

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**O.A.NO.1180/2016 (O.A.NO.237/2015 NAGPUR) WITH  
O.A.NO.110/2017 WITH  
O.A.NO.401/2017 (O.A.658/2015 NAGPUR)**

DISTRICT : NAGPUR

**O.A.NO.1180/2016 (O.A.NO.237/2015 NAGPUR)**

1. Roman Motiram Janbandhu, )
2. Vishal Prakash Khalane, )
3. Javedkhan Hafijkhan Pathan )
4. Kiran Ramanlal Totala )
5. Vishwas Kundalik Dhas, )
6. Sachin Shrikant Memane, )
7. Sachin Shankar Gadekar, )
8. Ashok Kisan Amode, )
9. Govind Bhagwanrao Waghmare, )
10. Santosh Ashok Relekar, )
11. Jitendra Vasudeo Amritkar )
12. Shriram Gangadhar Kavitate, )
13. Deshmukh Deepakkumar Panditrao )
14. Nitin Sudam Kapadis, )
15. Amolkumar Vasantrya Linghate )
16. Attadeep Desharath Maksare, )
17. Sandeep Samadhan Dutte )
18. Pramod Nimba Patil )
19. Soham Arunrao Gaikwad )
20. Nilesh Somnath Metkar )
21. Viren Vijay Dixit )
22. Amitkumar Pundlik Devhare )
23. Somnath Awadaji Pagar )
24. Amit Namdevrao Bansode )
25. Vidya Arjunrao Nagre )
26. Varsharani Shamrao Mane )
27. Rahul Ramesh Kale )
28. Kamalakar Madhukar Tidke )
29. Siddharth Panduragrao Landge )
30. Bhim Premdas Kunte )
31. Yogeshwari Subhash Patil )
32. Sharayu Omprakash Sonawane )
33. Chandraprabha Prabhakar Pethkar )
34. Nikita Prakash Kumble )
35. Vikas Gangaram Chavan )
36. Pratibha Kashinath Patil )
37. Shilpa Maruti Sonawane )
38. Amrita Siddharth Netkar )
39. Ashwini Madhukar Chaugule )
40. Rupali Dhanraj Patil )

41. Sangeeta Namdeorao Bhoyar )  
 42. Bhagwat Kushwarta Shivnath )  
 43. Rohini Panditrao Jadhav )  
 44. Ramkrishna Bhaurao Kolhe )
- ....Applicants**

**VERSUS**

1. State of Maharashtra, )  
 Through its Principal Secretary, )  
 Higher and Technical Education, )  
 Mantralaya, Mumbai 400 032 )
2. The Director of Technical Education )  
 State of Maharashtra, 3 M.C. Road, )  
 P.B. No.1967, Near Cama Hospital, )  
 Mumbai 400 001 )
3. The Maharashtra Public Service )  
 Commissioner, through its )  
 Secretary, Bank of India Building, )  
 3<sup>rd</sup> floor, Mahatma Gandhi Marg, )  
 Hutatma Chowk, Mumbai 400 001 )
- ....Respondents.**

**WITH**

**O.A.NO.110/2017**

- Shri Kedar Sharad Joshi, )  
 R/at. Balaji Heights, Flat No.603, )  
 Jambhulwadi Road, Near Telco Colony, )  
 Ambegaon Khurd, Taluka-Haveli, )  
 District-Pune, 411 046 )
- .....Applicant**

**VERSUS**

1. The State of Maharashtra & 2 Ors. )
- ....Respondents.**

**WITH**

**O.A.NO.401/2017 (O.A.658/2015 NAGPUR)**

- Mahamadgaus Abdulgani Patel, )  
 Residing C/o. N.M. Shaikh, Plot No.20, )  
 Mumtaj Nagar, Solapur 413 003 )
- .....Applicant**

**VERSUS**

1. The State of Maharashtra & 2 Ors. )
- ....Respondents.**

Mr. R.G. Panchal, learned Counsel for the Applicants.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM** : **Justice Mridula Bhatkar, Chairperson.**  
**Ms. Medha Gadgil, Member (A)**

**RESERVED ON** : **05.09.2023.**

**PRONOUNCED ON** : **21.09.2023.**

### **J U D G M E N T**

1. Total 58 candidates had approached this Tribunal for seeking directions that the Respondents No.1 & 2 should issue the orders of appointment as lecturers of English to the Applicants and from the date of the Selection they are to be treated as employees. The advertisement was issued on 06.07.2023 for the various posts including Lecturers in English. All over Maharashtra 92 posts were advertised. In O.A. No.1180/2016 out of 58 candidates now only 39 candidates along with one candidate each in O.A.No.110/2017 and O.A.No.401/2017 maintain their grievance before us. All these Applicants were selected and their names appeared in the merit list dated 24.07.2014. M.P.S.C. has declared list of 87 recommended candidates and the names of the Applicants are included therein. Out of select list of 87 as on today 41 candidates were left out without appointment. On account of Judgment of Hon'ble Bombay High Court in ***Writ Petition No.2046/2010 (Sachin Ambadas Dawale v/s. State of Maharashtra & another)*** decided on **19.10.2023**, the persons who were working on Ad-hoc or temporary basis were regularized, and therefore many posts out of 92 posts of Lecturers in English were consumed by those persons who were working

on Ad-hoc or temporary basis in all over Maharashtra and were accommodated on respective post.

2. Learned Counsel for the Applicant has submitted that the Applicants who are selected / recommended have vested right and cannot be kept without relief so they should be given the appointments. He has submitted that candidate who was appointed last from this select list is on 07.09.2017. Thus one by one earlier 26 Applicants were appointed from the select list. However, still 41 are without appointment. Learned Counsel for the Applicant further submits that the stand taken by Government that it does not give any right to the candidates, is not available to the Government as some candidates from the select list are appointed and therefore they have right under Article 14 of Constitution of India. Learned Counsel has produced G.R. dated 21.09.2022 regarding creation of Supernumerary Posts.

3. Learned Counsel Mr. Panchal has very vigorously argued the case of the Applicants. He submitted that the Government has committed an error in misinterpreting the decision of **Sachin Dawale (supra)**. The recommended candidates from the recruitment through M.P.S.C. though were consciously saved by the Division Bench of the Hon'ble High Court, Nagpur Bench in the case of **Sachin Dawale (supra)**, these applicants are the victims of erroneous interpretation and implementation of the case of **Sachin Dawale (supra)**. They are eligible and recommended candidates by the M.P.S.C. and since then they are waiting for their appointment as the lecturers in English. Thus the State has acted in breach of the ratio laid down in the case of **Uma Devi (supra)**. Learned Counsel has further argued that the law of the land is to be upheld. Hence, injustice done to the applicants is to be undone by giving them

regular appointments on the post of lecturers. Learned Counsel further submitted that the Government is making a false statement of non-availability of vacancies, and if it is true then he pointed out that the Government in the year 2022 has enacted the Maharashtra Creation of Supernumerary Posts and Appointment of Selected Candidates Act, 2022 (hereinafter referred as 'Supernumerary Post Act 2022' for brevity). The similar supernumerary posts are also to be provided to the present applicants as it is provided to SEBC candidates.

4. Learned Counsel has pointed out the G.R. dated 21.09.2022 issued by the G.A.D recommending creation of supernumerary posts based on Supernumerary Post Act 2022. Pursuant to that learned Counsel has submitted that the Rural Development Department of the State of Maharashtra issued G.R. dated 10.02.2023, creating supernumerary post in civil service of Zilla Parishad for those who were recommended and deprived of on account of non-availability of vacancy. Learned Counsel has further submitted that the posts of English Lecturers are required and they are not filled in order to save money. The Government has issued advertisement for various Polytechnic Colleges for filling up the posts on adhoc basis and walk-in interview basis. It is the responsibility of the welfare Government to accommodate these 41 applicants. The additional affidavit-in-reply dated 07.08.2023, filed by the Applicant No.34, Ms. Shilpa Maruti Sonawane, to the short affidavit dated 31.07.2023 filed by the Respondents thereby showing different charts in respect of different Polytechnic colleges at Nagpur, Khamgaon, giving details of the name of the posts-intake, post required and vacancy. It is also pointed out that the norms of All India Council of Technical Education (AICTE) are required to be followed by maintaining

the ratio of student teachers and the hours of lectures and the workload. It was finally shown that total Government Polytechnic colleges are 43 in Maharashtra, intake is 18189 (page 407) and total workload when required lecturers appointed and vacancy shown.

Sr. No	Total Govt. Polytechnics	Total intake	Total workload	Required Lecturers	Appointed	Vacancy
1.	43	18189	2628	146	89	57

5. Learned C.P.O. has painstakingly explained that the State cannot be blamed for not appointing the applicants but the appointment orders could not be issued as all the vacant posts were exhausted while implementing the orders of the Hon'ble High Court and the Tribunals protecting the adhoc lecturers in English. Learned C.P.O. in response to the submissions has stated that the Government has taken decision not to create more posts of English lecturer when the requirement is less and these candidates cannot be recommended under such circumstances.

6. While deliberating the issue it is necessary to understand the order dated 19.10.2013 passed by the **Bombay High Court, Nagpur Bench Nagpur Sachin Dawale (supra)** and also the order dated 06.01.2015 passed by the Hon'ble Supreme Court in **SLP No.39014/2013, State of Maharashtra & Anr. Versus Sachin Ambadas Dawale & Ors** wherein the Petitioners who were lecturers on temporary / adhoc basis in different Departments of the Government Polytechnic College in the State of Maharashtra have approached the Hon'ble High Court with a prayer that their status is to be made permanent and they are also entitled to the benefits of permanent appointment. The Hon'ble High Court after considering the law laid

down by the Hon'ble Apex Court in the case of **Secretary, State of Karnataka & Ors. Versus Uma Devi & Ors.** decided on 10.04.2006 in Appeal (Civil) 3595-3612/1999, prohibiting the appointment by backdoor entry has allowed the petition directing the State to regularize the services of those Petitioners who have completed three years service with technical breaks. While passing this order the Hon'ble High Court has taken into account the erstwhile recruitment process through M.P.S.C. in view of the huge vacancy of nearly 5000 teaching posts in various Departments of such colleges in the State of Maharashtra had given thought and further held that the regularization of 91 petitioners would not come in the way of Direct Recruits which are going to be selected and recommended by the M.P.S.C. In **Sachin Dawale's case (supra)** the Nagpur Bench of the Hon'ble High Court observed as under,

“19. One more fact that needs to be taken into consideration is that even according to the respondent- State there are more than 5000 teaching posts which are still vacant and the advertisement issued by the MPSC is only for 400 posts. It can, thus, be clearly seen that even after the candidates and would be selected through the selection process conducted by the MPSC are available, more than 4500 posts will be vacant. It is, therefore, clear that the petitioner's absorption would in no way affect the candidates who would now be selected through the MPSC. It is, thus, clear that the petitioners' continuation in service would not adversely affect the fundamental right guaranteed under Article 16 to the citizens. We are of the considered view that the respondent-State having extracted the work from the petitioners for years together, the petitioners cannot be deprived of the right of regular employment particularly when their entry can neither be termed as 'illegal' nor 'back door'.”

7. The verdict in the case of **Sachin Dawale (supra)** dated 19.10.2013 passed by the Hon'ble High Court, Nagpur Bench was challenged by the Respondent-State before the Hon'ble Supreme Court by filing **SLP No.39014/2013, State of Maharashtra & Anr. Versus Sachin Ambadas Dawale & Ors.** The said SLP was dismissed by order dated 06.01.2015 thereby confirming the judgment of Hon'ble High Court. However, before disposing the said SLP finally, the Hon'ble Supreme Court while issuing notices on 27.01.2014 in the said SLP passed the order as an interim measure directing that the Petitioner i.e. State of Maharashtra not to disturb the Respondents (i.e. 91 contractual lecturers) and consider their case for regularization. The Hon'ble Supreme Court further observed as follows :

“In the meantime, the petitioners shall not disturb the respondents and consider their cases for regularization but the order passed by the High Court directing the petitioners to confer permanency on contract Lecturers who have completed more than three years' service for their regularization, shall remain stayed.”

Though this order was passed, the other lecturers working on contract basis in the State of Maharashtra have filed nearly 16 Writ Petitions comprising of 136 contract lecturers and 51 O.As comprising of 113 contract lecturers were filed before M.A.T. seeking the same relief of regularization and benefits of permanency on parity and accordingly the Hon'ble High Courts and the Tribunal, both in various orders directed the Respondents not to remove the Petitioners or terminate the services of the contract lecturers as they are similarly placed like the Respondents.



8. Learned Counsel Mr. Panchal has produced the copy of the interim order dated 07.08.2014 in Writ Petition No.7413/2014 and further order dated 07.08.2014 in W.P.No.7406/2014. The requisition for filling up 92 posts of the lecturers in English was sent on 01.02.2013. The advertisement was issued on 06.07.2013. Thereafter, the applications were received by the M.P.S.C and after scrutiny of the applications and screening examination; the candidates were shortlisted for the interviews. By letter dated 27.05.2014, the M.P.S.C. has recommended 87 candidates for the post of lecturers in English where the names of the present Applicants are included in that list of 25.07.2014 of the recommended candidates. It is curious to know that though the candidates were recommended, the Government could not give them appointments on account of the interim orders passed by the Hon'ble High Court and the Tribunal that not to disturb or remove the candidates working on adhoc basis. Thus, the posts of lecturers were 92 and M.P.S.C. recommended 87 candidates. Thus, all the candidates including the present applicants should have been appointed, but in view of the interim orders of the Hon'ble High Court and the Tribunal protecting adhoc lecturers, the State of Maharashtra faced this knotty situation. The State moved interim application No.4 of 2014 in the said SLP with a prayer to modify the earlier order of 27.01.2014 and permit to appoint the candidates recommended by M.P.S.C. against the contract lecturers. However, it is pointed out that no order was passed in that application and subsequently the main SLP was dismissed on 06.01.2015. While confirming the order of the Hon'ble High Court in the case of **Sachin Dawale (supra)** the interim order passed by the Hon'ble Supreme Court on 27.01.2014 was not modified and thus, interim

protection granted remained in perpetuity. The select list of the Applicants was published on 21.04.2014. Thus, indeed it is unfortunate case of the Applicants who were recommended on merit against the vacant posts which were advertised. However, it is not pointed out to the Hon'ble Supreme Court. The interim application for modification was not pressed by the State even at the time of final order and thus, as on today all these orders hold the field. Most of the vacant posts are exhausted by appointing the adhoc professors / lecturers, by giving them permanency benefit. Thus, on the same point amongst the recommended candidates who were above in the list were accommodated against remaining vacant posts. However, 41 applicants who were recommended though having vested right could not be appointed.

9. It is true that in State of Maharashtra supernumerary posts on account of non-availability of the vacancies after SEBC reservation was declared illegal or void by the Hon'ble Supreme Court were created. It is also factually correct that the posts of Professors/ Lecturers for English are filled by walk-in interview. However, it is necessary to add that these posts are filled up on account of newly introduced National Education Policy (NEP). The learned C.P.O. has submitted that out of total original Applicants some of them are appointed on the posts as and when vacancies were available. The candidates who have secured more marks and were higher in rank were accommodated and naturally the candidates who are below in the said list were left out. Hence, some of the applicants though are similarly placed could not get appointment because of the non-availability of the vacancies. Indeed it is a very unfortunate state of affairs. However, it is upto the Respondent-State to take policy decision in respect of these applicants.

10. We are sympathetic towards the plight of the Applicants who are trying to wade through very hard water. We expect that Respondent-State to consider and may take appropriate policy decision in respect of creation of supernumerary posts for these Applicants. However, we direct that the applicants, as per their merit, to be accommodated against the present or future vacancies depending on as and when available in the said subject, unless the applicants are age barred.

11. With above directions, Original Applications stand disposed of.

Sd/-

**(Medha Gadgil)**  
**Member (A)**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**

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