

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 594 OF 2018

DIST. : LATUR

1. Dr. Kavita d/o Krushna Shende,)
Age. 28 years, Occu. : at present Nil,)
R/o Govt. Medical College Campus,)
Latur, Tq. & Dist. Latur.)
2. Dr. Jyoti d/o Babu Chincholikar,)
Age. 32 years, Occu. : at present Nil,)
R/o Govt. Medical College Campus,)
Latur, Tq. & Dist. Latur.)

APPLICANTS

V E R S U S

1. The State of Maharashtra,)
Through its Secretary,)
Department of Medical Education & Drugs,)
Mantralaya, Mumbai – 32.)
2. The Director of Medical Education,)
and Research, St. Georges Hospital)
Compound, Mumbai.)
3. The Dean,)
Government Medical College, Latur)
Tq. & Dist. Latur.)

RESPONDENTS

APPEARANCE :- Shri Ganesh V. Mohekar, learned Advocate
for the applicants.
: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondents.

**CORAM : Hon'ble Shri B.P. Patil, Acting Chairman
And
Hon'ble Shri P.N. Dixit, Vice Chairman**

RESERVED ON : 19th September, 2019

PRONOUNCED ON : 10th October, 2019

ORDER

1. The applicants are challenging the communication dtd. 3.8.2018 issued by the res. no. 3 thereby inviting the applications for the post of Jr. Resident on ad-hoc basis and prayed to quash and set aside the said communication and also sought declaration that they are entitled to continue in the employment of res. no. 2 on the post of Jr. Resident till regular and permanent employees / candidates are appointed by following due procedure of law, by filing the present O.A.

2. The applicants are having qualification of Bachelor of Dental Surgery (for short B.D.S.). The applicant no. 1 has completed her B.D.S. on 10.8.2011 from late Yashvantrao Chavan Memorial Medical and Rural Development Foundation Dental College and Hospital, Ahmednagar from Maharashtra University of Health Sciences, Nashik. She has completed her internship in the same college during the period from 20.8.2011 to 24.8.2012. Thereafter she has also been registered under Maharashtra State Dental Council, Mumbai as a Registered Dental Practitioner on 11.10.2012 and the said registration has been renewed by her from time to time.

3. The applicant no. 2 has completed her B.D.S. on 9.8.2007 from Pravara Medical Trust's, Rural Dental College, Loni, Ahmednagar from Maharashtra University of Health Sciences, Nashik. She has also completed her internship in the same college during the period from 16.8.2007 to 15.8.2008. She has also registered under Maharashtra State Dental Council, Mumbai as a Registered Dental Practitioner on 29.8.2008 and the said registration came to be renewed from time to time.

4. After completion of their internship the applicant no. 1 has initially applied to the res. no. 3 on 10.10.2013, 24.4.2015 and 16.6.2015 while the applicant no. 2 applied on 20.11.2010, 2.12.2011 and 30.7.2015. Taking into consideration the need of services to the patients and increase in the intake capacity of MBBS students in res. no. 3, the res. no. 3 demanded the posts of Jr. Resident in the Department of Dentistry, Government Medical College, Latur. Accordingly the res. no. 2 accorded an approval for filling up the posts of Jr. Resident in the Department of Dentistry, G.M.C., Latur by its letter dtd. 23.7.2015. On the basis of approval and sanction granted by the res. no. 2, the res. no. 3 has issued an appointment orders on 30.7.2015 in favour of the applicants purely on temporary basis for the period of 120 days. Accordingly, the applicants joined the duty. On expiry of 120

days, the applicants were continued in service from time to time by appointment orders issued by the respondent no. 3 during the period from 30.7.2015 to 1.8.2015. The service record of the applicants are unblemished and without any stigma and without any complaint from the respondents or patients.

5. It is their contention that their husbands are working with the res. no. 3 as permanent Assistant Professor and Associate Professor respectively in the Department of Forensic Medicine and Toxicology. As their husbands are permanent employees and residing in G.M.C. campus, the applicants were easily available for the service to the patients as compared to others. It is their contention that as their appointments were up to 1.8.2018, on 19.6.2018, 7.7.2018 they applied to the res. no. 3 for issuance of further continuation orders. The concerned department recommended the names of the applicants and forwarded their applications to the res. no. 3, but the res. no. 3 had not issued continuation order till 2.8.2018 in spite of recommendations from the concerned department. The applicants had also raised grievance to the res. no. 3 in that regard. The res. no. 3 by the communication dtd. 3.8.2018 informed them that he has decided to fill up the post of Jr. Resident by publishing an advertisement and therefore continuation has not been granted to them and also

advised the applicants to apply for the post after publication of advertisement in the news paper.

6. It is their contention that intake capacity of the res. no. 3 was initially 100 in the year 2012. In the year 2013 it has been increased to 150 in view of the permission granted by the M.C.I. For maintaining the strength of 150 MBBS students and for its recognition after 5 years, the M.C.I. has to carry out inspection each and every year. Accordingly the M.C.I. carried out the inspection in each and every year and at the time of inspection they had actually, physically verified the candidates as per the department wise and designation wise. After verification of the signatures, their physical presence, declaration form has been filled up by the concerned candidates and res. no. 3 for the academic year 1st August to 31st July, which was also duly signed by the applicants as well as by the res. no. 3 and the same has been forwarded to the M.C.I. It is their contention that they were serving on the post of Jr. Resident – I since 30.7.2015 till 1.8.2018 purely on ad-hoc basis. They discharged their duties with due care and honesty. Their performance was satisfactory. In spite of that the respondents discontinued their services and decided to fill up the posts by issuing an advertisement. Therefore, the applicants approached this Tribunal and prayed to quash the

communication dtd. 3.8.2018 issued by the res. no. 3 and sought declaration that they are entitled to continue in service of res. no. 3 on the post of Jr. Resident till regular and permanent employees are appointment on the post.

7. Respondent nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicants. It is their contentions that the applicants were appointed on temporary basis on the post of Jr. Resident in the Department of Dentistry, G.M.C., Latur. They were initially appointed for the period of 120 days on 30.7.2015 and were continued on the same post up to 1.8.2018 on the basis of appointment orders issued after every 120 days after giving technical breaks. It is their contention that the post of Jr. Resident came into existence through 'Residency Scheme' implemented in the Government Medical Colleges of the State vide G.R. dtd. 31.1.1996. The 'Residency Scheme' aims for betterment of patients and betterment of post graduate students thereby appointing them as 'Resident Doctors' by offering stipend. The said scheme was implemented as per the directions of Hon'ble Supreme Court passed in Civil Misc. Application No. 7667/1987 in W.P. no. 348 & 352/1985 as mentioned in G.R. dtd. 31.1.1996. It is their contention that the provisions of clause 3.1.0 and clause 1.5.7 as mentioned in Annex. A annexed to the G.R. dtd.

31.1.1996 are relevant to the present case. It is their next contention that clause 3 deals with eligibility and preferences for appointment to the post of Resident Doctors. Clause 3.1.0 clearly states that even after appointing post graduate students if any further vacancies remain, the appointments shall be made for 'service' purpose from any candidates holding requisite educational qualification. Clause 1.5.7 defines the appointment made for 'service' purposes. According to said clause 'service' appointments are short spell appointments made by advertisement and wait listing for a specified tenure not exceeding six months for rendering continuous service to the patients. The said appointments should be terminated after six month and for further period fresh appointments should be made by publishing an advertisement. It is their contention that the applicants were appointed for 'service' purpose as they were not post graduate students at the time of their initial appointment. The office of res. no. 3 ought to have terminated their services after six months. However they were continued in service for three years. It is their contention that the office of res. no. 3 erred not only in continuing the service of the applicants beyond six months but also in appointing them without publishing an advertisement. It is their contention that appointment of the applicants on the post of Jr. Resident was irregular and illegal and the office of the res. no. 3

was made aware of the error by post graduate students and other candidates who were eligible for appointment to the post held by the applicants. Therefore, the office of the res. no. 3 terminated the temporary appointment of the applicants and published an advertisement for fresh appointments. The action taken in that regard is just, legal and proper as per the provisions of the 'Residency Scheme' implemented by the Government.

8. They have denied that the applicants are employees. It is their contention that the Government in Medical Education & Drugs Department has empowered the Dean of respective Government Medical colleges to make appointments purely on temporary basis to the post of Assistant Professors and Medical Officers in regular pay scale. The employees appointed to these posts only can be considered as ad-hoc employees. The appointments made to the post of Resident Doctors cannot be treated as ad-hoc appointments as Resident Doctors are not entitled for regular pay scale. The applicants were appointed on stipend only during their entire tenure. It is obvious that employees appointed to stipendiary posts cannot be treated as ad-hoc employee and therefore they are not entitled for further continuation. It is their contention that there is no illegality in the

impugned communication. Therefore, they prayed to reject the O.A.

9. We have heard the arguments advanced by Shri Ganesh V. Mohekar, learned Advocate for the applicants and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents. We have also gone through the documents placed on record.

10. Admittedly the applicants have completed their B.D.S. in the year 2011 and 2007 respectively and they are registered as Registered Dental Practitioner under Maharashtra State Dental Council, Mumbai and their registration has been renewed from time to time. Admittedly both the applicants were appointed as Jr. Resident in G.M.C., Latur by the order dtd. 30.7.2015 issued by the res. no. 3 purely on temporary basis for the period of 120 days initially. Thereafter they were again appointed from time to time by giving technical breaks and they continued to work as Jr. Resident till 1.8.2018. Admittedly after completion of tenure of 120 days on 1.8.2018, the res. no. 3 has not issued further continuation order and informed them by communication dtd. 3.8.2018 that the posts may be filled in by publishing an advertisement and they may apply for the post after publication of an advertisement. Admittedly the applicants are not P.G. students and they are appointed as Assistant resident for 'service'

purpose. Admittedly appointments of the applicants have been made under 'Residency Scheme' implemented in the Government Medical Colleges of the State vide G.R. dtd. 31.1.1996.

11. Learned Advocate for the applicants has submitted that the applicants were serving on the post of Jr. Resident in the Department of Dentistry, Government Medical College, Latur continuously since 30.7.2015 to 1.8.2018. He has submitted that appointments of the applicants were made for 120 days on temporary basis and thereafter they were continued from time to time after giving technical breaks. He has submitted that since the applicants have been appointed on temporary and ad-hoc basis their services cannot be terminated unless and until regular appointments are made on the said posts. He has argued that the res. no. 3 has considered the request of the applicants and decided to fill up the posts of Jr. Residents by publishing an advertisement and informed the applicants accordingly by communication dtd. 3.8.2018. He has submitted that the action on the part of the res. no. 3 to fill up the post of Jr. Residents by publishing an advertisement is illegal. He has argued that the post of Resident Doctors is temporary and therefore the services of the applicants cannot be terminated unless and until the said posts are filled in by regular incumbent.

12. He has submitted that similar issue has been dealt with by the principal seat of this Tribunal at Mumbai in case of **Dr. Deepak Balvatkar & Ors. Vs. the State of Maharashtra & Ors. (O.A. no. 815/2015)** decided on 19.3.2019. In the said decision it has been held by the Tribunal that services of the ad-hoc employees cannot be replaced by another ad-hoc employees till regular appointments of the candidates nominated by the M.P.S.C. He has also placed reliance on the judgment of Hon'ble Supreme Court in case of **Hargurpratap Singh Vs. State of Punjab & Ors.** reported at **(2007) 13 Supreme Court Cases 292** and the decision of Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in case of **Dr. Anil s/o Sukhdevrao Dhage Vs. the State of Maharashtra & Ors. (writ petition no. 1250/2002)** decided on 13.8.2015.

13. Learned Advocate for the applicants has further submitted that 'Residency Scheme' has come into force in the Government Medical Colleges of the State of Maharashtra vide G.R. dtd. 31.1.1996. He has argued that similar scheme has been implemented by the Government of Kerala, wherein it has been mentioned that the resident Doctor will be temporary employee of the Institution. He has submitted that in view of the said fact the respondents ought not have decided to fill up the post of Jr.

Resident by publishing an advertisement. They should have considered the experience of the applicants rendered on the post and continued the services of the applicants. Therefore, he prayed to quash the impugned communication and to direct the res. no. 3 to continue the services of the applicants.

14. Learned C.P.O. has submitted that the Government of Maharashtra introduced a scheme namely 'Residency Scheme' by the G.R. dtd. 31.1.1996. The said scheme has been introduced for betterment of patients and students of post graduate. He has submitted that the object of the said scheme was to give financial security to the P.G. medical students. He has submitted that as per the provisions of clause (3.1.0) and clause (1.5.7) as mentioned in Annex. A attached to the G.R. dtd. 31.1.1996 the eligibility criteria for appointment of Resident Doctor has been provided. Moreover, it provides a provision regarding appointment made for 'service' purpose. He has submitted that as per the said provision the preference has to be given to the P.G. students for appointment on the post of Resident Doctor and the said appointment shall be made for the period of six months and thereafter it should be continued from time to time. He has submitted that as per the procedure laid down under the scheme the appointment should be made by publishing an advertisement

and from the eligible candidates. Even after appointing the post graduate students if any further vacancies remain, the appointments shall be made for 'service' purpose from other eligible candidates possessing requisite educational qualification as mentioned in the scheme and G.R. He has submitted that the applicants were not eligible to be appointed on the post of Jr. Resident in view of the rules framed under the said scheme, but the res. no. 3 appointed them in violation of the rules and they were continued in the service for the period of three years. He has submitted that the said irregularity has been brought to the notice of the res. no. 3 by the post graduate students and other candidates who were eligible for appointment to the posts held by the applicants. Therefore, the res. no. 3 decided to fill up the posts by publishing an advertisement and therefore he has not given reappointment to the applicants. He has submitted that the res. no. 3 has accordingly informed the applicants by communication dtd. 3.8.2018 and there is no illegality therein. Therefore, he prayed to reject the O.A.

15. On perusal of the record it reveals that the applicants have been appointed as Jr. Resident – I in the Government Medical College, Latur initially for a period of 120 days by the order dtd. 30.7.2015 and after completion of the said period they had been

reappointed by giving technical break for a period of 120 days from time to time. Their last tenure had come to an end on 1.8.2018. They have been appointed as a Jr. Resident – I in view of the 'Residency Scheme' implemented by the G.R. dtd. 31.1.1996. On perusal of the G.R. dtd. 31.1.1996 it is clear that the said scheme has been introduced by the Government in view of the directions of Hon'ble Supreme Court in Civil Misc. Application No. 7667/1987 in W.P. no. 348 & 352/1985 in order to provide the medical aid to the patients and provide financial assistance to the post graduate students. Accordingly the Government framed the rules for Resident Scheme with effective from January, 1996. The said rules are appended to the G.R. as Annex. A. On going through the objective, scope of it, it is clear that the Government has introduced the scheme for betterment of patients and to give financial assistance to the post graduate medical students. Rule 1.0.1 to 1.3.0 are relevant in this regard and the same reproduced below :-

“(1.0.1) These rules envisage a modified system of cyclic appointments at Government Medical Colleges in Maharashtra for a fixed tenure and shall be known as Residency Scheme.

(1.0.2) The Residency Scheme envisaged under these rules aims at making available the services of resident Doctors strictly on schedule in the maximum

interest of patient care. Secondly, it aims at providing betterment in post graduate medical education by offering best possible financial security and equitable work opportunity within available resources.

(1.1.0) The envisaged schemes does not imply a generic sense; nor does it emulate any established model of similar system in toto. The system model is specific selective and distinctive in its scope.

(1.2.0) These rules do not purport to hold out any promise to anyone.

(1.2.1) The rules enable interests of post graduate medical education to be concordant with interests of patient care based on the principle of mutual benefit. However, in case these interests clash, patient care interests shall rule superior.

(1.3.0) In view of its complexity, the scheme shall not be on to piecemeal approach, or jerky changes.”

Rule 1.5.7 defines ‘service appointment’, which reads as under :-

“(1.5.7) ‘Service appointment’ means short spell appointment made by advertisement / waitlisting, for a specified tenure not exceeding the six months, for rendering continuous service to the patients.”

16. Rule 2 provides time frame for appointment on the said post, whereas Rule 3 provides eligibility and preferences. The rule (3.1.0) is relevant in this regard, which reads as under :-

“(3.1.0) Having exhausted appointments under Clause 3.0.1 and 3.0.2 if any further vacancies remain the appointments shall be made for ‘service’ purposes from any candidates in following order of preference provided the candidates have obtained their M.B.B.S. degree from a statutory university, and the same is recognized by Medical Council of India.”

17. On perusal of the said rules it is crystal clear that in view of the said rules the appointment on the post of Resident Doctors should be made from the post graduate students by publishing an advertisement. If sufficient number of students are not available and further vacancies are available then appointment shall be made for ‘service’ purposes as per rule 3.1.0 from the candidates, who have obtained M.B.B.S. degree from the statutory University and the same is recognized by the M.C.I. The applicants have been appointed for ‘service’ purposes as they are not post graduate students. While giving appointment to them, the res. no. 3 had not followed the procedure laid down in the rules framed under the scheme by the Government. On perusing the provisions of Rules it reveals that the applicants were not eligible to be appointed as Resident Doctors as they have not passed

M.B.B.S. In spite of that they continued in service for three years. The res. no. 3 realized the mistake committed by him when it was brought to his notice by the post graduate students and therefore he decided not to give continuation / reappointment to the applicants on the post of Resident Doctor and decided to fill up the posts by publishing an advertisement and accordingly informed the applicants about his decision by the communication dtd. 3.8.2018. There is no illegality in the decision taken by the res. no. 3 in that regard as well as in the communication dtd. 3.8.2018 issued by him. Therefore, no interference in the said decision is called for. The res. no. 3 has further informed the applicants that they shall participate in the recruitment process, if they are eligible after publication of an advertisement for filling in the said posts of Resident Doctor. Therefore, there is no illegality in the impugned communication.

18. We have gone through the decisions relied by the learned Advocate for the applicants. In all the above cited cases the applicants were appointed on ad-hoc basis in the regular pay scale till the appointment of regular candidates by the M.P.S.C. and therefore the Hon'ble Supreme court, Hon'ble High Court and this Tribunal has granted protection in their favour. In the present case the applicants were appointed for a temporary

period. They were not getting the pay scale but they were getting stipend. Therefore they cannot be said to be appointed on temporary and ad-hoc basis. Therefore, the above cited decisions relied on by the learned Advocate for the applicants are not attracted in this case.

19. Therefore, in our opinion, no interference is called for in the impugned order. The applicants are not entitled to continue in the post of Resident Doctor –I as their appointments have been made by the res. no. 3 without following the due procedure as laid down in the scheme framed by the Government. Therefore, the applicants are not entitled to get declaration as sought for. There is no merit in the Original Application. Hence, the Original Application deserves to be dismissed. Hence, we pass following order :-

ORDER

Original Application no. 594/2018 stands dismissed. In view of dismissal of Original Application the interim relief granted by the Tribunal vide order dtd. 9.8.2018 is vacated. There shall be no order as to costs.

(P.N. DIXIT)
VICE CHAIRMAN

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 10th October, 2019