years for reserved category candidates). Selected candidates were to be appointed in their office to work against clerical post. Those who could not be adjusted against the post but were kept in the waiting list, were called upon to work on payment of nominal fees under the control of different departments like revenue Department, Settlement Commissioner, Land Records Department, city survey office, etc. Those candidates who were engaged to work on payment of fees were popularly known as "unpaid candidates".

C Their payments are being made out of copying fees received by the department, 70% of which was for payment of wages to the said unpaid candidates and 30% share was credited to the Government.

D 4. The applications were called for appointment to Clerical posts. The appellant and others were declared successful. Those whose names were appearing in the main selection list were appointed against the Clerical post. Rest in the waiting list were allowed to work as unpaid candidates. Since 4th July, E 1985, the appellant is working as unpaid candidate in the City Survey Office at Dhule, Maharashtra.

F 5. The Secretary of Bhumi Abhilekh Bina Vetan Sangthana (Union of Unpaid Candidates belonging to Land Records Department) filed an Original Application No.153 of 1991 before the Maharashtra Administrative Tribunal, Mumbai. They prayed for direction on the respondents for regular absorption of its members i.e. unpaid candidates against the regular vacancies. The Tribunal by its judgment dated 20th December, G 1992 allowed the application directing the respondents to absorb unpaid candidates, who had put in more than ten years of service as such, by giving preference and by relaxation of age, if they otherwise fulfill other eligibility criteria.

H 6. The said judgment was challenged by the State Government before this Court and the SLP was dismissed on

14th July, 1995. Consequently, the State Government issued G.R. dated 21st October, 1995, for implementation of the directions of the Tribunal in Original Application No.153 of 1991.

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7. The other candidates of revenue department thereafter approached the Tribunal at Aurangabad by filing Original Application No.895 of 1995. The said application was also decided in their favour by judgment dated 30th November, 1995. The Tribunal directed the State Government to frame a scheme as envisaged in its earlier judgment dated 20th December, 1992 for absorption of unpaid candidates. In order to comply with the directions issued by the Tribunal, the State Government issued G.R. dated 22nd October, 1996 for absorption of unpaid candidates in the revenue department and fixed 30th November, 1995 as the cutoff date. Consequently, unpaid candidates who had completed 10 years of service as such, became eligible for absorption, subject to the satisfaction of other conditions prescribed in the said GR.

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8. In Writ Petition No.2150 of 1998, the Division Bench of the Bombay High Court passed an order on 16th October, 2002 directing the State to pay a minimum salary of Rs.3,200/- per month to the unpaid candidates. Pursuant to the said direction, the benefit of minimum salary of Rs.3,200/- was given by the State Government to all unpaid candidates.

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9. Subsequently, a group of writ petitions were also disposed of by a Division Bench of the Bombay High Court in *Shivshankar Gundu Jawanlal and another vs. State of Maharashtra and others, 2007 (3) Mh.L.J. 43*. In the said case, the petitioners were seeking a common relief for being absorbed as permanent Class III employees of the State Government with retrospective effect in the light of judgment of the Tribunal in Original Application No.153 of 1991 and GRs dated 21st October, 1995, 22nd October, 1996 and 10th March, 2005. A group of writ petitions were disposed of by the Bombay

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- A High Court with observation that all the unpaid candidates appointed till 12th February, 1987 cannot be termed as backdoor entrants and declared that they are eligible for the scheme formulated under the GRs dated 21st October, 1995 and 22nd October, 1996. The High Court also held that unpaid candidates appointed from 13th February, 1987 onwards are not entitled for the benefit of any of the GRs dated 21st October, 1995, 22nd October, 1996 and 10th March, 2005.

10. The aforesaid judgment was challenged by those unpaid candidates, who were appointed on and after 13th February, 1987, in view of denial of relief given by the Division Bench of the Bombay High Court. The Civil Appeals preferred by those unpaid candidates were allowed by this Court's order dated 11th August, 2011 directing the respondents to take action for regularization of services of the appellants in accordance with GR dated 10th March, 2005.

11. Meanwhile, services of certain unpaid candidates were terminated by the respondents. The appellant's service was also terminated by order dated 20th April, 1998.

12. The appellant and others challenged their respective orders of termination before the Maharashtra Administrative Tribunal, Mumbai Bench at Aurangabad and prayed for directions on respondents for regularisation of their services.

13. After hearing the parties, the Tribunal by its common judgment dated 24th November, 2011 passed in Original Application No.202/1998 (*Smt. Rajani vs. Government of Maharashtra etc.*), including Original Application No.293/1998 preferred by the appellant, allowed the applications, set aside their respective orders of termination with direction to the respondents to take action for regularisation of services of all the applicants including the appellant herein in accordance with GR dated 10th March, 2005. It was directed to pass appropriate orders within three months.

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14. Thereafter, respondent no. 3 vide his letter dated 7th August, 2012, intimated the appellant that her service cannot be regularized because of non-fulfillment of condition in GR dated 10th March, 2005. It was alleged that the appellant was not working on the date when GR came into force.

15. The appellant being aggrieved, filed a contempt petition in Original Application No. 292/1998. The same was rejected by order dated 18th December, 2012. The order passed by the Tribunal was challenged by the appellant before the High Court in writ petition no. 1047 of 2013. After hearing the parties, the High Court rejected the writ petition on the ground that the appellant did not fulfill the requirement as laid down under GR dated 10th March, 2005.

16. In the said writ petition, the respondents took a similar plea before the High Court that the appellant did not attend the office since 8th July, 2002. She ceased to be in employment since then. It was contended that on the date of issuance of Government Resolution dated 10th March, 2005, since the appellant was not in employment the benefits as per Government Resolution cannot be extended in her favour. The Division Bench accepted the said plea and upheld the order passed by the Tribunal.

17. Learned counsel for the appellant rightly contended that the High Court has misguided itself by holding that the appellant was not in service since July, 2002 and was not working on the date of Government Resolution dated 10th March, 2005.

18. The order of termination dated 20th April, 1998 was set aside by the Tribunal by its order dated 24th November, 2011. The Tribunal directed the respondents to consider the case of appellant for regularization in terms of Government Resolution dated 10th March, 2005. The order of termination being set aside, in the eye of law the appellant shall be deemed to be continued in service even on 10th March, 2005 i.e. the date when the Government Resolution was issued. Such being

A the position of law, the appellant is entitled for regularization. But the High Court was not correct in holding that the appellant was not in service on 10th March, 2005 and wrongly rejected her claim for regularization.

B 19. For the reason aforesaid, the impugned judgment passed by the High Court cannot be upheld. The impugned judgment dated 15th March, 2013 passed by the High Court is set aside. The respondents are directed to comply with the order and directions passed by the Tribunal on 24th November, 2011 in OA No. 293/1998 and regularize the services of the  
C appellant with retrospective effect within two months from the date of receipt of copy of this judgment. The appeal is allowed with the aforesaid direction and observation. No costs.

Devika Gujral

Appeal allowed.