

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.**

ORIGINAL APPLICATION NO. 809 OF 2021

DIST. : JALGAON

Dr. Imran Nizam Pathan,)
Age. 35 years, Occu. Service as)
Assistant Professor (Department of)
Dentistry), Government Medical College,)
Jalgaon, R/o Salar Nagar,)
Fouzia Apartment,)
Behind Minar Restaurant, 1st Floor,)
Ajinatha Choufuli, Jalgaon – 425 001.)..

APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
The Secretary, Medical Education)
and Drugs Department, 9th Floor,)
Administrative Building,)
Gokuldas Tejpal Hospital,)
Tilak Marg, Mumbai – 400 001.)
- 2) **The Director,**)
Medical Education and Research)
Department, Saint Georges)
Hospital Compound, 4th Floor,)
Government Dental College Building,)
Near C.S.T., Mumbai – 400 001.)
- 3) **The Dean,**)
Government Medical College,)
Jalgaon, District – Jalgaon.)
- 4) **Dr. Priya Raju Bhuje,**)
Age. Major, Occu. Service as)
Assistant Professor (Department)
Of Dentistry), Jilhapeth,)
Government Medical College,)
Jalgaon, Dist. – Jalgaon 425 001.)..

RESPONDENTS

APPEARANCE :- Shri V.B. Wagh, Advocate for the
applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : **22.08.2024**

ORAL ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri V.B. Wagh, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for respondent authorities.

2. The applicant has completed his B.D.S., as well as, the Master's Degree i.e. M.D.S. The applicant was initially appointed as Assistant Professor in the Department of Dentistry on ad-hoc basis vide order dated 27.09.2017 for 120 days and his services were time to time continued thereafter. It is the further contention of the applicant that the Divisional Selection Board selected the applicant for the said post during the period of pandemic and was given an appointment on 12.07.2021 for 120 days. Thereafter also the applicant was continued and the

periodical orders for 120 days were issued in his favour time to time. It is the further contention of the applicant that he has prayed for regularization of his services and proposal was also forwarded in that regard. On 25.12.2020 the applicant submitted representation to the respondent authorities to continue him till the decision is taken in respect of his regularization. It is the contention of the applicant that without taking any effective decision on his representation the respondents filled in the vacancy by making appointment of bonded candidate i.e. respondent no. 4 for the period of 01 year. Consequently the applicant was not continued thenceforth.

3. It is the grievance of the applicant that despite having vacancies wherein the respondent no. 04 could have been conveniently accommodated instead of making his appointment on the said posts, it was made on the post on which the applicant was working by discontinuing his services. In the circumstances, the applicant has preferred the present Original Application seeking the following reliefs:-

“A) This Original Application may kindly be allowed.

B) To hold and declare the applicant is entitled for regularization of his services on the post of Assistant Professor (Department of Dentistry) w.e.f. 28.09.2017 to till today and to extend all the consequential benefits to which the applicant is entitled.

C) The respondent No. 1 to 3 may kindly be directed to continue the services of the applicant on the post of Assistant Professor (Department of Dentistry) till the duly selected candidate is available and to appoint the respondent No. 4 on any vacant post of Senior Resident in the office of respondent no. 3.

D) Any other relief may kindly be granted in favour of the applicant in the interest of justice.

E) To direct the respondent authorities to consider the claim of the applicant for regularization of services pursuant to the proposal submitted on 08.12.2020 and to take the decision forthwith.

F) To direct the respondent No. 3 to consider and to issue the appointment order on the post of Assistant Professor (Department of Dentistry) in view of the vacancy which is been arise due to the completion of the bond period of the respondent No. 4 and for that purpose necessary orders may kindly be passed.

G) To quash and set aside the communication dated 07.06.2022 issued by the respondent No. 3 stating that, the claim of the applicant cannot be considered, as the bonded candidate has joined.”

4. The contentions raised in the Original Application and the prayers made therein have been resisted by the respondents. Respondent nos. 01 to 03 have filed their joint affidavit in reply and have opposed the Original Application and the prayers made therein by the applicant. It appears to be the main contention in the affidavit in reply that appointment orders, which were issued in favour of the applicant, were containing a specific condition/clause to the effect that the appointment of the applicant was purely on temporary basis

and in the meanwhile period if any bonded candidate is appointed or any regularly selected M.P.S.C. candidate becomes available, the services of the applicant were to be put to an end. It is the further contention of the respondents that till the candidate did not become available either from the M.P.S.C. or bonded candidate, the respondents continued the applicant in service, however, when respondent no. 04 was given an appointment as bonded candidate, obviously the applicant was required to be discontinued. According to the respondents, no error can be noticed in the decision so taken by the respondents and, as such, according to these respondents, there is no merit in the Original Application so filed by the applicant. The respondents have, therefore, prayed for rejecting the Original Application.

5. We have duly considered the submissions made on behalf of the applicant, as well as, the respondent authorities. We have also gone through the documents produced on record by the parties. The last appointment issued in favour of the applicant is of the date 09.11.2021 (Annexure A-3 - page 44 in the paper book). The said appointment order contains a specific condition (condition no. 05) which envisages that the applicant was being appointed for the period of 120 days and if bonded or

M.P.S.C. recommended candidate becomes available, whichever occurs earlier, the services of the applicant would come to an end. The applicant is not disputing that the respondent no. 04 is a bonded candidate and she has been appointed in his place.

6. Pleadings and documents on record show that one Dr. Shrutika Bhagwan Borade was initially appointed as bonded candidate and after she completed 01 year on the said post another candidate namely Dr. Priya Raju Bhuje came to be appointed. Though the learned counsel appearing for the applicant sought to contend that both the candidates were not possessing required experience to be appointed on the post of Assistant Professor, we may not indulge in considering such pleas for want of pleadings in that regard in the O.A. The applicant has prayed for continuation on the post of Assistant Professor on which he worked for the period of about 05 years on the strength of the orders time to time issued in his favour. The applicant has also prayed for regularization of his services.

7. It is not in dispute that the applicant is not in service from the date respondent no. 04 resumed the duties on the post on which the applicant was working. Insofar as appointment of respondent no. 04 is concerned, the applicant has not raised any objection against the said appointment. In

the circumstances, we may not go into details of eligibility of the candidate, who has been appointed in place of the applicant. Secondly, when the services of the applicant came to an end in terms of the order of appointment dated 09.11.2021, the termination of the services of the applicant cannot be in any way termed as arbitrary exercise of power by the respondents. However, the another submission made by learned counsel for the applicant, which is reflected in the pleadings in the O.A. that there are vacancies against which the applicant could have been accommodated and his services could have been continued on the said post having considered the fact that the applicant has already put in service for the period of 05 years, assumes substance.

8. From the documents placed on record it reveals that the applicant had approached the Hon'ble Bombay High Court, Bench at Aurangabad by filing Writ Petition No. 2447/2022 making grievance in regard to rejection of interim relief by this Tribunal. In the said order the Hon'ble High Court has observed about the representation made by the applicant for his continuation. As averred in the Original Application there are vacant posts. Vacancy position is not brought on record by the respondents. In the circumstances, it appears to us that the

present application can be disposed of by giving following directions to the respondents:-

ORDER

(i) Respondents shall consider the applicant for his appointment for the post of Assistant Professor or any other equivalent post, if the vacancies are available, having regard to the fact that he has served with them for the period of about 05 years from 2017 to 2021.

(ii) The Original Application stands disposed of in the aforesaid term, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 22.08.2024