

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.927 OF 2014**

**DISTRICT : MUMBAI**

Prof. Ashok N. Kotangle, )  
 Residence : 3 & 4, Kurban House, )  
 1<sup>st</sup> Floor, 4<sup>th</sup> Marine Street, )  
 Dhobi Talao, Mumbai 400 002. ) **...APPLICANT**

**VERSUS**

1. State of Maharashtra, )  
 Through the Principal Secretary, )  
 Ministry of Higher and Technical Education, )  
 Office at Mantralaya, Mumbai 400 032. )
2. The Principal, )  
 Sydenham College of Commerce & Economics, )  
 B-Road, Churchgate, Mumbai 400 020. )
3. Director, )  
 Higher and Technical Education, )  
 Government of Maharashtra, Pune. )
4. Mr. Sagar Kotakar, )  
 Sydenham College of Commerce and Economics, )  
 B – Road, Churchgate, Mumbai 400 020. )
5. Maharashtra Public Service Commission, )  
 MTNL Bldg., Opp. Cooperage football Ground, )  
 Mumbai 400 002. )

**....RESPONDENTS**

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Shri L.C. Chogle learned Counsel with Shri A.D. Nagarjun, learned Counsel for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN  
SHRI RAJIV AGARWAL, VICE-CHAIRMAN

RESERVED ON : 28.03.2016.

PRONOUNCED ON : 27.04.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

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

1. Heard Shri L.C. Chogle learned Counsel with Shri A.D. Nagarjun, learned Counsel for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This O.A. has been filed by the Applicant challenging the order dated 01.10.2014 cancelling the order dated 16.08.2014 appointing the Applicant as Part Time Lecturer in the subject of 'Business Law' in Sydenham College of Commerce and Economics, Mumbai. The Applicant has also challenged the Advertisement No.25/2013 published by the Maharashtra Public Service Commission as unlawful and illegal. Some other reliefs are also sought by the Applicant.

3. Learned Counsel for the Applicant argued that :-

- (a) The Applicant was appointed as Part Time Lecturer of Business Law with effect from 18.06.2002 in Sydenham College of Commerce and Economics, Mumbai.
- (b) The Applicant has qualifications of B.Sc. and LL.M. and he has passed S.E.T. examination in 1995. He is fully qualified to be appointed on the post of Lecturer.

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- (c) Order dated 18.06.2002 did not mention that the Applicant was appointed till the candidate appointed through the Maharashtra Public Service Commission (M.P.S.C.).
- (d) As per provision of Government Resolution (G.R.) dated 19.09.1975, a temporary Government servant is deemed to have become permanent after three years of service. The Applicant has, accordingly, acquired status of a permanent Government servant in 2005. As per G.R. dated 11.12.1999, permanent part-time teachers are also entitled to the benefits of the scheme of career advancement i.e. promotion from the post of Lecturer to Reader and Professor. As part-time teacher, the Applicant was eligible to be given such benefits. As per the Maharashtra Civil Services (Pay) Rules, 1981, a Government Servant is entitled to get annual increments. All these benefits were not extended to the Applicant, though he was entitled to get them.
- (e) That as a part of curriculum in Sydenham College, every week, 20 lecturers in Business Law are required to be delivered / taught. The Applicant was tasked to teach 10 lecturers per week. The workload of a full time lecturer is 20 lecturers per week. Since inception, the subject of Business Law is taught in Sydenham College by practicing lawyers, who work as part-time lecturers.
- (f) An advertisement No.25/2013 was issued by M.P.S.C. on 29.07.2013 *inter-alia* to fill two posts of Assistant Professors, Maharashtra Education Service (Collegiate Branch), Group 'A' in Business Law. The Applicant was called by M.P.S.C. as an expert in the subject, as part of the Interview Board, to select suitable candidate for those posts, which consisted of Chairman, M.P.S.C., Government Representatives and subject expert as members. The Respondent No.4 was selected as Assistant Professor.
- (g) In fact, Government has sent requisition to appoint two full time Assistant Professor of Business Law in Sydenham College, which presupposes workload of 40 lecturers per week, while the actual work load is 20 lecturers per week. The organogram sanctioned for Sydenham College show 4 sanctioned posts of lecturers in Business Law, 2 full time and 2 part time, which would mean workload of 60 lecturers per week. These facts are totally wrong. When the work load for Business Law is only 20 lecturers per week, which is work load of one full time lecturer, the requisition sent to M.P.S.C. by the State Government was not based on correct facts. On this ground

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alone, the advertisement no.25/2013 is liable to be quashed and selection of the Respondent No.4 be declared to be illegal.

- (h) On top of it, the Applicant was called as an expert to select candidates, who have now replaced him, thus forcing the Applicant to be cause of his own ouster.
- (i) Applicant is entitled to be given benefits of 6<sup>th</sup> Pay Commission with effect from 01.01.2006. His 'service book' was not prepared, though he was a permanent employee.
- (j) The Applicant in fact was selected as a full-time lecturer in the Department of law of Mumbai University. However, he wanted to practice law and so did not join that post. He chose to work as part time lecturer since 2002 and has been in continuous service for more than 10 years in Sydenham College.
- (k) The Applicant can be accommodated as part time lecturer in Sydenham College, a only one of the two selected candidates has joined as Assistant Professor, (the Respondent No.4), who can be transferred to I.Y. College, and the Applicant and another person appointed on clock hourly basis can teach at Sydenham College on part time basis.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent Nos.1 to 3 and 5 that the Applicant was not appointed by following due procedure when he was given appointment as part-time lecturer by order dated 17.06.2002 w.e.f. 18.06.2002. This order was issued by the Incharge- Principal of Sydenham College and it is clearly mentioned that it was issued to ensure that the teaching of the students does not suffer. Though, the order stated that it will be effective till further orders, it does not mean that the Applicant was appointed on regular basis as Part-Time lecturer. In fact, G.R. dated 16.08.2004 makes it clear that the Applicant's appointment as Part-Time Lecturer is approved subject to the conditions, *inter-alia*, that he will not be eligible for any service related rights, seniority or regular service or pensionary benefits. His service was liable to be terminated any time without notice. Learned P.O. argued that in the case of **Secretary, State of Karnataka and Other Vs. Umadevi**

**(3) and other reported in (2006) 4 SCC 1.** Hon'ble Supreme Court has held that a person who is engaged sans proper procedure of selection without consultation with the Public Service Commission, cannot invoke the theory of legitimate expectation. It cannot be said that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. Learned P.O. contended that the Applicant is claiming permanency after three years of employment. However, that pre-supposes that his appointment should have been made in accordance with recruitment rules and after following proper procedure. The Applicant is relying of G.R. dated 11.12.1999. This G.R. provides that the Recruitment in Government Colleges and Institutes of Sciences will be regulated by respective recruitment rules prescribed by the State Government in consultation with M.P.S.C. The selection criterion for Part-Time teachers is the same as full time teachers. Permanent part-time teachers are eligible to get the benefits of the scheme of career advancement from Lecturer to Senior Scale Lecturer, Selection Grade Lecturer/ Reader and Professor. However, as the Applicant was not selected by M.P.S.C. in accordance with recruitment rules, he is not entitled to get the benefit of permanency as per G.R. dated 19.09.1975. That G.R. is regarding temporary Government servant, who are regularly selected and after service for three years are conferred the benefits of permanency. This concession / benefit is not applicable to those, whose appointment is not made after following regular procedure for recruitment. Condition No.1 of the G.R. itself make it very clear. When the Applicant was not entitled to get benefits of permanency, he is not eligible to get benefits of G.R. dated 11.12.1999 regarding career advancement scheme. Learned P.O. further argued that the Applicant is attempting to make out a cause out of discrepancy / mistake in the requisition dated 02.02.2013 sent by the Respondent No.1 to the Respondent No.5 (M.P.S.C.) to fill two posts of Assistant Professors in Business Law, while, there was workload of only one full time post. The letter dated 16.10.2012 from the Respondent No.2 to the

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Respondent No.3 has clearly stated that there were only two posts of part time lecturers in Sydenham College. However, G.R. dated 26.09.2010 did mention that in Sydenham College, two posts of full time and two posts of part-time lecturers in Business Law were sanctioned. Learned P.O. argued that the Principal of the College (the Respondent No.2) had communicated to the Respondent No.3 that as per workload, only two part-time lecturers were required in Business Law. Even if it is accepted that Government requisition for 2 posts of lecturer in Business Law was defective, it is not understood, as to how that would have affected the interest of the Applicant. The facts remains that though M.P.S.C. recommended two candidates, only one actually joined as full time lecturer in Sydenham College. The aggrieved party would be the second selected candidate, had he decided to join and there was no vacancy for him. This cannot be a ground to quash advertisement No.25/2013 issued by M.P.S.C. or to declare selection of the Respondent no.4 as invalid.

5. Learned P.O. argued that the judgment of Nagpur Bench of Hon'ble Bombay H.C. in the case of Sachin Ambadas Awale & Ors Vs. State of Maharashtra and Another reported in 2014(2) Mh.L.J. page 36 has no application in the present case as the facts are entirely different in the present case. Similarly, judgment of this Tribunal dated 24.04.2015 in O.A.Nos.340/2012 and others, which is based on the aforesaid judgment of the Hon'ble High Court is also not applicable.

6. We find from record that the Applicant claims that he was selected by a duly constituted Selection Committee as Part-time lecturer and appointed with effect from 18.06.2002 on that post by order dated 17.06.2002. The aforesaid appointment letter is reproduced below in full :-

“श्री. अशोक कोटांगळे यांचे “व्यापारी कायदा” [ बिझनेस लॉ ] या विषयासाठी अर्धवेक अधिव्याख्याता म्हणून दिनांक १८.६.२००२ पासून विद्यार्थ्यांचे शैक्षणिक नुकसान होऊ नये म्हणून पुढील आदेश होईपर्यंत नेमणूक करण्यात येत आहे.

सही  
(प्राध्या.प. मि. तायडे)  
प्र. प्राचार्य ”

From the text of order which is quoted, it is clear that the Applicant was appointed till further orders, only to ensure that the student's education did not suffer.

7. The appointment was approved by the Respondent No.1 (State Government), who, is the appointing authority, by G.R. dated 16.08.2004 . This G.R. reads :-

“शासन निर्णय : श्री. ए. एन. कोटांगळे यांची निवड समिती मार्फत मुलाखत घेऊन सिडनहॅम वाणिज्य व अर्थशास्त्र महाविद्यालय, मुंबई येथे अर्धवेळ अधिव्याख्याता (व्यापारी कायदा) या पदावर दि. १८ जुन, २००२ पासून नियुक्ती करण्यात आली आहे. सदर नियुक्तीस पुढील अटीच्या अधिन राहून मान्यता देण्यात येत आहे.

१. श्री कोटांगळे यांना सेवाविषयक कोणताही अधिकार वा जेष्ठता, सेवा नियमितीकरण या सारखे फायदे मिळण्यास ते पात्र राहणार नाहीत. त्यांची सेवा निवृत्ती वेतनहार्य समजली जाणार नाही.”

From this order of approval, it is seen that though the Applicant was interviewed by some Selection Committee, there was no G.R. issued prior to his selection by the constituting / appointing a proper selection committee Government to select a person for the post. The Applicant has not brought any evidence to show that any advertisement was issued before his appointment. In fact the Applicant has never claimed as such.

8. As per the recruitment rules for appointment to the post of lecturers (which will be applicable for selection to the post of part-time lecturer also, as per G.R. dated 11.12.1991), the selection has to be through M.P.S.C., as these are Group A posts. Article 320 of the Constitution also mandates that. The Applicant's selection was not through M.P.S.C.. There is nothing on record to show that this post was taken out of purview of M.P.S.C. any time.

*[Handwritten signature]*

9. As no advertisement was issued, it cannot be said that all eligible candidates, were given opportunity to compete for the post. All these are essential requirements for a selection to be valid. Hon'ble Supreme Court in Umadevi's case has observed, (quoting from earlier judgment in Union Public Service Commission Vs. Girish Jayanti Lal Vaghela) that :-

*"12. 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."*

10. From the facts placed on record by the Applicant, it is quite clear that no advertisement was issued and also that no Committee was constituted by the Appointing Authority to interview him. In these premises applicant's adhoc appointment cannot be called a regular appointment. He is, therefore, clearly ineligible to get the benefit of permanency in terms of G.R. dated 19.09.1975, which pre supposes that a temporary Government servant was appointed after following due procedure.



11. The Applicant is not eligible to get benefit like carrier advancement scheme as he was not appointed as per paragraph 7 of the aforesaid G.R. dated 11.12.1999 which reads :-

*“Recruitment of Teachers in Government Colleges and Institute of Sciences will be regulated by respective recruitment rules prescribed by the State Government in consultation with Maharashtra Public Service Commission.”*

12. Paragraph 17 of the G.R. deals with Part-time teachers. It is reproduced below in full :-

*“17. Part time teachers :*

*The minimum qualifications for appointment of part time teacher should be the same as that of regular teachers and selected by regularly constituted Selection Committees. The part time teachers should be appointed only in exceptional circumstances when it is appropriate to the requirements of the institutions in terms of subjects to be taught or workload. They can be appointed on a contract appointment, if only for a short period or as permanent half time / proportionate time employees against half/ proportionate salary of the scale (and should include proportionate increments dearness allowance and other permissible benefits). Such permanent part time teachers will also be entitled to the scheme of career advancement from Lecturer to Senior Scale Lecturer, Selection Grade Lecturer/ Reader, and Professor. However, they will be entitled to half/ proportionate amount of the basic of the scale and proportionate increments, dearness allowance and any other permissible benefits.”*

13. The part-time teachers for Government Colleges have to be selected by regularly constituted selection committee, and, it would mean through M.P.S.C.. Appointment of Temporary or Adhoc teachers can be done only in exceptional circumstances. In the present case, Government has now decided to appoint full time teachers. As the Applicant was not appointed by following regular procedure, nor was he a permanent part time lecturer, he has no ground to object or challenge cancellation of his part time appointment or the selection of the Respondent No.4 as full time lecturer.

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14. The Applicant has relied on the following judgments, viz :

(i) **Sachin Ambadas Dawale and Others V. State of Maharashtra & another : 2014 (2) Mh.L.J. 36.**

In that case Petitioners were working as Lecturers in Government Poly-technics on contractual basis. Government has decided to fill the post of contractual basis permanently as a policy decision. It will suffice to quote from paragraph 16 & 17 of the aforesaid judgment to show that facts in the present case are quite different.

In paragraph 16, Hon'ble High Court has observed that :-

*"The respondents have stated in their affidavit that the monthly pay of the employees have been increased. It is not disputed that the Petitioners are having the qualifications required for the posts in which they are working. The respondents have not disputed that the appointment for the teaching posts are taken out of the purview of the M.P.S.C. as informed by the communication dated 29<sup>th</sup> March, 2008."*

In paragraph 17, of the aforesaid judgment, it is stated that :-

*"In the present case, though the Petitioners are not selected through M.P.S.C., it is undisputed that the Petitioners are selected after the procedure for selection is followed and through the duly constituted selection committee as constituted by the Government of Maharashtra. The advertisement was issued before the Petitioners were selected and all interested candidates has applied for the posts for which the Petitioners are selected. Thus, it cannot be said that the Petitioner have got employment through back door entry."*

In the present case, the post was not taken out of the purview of M.P.S.C. There was no advertisement and no. G.R. was issued constituting selection committee. The Applicant has to be held as a back door entrant. This case is clearly distinguishable.

(ii) **Vaidya Bharati P. Shah Vs. State of Maharashtra & Others : 1990 (3) Bom.C.R. 721.**

It was held that long spell of temporary service of part time teachers has to be treated as permanent. This judgment is

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delivered on 23.07.1990, much before the judgment of Hon'ble Supreme Court in Umadevi's case (supra).

In Umadevi's case, Hon'ble Supreme Court has observed as follows :-

*"54. It is also clarified that those decision which run counter to the principles settled in this decision, or in which directions running counter to which we have held herein, will stand denuded of their status as precedents."*

With great respect, in our considered opinion this judgment can no longer be said to be good law, in view of judgment of Constitutional Bench of Hon'ble Supreme Court in Umadevi's Case, (supra).

- (iii) **In Mala Education Society, Sonai & Another V. Haribhau S/o. Jagannath Kardile & Others (Citation is not clear but it is a Bombay High Court judgment in Writ Petition No.1040 of 2000 dated 05.07.2007, Aurangabad).**

It was held that if a candidates is selected by following due procedure according to University statutes, it is incumbent on the management to appoint him and he cannot be appointed on temporary basis for every academic year. This is case is clearly distinguishable as we have held that the Applicant was not selected by following due procedure as per Recruitment Rules.

- (iv) **Judgment of this Tribunal dated 27.04.2015 in a Group of O.A.Nos.340 of 2011 and others,**

In this case, it is observed in paragraph 5 that :

*"There is some kind of a preamble that shows that there was a G.R. dated 30<sup>th</sup> June, 1993, whereunder a Selection Committee for appointment as temporary Professors come to be appointed. Interviews were held. Pursuant thereto, the Applicant came to be selected."*

It further observed in the same paragraph that :

“The exact marathi words are “संबंधितांची नियुक्ती ही प्रचलित सेवा प्रवेश नियमानुसार करण्यात येत आहे.”

In paragraph 7, it is observed that :

*“7. The above discussion would, therefore, make it very clear that the Applicants came to be appointed through a process of appointment ordained by a regular G.R. and amongst the persons so similarly placed as one another, it was by a selection process though not through M.P.S.C.”*

In the present case, all these elements are conspicuous by their absence. This case is clearly distinguishable.

15. We have already concluded that the Applicant was never selected by following due procedure by a proper selection committee or M.P.S.C. His appointment by letter dated 17.06.2002 was irregular and he could not claim any benefit of permanency. The Applicant had accepted conditions attached to his appointment as approved by Government by G.R. dated 16.04.2004. We do not see any reasons or grounds on which Applicant can be allowed to turn around and claim benefit of permanency or regularization or other service related benefits available to employees, who are regularly appointed.

16. The grounds raised by the Applicant for challenging the selection of the Respondent No.4 by M.P.S.C. for the post of Assistant Professor of Business Law or the challenge to advertisement no.25/2013 issued by M.P.S.C. are not convincing at all. Even if there were mistakes in the number of sanctioned posts of lecturers in Business Law in Sydenham College in the G.R. or in the requisition sent by the State Government to M.P.S.C., ultimately only one candidate viz. the Respondent No.4 got appointed as Assistant Professor in Business Law in Sydenham College. Once the requirement of 20 lecturers a week can be met by one full time teacher, the services of the Applicant were no longer required. As the Applicant was given appointment subject to condition that his services could

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be terminated at any time, he has no reason to feel aggrieved. Moreover as observed hereinbefore, applicant's selection as part time teacher was without following due procedure and he is not entitled to continuation or regularisation. The Applicant is not entitled to reliefs in paragraph 9(a), 9(b), 9(d), 9(e). As regards relief in paragraph 9(c), the Respondents No.1 to 4 may decide the claim of the Applicant as part time lecturer, and as to whether he is entitled to receive monetary benefits claimed by him after implementation of 6<sup>th</sup> Pay Commission.

17. This O.A. is disposed off accordingly with no order as to costs.

Sd/-  
(RAJIV AGARWAL)  
VICE-CHAIRMAN

Sd/-  
(A.H. JOSHI, J.)  
CHAIRMAN

Place : Mumbai  
Date : .04.2016  
Typed by : PRK