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STATE OF MAHARASHTRA & ORS.

v.

ANITA & ANR. ETC.

(Civil Appeal Nos. 6132-33 of 2016)

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JULY 12, 2016

**[T.S. THAKUR, CJI, R. BANUMATHI AND
UDAY UMESH LALIT, JJ.]**

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Service Law – Appointment – On contractual basis – Propriety of – Government resolutions dated 21.08.2006 and 15.09.2006 approving filling up 471 posts on contractual basis – As per the resolutions appointments were to be made initially for eleven months, to be renewed twice (11 months each time) and after maximum contractual period fresh process of selection was to be initiated – Appointment of respondents – After expiry of term of the respondents, State issued fresh advertisement – Thereafter respondents challenged the conditions in the Resolutions dated 21.08.2006 and 15.09.2006 – State Administrative Tribunal held that the posts were permanent in nature – However, there was no direction to regularise the respondents – Writ Petition by the State as well as respondents – Dismissed by High Court – On appeal, held: The Government Resolutions show that intention of the State was to fill up the posts on contractual basis – The terms of the agreement which the respondents had entered into further reiterate that the appointments were contractual – The respondents, after having accepted contractual appointment, are estopped from challenging the terms of their appointment – The Government's policy decision to fill up the posts on contractual basis, could not have been interfered with by the Tribunal and the High Court – Estoppel – Administrative Law – Policy decision.

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Allowing the appeals, the Court

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HELD: 1. The intention of the State Government to fill up the posts of Legal Advisors, Law Officers and Law Instructors on contractual basis is manifest from the clauses in Government Resolutions dated 21.08.2006 and 15.09.2006. The terms of the agreement which the respondents have entered into, also

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reiterate the stand of the State that the appointments were purely contractual and that the respondents shall not be entitled to claim any right or interest of permanent service in the Government. Conditions of respondents' engagement is governed by the terms of agreement. After having accepted contractual appointment, the respondents are estopped from challenging the terms of their appointment. [Paras 14 and 16] [887-G; 888-H; 889-A-B]

2. Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred, but merely because the posts were created, they cannot be held to be permanent in nature. When the Government has taken a policy decision to fill the posts on contractual basis, the Tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature. [Para 17] [889-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6132-33 of 2016.

From the Judgment and Order dated 28.03.2012 of the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition Nos. 9145 of 2010 and 9160 of 2010

WITH

C. A. Nos. 6134, 6135-36, 6137, 6138, 6139, 6140, 6141-42, 6143, 6144, 6145, 6146, 6147-48, 6149, 6150, 6151, 6152-53, 6154, 6155, 6156, 6157 of 2016.

Madhvi Divan, Nishant Ramakantrao Katneshwarakar, Ms. Anagha S. Desai, Vishal Jogdand, Debasis Misra, Prabhat Kumar, Ms. Purna Kumari, Binay Kumar Das, Sachin Patil, Shriram P. Pingle, Dilip Annasahed Taur, Amol V. Deshmukh, Ms. Kanchan Vohra, Anil Kumar, Dr. Kailash Chand, Ms. Madhavi Divan, Atul B. Dakh, Nitin S. Tambwekar, B. S. Sai, K. Rajeev, Shankar Shillarge, M/s. Lawyer's Knit and Co), Vinayak Dixit, Sr. Adv., Pranav Sachdeva, Rohit Kr. Singh, Rohit Kumar Singh, Ms. Asha Gopalan Nair, Ashutosh Dubey Abhishek Chauhan, V. S. Rawat, Satyajit A. Desai, Ms. Anagha S. Desi, Akash Kakade, Advs. for the appearing parties.

A The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Delay condoned. Leave granted.

B 2. This batch of appeals has been filed against the order dated 28.03.2012 and other impugned orders passed by the High Court of Bombay Bench at Aurangabad whereby 471 posts of Legal Advisors, Law Officers and Law Instructors created by Government Resolutions dated 21.08.2006 and 15.09.2006 for appointment on contractual basis under the Director General of Police and Commissioner of Police, Greater Mumbai, were held to be permanent in nature. For convenience, appeals arising out of SLP(C) No.34788-34789 of 2012 are taken as the lead case.

C 3. State of Maharashtra vide Government Resolution dated 21.08.2006 approved creation of 471 posts in various cadres including Legal Advisors, Law Officers and Law Instructors under the establishment of Director General of Police and Commissioner of Police, Greater Mumbai. As per clause (3) of the said Government Resolution, the posts shall be filled up on contractual basis as per the terms and conditions prescribed by the Government. By a subsequent Resolution dated 15.09.2006, the Government maintained that 471 posts created vide resolution dated 21.08.2006 shall be filled up on contractual basis by payment of consolidated pay. As per the conditions of service laid down in the Government Resolution dated 15.09.2006, the appointment was initially for eleven months and with a provision of extension up to maximum of three terms each term being of eleven months. After expiry of third term, the candidates are required to face fresh selection process once again. After the expiry of the term of respondents, their appointments automatically came to an end. In pursuance of the expiry of terms of respondents, the State issued fresh advertisements for recruitment of Legal Advisors, Law Officers and Law Instructors on 05.12.2009, 13.01.2010 etc.

D 4. On expiry of the contractual period and being aggrieved by publication of fresh advertisement, the respondents approached the Maharashtra Administrative Tribunal challenging the conditions in the Government Resolutions dated 21.08.2006 and 15.09.2006, which laid down that the appointment of the law officers/law instructors shall be contractual, is arbitrary and that the respondents should have been appointed on regular pay scale and not on consolidated pay. The tribunal

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partly allowed the claim of the respondents and the tribunal struck down those provisions by holding that clause (3) of the Government Resolution dated 21.08.2006 and the clauses 'A', 'B', and 'C' in the Government Resolution dated 15.9.2006 suffered from arbitrariness and unreasonableness. However, no direction was issued by the tribunal directing the State Government to regularise the respondents.

5. Aggrieved thereof, respondents filed writ petitions before the High Court seeking for a direction to the State Government to regularise their services. State Government also filed writ petition challenging the order of the tribunal striking down the clauses in the said Government Resolutions as arbitrary and for setting aside the order of the tribunal.

6. The High Court vide impugned judgment dismissed all the writ petitions filed by the State Government as well as by the respondents. The High Court took the view that 471 posts created by the State Government in various cadres are permanent posts and thus the appointments thereon must also be permanent. However, considering the fact that the appointment of the respondents were not made in regular manner under the constitutional scheme, the High Court held that the respondents/original applicants cannot claim permanency and/or regularisation.

7. Being aggrieved, the State as well as the applicants have preferred these appeals. Vide order dated 02.11.2012, this Court has granted stay of operation of the impugned judgment dated 28.03.2012 passed by the High Court as well as the order dated 06.05.2010 passed by the Maharashtra Administrative Tribunal, Aurangabad Bench and this Court directed that the respondents be permitted to continue in service until further orders. Similar orders came to be passed in other appeals also. However, this Court's order dated 02.11.2012 was modified by a subsequent order of this Court dated 19.08.2014 to the effect that "*the Law Officers/Law Advisers/Law Instructors, whose contractual appointments have come to an end, shall not be continued beyond their contractual period. If their appointments have been renewed, the same shall be continued till the period comes to an end*".

8. On instructions, counsel for the State of Maharashtra submitted that in view of the order dated 19.08.2014, presently none of the respondents are continuing in service. Since none of the respondents are continuing in service, the appeals have become infructuous. However,

- A the appeals ought to be decided to answer the contentious issues raised and to settle the questions of law involved in the matter.

9. Learned counsel for the appellants contented that 471 posts created by the Government Resolution dated 21.08.2006 were not permanent posts and the appointments were made purely on contractual basis. It was submitted that filling up of 471 posts on contractual basis and not on permanent basis is a matter of government policy and that it was beyond the purview of the tribunal to set aside the same. It was submitted that the respondents had entered into a contract with the State Government thereby accepting the terms of service laid down in Government Resolution dated 15.09.2006 and having accepted the appointment on contractual basis, the respondents are estopped from challenging the validity of the said Government Resolutions dated 21.08.2006 and 15.09.2006.

10. Per contra, the counsel for the respondents contended that clause (3) in the Government Resolution dated 21.08.2006 and clause 'A', 'B' and 'C' in the Government Resolution dated 15.09.2006 are arbitrary and unreasonable and rightly struck down by the tribunal as violative of Articles 14 and 16 of the Constitution of India. It was further contended that even though the respondents had entered into a contract with the government accepting clause (3) in the Government Resolution dated 21.08.2006 and the clauses 'A', 'B' and 'C' in the Government Resolution dated 15.09.2006, the same will not operate as estoppel.

11. We have carefully considered the rival submissions made by learned counsel for the parties and perused the impugned judgment and the material on record.

12. In the Government Resolution dated 21.08.2006 while creating 471 posts in various cadres including Legal Advisors, Law Officers and Law Instructors in clause (3) of the said Resolution, it was made clear that the posts created ought to be filled up on contractual basis. Clause (3) reads as under:-

"The said posts instead of being filled in the regular manner should be kept vacant and should be filled on the contract basis as per the terms and conditions prescribed by the government or having prepared the Recruitment Rules should be filled as per the provisions therein."

13. Subsequently, the said Resolution was modified by Government Resolution dated 15.09.2006. In the said Resolution, the column specifying "Pay Scale" was substituted with column "Combined Permissible Monthly Pay + Telephone & Travel Expenses". However, there was no change in the decision of the government on filling up the posts on contractual basis. Government Resolution dated 15.09.2006 stipulates the terms and conditions of the contractual appointments. Clauses 'A', 'B', 'C' and 'D' read as under:-

"A) The appointment of the said posts would be completely on contractual basis. These officers/employees would not be counted as government employees.

B) The said appointments should be made on contract basis firstly for 11 months. After 11 months the term of the agreement could be increased from time to time if necessary. Whereas, the appointing authority would take the precaution while extending the terms in this manner that, at one time this term should not be more than 11 months. The appointment in this way could be made maximum three times. Thereafter, if the competent authority is of the opinion that the reappointment of such candidate is necessary then such candidate would have to again face the selection process.

C) The concerned appointing authority at the time of the appointment would execute an agreement with the concerned candidate in the prescribed format. The prescribed format of the agreement is given in Appendix 'B'. It would be the responsibility of the concerned office to preserve all the documents of the agreement.

D) Except for the combined pay and permissible telephone and travel expenses (more than the above mentioned limit) any other allowances would not be admissible for the officers/employees being appointed on contract basis."

14. The intention of the State Government to fill up the posts of Legal Advisors, Law Officers and Law Instructors on contractual basis is manifest from the above clauses in Government Resolutions dated 21.08.2006 and 15.09.2006. While creating 471 posts vide Resolution dated 21.08.2006, the Government made it clear that the posts should be filled up on contractual basis as per terms and conditions prescribed by the Government. As per clause 'B' of the Government Resolution dated

- A 15.09.2006, the initial contractual period of appointment is eleven months and there is a provision for extension of contract for further eleven months. Clause 'B' makes it clear that the appointment could be made maximum three times and extension of contract beyond the third term is not allowed. If the competent authority is of the opinion that the reappointment of such candidates is necessary then such candidates would again have to face the selection process.
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15. It is relevant to note that the respondents at the time of appointment have accepted an agreement in accordance with Appendix 'B' attached to Government Resolution dated 15.09.2006. The terms of the agreement specifically lay down that the appointment is purely contractual and that the respondents will not be entitled to claim any rights, interest and benefits whatsoever of the permanent service in the government. We may usefully refer to the relevant clauses in the format of the agreement which read as under:-

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- D "1. The First Party hereby agrees to appoint Shri/Smt. _____ (Party No. II) as a _____ on contract basis for a period of 11 months commencing from _____ to _____ (mention date) on consolidated remuneration of Rs. _____ (Rupees _____ only) per month, and said remuneration will be payable at the end of each calendar month according to British Calendar. It is agreed that IInd party shall not be entitled for separate T.A. and D.A. during the contract period....
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5. Assignment of 11 months contract is renewable for a further two terms of 11 months (i.e. total 3 terms), subject to the satisfaction of Competent Authority, and on its recommendations.

- G 6. The Party No. II will not be entitled to claim any rights, interest, benefits whatsoever of the permanent service in the Government."

16. The above terms of the agreement further reiterate the stand of the State that the appointments were purely contractual and that the respondents shall not be entitled to claim any right or interest of permanent

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service in the government. The appointments of respondents were made initially for eleven months but were renewed twice and after serving the maximum contractual period, the services of the respondents came to an end and the Government initiated a fresh process of selection. Conditions of respondents' engagement is governed by the terms of agreement. After having accepted contractual appointment, the respondents are estopped from challenging the terms of their appointment. Furthermore, respondents are not precluded from applying for the said posts afresh subject to the satisfaction of other eligibility criteria. A B

17. The High Court did not keep in view the various clauses in the Government Resolutions dated 21.08.2006 and 15.09.2006 and also the terms of the agreement entered into by the respondents with the government. Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred but merely because the posts were created, they cannot be held to be permanent in nature. When the government has taken a policy decision to fill up 471 posts of Legal Advisors, Law Officers and Law Instructors on contractual basis, the tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature. C D

18. In the result, the impugned judgment of the High Court is set aside and these appeals are allowed.

19. Consequently, all other appeals are also allowed. E

20. No costs.

Devika Gujral

Appeals allowed.