

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13422 OF 2024

NASIM ALI AHSANULLAH KHAN,

Age: 64 years, residing at,
 Flat No. 1, Building No. 7-B, Takshila CHS
 Ltd., Mahakali Caves Road, Andheri (East),
 Mumbai 400 093.

...PETITIONER

~ versus ~

1. **THE STATE OF MAHARASHTRA,**
 through the Principal Secretary,
 General Administration Department,
 Mantralaya, Mumbai 400 032.
2. **PRINCIPAL SECRETARY,**
 Social Justice, Cultural Affairs & Sports
 Department, Mantralaya,
 Mumbai 400 32.
3. **GOVERNMENT OF MAHARASHTRA,**
 through the Secretary, Minority
 Development Department, Madam Cama
 Road, Mantralaya, Mumbai 400 032.

...RESPONDENTS

APPEARANCES**For the Petitioner**

Faran Khan, with Mutahhar Khan,
 Mittal Munoth, Anushka Jain Harshil
 Gandhi.

For Respondent-State**Mr Aditya Deolekar, AGP****Present in Court**

Mr Jahangir Khan, Under Secretary,
 (Minority Development Department).

Mr Chetan Dusani, Desk Officer,
(Minority Development Department).

**CORAM : SUMAN SHYAM &
ADVAIT M. SETHNA, JJ.**

RESERVED ON : 9th JULY 2026.

PRONOUNCED ON : 7th AUGUST 2026.

JUDGMENT (Per Suman Shyam, J):-

1. Heard. Rule. Rule made returnable forthwith. By consent of the parties, taken up for final hearing.

2. The Writ Petitioner herein was the Original Applicant before the learned Maharashtra Administrative Tribunal (MAT) in Original Application No. 68 of 2004 as well as Original Application No. 1136 of 2016. In Original Application No. 68 of 2004, the Writ Petitioner had *inter-alia* prayed for an order for regularization of his service as Urdu Typist with effect from 6th January 1981 and as Urdu Stenographer (H.G.) with effect from 17th May 1991, which relief was declined by the learned Tribunal by order dated 1st September 2005 passed in Original Application No. 68 of 2004, by observing that the Petitioner did not possess the requisite certificate prescribed under the Recruitment Rules for

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regularization of his service and that there was a Departmental Enquiry pending against him at that point of time. The Departmental Enquiry was subsequently concluded and the Petitioner was exonerated. His suspension was also revoked. Notwithstanding the same, the service of the Petitioner was not regularized. On the contrary, by order dated 30th November 2016, the service of the Petitioner was terminated, after he had rendered 35 years continuous service under the Respondents, that too, without serving any Show Cause Notice. Aggrieved thereby, the Petitioner had approached the learned Tribunal for the second time by filing Original Application No. 1136 of 2016 assailing the order of termination of service, by making a further prayer for regularization of his service, with consequential benefits. By the impugned order dated 16th October 2022, the learned MAT had partly allowed the Original Application No. 1136 of 2016, by setting aside the order of termination of service and directed payment of arrear salary with 9% interest to the Petitioner for the period of suspension. However, the prayer of the Petitioner for regularization of his service had once again been declined by the learned MAT, primarily on the ground that the same prayer was earlier rejected by order dated 1st September 2005 passed in

Original Application No. 68 of 2004. The order dated 16th October 2022 passed in Original Application No. 1136 of 2016, to the extent the same had declined the prayer for regularization of service of the Petitioner as well as the earlier order dated 1st September 2005 passed in Original Application No. 68 of 2004 have both been put under challenge in the instant Writ Petition. The facts and circumstances of case, giving rise to the filing of the Writ Petition, briefly stated, are as hereunder.

3. On 16th April 1975, the Government of Maharashtra had established the Maharashtra State Urdu Academy. The academy was initially placed under the administrative control of the General Administration Department (“GAD”). However, subsequently, the Academy was placed under the administrative control of the Social Justice, Cultural Affairs & Sports Department. Thereafter, it was placed under the administrative control of the Minority Development Department. On being sponsored by the Employment Exchange, the Writ Petitioner was appointed as Urdu Typist, on temporary basis, vide order dated 6th January 1981, in the pay scale of Rs. 260-10-390-15-420 Extension 15-95 plus allowances. The Petitioner had accordingly, joined the post of Urdu Typist.

While the Petitioner was rendering service as Urdu Typist, by order dated 23rd July 1990 issued by the Under Secretary, Education and Employment Department, recommendation was made to appoint the Petitioner as Urdu Stenographer (H.G.) which is a higher grade post. Consequently, on 10th May 1991, appointment order was issued appointing the Petitioner as Urdu Stenographer (H.G.) with effect from 7th May 1991 for a period of six months or till regular selection through the Maharashtra Public Service Commission ("MPSC"). It appears from the appointment order dated 10th May 1991 that the appointment of the Petitioner was against the sanctioned vacant post of Urdu Stenographer (H.G.), which was created for the Urdu Academy, as per the Government Resolution ("GR") i.e. GAD No. Establishment 1190/36/90/19A, dated 11th July 1990.

4. Since the appointment of the Petitioner in the post of Urdu Stenographer (H.G.), as aforesaid, was also on temporary basis, hence, his appointment was extended from time to time by issuing fresh orders of appointment. Record reveals that successive orders including the orders dated 27th November 1992, 15th April 1993, 8th March 1994, 27th April 1994, 13th September 1994 and 30th

March 1995 were issued, thus permitting the Petitioner to continue in the post of Urdu Stenographer (H.G.), without any break in his service. It may be noted therein that the temporary service of the Petitioner had to be extended from time to time since there was no other candidate who was available for filling up the vacancy on regular basis.

5. On 18th April 1994, the recruitment rules for the post of Urdu Stenographer (H.G.) were notified. As per Rule 3(b)(iii) of the Rules of 1994, one of the criteria for regular recruitment to the post of Urdu Stenographer (H.G.) on the basis of nomination was that the candidate must possess a certificate from the recognized institution certifying that the candidate has Urdu Shorthand speed of 120 words per minute and Urdu Typing speed of 30 words per minute.

6. In the year 1995, MPSC has initiated a process for selection of candidate for recruitment in the post of Urdu Stenographer (H.G.) on regular basis. The Petitioner was the sole applicant for the SAID post. He had appeared in the written examination held on 4th November 1995 and, thereafter, in the oral interview. However, the Petitioner could not produce any certificate from a

recognized institute, as per the requirement of Rule 3(b)(iii) of the Rules of 1994, as a result of which, the MPSC did not recommend his name for appointment on regular basis. It transpires from the documents on record that there was no such institution in the State of Maharashtra having the recognition of the Government for issuing such certificate pertaining to Urdu Shorthand and Typewriting. As such, by taking note of the said fact, the MPSC had recommended amendment in the recruitment Rules by suggesting that the requirement of obtaining a certificate from a recognized institute be replaced by inserting knowledge of Urdu Shorthand and Typewriting.

7. On 10th August 2001, the Maharashtra State Examination Board had also informed the Government that it does not conduct examination in Urdu Shorthand and Urdu Typewriting. On 22nd April 2002, the MPSC had again communicated to the Respondent No. 2 to carry out amendments in the recruitment rules, so as to facilitate appointment/regularization in the post of Urdu Stenographer (H.G.). However, no such action was taken in the matter. On the contrary, by order dated 30th July 2002, the Petitioner was placed under suspension pending drawal of

Departmental Enquiry (“DE”). On 29th March 2003, DE was initiated against the Petitioner as per the provisions of Maharashtra Civil Services Rules, 1979 (“MCSR”) by framing as many as three different charges against him.

8. Being aggrieved thereby, the Petitioner had instituted Original Application No. 68 of 2004 before the Maharashtra Administrative Tribunal (“MAT”) seeking a direction for regularization of his service as Urdu Typist with effect from 6th January 1981 and as Urdu Stenographer (H.G.) with effect from 17th May 1991. However, as has been noted hereinabove, the said prayer of the Petitioner was declined by the learned MAT by order dated 1st September 2005, primarily on two counts, viz., (i) that the Petitioner did not possess the certificate issued by the recognized institute so as to fulfill the requirement of Rule 3(b)(iii) of the Rules of 1994 and, (ii) there was a Departmental Enquiry pending against him.

9. On 15th January 2010, the suspension of the Petitioner was revoked and he was allowed to join back his duties. On 29th September 2010, the Petitioner was exonerated from all the charges and the Departmental Enquiry was concluded. The

Petitioner was let-off by giving him a warning to remain cautious in future. Subsequently, by order dated 29th April 2011, the period of suspension of the Petitioner from 30th July 2002 to 15th January 2010 was also regularized by treating the same as “on duty”.

10. It appears from the material on record that during the period from 2011 to 2015, the Petitioner had made several representations before the authorities seeking benefit of the 5th and 6th Pay Commission recommendations by renewing his prayer for regularization of service. However, no action was taken on such representation submitted by the petitioner. The Writ Petitioner was also aggrieved on account of the fact that while the Government had regularized the services of one Javed Abdul Wahid Khan, a temporary Clerk-Typist (Urdu) on 9th February 2015 and another candidate who was temporarily working as a Gujarati Clerk even though they do not possess the certificate from a recognized institution, yet, parity of treatment on such count was not extended to the Writ Petitioner.

11. In the year 2016, the Petitioner had again submitted another representation, thus renewing his prayer for regularization in service. However, on such count also, there was no favourable

response from the authorities. On the contrary, by issuing the order dated 30th November 2016, the services of the Petitioner was terminated. It appears from the material on record that although the Petitioner was exonerated in the DE, yet, his service was terminated on similar allegations, based on order dated 1st September 2016 passed by Up-Lokayukta on a complaint made by a third party, whereby a direction was issued to the effect that steps should be taken in respect of the illegalities committed by the Petitioner.

12. It is the case of the Petitioner that no prior notice was served before terminating his service by issuing the order dated 30th November 2016. Therefore, assailing the order of termination of service, the Petitioner had approached the learned MAT for the second time by filing Original Application No. 1136 of 2016, with a prayer to set aside the order of termination from service and also to issue a direction for regularization of service and for payment of consequential benefits. By the order dated 16th October 2022, passed in Original Application No. 1136 of 2016 filed by the Petitioner, the Original Application was partly allowed by interfering with the order of termination from services and a

direction was also issued to pay the arrear salaries along with 9% interest, for the period of suspension. The learned MAT had, however, declined the relief of regularization of service on the ground that the Writ Petitioner/Original Applicant does not fulfill the requirement of Rules of 1994. It will be significant to note herein that the learned MAT has, frowned upon the Respondents for having such a rule in existence for a long time, which was not capable of being implemented due to the absence of any recognized/approved institution issuing such certificate as contemplated by Rule 3(b)(iii) of the Rules of 1994. The relevant part of the Judgment and Order dated 16th October 2022 passed by the learned MAT in Original Application No. 1136 of 2016 is reproduced hereinbelow for ready reference:-

“9. In this matter, the fact about the appointment of the applicant as Urdu Typist on 6.1.1981 and thereafter his appointment as Higher-Grade Stenographer (Urdu) on 17.5.1991 is not disputed by the Respondents. It is also true that the post of Urdu Typist was lapsed in between and he worked thereafter as Higher-Grade Stenographer (Urdu). The Respondent-State has categorically admitted on affidavit filed by Shri Anupkumar Yadav, Secretary, Minorities Development Department that there is no Government recognized Institute in the State of Maharashtra to conduct examination of Urdu Typist and Urdu Stenographer. Therefore, it was just not possible for the applicant to produce such Certificate. We are fully aware that the applicant had earlier filed Original Application No. 64/2004 seeking regularization of his services as Urdu Typist or Higher-Grade Stenographer (Urdu) and the said Original Application was rejected by this Tribunal by order dated 1.9.2005, after adjudicating the issues on merit. The said

order was not challenged by the applicant by filing Writ Petition before the Hon'ble High Court. Thus, the said order as on today it holds the field. We are not the Appellate Authority and therefore, cannot deal with the issue of regularization of the services of the applicant either as Urdu Typist or Higher-Grade Stenographer (Urdu). However, the Government has appointed the applicant in the year 1981 when there were no recruitment rules for appointment of Urdu Typist or Higher-Grade Stenographer (Urdu). Subsequently, after 12 to 13 years on 18.4.1994 the Recruitment Rules for the post of Higher-Grade Stenographer (Urdu) was framed by the Government and as per the said rules the speed for Typing and Shorthand is prescribed. It is necessary on the part of the Respondent-State to provide the names of the Institute which are recognized or approved by the State to enable the Government employee or the person to take training or to get his qualification certified by the said recognized/approved Institute. Till today, the Government has not decided any Institute which is recognized or approved for Urdu Typing or Urdu Shorthand as per the 1994 Recruitment Rules. The said Rules are still in existence without providing the name of the recognized Urdu Institute. It is shocking to come across such a mockery of its own rules framed by the Government. We direct, the Secretary, Minorities Development Department, Respondent no. 3, to find out which Institute can be approved/registered for Urdu Typing and Urdu Shorthand so that in future no person like the applicant shall suffer.

10. So far as the termination order is concerned, it is illegal and malicious order, which we are inclined to quash and set aside. Admittedly, departmental enquiry was conducted by the Respondents for the charges levelled against the applicant. At this stage, we do not want to comment on these charges which were rightly held by the Enquiry Officer not sustainable and the Enquiry Officer has rightly exonerated the applicant and as per the Maharashtra Civil Service Rules if the Enquiry Officer has exonerated the delinquent officer and the report is submitted to the Disciplinary Authority, the Disciplinary Authority has every power either to accept or reject the report. By order dated 23.9.2010, the applicant was exonerated of all the charges and he given warning that he should not participate in education and religious activities of Muslim religion and so also collecting donations from various National and International sources and using the same to propagate Islam. Further the suspension period of the applicant from 30.7.2002 to 15.1.2010 was treated as period spent on duty and regularized. Five years thereafter, on the complaint by third Party, the file of the applicant was reopened by the Upa Lokayukta. By order dated 1.9.2016 the Upa Lokayukta, Dr Sailesh Kumar directed the

Respondents to take steps in respect of the illegality committed by the applicant. Pursuant to the recommendations of the Upa Lokayukta the order of termination dated 30.11.2016 was passed.

11. We have perused the order dated 30.11.2016 terminating the services of the applicant. We are surprised to see the procedure followed by Mr Shyamlal Chaure, Deputy Secretary, Minorities Development Department. He has passed the order on the basis of his own perceptions and subjective bias. No notice was served to the applicant as to why his services are not to be terminated. Even on receiving the report and directions of the Upa Lokayukta dated 1.9.2016, the Government is not authorized to terminate unilaterally and summarily the services of the applicant and especially when he was exonerated from the charges in the D.E. The entire order appears biased and baseless as the applicant was not given any show cause notice, which is against the principles of natural justice. Thus, it leads to travesty of justice.

12. We have been informed by the learned counsel for the applicant that the Respondents did not pay the arrears for the period of suspension, though there was specific order of his reinstatement and it was ordered that applicant is entitled to get the pecuniary benefits during that period. Learned P.O on our query and on the basis of the instructions from the Respondents admitted that the dues during the suspension period of applicant remained to be paid and it is calculated by the Respondents. We express that the applicant has suffered injustice and the Government completely ignored the fact of his reinstatement and payment of the amount during that period. Hence, the applicant is entitled to get interest @ 9% p.a from year-wise whenever it fell due.

13. In view of the above, we pass the following order:-

- (a) The Original Application is allowed.
- (b) The impugned order dated 30.11.2016 terminating the services of the applicant is quashed and set aside.
- (c) The applicant is entitled to arrears of salary for the suspension period from 30.7.2002 to 15.1.2010 along with 9% interest p.a.”

13. Aggrieved by the order of the learned MAT to the extent the same had rejected the prayer of the Writ Petitioner/Original Applicant for regularization of service, the present Writ Petition has

been filed. The primary contention of the Petitioner is that the Rules of 1994 were not in force on the date on which the Petitioner was appointed as Urdu Stenographer (H.G.). Therefore, such Rules cannot have any retrospective bearing on the question of regularization of service of the Petitioner. It has also been contended that in the absence of any recognized institute in the State of Maharashtra issuing a certificate for Urdu Stenography/Typewriting, it would be impossible for any candidate to fulfill the requirement of Rule 3(b)(iii) of the Recruitment Rules, 1994. Therefore, the rules are liable to be declared as illegal and not enforceable in law.

14. The Petitioner has further contended that having spent long years of service in the department as Urdu Stenographer (H.G.), the learned Tribunal was not correct in rejecting the prayer of the Petitioner for regularization of service merely by relying upon Rule 3(b)(iii) of the Rules of 1994, which was not capable of being implemented. Further, the opinion expressed by the learned Tribunal in Judgment and Order dated 16th October 2022 to the effect that in view of rejection of the same prayer for regularization of service by the earlier order dated 1st September 2005 passed in

Original Application No. 68 of 2004, according to the Petitioner was erroneous as in the meantime, the departmental proceeding pending against the Petitioner had been closed. As such, according to the petitioner, the very basis of the Order dated 1st September 2005 was non-existent at the time when the impugned Order dated 16th October 2022 was passed. Therefore, the learned Tribunal has committed manifest illegality in failing to consider that the ground realities under which the order dated 1st September 2005 was passed, had substantially altered, justifying a fresh consideration of the prayer for regularization of service of the Writ Petitioner on merit.

15. The Respondents have contested the case of the Petitioner, *inter alia*, contending that in view of rejection of the prayer for regularization made by the Petitioner by order dated 1st September 2005 passed in Original Application No. 68 of 2004, the same prayer could not have been entertained by the learned MAT in the subsequent Original Application No. 1136 of 2016. Therefore, the prayer for regularization of service made by the petitioner has been rightly rejected by the learned MAT. The Respondents have further contended that the appointment of the Writ Petitioner as Urdu

Typist on 6th January 1981 and Urdu Stenographer (H.G.) on 10th May 1991, were both temporary in nature and were made as stop-gap arrangements so as to ensure that the institution remained functional until such time, regular recruitment in the post, through the MPSC was completed. Therefore, according to the Respondents, mere long period of temporary service would not vest any right on the Petitioner for permanent absorption and/or regularization of his service.

16. Coming to the question of validity of the provisions of Rule 3(b)(iii) of the Rules of 1994, the Respondents have contended that it is the prerogative of the Executive to frame Rules prescribing the criteria/qualification/ experience for recruitment. As such, the prescription of the Rules ought to be followed for filling up the posts on regular basis under the Recruitment Rules. Therefore, the opinion of the MPSC or the Examination Board indicating the non-availability of any recognized institute to issue the certificate of proficiency in Urdu Stenography or Typewriting cannot be a ground to dilute the provisions of the Rule.

17. The Respondents have further contended that since the service of the Petitioner was never regularized, and he continued

to serve as temporary employee, hence, the benefit of the Pay commission recommendations would not be applicable to temporary employees like the Writ Petitioner. However, according to the Respondents, as sum of Rs. 2,88,368/- (Rupees Two Lakhs Eighty Eight Thousand Three Hundred Sixty Eight) was determined and paid to the Petitioner, as arrear salary, as per the directions issued by the learned MAT. Contending that this is not a case of enforcement of any statutory right or fundamental right of the Petitioner, the Respondents have prayed for dismissal of the Writ Petition.

18. During the course of arguments, Mr Faran Khan, learned counsel for the Writ Petitioner, has argued that the initial appointment of the Petitioner in the post of Urdu Typist, having been made through the Employment Exchange and against a regular vacancy, the said process was in accordance with law. The appointment of the Petitioner to the post of Urdu Stenographer (H.G.) was also on the basis of order passed by the authorities. Therefore, submits Mr. Khan, for all practical purposes, it was a regular appointment. Contending that save and except the certificate contemplated by Rule 3(b)(iii) of the Rules of 1994, the

Petitioner had fulfilled all other conditions of the Rules for regularization of his service. Mr. Khan has further argued that the Respondents were not justified in continuing with the service of the Petitioner as a temporary employee. The fact that the Petitioner was the only Applicant before the MPSC for the post of Urdu Stenographer (H.G.), according to the learned counsel for the Petitioner, is sufficient proof of the fact that it was not possible for any candidate to fulfill the requirement of Rule 3(b)(iii). The learned Counsel has, therefore, argued that in the absence of any recognized institute being available in the State, it would be impossible for any person to comply with such requirement of the Recruitment Rules and the said fact is also well within the knowledge of the Respondents.

19. Mr Khan has further argued that the learned MAT has committed manifest illegality in failing to consider the fact that in the earlier round, the regularization in service of the Petitioner could not take place due to the pendency of the Departmental Enquiry and it was in such factual backdrop, that the prayer was declined. However, submits Mr. Khan, the Writ Petitioner having been exonerated of the charges brought against him in the

departmental proceeding, he was entitled to a fresh and independent consideration of the prayer for regularization, which was incorrectly declined by the learned MAT.

20. In support of the above arguments, the learned Counsel for the Petitioner has relied upon the following decisions:

- i. State of Gujarat & Ors. Vs. Talsibhai Dhanjibhai Patel, 2022 SCC OnLine SC 2004.*
- ii. Dnyaneshwar Madhao Wankhede (through L.Rs.) v. State of Maharashtra & Ors., W.P. No. 5476 of 2017 (Bom. HC, Nagpur Bench), dt. 26.03.2019.*
- iii. Yashwant Hari Katakhar v. Union of India & Ors., (1996) 7 SCC 113.*
- iv. State of Punjab & Anr. v. Suresh Kumar Sharma, (2010) 11 SCC 667.*
- v. Yashwant Arjun More & Ors. v. State of Maharashtra & Ors., (2014) 13 SCC 264.*
- vi. V.N. Nabar v. State of Maharashtra, 1981 SCC OnLine Bom 505 : 1981 Lab. I.C. 1609.*
- vii. State of Maharashtra & Ors. v. Ravindranath Kautik Mohite, 2016 (6) Mh.L.J. 440 (Bom. HC).*
- viii. Kaliram S/o Budhaji Usendi & Anr. v. State of Maharashtra & Ors., W.P. No. 5841/2024 (Bom. HC, Nagpur Bench), dt. 01.10.2025.*
- ix. Nilkanth S/o Manikrao Kulkarni v. State of Maharashtra & Ors., W.P. No. 1359 of 2017 (Bom. HC, Aurangabad Bench), dt. 07.04.2026.*

- x. State of Maharashtra & Ors. v. Tulsiram Raghunath Sawant, 2026:BHC - AUG: 9078 (Bom. HC, Aurangabad Bench), dt. 24.02.2026.*
- xi. G.L. Oberoi v. Lal Dev Pandit, 2021 SCC OnLine Del 5839 : (2022) 286 DLT 287.*
- xii. Fazlulla & Ors. v. Smt. Khathunnisa (through L.Rs.) & Ors., NC: 2025:KHC:26780 (High Court of Karnataka), dt. 17.07.2025.*

21. Mr. Deolekar, learned AGP, on the other hand, has supported the stand of the Respondents taken in the affidavit-in-reply and has argued that, being an employee, whose service was never regularized in accordance with law, the Petitioner cannot claim the benefit of, either the pay revisions or any pensionary rights under the Rules, since the Pension Rules would not have any application in case of a temporary employee.

22. We have considered the arguments advanced by the learned Counsel for the parties and have also carefully gone through the material on record. As would be evident from the facts narrated above, the primary grievance of the Petitioner is/was on account of the fact that his service was not regularized by the Authorities, despite having rendered continuous service for 35 long years. The Respondents, by taking recourse to Rule 3(b)(iii) of the Rules of 1994, have denied the benefit of regularization of service to the

Petitioner, although, in the absence of any recognized institute in State of Maharashtra, which could issue a certificate, as required under the Rules, it was impossible for any candidate to secure an order of regularization of service in the post of Urdu Typist or Urdu Stenographer.

23. There is no controversy in this case about the fact that the initial appointment of the Petitioner, as Urdu Typist on 6th January 1981, was on temporary basis but his appointment was against a sanctioned post carrying a pay scale. The appointment of the Petitioner as Urdu Stenographer was also against a sanctioned vacant post carrying a pay scale. His appointment was made as per recommendation of the Under Secretary of Education and Employment Department.

24. It is a matter of common knowledge that around the year 1981, appointments in Grade-III and Grade-IV posts in the Government Department used to be made based on candidates sponsored through the Employment Exchange. That was not only a permissible mode of recruitment in Government job but was also a recourse frequently adopted by the Government Departments. Viewed from that angle, we do not find any illegality in the

appointment process of the Petitioner, at least in the post of Urdu Typist although it is correct that the Petitioner's appointment as Urdu Typist was on temporary basis. Subsequently, the MPSC had conducted selection process for filling up the post of Urdu Stenographer on regular basis and the Writ Petitioner also took part in the said process. However, it is apparent from the documents on record that the only reason for which, the name of the Petitioner was not recommended by the MPSC was on account of the fact that he had failed to produce the certificate from a recognized institute as required under Rule 3(b)(iii) of the Rules of 1994. It is, however, the admitted position that in the absence of any recognized institution in the State of Maharashtra issuing such certificate, it would not have been possible for any candidate to furnish such a certificate. Therefore, it was not possible for the Petitioner to fulfill the requirement of the Rules of 1994. The Petitioner did not have any control of the perceived disability, in his failure, to fulfill the requirements of Rule 3(b)(iii) of the Rules of 1994.

25. The legal maxim *lex non cogit ad impossibilia* meaning-the law does not compel a man to do what he cannot possibly perform

and *impossibilium nulla obligatio* meaning-the law does not expect a party to do the impossible, are very well established legal doctrines. While interpreting the doctrine of impossibility, the Hon'ble Supreme Court has made the following observations in the case of ***State of Madhya Pradesh vs. Narmada Bachav Andolan & Ors.***¹ in para 39, which are quoted hereinbelow:-

“39. The court has to consider and understand the scope of application of the doctrines of *lex non cogit ad impossibilia* (the law does not compel a man to do what he cannot possibly perform); *impossibilium nulla obligatio est* (the law does not expect a party to do the impossible); and *impotentia excusat legem* in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman law *nemo tenetur ad impossibilia* (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide Chandra Kishore Jha v. Mahavir Prasad, Hira Tikkoo v. UT, Chandigarh and HUDA v. Dr. Babeswar Kanhar.)”

26. From the above, it is apparent that law permits a valid excuse for non-compliance of any provision of the statute if a compliance of the same has been rendered impossible by the circumstances in respect of which the person affected, has no control.

1 (2011) 7 SCC 639.

27. In the present case, as has been noted above, in the absence of any recognized institute issuing Urdu Shorthand/ Typewriting certificate, it was impossible for the Petitioner to meet the requirement of Rule 3(b)(iii) of the Rules of 1994. The Respondents were also all along aware of the said facts. It has not been denied by the Respondents that there was no recognized institute in the State of Maharashtra issuing such a certificate and, therefore, it was not possible for any candidate to fulfill the requirement of Rule 3(b)(iii). Therefore, it was incumbent upon the authorities to take note of the said fact and exempt the Petitioner from the onus of fulfilling the requirement of Rule 3(b)(iii), thus paving the way for regularization of his service. However, for reasons which are not found to be tenable, no such order was issued in favour of the Petitioner while he was in service.

28. Having regard to the facts and circumstances of the case, we are of the view that after having taken the service from the Petitioner for 35 long years, initially in the post of Urdu Typist and, thereafter, in the post of Urdu Stenographer, which had permitted the Department to function, the Petitioner's service ought to have been made permanent. Therefore, even if no specific order was

issued by the Respondents regularizing the service of the Petitioner, in view of the long years of continuous service rendered by the Petitioner, he would have to be treated as a permanent employee for all intent purpose.

29. Law is well settled by a series of judicial pronouncements that an employee, who has rendered long years of service even as an ad-hoc or temporary appointee cannot be denied pension upon his superannuation merely by taking a technical plea that the service of the employee was not regularized. In the case of *State of Gujarat & Ors. Vs. Talsibhai Dhanjibhai Patil* (Supra) relied by Mr Khan, dealing with similar nature of grievance of an employee who had rendered ad-hoc service for 30 years, the Hon'ble Supreme Court has made the following observations in paragraph Nos. 1 to 4, which are reproduced herein below for ready reference.

“1. It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continues service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand.

2. In the present case, the High Court has not committed any error in directing the State to pay pensionary benefits to the

respondent who has retired after rendering more than 30 years service.

3. Hence, the Special Leave Petition stands dismissed.
4. Pending application(s), if any, shall stand disposed of. ”

30. In *Yashwant Hari Katakhar Vs. Union of India & Ors* (Supra), it has been held by the Hon’ble Supreme Court that an employee, who had put in more than 18 years of *quasi* permanent service when the rules required minimum ten years of permanent service to earn pension, it would be travesty of justice if such employee is denied the pensionary benefits simply on the ground that he was not a permanent employee of the Government. It was held that the employee having served the Government for almost two decades, it will be unfair to treat him as temporary *khalasi* rather, the service of the employee is to be treated as one in permanent capacity. Therefore, it was held that the employee would be entitled to pensionary benefits.

31. From an analysis of the law laid down in the aforementioned decisions of the Supreme Court, it is thus clear that an employee who has rendered long years of service spanning over decades, cannot be denied the benefit of pension and other benefits of a permanent employee merely by taking a technical plea that his

service was not made permanent, particularly when the employee was not responsible in any manner for his continuance in service as a temporary employee.

32. In the present case, the Petitioner, having continuously served in the posts of Urdu Typist and then Urdu Stenographer, for a period of more than 35 years, against a sanctioned vacant post, without any break in service and his services having been utilized by the Department for running the Institution, the Petitioner must be held to have rendered service in permanent capacity for all practical purposes, more so, since non-regularization of his service was for reasons not attributable to the Petitioner. Having regard to the ground on which the service of the Petitioner was not regularized, we are of the view that the same cannot be a justification for denying him the status of a permanent employee. Therefore, in our view, the present would be a case of deemed regularization of the service of the Petitioner, atleast for the purpose of extending him the benefit of pension and other service benefits, as may be applicable, in case of a permanent employee.

33. After the order of termination from service of the Petitioner was set aside and he was reinstated back in service, the Petitioner

was allowed to continue in service till attaining the age of superannuation. Therefore, in the facts and circumstances of the case, we are of the opinion that, the State, being a model employer, would be under a constitutional obligation to extend pensionary benefits along with other service benefit such as arrears of pay, pursuant to revision of pay, to the Petitioner as otherwise, the same would be highly arbitrary, unfair, discriminatory and, hence, in violation of the fundamental rights of the Petitioner guaranteed under Article 14 of the Constitution.

34. Emphasizing the role of the State as a model employer, the Hon'ble Supreme Court, in the case of *Bhola Nath Vs. State of Jharkhand & Ors.*² has made the following observations in paragraphs 11.1 and 11.2.

“11.1. This Court has consistently held that the State, being a model employer, is saddled with a heightened obligation in the discharge of its functions. A model employer is expected to act with high probity, fairness and candour, and bears a social responsibility to treat its employees in a manner that preserves their dignity. The State cannot be permitted to exploit its employees or to take advantage of their vulnerability, helplessness or unequal bargaining position.

11.2. It therefore follows that the State is required to exercise heightened caution in its role as an employer, the constitutional mandate casting upon it a strict obligation to act as a model

2 2026 SCC OnLine SC 129.

employer, an obligation from which no exception can be countenanced.”

35. In so far as the technical objection raised by the Respondents regarding the maintainability of the prayer for regularization on the ground that by the earlier order dated 1st September 2005 passed in Original Application No. 68 of 2004, the said prayer had been declined, we deem it appropriate to note herein that in view of the observations made hereinbefore, wherein, we have held that the Petitioner ought to have been treated as permanent employee, and considering that he has already retired from service upon attaining the age of superannuation, it will be a case of deemed regularization. Therefore, the question of denying the benefit of regularization in service to the Petitioner cannot arise at this point of time. However, even assuming that such a technical plea of constructive *res judicata* was relevant in this case, even then, since the prayer of the Petitioner was declined on the earlier round on account of pendency of Departmental Enquiry, after his exoneration in the Departmental Enquiry, the foundational fact for consideration of prayer for regularization of service had fundamentally altered and, therefore, the learned Tribunal, in our opinion, was not justified in declining the aforesaid relief merely

on the ground that the same was declined on the previous occasion by the order dated 1st September, 2005 passed by the MAT. In view of the change of foundational facts, we are of the view that the prayer for regularization in service made by the Petitioner was not hit by the principles of constructive *res judicata* and hence, the same ought to have been considered on merit by the Learned MAT by the impugned Judgment. [see:- *G.L. Oberoi Vs Lal Dev Pandit*]³

36. For the aforesaid reasons, we are of the view that the Writ Petition must succeed. The same is hereby allowed.

37. The Respondents are directed to pass appropriate order granting pensionary benefits to the Petitioner, as an employee who has retired in the post Urdu Stenographer, by treating him as a permanent employee with effect from 17th May 1991. The Respondents are also directed to calculate the arrear of salary and/or pension that the Petitioner would be entitled to, pursuant to revision of pay and accordingly, release his arrear due, within a period of 3 (three) months from the date of uploading this order, failing which, the amount would carry interest at the rate of 9%

3 2021 SCC OnLine Del 5839.

(nine percent) per annum from the date on which the amount had become due, until realization.

38. The Writ Petition is disposed of accordingly.

39. Parties to bear their own costs.

(ADVAIT M. SETHNA, J.)

(SUMAN SHYAM, J.)