

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH : NAGPUR.
ORIGINAL APPLICATION NO. 348/2015

Dr. Sudhakar Mahadeorao Parhate,
R/o Govt. Quarters, Gorakshan Road,
Akola , Tah. And Distt. Akola.

-----**APPLICANT.**

-Vs-

1. The State of Maharashtra ,
Through its Secretary, Medical Education and
Drugs Department,
Mantralaya, Mumbai
2. The Director, Medical Education and Drugs,
Govt. Dental College Building Behind CST, Fort, Mumbai.
3. The Dean, Govt. Medical College,
Akola.
4. Dr. N.D. Balani, Govt. Medical College,
Akola.

-----**RESPONDENTS.**

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1. Shri S.N. Gaikwad, Advocate for the applicant .
 2. Shri A.P. Sadavarte, P.O. for the respondents 1 to 3.
 3. None for R/4.

**CORAM : B. Majumdar : Vice-Chairman
&**

S.S. Hingne: Member (J)

DATE : 2nd May, 2016.

ORAL ORDERPER VICE-CHAIRMAN

The applicant is an Associate Professor of Pharmacology, Govt. Medical College, Akola. He has filed this O.A. as he is aggrieved that he has not been promoted as Professor. The applicant was appointed as a Lecturer at G.M.C., Nagpur in 1990. R/4, Dr. N.D. Balani, was appointed on 1/8/1992. A DPC was held at the level of the Director of Medical Education and Research (R/2) on 5/6/2015. Following this, on 6/6/2015, R/2 issued an order granting fortuitous promotion to the applicant for 360 days subject to a candidate sponsored by MPSC being available. In the final seniority list of Associate Professors as on 1/1/2015 the applicant is placed at Sr. No. 25 and R/4 at Sr. No. 2. On 6/6/2015 the applicant had given an undertaking before R/2 which, *inter alia*, stated as follows :-

- 9) "मला मिळालेली नियुक्ती ही संस्थेतील विद्यार्थांचे शैक्षणिक अडचण दूर करण्यासाठी मिळालेली आहे, असे मी समजते/समोजतो.

- २) या नियुक्तीमुळे मी नियमित पदोन्नतीसाठी हक्क सांगणार नाही याची हमी देते/देतो.
- ३) या संबंधात मी कोणत्याही न्यायालयात दावा दाखल करणार नाही व हक्क सांगणार नाही, हे देखील या प्रतिज्ञा पत्राद्वारे हमी देत आहे.
- ४) तसेच माझी नियमित पदोन्नती शासनाकडून त्याच संस्थेत , त्याच पदावर जरी केली तरी वरिष्ठ पदावर केलेली तात्पुरती केलेली सेवा गृहीत धरण्याची वा त्याचे लाभ व मानीव दिनांक मिळण्याबाबत कोणत्याही प्रकारचे अभिवेदन मी सादर करणार नाही व तसा माझा कोणताही हक्क राहणार नाही . या हमी पत्राद्वारे लिहून देत आहे.
- ५) सदरची पदोन्नती राज्यस्तरीय सेवाजेष्ठता क्रमांक व अनुशेष विचारात न घेता केलेली आहे, याची मला जाणीव आहे.
- ६) उपरोक्त सर्व अटी मला मान्य आहे, असे हमीपत्र लिहून देत आहे."

2. On 9/6/2015 the Govt. in Department of Medical Education and Drugs issued an order granting fortuitous (तदर्थ) promotion to R/4 whereby the applicant stood reverted as Lecturer. The applicant has challenged the legality of this order in the O.A.

3. The applicant submits that two different authorities have passed different orders in favour of two different persons. The order granting him promotion states that it is for a period of 360 days or the availability of a regular candidate through MPSC but before completion of this period and before a regular candidate could be appointed the impugned order has been issued. He further submits that till today he had not handed over the charge to anyone and R/4 has not joined in his place.

4. The Secretary, Medical Education and Drugs Department (R/1) in his reply submits that R/4 was promoted as per the final seniority list dtd. 1/1/2015 in which he is placed above the applicant. R/1 is the competent authority to issue promotion orders for the cadre of Professor and in case of R/4 his promotion was granted after following due procedure of the Establishment Board of the Govt. The conditions of order of promotion of the applicant clearly state that the promotion is on a temporary basis and the applicant had also furnished an indemnity bond that he was accepting the ad hoc promotion.

Hence the applicant has no right to continue on this post or to claim regular promotion.

5. Shri S.N. Gaikwad, Id. counsel for the applicant mainly reiterated the submissions of the applicant in the O.A. He relied strongly on the conditions stipulated in the order of promotion of the applicant, wherein it is stated that the temporary promotion will lapse once a regularly appointed candidate to the post ~~is~~ ^s joined through MPSC. Hence the applicant was required to be reverted only if such a candidate had joined.

6. Shri A.P. Sadavarte, Id. P.O. for the respondents vehemently opposed the O.A. by submitting that R/2 i.e., the Dean of the Govt. Medical College is not competent to grant regular promotion to the post of Professor and hence he had granted ad hoc/fortuitous promotion to the applicant purely on a stop-gap basis. This was clearly stated in the order of promotion. The applicant had also executed an undertaking that he was accepting this promotion as a purely temporary

one and that he would not claim any right to regular promotion on this basis. The Govt. had issued an order of promotion of R/4 after following the due procedure of getting recommendations of the Establishment Board. The only reason why the order of promotion of R/4 stated that it was ad hoc because it was subject to being approved by MPSC.

7. None was present for R/4 nor any return was filed on his behalf.

8. We find that undisputedly R/2, i.e. Dean, Govt. Medical College, Akola is not competent to grant appointment to the post of Professor, which is a Senior Group-A post through nomination or promotion. This authority is vested with the State Govt. The fact that the applicant's appointment was for a limited period of 360 days and it was on the basis of the recommendations of the DPC held at the level of R/2, in our view, clearly demonstrates that promotion was granted on a stop-gap basis till regular appointment by Govt. It is also not disputed that R/4 was promoted on the basis of his seniority

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over the applicant and as per the recommendations of the Establishment Board of the Govt. which is the competent body to approve regular promotion. Thus the promotion of R/4 cannot be said to be a stop-gap arrangement. It is also obvious that the said order of promotion states it to be ad-hoc as the approval of MPSC to the order was awaited. By giving an undertaking dtd. 6/6/2015 the contents of which we have already reproduced in para 1 above, the applicant had admitted and accepted that he was aware of the temporary and stop-gap nature of his promotion and that it was done without considering his state level seniority and issues like backlog, etc. Thus, we find no illegality in the impugned order dtd. 9/6/2015 promoting R/4 as Professor in place of the applicant. The O.A. is therefore without any merit and stands rejected with no order as to costs.

sd/-

(S.S. Hingne)
Member (J)
Skt.

sd/-

(B. Majumdar)
Vice-Chairman.