

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1170 OF 2016**

**DISTRICT : THANE**

Dr. (Shri) Rajendra R. Avhad. )  
Age : 34 Yrs., Working as Ad-hoc Assistant )  
Professor in Dentistry Grant Government )  
College and Sir J.J. Group of Hospitals, )  
Byculla, Mumbai 400 008 and Residing at )  
Dhananjay Krupa Society, Near Shiva )  
Temple, Dombivali (E), Dist : Thane. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Medical Education & Drugs Dept., )  
Mantralaya, Mumbai - 400 032. )
2. The Director of Medical Education & )  
Research, Having Office at 4<sup>th</sup> Floor, )  
Govt. Dental College & Hospital )  
Building, St. George's Hospital )  
Compound, Mumbai - 1. )
3. Dr. Sandip Chavan. )  
Age : Aged, Appointed as Assistant )  
Professor, Dentistry and posted in )  
Grant Government Medical College, )  
Mumbai. )



4. Dr. Sunanda Dhivare. )  
 Age : Aged, Appointed as Assistant )  
 Professor, Dentistry and posted in )  
 Grant Government Medical College, )  
 Mumbai. )...Respondents

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 27.06.2017**

### **JUDGMENT**

1. The issue is as to whether the Applicant initially appointed as a bonded candidate and later on, on temporary basis can block the appointments of regularly appointed candidates through the Maharashtra Public Service Commission (MPSC) on the ground that on the principle of "last come first go" those who joined after the Applicant on temporary basis should first of all make room for the said candidates and in any case, there are other posts to which the regularly appointed MPSC candidates could be appointed to.

2. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the



Applicant and Mr. A.J. Chougule, the learned Presenting Officer (PO) for the Respondents.

3. The 1<sup>st</sup> Respondent is the State of Maharashtra in Medical Education and Drugs Department, the 2<sup>nd</sup> Respondent is the Director of Medical Education and Research and the 3<sup>rd</sup> and 4<sup>th</sup> Respondent are the candidates having been appointed through MPSC as Assistant Professors of Dentistry and appointed in Grant Government Medical College, Mumbai.

4. It is not much in dispute that the Applicant on 2.9.2011 came to be appointed as a bonded candidate and then w.e.f.06.11.2013, he was appointed on temporary basis for 364 days. The present OA came to be instituted on 14.12.2016 as on which date, the Applicant has just about completed three years of temporary appointment. He was appointed as Assistant Professor in Dentistry. Perusal of Page 64 of the PB, which is an order of 12<sup>th</sup> September, 2016 issued by the Dean of the Government Dental College, Mumbai (in Marathi) would show that the Applicant came to be appointed on 30.8.2016 (re-appointed) for 120 days from the date he assumed the charge or the regularly appointed MPSC candidate became available whichever was earlier. It was a purely temporary appointment which would come to an end all by itself after



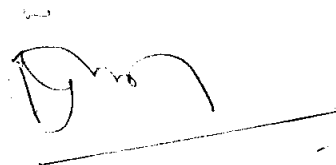
the completion of the said period and it would not be necessary to issue any separate order. As far as the bonded candidates were concerned, their case would be submitted to the Government for appointment for 264 days. There was certain other direction given to the Applicant which is not necessary to be set out herein.

5. By the State Government decision of 22.10.2016, the State Cabinet took a decision as a one-time measure to accord permanency to the temporary Lecturers in Government Medical Colleges and Ayurvedic Colleges. In the preface, it was stated that the posts under the control of Sir J.J. Group of Hospitals, the regular posts of Assistant Professors had not been filled up. Therefore, w.e.f.24.10.2016 as an extremely exceptional circumstance and one time measure, the regularization was being given to the temporary Assistant Professors, etc. In the Government Medical Colleges and Hospitals, 159 such candidates were there and their names had been set out in the Schedules thereto annexed. The Applicant obviously seeks the benefit thereof, but it so happened that the State Government issued an order dated 6<sup>th</sup> December, 2016 whereby nine Doctors came to be appointed through MPSC and the 3<sup>rd</sup> and the 4<sup>th</sup> Respondents were there in that list and they were appointed in Grant Medical College, Mumbai



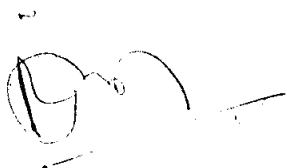
which would make the position of the Applicant difficult. It is his case that there were others, those such similarly placed as he was, but they were in the manner of speaking junior, and therefore, they should be first of all made to make way for the said private Respondents but in any case, even the Applicant should not be disturbed because there were other vacancies at various other places in the State which the newly regularly appointed candidates could be accommodated. The record would show that, as late in the month of April, 2017 on being moved by the Applicant, this Tribunal wanted to know, if there were vacancies elsewhere, but it would appear from the tone and tenor of the submissions on behalf of the State and in the Affidavit-in-reply that, no such vacancies were there, and therefore, there was no other-go but to see to it that the Applicant made way for regularly appointed Assistant Professors.

6. It must have become very clear from the above discussion that even as the Applicant seeks to block the entry of the regularly appointed MPSC candidates, there was a clear stipulation to the contrary in his order of appointment and even generally, in the absence of compelling legally acceptable source, in my opinion, it cannot be successfully argued that the regularly appointed

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MPSC candidates should be subordinated to the temporary appointees. For all practical purposes, what the Applicant really wants is from this Tribunal to regulate the functioning of the concerned Department from here and that is quite clearly not an acceptable course of action. In my opinion, other factors remaining constant, this Tribunal shall not be in a position to so regulate their process and procedure as to assume to itself the *defacto* administratorship. Unless it was shown that the move was marred by malafides or was otherwise falling foul with the constitutional guarantee, I do not think, it would be possible for me to interfere in the manner, the Applicant wants me to do. After-all, as between the regularly appointed MPSC candidates and the temporary employees, there is bound to be some tussle, but on basic principles, the regular MPSC appointees must carry the day.

7. My attention was invited on behalf of the Respondents to the Judgment of the Hon'ble Bombay High Court at its Nagpur Bench in **Writ Petition No.4953/2013 (Dr. Harshal Mohan Chandorilar Vs. State of Maharashtra and 2 other Writ Petitions, dated 9<sup>th</sup> October, 2013.** The present facts are in fact, much better placed in favour of the Respondents because in that matter, two sets of temporary employees were there while



here, the Respondents 3 and 4 are regular MPSC appointees. The above observations would squarely apply even to the principles of "last come first go" because again, I do not think, it is open to this Tribunal to micro-manage the affairs of the Respondents. I find no merit in this Original Application and the same is accordingly dismissed with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**27.06.2017**

27.06.17

Mumbai

Date : 27.06.2017

Dictation taken by :

S.K. Wamanse.

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