

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.2 OF 2014**

DISTRICT : PUNE

Shri Ajay Sahebrao Gaikwad,)
Pharmacist, Sassoon General Hospital, Pune-1)
Address for service of notice:)
Shri A.V. Bandiwadekar, Advocate,)
9, Ram Kripa, Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400016)..Applicant

Versus

1. The Dean, Sassoon General Hospital,)
Pune-1)

2. The Director of Medical Education and)
Research, Govt. Dental College and)
Hospital Building, 4th floor,)
St. George's Hospital Compound, Mumbai)..Respondents



Shri A.V. Bandiwadekar – Advocate for the Applicant
Shri N.K. Rajpurohit – Chief Presenting Officer for the Respondents

CORAM : Shri Rajiv Agarwal, Vice-Chairman
Shri R.B. Malik, Member (J)
DATE : 18th February, 2016
PER : Shri R.B. Malik, Member (J)

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) for the Respondents.

2. The applicant, a Pharmacist in Pune's Sassoon Hospital has been working on temporary basis from October 1999. He hereby seeks regularization of service with all benefits.

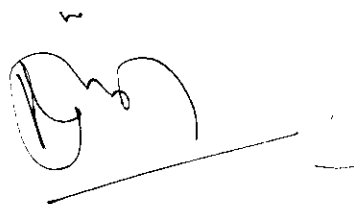
3. We have perused the record and proceedings. The point is as to whether a case is made out for regularization and our finding for the reasons set out below is in the Negative.

4. The applicant is a qualified pharmacist (Exhibit A, page 19 of the paper book (P.B.). He was appointed after a



process and procedure on temporary basis for thirty days vide the order dated 11.10.1999 (Exhibit B page 20). But the same "arrangement" has continued till date. The applicant brought OA No.791 of 2001 before this Tribunal (Shri A.S. Gaikwad Versus State of Maharashtra and others). There were other OAs as well seeking similar relief. A Bench of this Tribunal rendered a common order on 17.8.2001. That order reads as follows:

"Heard both sides. It is stated in the reply that the appointment of the applicants were purely temporary and a Committee is being constituted by the DMER for making regular selection to the posts in question. We, therefore, direct that the applicants be allowed to appear before the Committee and be given necessary age relaxation if he/she was within the age limit at the time of initial appointment and the relaxation shall be to the extent he/she actually worked in the said post. He/She shall be considered for regular service subject to his/her suitability if he/she is otherwise eligible and fit for the appointment in question. Applicants are not to be replaced by another ad hoc appointees. Applications thus stand disposed off. No order as to costs."

A handwritten signature in black ink, consisting of a large, stylized initial 'B' followed by a flourish, positioned above a horizontal line.

5. Two broad aspects emanate from the order above quoted viz.

1) The applicant was to be allowed to appear for the examination for regular selection. But no outer limit was fixed for the conduct of that examination. The applicant was entitled to age relaxation etc. Therefore, at least in this particular OA the applicant would not suffer even if the respondents were to make delay in holding the said examination, because he could be replaced only by regular appointees.

2) The applicant was to be considered for regular appointment subject to his suitability if he was otherwise eligible and fit for regular appointment.


6. The record shows that the examination was held and the applicant failed. It must, therefore, follow that the applicant was neither suitable, nor eligible and fit for regular appointment. In order to have a focused grasp let us reproduce paragraph 17 from the OA, paragraph 20 from the affidavit in reply of the respondents (page 93 of P.B.) and paragraph 7 page 107 of P.B. being the affidavit in rejoinder of the applicant:

“17. That as per the decision of the Hon’ble Tribunal rendered in the petitioner’s earlier OA No.791 of



2001 on 17.8.2001 and against the respondents herein, it was incumbent on them to allow the petitioner to appear before the committee being set up by the respondent no.2 for the purpose of making regular selection to the said post. That, however, the respondent no.2 did not constitute such committee, with the result, the case of the petitioner for regularization of his services in the said post, could not be considered till this date. That in fact, failure to do this exercise by the respondent no.2 amounted to contempt of the Hon'ble Tribunal."

"20. With reference to para 6.17, I say that the respondent no.2 did not allow the applicant to appear before Committee for the purpose of making regular selection to the said post. The respondent no.2 had conducted common entrance tests - MEDSS-CWT - to fill up the vacancies in the post of Pharmacist including one on which the Applicant is working. It is stated that the Applicant had appeared for these tests twice i.e. in the year 2006 and again in the year 2012. However, the Applicant failed to prove his merit as he secured only 38 marks in MEDSS-CWT-2006 and 26 marks in MEDSS-CWT-2012. It is also stated that the last candidate selected and appointed through MEDSS-CWT-2006

✓


as a Pharmacist was having 76 marks. In MEDSS-CWT-2012, the Applicant occupied place at serial number 3891 at state level and at number 527 in SC category merit list. Since the applicant was quite below in merit list he was not even called for document verification. It clearly shows that the applicant was given enough opportunities to appear in the recruitment process but he could not prove his merit and could not be selected on meritorious grounds. It is also stated that as per the decision given by Hon'ble Tribunal in OA No.791/2001 filed by the applicant, he was allowed to appear for the above said common written tests. Thus, sufficient opportunity was given to the applicant to participate in the process of regular selection and it is totally wrong and incorrect to say that the respondent no.2 has caused contempt of the Hon'ble Tribunal in any way."

"7. That in the circumstances stated above, the respondents cannot again and again refer the fact about the petitioner having not cleared the CET for regular appointment to the said post. This is more so, when this is not the relief sought by the petitioner challenging his CET results, especially when his appointment in the said post was 7 years before the

A handwritten signature in black ink, consisting of a stylized 'G' followed by a flourish, positioned above a horizontal line.

CET was held. That in any case, the decision of the Hon'ble Tribunal rendered in the case of the petitioner in the year 2001, did not give any direction to the respondents to regularize or absorb the petitioner in service on permanent basis after holding CET and in fact it was without holding CET. Thus, the passing or failure of CET by the petitioner has nothing to do with the reliefs sought in the OA."

7. Having quoted the three paragraphs there is no need of any elaboration. They are self evident. There is nothing in the last quote except applicant's desperation at the unavoidable failure in this OA following his failure in the examination.

8. Shri Bandiwadekar's reliance on our own judgments in OA No.1239 of 2013 (Anil V. Pagar and 13 others, dated 17.3.2015) and OA No.1136 of 2012 (Smt. Ratna Thakurdesai and 17 others Vs. State of Maharashtra and another, 22.1.2016) on present facts is not quite apposite. Those OAs were decided on the ratio of a judgment of a division bench of the Hon'ble Bombay High Court (Nagpur Bench) in Writ Petition No.204 of 2010 (Sachin A. Dawale and 90 others Versus State of Maharashtra, 19.10.2013). It was confirmed in Special Leave to Appeal (C) No.39014 of 2013 (State of Maharashtra and another Versus Sachin A. Dawle, 6.1.2015). In that matter the services of a large number of

✓


temporary (contract) polytechnic teachers came to be regularized. It was held on facts that they were not backdoor entrants. However, on a very crucial aspect the present facts are distinguishable. There for all chest thumping and professions aimed at supporting, regular appointment the constitutional agency charged with the duty to hold examinations for regular appointments did not hold the examination. That was for no reason. The available posts were in large number and the temporary teachers even otherwise had an impregnably sure shot case. But they caused harm to regular appointees. They did not block them. But most significantly for years after years examinations for regular appointments were inexplicably not held. And in this OA not only were exams held but the applicant took part in that but unfortunately he could not crack it. That makes all the difference between this OA and **Sachin Dawale**.

9. This OA is dismissed with no order as to costs.

Sd/-

Sd/-

Sd/-

Sd/-

Date : 18th February, 2016

Dictation taken by: S.G. Jawalkar.