

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 955 OF 2019**

DISTRICT : SANGLI

Dr Shekhar Sakharam Rajderkar)
Presently serving as Professor,)
Department of Community Medicine,)
Government Medical College, Miraj)
R/o: 169, 'Swati Bungalow',)
Rama Udyan, Phase-II, Pandharpur Rd,))
MIRAJ 416 410.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary)
Department of Medical Education)
& Drugs, 9th floor,)
G.T Hospital Campus,)
L.T Road, Mumbai 400 001.)
2. The Dean,)
Government Medical College,)
Miraj, Pandharpur Road,)
Miraj, Dist-Sangli 416 410.)
3. The Director,)
Directorate of Medical Education)
& Research, 4th floor,)
Government Dental College)
& Hospital, St. Georges' Hospital)
Compound, Near CST, Mumbai.)
4. The Registrar,)
Maharashtra University of Health)
Science, Mhasrul, Vani Dindori Rd)

- Nasik 422 004.)
5. Maharashtra Public Service)
Commission, through Secretary,)
5th, 7th & 8th floor,)
Cooperage Telephone Exchange,)
M.K Marg, Mumbai 400 021.)
6. Dr V.P Rukhmode,)
Ad hoc Dean,)
Govt. Medical Colelge, Gondia,)
Nehru Putla Statute,)
Gondia, Maharashtra 441 601.)
7. Dr S.B Deshmukh, Ad hoc Dean,)
SRTR Govt. Medical College,)
Ambejogai, Dr B.R Ambedkar Rd,)
Ambejogai, Maharashtra 431 517)
8. Dr Manish Shrigirwar,)
Ad hoc Dean,)
Govt. Medical College, Yevatmal,)
Waghapur Road, Palswadi Camp,)
Civil Lines, Yevatmal,)
Maharashtra 445 001.)
9. Dr. Girish Thakur,)
Ad hoc Dean,)
Govt. Medical College, Latur.)
Mataji Nagar, Motinagar,)
Latur, Maharashtra 413 512.)
10. Dr. Sanjaykumar Tambe,)
Ad hoc Dean,)
Plot no. P-107, MIDC Area,)
Tal-Baramati, Pune 413 133.)...**Respondents**

Shri Gaurav Sharma, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Shri P.N Dixit (Vice-Chairman) (A)**
Shri A.P Kurhekar (Member) (J)

DATE : **02.11.2020**

PER : **Shri P.N Dixit (Vice-Chairman) (A)**

ORDER

1. Heard Shri Gaurav Sharma, learned advocate for the applicant and Ms Swati Manchekar, learned C.P.O for the Respondents.

2. The Original Application is regarding promoting the applicant to the post of Dean, as he has been working as Professor and Head of the Department since 18.3.2009. In this O.A he has made following prayer by way of amendment.

“9(e) That this Hon’ble Tribunal may be pleased to directed the Respondents also to consider the candidature of the applicant for the post of ‘Dean’ immediately upon vacancy of ‘Dean’ in any of the Medical College (s) in the State of Maharashtra under the direct control and supervision of the Respondents;

and/or further this Hon’ble Tribunal may be pleased to direct the Respondents to promote and appoint the applicant to the post of Dean from the date of appointment of juniors of the applicant, being the applicant senior to the Respondents nos, 6,7, 8, 9 & 10 by quashing and setting aside their appointment as ad hoc Dean.”

3. The learned advocate further mentions that he had served the notice repeatedly on the private Respondents. However, none of them are represented.

4. The Respondents no. 1, 2 & 3 have filed their affidavit in reply to the amended Original Application. Similarly affidavit has also been filed by M.P.S.C. The affidavit states that Respondents no. 6 to 9 are ad hoc Deans (Acting Deans). Respondent no. 8 has already taken Voluntary Retirement. Respondents no 6, 7 & 9 are not ad hoc Deans. They are acting Deans. They are not at all promoted as Dean either on temporary

or on ad hoc basis. They have been just given additional charge of Dean at local level to facilitate routine administrative work.

5. The learned C.P.O on instructions states that the process of promoting Professors to the post of Dean is under process and is not completed. According to learned C.P.O, no junior person to the applicant has been promoted to the post of Dean. The seniority list of Professors is enclosed to the Original Application from page no. 196, Exh. 'H' to 'EE'. The name of the applicant is figuring at Serial no. 98 on page no. 196R. Perusal of the seniority list reveals that there are other persons who are senior to the applicant and they are above him. Learned C.P.O submits that the regular promotion to the post of Dean would be on the basis of this seniority list and the applicant has not disputed the seniority list.

6. The learned advocate for the applicant points out that the posting of Acting Deans is contrary to the administrative instructions and orders issued by DoPT from time to time. He further submits that they are occupying these posts as Acting Dean for more than 3 years. Learned advocate for the applicant states that overlooking his case for the post of Acting Dean is contrary to legal provisions and under Article 14 and 16 of the Constitution of India.

7. The affidavit filed by the Respondents do not mention any legal impediment in considering the applicant for the post of Acting Dean like others who are posted in other Medical Colleges.

8. Learned C.P.O further mentions that in case applicant is considered for giving such Acting Dean post, he should be required to join anywhere. Learned advocate for the applicant submits that the applicant is prepared to work anywhere in Maharashtra if posted in the capacity as Acting Dean as the others have been appointed. Learned advocate for the applicant mentions on instructions that he has no hesitation and he would join at any place as Acting Dean.

9. Meanwhile learned advocate points out that the MPSC had published an advertisement on 14.6.2018 for the post of nominated Dean. There were 2 vacancies. The results were published on 6.11.2018. The list of selected candidates was published on 6.11.2018, (Page 196-D of the Paper Book mentions two names). Both these persons have superannuated. In addition MPSC had also published waiting list of 8 persons at (page no. 196E). The name of the applicant is at serial no. 6 of the same from open category. According to learned counsel for the applicant select list is valid for a period of 2 years and would be expiring on 5.11.2020. According to him, the applicant therefore needs to be considered for the appointment as Dean if there is a vacancy for the open category. However, the select list also mentions that there is no post available for open category.

10. Learned C.P.O submits that as per the results published by MPSC on 6.11.2018, two persons, namely Thakur Sanjiv Shamrao was appointed in the category of S.T and Upalekar Kalpana Vishnupant was selected for appointment from open category. However, Upalekar Kalpana Vishnupant submitted that she is not interested to work as Dean. As such, next person in the merit list in the open category Mr Humne Arun Yeshwantrao, was appointed as Dean on 24.9.2020. Thus according to learned C.P.O there is no post which is remaining to be filled in the categories that have been advertised and selected by MPSC. Hence according to her it would not be possible to consider the name of the applicant for appointment as Dean as claimed by him in the O.A.

11. According to learned C.P.O, Mr Humne A. Yeshwantrao, has been appointed as per order dated 18.11.2019 passed in O.A 874/2019 by the Nagpur Bench of this Tribunal.

12. Learned advocate for the applicant relies on the judgment of the Hon. Supreme Court in **Manoj Manu & Ors Vs. Union of India & Ors Civil Appeal 6707/2013, arising out of S.L.P (Civil) No 26967/2011** dated 12.8.2013, the relevant portion reads as under:-

“14. It is, thus manifest that though a person whose name is included in the select list, does not acquire any right to be

appointed, the Government may decide not to fill up the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once, it is found that the decision of the Government is based on some valid reason, the Court would not issue any Mandamus to Government to fill up the vacancies.”

13. Learned counsel for the applicant further argued that as the applicant was in the list of selected candidates there vacancies should have been filled in by persons who are in the list of selected candidates. He therefore submitted that the ratio laid down by the Hon. Supreme Court should be implemented. No one should have been appointed as Acting Dean, on local basis.

14. Learned C.P.O points out that the advertisement was only for two posts and action has been taken. In respect of other posts, advertisement needs to be issued and existing list cannot be utilized for filling up the vacancies after the advertised posts have been filled in.

15. Learned advocate for the applicant also relies on the judgment of Hon'ble Supreme Court in Secretary, **State of Karnataka & Ors Vs. Uma Devi & Ors, (2006) 4 SCC 1**. The relevant portion is reproduced below:-

“An ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee. He must be replaced by only a regularly selected employee.

33. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization

38. In Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Others [2006 (2) SCALE 115], this Court answered the question, who was a Government servant and stated:- "Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of

Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words "employment" or "appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution (See B.S. Minhas Vs. Indian Statistical Institute and others AIR 1984 SC 363)

42. While answering an objection to the locus standi of the Writ Petitioners in challenging the repeated issue of an ordinance by the Governor of Bihar, the exalted position of rule of law in the scheme of things was emphasized, Chief Justice Bhagwati, speaking on behalf of the Constitution Bench in Dr. D.C. Wadhwa & Ors. Vs. State of Bihar & Ors. (1987 (1) S.C.R. 798) stated: "The rule of law constitutes the core of our Constitution of India and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the Executive or any other authority should be within the constitutional limitations and if any practice is adopted by the Executive which is in flagrant and systematic violation of its constitutional limitations, petitioner No. 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice."

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee."

16. Learned advocate for the applicant submits that the persons who have been appointed as Acting Deans have not been selected by MPSC for the post of Dean. However, applicant has been selected by MPSC and therefore his claim is on much stronger footing than the other candidates who have been appointed as Acting Deans.

17. Learned advocate for the applicant also relies on the judgment of the Hon'ble Supreme Court in **Rudra Kumar Sain & Ors Vs. Union of India (UOI) & Ors, W.P (C) No. 490/1987 with W.P (C) Nos 1242/90, 14114/84, 707/88, 856/88 and 764/88 dated 22.8.2000**, wherein various terms such as ad hoc, stop gap, fortuitous have been discussed by the Supreme Court. The Hon'ble Supreme Court observed as under:-

“If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as ‘ad hoc’ or ‘stop-gap’. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as ‘fortuitous’ in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then, it can appropriately be called as a ‘stop-gap’ arrangement and appointment in the post as ‘ad hoc’ appointment. It is not possible to lay down any straight-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stop-gap) can be made.”

Learned advocate for the applicant therefore reiterates that the persons who are occupying the post of Acting Dean have been continuing since last 3 years and thus, effectively denying the applicant of the opportunity to be posted as Dean. Learned advocate states that as mentioned in the affidavit by the Respondents, the persons who are working as Acting Dean are given temporary charge as stop gap arrangement at local level. The affidavit further states that while giving the additional charge, local seniority has been considered. Advocate for the applicant submits, this practice of local seniority is unheard of and has no legal approval.

18. Learned C.P.O points out that the selection for the post by MPSC was for direct nominee and two posts have already been filled in. As far as remaining post from 50% is concerned, they are to be filled in by promotion and the process of promotion for the post of Dean has been started. However, the applicant is much junior and not in the zone of consideration and he may not be included in the list of persons to be considered for promotion.

19. There is difference in appointment as ad hoc Dean and appointment as Acting Deans. The judgments referred to by learned counsel for the applicant pertains to ad hoc appointment and the practice of ad hoc appointment is deprecated, whereas the appointment of Respondents no 6 to 10 is as Acting Deans at local level from the point of administrative convenience. Therefore, the decisions of the Hon'ble Supreme Court referred by the learned counsel for the applicant are hardly of any assistance to him

20. However, it seems that Respondents no 6 to 10 were appointed as Acting Deans in view of vacancy in the post of Dean to facilitate routine administrative work at local level. As such, the posting of Respondents no 6 to 10 as Acting Deans is purely a stop gap arrangement and it does not create any right in favour of them for promotion to the post of Dean. Therefore, this arrangement of appointing Respondents no 6 to 10 as Acting Dean being purely for administrative convenience and stop gap arrangement need not be disturbed.

21. In so far as relief claimed by the applicant for promotion to the post of Dean is concerned, it is premature as the post of Dean is required to be filled in on the basis of seniority and the process for the same is already under way. Therefore, we are not inclined to grant any such relief.

22. However, considering that persons junior to the applicant are appointed as Acting Deans, the request of the applicant to consider him for the post of Acting Dean anywhere in Maharashtra is reasonable and

deserves to be accepted. We, therefore, direct the Respondents to consider the applicant for the post of Acting Dean anywhere in the State of Maharashtra and issue appropriate orders within four weeks from today. The decision to be communicated to the applicant within two weeks thereafter. It is clarified that the posting of the applicant as Acting Dean would not create any right whatsoever in his favour to claim promotion to the post of Dean.

23 With the above directions, Original Application stands disposed of. No order as to costs.

Sd/-

(A.P Kurhekar)
Member (J)

Sd/-

(P.N Dixit)
Vice-Chairman (A)

Place : Mumbai

Date : 02.11.2020

Dictation taken by : A.K. Nair.