

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.815 OF 2015**

**(SUBJECT : APPOINTMENT)**

1. Dr. Deepak Balvatkar, )
  2. Dr. Gurunath Dalvi, )
  3. Dr. Sandesh Aamuthe, )
  4. Dr. Ranjit Jadhav, )
  5. Dr. Swapnil V. Kanunje, )
  6. Dr. Sarang D. Khochikar, )
  7. Dr. Sandip J. Shrawasthi, )
  8. Dr. Madhuri S. Shrawasthi, )
  9. Dr. Deepak R. Kumbhar, )
  10. Dr. Rupeshkumar D. Shinde, )
  11. Dr. Aasma A. Mulla, )
  12. Dr. Pradip Kadam, )
  13. Dr. Shital Hirgude, )
  14. Dr. Jahir Patvegar, )
  15. Dr. Pramod Bhoi (Kamble) )
  - Working at C/o. Rajarshi Chatrapati Shahu Maharaj, )
  - Government Medical College and CPR Hospital )
  - At Kolhapur, through its Dean at Kolhapur. )
- ...Applicants**

**Versus**

1. State of Maharashtra, )  
Through Director of Medical Education and )  
Research, office at Mumbai )
  2. Rajarshi Chatrapati Shahu Maharaj, )  
Government Medical College and CPR Hospital )  
At Kolhapur, through its Dean at Kolhapur )
  3. The Secretary, )  
Medical Education and Drugs Department, )  
Mantralaya, Mumbai 32. )
- ...Respondents.**

Shri Sachin Bhaskar, learned Advocate for the Applicants.

Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

**CORAM** : **JUSTICE SHRI A.H. JOSHI, CHAIRMAN**  
**SHRI P.N. DIXIT, MEMBER(A)**

**RESERVED ON** : **18.02.2019.**

**PRONOUNCED ON** : **19.03.2019.**

**PER** : **JUSTICE SHRI A.H. JOSHI, CHAIRMAN**

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

1. Heard Shri Sachin Bhaskar, the learned Advocate for the Applicants and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

2. This Original Application is filed by 15 Medical Officers who were appointed on temporary basis till duly selected candidates were received and were continued by various orders of appointment.

3. Learned Advocate Shri Sachin Bhaskar for the Applicants states that Applicants No.1, 5, 7, 10, 12 and 15 did not wish to press this O.A. Therefore, this O.A. is continued and heard as regards remaining Applicants.

4. Prayers contenting the Original Application for final relief reads as follows :-

"A. Be pleased to call for record and proceedings of the allotment of the Government Bonded Services 2015-2016 and the provisional recommendation list made by the respondent No.1 against the vacancies of the Medical Officer, Class-II on the establishment of respondent No.2 and after going through the same and satisfying about the legality, validity and propriety thereof be pleased to quash and set aside the same;

B. By pleased to restrain the respondents herein from replacing the service of the applicants herein without a candidate selected by the MPSC for permanent post on the establishment of the respondent No.2 and recommended by MPSC is available with the respondents herein."

(Quoted from paragraph 10, page 19 of the paper book of O.A.)

5. Foundation of Applicants claim is explained in paragraph 7(f) which is quoted below :-

“f. The applicants submit that the applicants herein are the candidates who have also acquired additional qualification and now at this stage replacement of the temporary candidates by another temporary candidates should be deprecated. The applicants herein accepted the appointments. There was a clear mention that once the MPSC recommended candidate comes for permanent posting, the services of the applicant shall come to an end. However, in the present case the State of Maharashtra has recommended the names of the Bonded candidates for the year 2015-2016. It is submitted that those candidates are not regularly selected candidates on permanent basis but it is an adhoc arrangement of stop-gap arrangement for the time being. It is also necessary to point out that as per the scheme of the Government so far as the Bond is concerned if a candidate pays the amount mentioned in the bond, he is not supposed to join the College or Hospital where he has been or she has been recommended by the respondent No.1 herein. Thereafter, those candidates cannot be called as regularly selected candidates appointed on the permanent post.”

(Quoted paragraph f, page 17 of the paper book of O.A.)

6. Applicants averment referred to in foregoing paragraph No.5 is replied by the Respondents in paragraph 21 of the affidavit-in-reply which reads as follows :-

“21. With reference to Ground 7(f), I say and submit that in every academic year there is possibility of passing some candidates in Post Graduation examination and there may be availability of some bonded candidates at the interval of every 6 months. Hence there is no question of continuation of the Applicant on the said post till she is replaced by MPSC candidate.

In the W.P. No.4953, 4954, 5097 of 2012 at Hon. High Court of Judicature, Bombay bench at Nagpur, has pleased to decline the applicants to continue the interim relief any longer and their applicants were dismissed with no order as to costs.

It is also submitted that in the M.A.No.565 of 2013 in O.A.No.1151 of 2013 at Hon'ble Maharashtra Administrative Tribunal, Mumbai bench, has pleased to decline the application to continue the interim relief any longer and their petitions were dismissed with no order as to costs.

(Quoted paragraph 21, page 55 of the paper book of O.A.)

7. Learned Advocate for the Applicants has placed reliance on many judgments and specially judgments of Hon'ble Division Bench of Hon'ble High Court of Bombay (Nagpur Bench) in case of **Dr. Anil S. Dhage Versus State of Maharashtra & 6 Ors., Writ Petition No.1250 of 2002, decided on 13.08.2015** and in case of Hon'ble High Court of Bombay (Nagpur Bench) in case of **Sachin A. Dawale & Ors. Versus State of Maharashtra & Ors., Writ Petition No.2046 of 2010, decided on 19.10.2013.**

8. Applicants' claim contained in paragraph 7(f) in foregoing paragraph is supported and forfeited by the findings and observations contained in judgment of Hon'ble High Court in case of **Dr. Anil S. Dhage Versus State of Maharashtra & 6 Ors., Writ Petition No.1250 of 2002, decided on 13.08.2015** in paragraph No.13 is binding by judicial dictum.

9. Moreover, as viewed in case of **Sachin A. Dawale & Ors. Versus State of Maharashtra & Ors.**, Government servants were continued for long duration and even without advertisement of their posts for filling it from M.P.S.C. were observed.

10. Plea of the Respondents in opposing the averments made by applicants in Original Application in paragraph 7(f) are in direct conflict and contradict with the findings reported in case of **Dr. Anil S. Dhage Versus State of Maharashtra & 6 Ors.**, and hence Respondents' plea is found to be totally untenable, and does not deserve any weightage.

11. In the present Original Application prayer of the Applicants is not for permanent absorption. All that they claimed is that their services shall not be discontinued until they are replaced by regular selected candidates.

12. The claim of the applicants is far smaller and far lesser than what is held by Hon'ble High Court in case of **Dr. Anil S. Dhage Versus State of Maharashtra & 6 Ors., Writ Petition No.1250 of 2002, decided on 13.08.2015** and hence this Tribunal finds that there is no legal impediment in allowing applicants to continue their services till these posts are filled in by regular appointees by Maharashtra Public Service Commission / Selection body.

13. Hence, Original Application is allowed in terms of prayer (A) and (B), which reads as follows :-

“(A) Be pleased to call for record and proceedings of the allotment of the Government Bonded Services 2015-2016 and the provisional recommendation list made by the respondent No.1 against the vacancies of the Medical Officer, Class-II on the establishment of respondent No.2 and after going through the same and satisfying about the legality, validity and propriety thereof be pleased to quash and set aside the same;

(B) Be pleased to restrain the respondents hereby from replacing the service of the applicants herein without a candidate selected by the MPSC for permanent post on the establishment of the respondent No.2 and recommended by MPSC is available with the respondents herein.”

(Quoted prayer clause 10 (A) and (B), page 19  
of the paper book of O.A.)

14. Parties are directed to bear their own costs.

SD/-

**(P.N. Dixit)**  
**Member(A)**

SD/-

**(A.H. Joshi, J.)**  
**Chairman**

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