

CHIEF EXECUTIVE OFFICER, ZILA PARISHAD,
THANE & ORS.

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v.

SANTOSH TUKARAM TIWARE & ORS.

(Civil Appeal No. 8856 of 2022)

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NOVEMBER 24, 2022

[M. R. SHAH AND M. M. SUNDRESH, JJ.]

Service Law: Regularisation in service – Continuity of service for a longer period on a contractual basis – Regularization sought on basis thereof – Held: Merely because employee-driver continued in service for longer period on contractual basis, the order of regularization ought not to have passed more particularly, when a policy decision was taken to avail the services of the driver by the agency/contractor and that the appointment of employee and other similarly situated drivers was not made after any selection procedure – Appointment of the employee was purely on stopgap and on contractual basis – Thus, the High Court erred in ordering regularization, and the order is quashed and set aside – Policy decision.

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Allowing the appeal, the Court

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HELD: 1.1 When respondent No. 1 was initially appointed in the year 2010, he was appointed on temporarily contractual basis till the tender process to award the contract for availing the services of the driver is completed. In communication dated 29.03.2010, the District Health Officer, Zila Parishad communicated to the Block Development Officer. That thereafter only applications were invited and the appointment of driver of ambulance on contractual basis was made. In the appointment order itself it was specifically provided that if at the said place appointment of Zila Parishad driver is done then the appointment of concerned driver would be terminated. Therefore, at the relevant time neither there was any selection process followed nor it can be said that the appointment of respondent as driver was made after following due procedure as required. It appears that at the relevant time the appointment on contractual basis was made looking to the public interest and to see that the

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- A ambulance is not without any driver. At this stage, it is required to be noted that after G.O. issued by the Government, the regular appointments were banned and services of the driver were to be provided by the contractor/agency. It is true that for whatever reason the tender process to award the contract could not be completed and therefore, respondent No. 1 continued to render services as a driver on contractual basis. That the further tender process was started in the month of March, 2021 which was awarded in the month of July, 2021 and therefore, as the contract was awarded to the agency to provide services of the drivers, the services of respondent No. 1 along with other similarly situated drivers were put to an end by order dated 15.07.2021. That thereafter respondent No. 1 filed a writ petition before the High Court praying for regularization which was filed on 31.07.2021, and by that time vide order dated 15.07.2021 the services of respondent No. 1 was put to an end. Despite the above and solely on the ground that respondent No. 1 has rendered his services for longer period the High Court ordered regularization. The High Court also set aside order dated 15.07.2021 though the same was not challenged before the High Court. Without challenging order dated 15.07.2021 the High Court ought not to have set aside order dated 15.07.2021 which was on the award of the contract to the agency. [Para 6 and 6.1][823-C; 824-D, E]
- 1.3 Merely because respondent No. 1 continued in service for longer period on contractual basis the High Court ought not to have passed the order of regularization more particularly, when a policy decision was taken to avail the services of the driver by the agency/contractor and that the appointment of respondent No. 1 and other similarly situated drivers was not made after any selection procedure. The appointment of respondent No. 1 was purely on stopgap and on contractual basis. Under the circumstances, the High Court committed a very serious error in ordering regularization as well as quashing and setting aside order dated 15.07.2021 by which on the contract being awarded to Security Services Company., the services of respondent No. 1 was put to an end. Thus, the impugned judgment and order passed by the High Court quashing and setting aside communication dated 15.07.2021 putting an end to services of respondent No. 1

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on the contract being awarded to the Security Services Company, A
and the order directing the appellants to regularize the services
of respondent No. 1 as a driver is quashed and set aside. [Para
6.2, 7][825-B-D, H; 826-A]

Pandurang Sitaram Jadhav and Ors. v. State of Maharashtra (2020) 17 SCC 393; Sheo Narain Nagar and Ors. v. State of Uttar Pradesh and Anr. (2018) 13 SCC 432 : [2017] 11 SCR 138 – distinguished.

Case Law Reference

(2020) 17 SCC 393	distinguished	Para 6.3	C
[2017] 11 SCR 138	distinguished	Para 6.3	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8856
of 2022.

From the Judgment and Order dated 16.12.2021 of the High Court D
of Judicature at Bombay in Writ Petition No. 4731 of 2021.

A. Karthik, Arsh Khan, Ms. Srepriya, Kailas Bajirao Autade, Advs.
for the Appellants.

Mrs. V. Mohana, Sr. Adv., Satyajit A. Desai, Abhinav K. E
Mutyalwar, Satyakam Sharma, Ms. Anagha S. Desai, Aaditya Aniruddha
Pande, Siddharth Dharmadhikari, Bharat Bagla, Advs. for the
Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Leave granted.

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2. Feeling aggrieved and dissatisfied with the impugned judgment G
and order dated 16.12.2021 passed by the High Court of Judicature at
Bombay in Writ Petition No. 4731/2021, by which, the High Court has
set aside the order of termination issued to respondent No. 1 herein –
original writ petitioner and directed the appellant – Zila Parishad to grant
him the benefits as regular employee from the date of termination i.e.,
15.07.2021, the Zila Parishad, Thane has preferred the present appeal.

3. The facts leading to the present appeal in a nutshell are as under: -

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- A 3.1 That the Zila Parishad, Thane issued communication dated 29.03.2010 to the Block Development Officer, Panchayat Samiti requesting for immediate recruitment of ambulance drivers at primary health centres on contractual basis till the tender process for supplying/ providing driver on contract basis is completed. It was directed to complete the process of appointing the drivers on contract basis locally and on the maximum honorarium of Rs. 7,600/- for each driver. Pursuant to the said communication, the Block Development Officer initiated the process. Vide office order dated 24.05.2010, respondent No. 1 – original writ petitioner was appointed temporarily and on contract basis as a driver for a period of two months and an agreement was executed between respondent No. 1 and Health Officer, Primary Health Centre agreeing with the terms and conditions of the employment. One of the conditions was that the appointment of candidate is on the contract basis and is exclusively temporary in nature. That another condition was that if at the appointed place appointment of zila parishad driver is done then the appointment of concerned driver will be terminated. As it took time in completing tender process the tenure/engagement of respondent No. 1 was extended from time to time but for every two months on the same terms and conditions on which earlier he was engaged. Thereafter, respondent No. 1 in the year 2019 gave a representation to the Zila Parishad for permanency on the post of driver and the concerned medical officer issued the experience certificate. That thereafter Taluka Health Officer issued order dated 18.08.2020 for re-employment of respondent No. 1 for temporary basis from 01.11.2019 to 30.09.2020. Again, in the year 2020 respondent No. 1 was re-appointed on contractual basis for a period of 11 months. That respondent No. 1 again submitted his representation and prayed for permanency submitting, inter-alia, he has been working approximately for nine years. That thereafter respondent No. 1 – original writ petitioner filed Writ Petition No. 4731/2021 before the High Court on 31.07.2021 and prayed for regularization and to confer permanency. Before that by order dated 15.07.2021 and in compliance with order dated 06.07.2021 of CEO, Zila Parishad, Thane, Taluka Health
- G Department terminated the appointment of respondent No. 1 and appointed an outsourcing agency. At this stage, it is required to be noted that appointment of respondent No. 1 as contractual driver was put to an end as by that time the tender process was completed and the contract for providing contractual driver was given to one M/s Rakshak Security Services and Systems Pvt. Ltd., Pune. That the High Court issued the
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notice in Writ Petition on 30.08.2021 and by an interim order the High Court allowed the original writ petitioner to sign the muster roll and to continue his work. That thereafter by the impugned judgment and order the High Court has not only set aside order of termination dated 15.07.2021 though no such prayer was made, but has ordered regularization and permanency on the ground that he has been continued in service for more than nine years as a driver without break and/or with artificial break.

3.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, Zila Parishad has preferred the present appeal. By order dated 07.03.2022 while issuing the notice this Court stayed the operation of the impugned judgment and order passed by the High Court.

4. Shri A. Karthik, learned counsel appearing on behalf of the appellants has vehemently submitted that in the facts and circumstances of the case the Hon'ble High Court has seriously erred in directing to regularize services of respondent No. 1.

4.1 It is submitted by learned counsel appearing on behalf of the appellants that the Hon'ble High Court has not properly appreciated the fact that the initial appointment of respondent was on contractual basis and till the tender process for providing services of the driver is completed.

4.2 It is submitted that the Hon'ble High Court has not properly appreciated that fact that respondent No. 1 was neither appointed on regular basis nor was appointed after following due procedure as required and was appointed as stopgap and on contractual basis. It is submitted that merely because it took a longer time to complete the tender process and that respondent No. 1 continued for a long time on contractual/temporary basis, the respondent has not acquired any right to get his services regularized.

4.3 It is vehemently submitted by learned counsel appearing on behalf of the appellants that the post of driver was vacant at Primary Health Centre, Sendrun. Considering the fact that the medical service is an emergency service and for 24 hours and the ambulance cannot be without any driver, the service of driver was temporarily required and therefore, the applications for the post of temporary driver on the contract basis was called by the panchayat samiti office from District Health Officer, Zila Parishad, Thane. It is submitted that respondent No. 1 applied

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- A for the post of driver on temporary contract basis and his application for the said post was considered and the direction was given to appoint him on the post of driver only for temporary contract period. It is submitted that in the appointment order itself it is specifically mentioned that he is appointed as a driver on temporary basis and his services shall be put to an end as and when the appointment of the driver is made by the Zila Parishad.

4.4 It is further submitted that thereafter the tender process to award the contract commenced in the month of March, 2021 and having come to know about the tender process respondent No. 1 filed the writ petition before the High Court praying for the regularization. It is submitted

- C that the same petition was filed on 31.07.2021. But by the time the contract was given/awarded to one M/s Rakshak Security Services and Systems Pvt. Ltd., Pune and therefore, by order dated 15.07.2021 the services of respondent No. 1 along with other similar situated contractual drivers were put to an end. It is submitted that though order dated 15.07.2021
- D was not specifically challenged before the High Court and it was also brought to the notice of the High Court by way of counter, without any challenge the Hon'ble High Court has set aside order dated 15.07.2021 and thereafter, has ordered regularization which is impermissible.

4.5 Making the above submissions it is prayed to allow the present appeal.

5. Present appeal is vehemently opposed by Mrs. V. Mohana, learned Senior Advocate appearing on behalf of respondent No. 1.

5.1 It is submitted that in the facts and circumstances of the case and more particularly, when respondent No. 1 was continued in service

- F for more than ten years the Hon'ble High Court has not committed any error in ordering regularization of his services.

5.2 It is submitted that before appointing respondent No. 1 applications were invited by the District Health Officer, Zila Parishad, Thane and thereafter, respondent No. 1 was appointed in the year 2010

- G and thereafter, his services have been continued from time to time by giving him artificial break which continued up to July, 2021. It is submitted that therefore in the above facts and circumstances no error has been committed by the High Court in ordering regularization. Reliance is placed upon the decisions of this Court in the case of **Pandurang Sitaram Jadhav and Ors. Vs. State of Maharashtra; (2020) 17 SCC 393** as
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well as on the decision of this Court in the case of **Sheo Narain Nagar and Ors. Vs. State of Uttar Pradesh and Anr.**; (2018) 13 SCC 432. A

5.3 Making the above submissions and relying upon the above decisions it is prayed to dismiss the present appeal.

6. We have heard learned counsel appearing on behalf of the respective parties at length. At the outset, it is required to be noted that by the impugned judgment and order the High Court has directed the appellants – Zila Parishad to regularize the services of respondent No. 1 as a driver. However, it is required to be noted that when respondent No. 1 was initially appointed in the year 2010, he was appointed on temporarily contractual basis till the tender process to award the contract for availing the services of the driver is completed. In communication dated 29.03.2010, the District Health Officer, Zila Parishad communicated to the Block Development Officer as under: -

“HEALTH DEPARTMENT, ZILLA PARISHAD, THANE
Outward No. ZP/AV/Vehicle/Vshi/68
Health Department, Zilla Parishad, Thane
Date: 29.03.2010

To, Block Development Officer

Panchayat Samiti —————(concerned)

Subject: In respect of appointment of driver on contractual basis. E

Within your jurisdiction, new TATA Sumo ambulance are provided to primary health centre through this office. And those public health centres which has been provided with new ambulance, the old vehicle of that place is given to other primary health centre. Those primary health centre were the posts of drivers are vacant, at those primary health centres, for supplying /providing drivers on contract basis society the procedure for tender is being done at the department level. For this tender process, minimum two month period may be required. F

Therefore, on your level, the process of appointing driver may be done locally. The monthly 41 honorarium maximum limit will be amount of Rs. 7600/- for each driver. Any more amount than this will not be payable. For inviting quotation, driving license of the driver, insurance of the vehicle etc record should be included. G

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- A Before this, the contract of vehicles taken on lease in the financial year 2009-10 is expiring on 31.03.2010. Therefore, vehicle of medical aid squad is being closed. However, those primary health centres / squad who has not been provided with government vehicle till today, those health centres and squad are hereby permitted to ply vehicle on lease basis until further orders. The list of said societies is annexed herewith.

B Those primary health centres where the posts of drivers are to be filled on contractual basis, the list of those primary health centres is annexed herewith.

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Sd/-
District Health officer,
Zilla Parisahd,
Thane”

- D That thereafter only applications were invited and the appointment of driver of ambulance on contractual basis was made.

- E 6.1 In the appointment order itself it was specifically provided that if at the said place appointment of Zila Parishad driver is done then the appointment of concerned driver will be terminated. Therefore, at the relevant time neither there was any selection process followed nor it can be said that the appointment of respondent as driver was made after following due procedure as required. It appears that at the relevant time the appointment on contractual basis was made looking to the public interest and to see that the ambulance is not without any driver. At this stage, it is required to be noted that after G.O. issued by the Government, the regular appointments were banned and services of the driver were
- F to be provided by the contractor/agency. It is true that for whatever reason the tender process to award the contract could not be completed and therefore, respondent No. 1 continued to render services as a driver on contractual basis. That the further tender process was started in the month of March, 2021 which was awarded in the month of July, 2021
- G and therefore, as the contract was awarded to the agency to provide services of the drivers, the services of respondent No. 1 along with other similarly situated drivers were put to an end by order dated 15.07.2021. That thereafter respondent No. 1 filed a writ petition before the High Court praying for regularization which was filed on 31.07.2021, and by that time vide order dated 15.07.2021 the services of respondent
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No. 1 was put to an end. Despite the above and solely on the ground that respondent No. 1 has rendered his services for longer period the High Court has ordered regularization. The High Court has also set aside order dated 15.07.2021 though the same was not challenged before the High Court. Without challenging order dated 15.07.2021 the High Court ought not to have set aside order dated 15.07.2021 which was on the award of the contract to the agency.

6.2 Merely because respondent No. 1 continued in service for longer period on contractual basis the High Court ought not to have passed the order of regularization more particularly, when a policy decision was taken to avail the services of the driver by the agency/contractor and that the appointment of respondent No. 1 and other similarly situated drivers was not made after any selection procedure. The appointment of respondent No. 1 was purely on stopgap and on contractual basis. Under the circumstances, the High Court has committed a very serious error in ordering regularization as well as quashing and setting aside order dated 15.07.2021 by which on the contract being awarded to M/s Rakshak Security Services and Systems Pvt. Ltd., the services of respondent No. 1 was put to an end.

6.3 Now so far as the reliance placed upon the decision of this Court in the case of **Pandurang Sitaram Jadhav** (supra) is concerned, on facts the said decision shall not be applicable to the case on hand and/or of any assistance to respondent No. 1. It was a case where this Court found an unfair labour practice. It was found that employees similarly situated working in the same establishment were granted regularization. Similarly, the decision of this Court in the case of **Sheo Narain Nagar** (supra) also shall not be applicable to the facts of the case on hand. It was a case where the authorities conferred temporary status and it was found that there was requirement of work and availability of posts too, and it was found that it was not a case of back-door entry, the services of the concerned employees were directed to be regularized w.e.f., 02.10.2002 from the date on which the authorities conferred the temporary status. Therefore, on facts the said decision shall not be applicable to the facts of the case on hand.

7. In view of the above and for the reasons stated above the impugned judgment and order passed by the High Court quashing and setting aside communication dated 15.07.2021 putting an end to services of respondent No. 1 on the contract being awarded to M/s Rakshak

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- A Security Services and Systems Pvt. Ltd., and the order directing the appellants to regularize the services of respondent No. 1 as a driver deserves to be quashed and set aside and is accordingly quashed and set aside. Consequently, writ petition preferred by respondent No. 1 stands dismissed. Present appeal is accordingly allowed. In the facts and circumstance of the case there shall be no order as to costs.
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Nidhi Jain

Appeal allowed.