

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.17/2016

Vidya d/o Murlidhar Jangle,
 Aged about 32 years, Occ. Service,
 r/o 4/22 Jugale Niwas Raje Raghuji Nagar,
 Nagpur.

Applicant

Versus

- 1) The State of Maharashtra,
 through its Secretary,
 Medical Education and Drugs Department
 having its office at Mantralaya, Mumbai- 400 032.
- 2) Director of Ayush,
 Maharashtra State Mumbai
 Government Dental College and Hospital,
 4th floor St. George's Hospital,
 P.D. Mello Road, Fort, Mumbai.
- 3) Dr. Sushilkumar s/o Pramod Wairagade,
 Aged about 37 years, Occ. Service,
 R/o Mul Tah. Mul, Distt. Chandrapur. (Intervener)
- 4) Dr. Hemant S/o Rohidas Maske,
 Aged about 43 years, Occ. Service,
 R/o Omnagar, Degloor Road Udgir,
 Distt. Latur. (Intervener)

Respondents

Shri S.P. Palshikar, Advocate for the applicant.

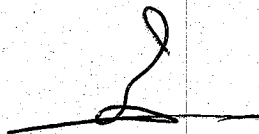
Shri P.N. Warjurkar, P.O. for the respondent nos. 1 and 2.

Preeti Rane, Advocate for respondent nos. 3 & 4 (Intervener).

Coram :- Shri Justice A.H. Joshi, Chairman.

Reserved on :- 30th January, 2017.

Pronounced on :- 27th February, 2017.



ORDER -

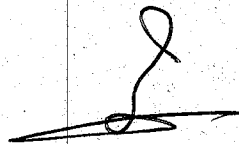
Heard both the sides. Perused the record annexed to the O.A. and Judgments cited at Bar.

2. The applicant's case in brief is as follows :-

- (a) The applicant is holding the qualification of BAMS and MD (Shalya Tantra), which is the requisite qualification for appointment to the post of Assistant Professor Shalya Tantra.
- (b) The respondent no.2 has published an advertisement thereby inviting applications for the various posts mentioned in the Advertisement. On 25-10-2013 the applicant has submitted application from Scheduled Tribe category. On 30-10-2013 the interview was conducted in the office of respondent no.2. The applicant was selected and was given an appointment order for duration of 120 days. On 05-05-2014 another order of appointment was issued for period of 120 days. In June, 2014 the applicant was transferred to Government Ayurved College, Nagpur. On 04-09-2014 the applicant's services were continued for a period of 364 days. On 07-09-2015 another appointment order was issued in favour of applicant for a period of 360 days.
- (c) The applicant fulfils the criteria/norms and experience for grant of permanency and continuity of service however she apprehends that due to the appointment of the Respondent No[3] by order dated 7-9-2015, the applicant may not be continued. Therefore the applicant has approached this Tribunal for the redressal of her grievances. Applicant's prayer is that in view of her continuous service she be permanently absorbed on the post held by her.

3. This Tribunal issued notice, and passed an order on 18.2.2016 directing grant of status quo/interim protection to the applicant in view of the interim order as was operating in W.P. No. 8118 of 2015 (at Aurangabad Bench of High Court). Therefore applicant is continued in employment.

4. This O.A. is opposed by the State Government. Affidavit-in-reply is filed on behalf of respondent no.2, which is on record at page nos. 30 to 37. Summary of the grounds on which the State has objected to the reliefs sought in present O.A. is as follows :-



- (a) The temporary appointment of the applicant had become possible in view of the government decision dated 30th August, 2008, copy whereof is placed on record at page no. 38 (Annex-R-1).
- (b) The applicant was appointed and continued from time to time only till candidate duly selected by MPSC to be appointed on regular basis was to be received.
- (c) Therefore the applicant is not entitled for permanency or absorption.
- (d) The candidates who had undergone the process of application, interview etc. were selected by MPSC and list was forwarded by MPSC to the Government. In turn the Government had directed that appointment order of selected candidates be issued. This communication of Government was issued during pendency of present O.A. on 18-04-2016. Copy of said communication is on record at page no.40 as Annex-R-2.

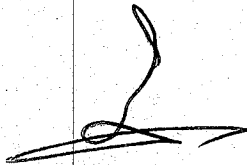
In view of order passed in MCA No. 16/17, in O.A. No. 17/16 by Hon'ble Vice Chairman of MAT, Nagpur, Corrections are made.

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5. The respondent no ⁴3 has filed a long and detailed affidavit and pleaded various points. Summary of respondent no ⁴3's main points of contest contained in the affidavit, is as follows :-

- (i) The applicant had applied for temporary appointment furtherance to the advertisement issued by the government where candidates were called to apply for short term (i.e. locum vacancies), till candidates duly selected by MPSC were received to fill in regular vacancies.
- (ii) Immediately within 2 months from the applicant's appointment by order dated 30-10-2013 on 12.12.2013, advertisement was issued by MPSC on 12-12-2013 inviting applications for various posts, inter-se, for the post against which the applicant was appointed for fixed duration.
- (iii) The respondent no ⁴3 was selected by MPSC. The selection was flashed on MPSC's website on 6-2-2016.
- (iv) The Respondent no ⁴3 is waiting for appointment, which could not be issued by the Government due to the interim stay granted by this Tribunal.

In the aforesaid background, the respondent no ⁴3 has prayed for dismissal of W.P.



6. The applicant had placed reliance on Judgment in W.P. No. 8118/2015 (**Vaidya Mayur S/o Ramesh Deshmukh Vs. State of Maharashtra**) wherein, according to the applicant, writ petitioners in said writ petition who were similarly situated were ordered to be absorbed.

7. The learned Advocate for respondent no. ⁴3 has also placed reliance on the Judgment (in W.P. No. 8118/2015 supra) i.e. the same judgment which is relied upon by learned Advocate for applicant apart from few other Judgments.

8. The learned P.O. Shri Warjurkar has placed reliance on Judgment of **State of Maharashtra & Ors. Vs. Anita & Ano. (2016) 2 SCC (L&S) 384, (2016) 8 SCC 293.**

9. This Tribunal has considered the material placed on record by the parties and citations relied by Advocates of both sides.

10. The material placed on record by both sides reveals various facts which are discussed and are dealt with in following paragraphs.

11. The Directorate of Ayush of Government of Maharashtra issued advertisement sometime in early 2012. It contained invitation of applications for various posts under the said Directorate. Copy of advertisement is at page 14A which is Annexure-A-1 to the OA. Preambles of the advertisement reads as follows :-

“शासकीय आयुर्वेद महाविद्यालयातील विविध विषयाच्या महाराष्ट्र आयुर्वेद सेवा (गट-ब) संवर्गातील सहायक प्राध्यापक पदावर १२० दिवसांचे कालावधीसाठी निव्वळ तात्पुरत्या स्वरूपात नेमणूक करण्यासाठी इच्छुक व पात्र उमेदवारांकडून अर्ज मागविण्यात येत आहेत. तात्पुरत्या नेमणूकीसाठी उपलब्ध असलेल्या पदांचा विषय व ठिकाणनिहाय तपशील खालीलप्रमाणे आहे.....”



In view of an order passed in MCA No. 6117, in OA No. 17/16 by Hon'ble Vice Chairman of MAT, logpur ondt. 22/3/17 corrections are made.

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12. The advertisement (Quoted from page 14-A of the paper book of the O.A.) referred to in the foregoing paragraph contains various conditions. General conditions stipulated in it read as follows :-

“ १. उमेदवारास कायमस्वरुपी शासकीय कर्मचा-याचे अन्य कुठलेही लाभ अनुज्ञेय नसून त्यांना सदर पदावरील नियुक्तीसाठी कायमस्वरुपी हक्क सांगता येणार नाही व १२० दिवसांच्या कालावधीनंतर किंवा सदर पदावर महाराष्ट्र लोकसेवा आयोगाकडून नियमित उमेदवार प्राप्त होईपर्यंत किंवा बदलीने किंवा अन्य कोणत्याही प्रशासकीय कारणास्तव नियमित उमेदवार उपलब्ध होईपर्यंत, यापैकी जे काही अगोदर घडेल त्या तारखेला तात्पुरती नियुक्ती आपोआप संपुष्टात येईल.

२. उमेदवार महाराष्ट्र वैद्यक व्यवसायी अधिनियम, १९६१ (१९६१ चा महाराष्ट्र अधिनियम नियम क्रमांक अठठावीस) अंतर्गत नोंदणीकृत असावा.

३. मागासवर्गीय प्रवर्गासाठी आरक्षित असलेल्या पदावर अर्ज करणा-या उमेदवाराने जात वैधता प्रमाणपत्र व अनुसूचित जाती/ अनुसूचित जमाती व्यतिरिक्त उमेदवाराने अघयावत नॉन क्रिमीलेअरची साक्षांकित प्रत जोडावी. जात वैधता प्रमाणपत्र व अघयावत नॉन क्रिमीलेअरची साक्षांकित प्रत अर्जासोबत जोडलेली नसल्यास, सदर नियुक्ती निव्वळ तात्पुरत्या स्वरुपातील १२० दिवसांसाठी असल्यामुळे संबंधीत उमेदवारात मुलाखतीसाठी अपात्र ठरविण्यात येईल.

४. उमेदवारात नियमित नियुक्त आणि कार्यरत असलेल्या अध्यापकांप्रमाणे पदाच्या कर्तव्य आणि जबाबदा-या पार पाडाव्या लागतील.

५. नियमित नियुक्त आणि कार्यरत अध्यापकांप्रमाणेच उमेदवारांचे कामेच तास राहतील.

६. उमेदवारास सार्वजनिक सुटटी आणि रविवार व्यतिरिक्त कोणत्याही प्रकारची रजा अनुज्ञेय राहणार नाही.

७. उमेदवारास तात्पुरती नियुक्ती सोडावयाची झाल्यास किमान १ महिना अगोदर संबंधित अधिष्ठाता यांचेकडे रीतसर अर्ज करून माहिती देणे आवश्यक राहिल, अन्यथा १ महिन्याचे वेतन शासनास जमा करावे लागेल.

८. उमेदवारांचे काम समाधानकारक आढळल्यास व त्यावेळी संबंधीत पद रिक्त असल्यास, १२० दिवसांच्या कालावधीची तात्पुरती नियुक्ती तांत्रिक खंड देवून (शासनाचे अनुमतीने) पुढे १२० दिवसांपर्यंत तात्पुरती नियुक्ती म्हणूनच चालू ठेवण्यात येईल.

९. निवड झालेल्या उमेदवारास शासनाकडून व्यवसायरोध भत्ता देय असल्यामुळे त्यास कोणत्याही प्रकारचा खाजगी व्यवसाय करता येणार नाही.”

(Quoted from page nos. 14B and 14C of the paper book of the O.A.)



13. The applicant had applied furtherance to the advertisement of which conditions are quoted and disclosed herein before.

14. By order dated 30-10-2013 Annexure-A-2 at page no.15, the applicant was appointed. The appointment order contains various conditions. Crucial conditions contained in the order of appointment read as follows :-

“9) ”

२) आपणांस कायमस्वरुपी शासकीय कर्मचा-याचे अन्य कोणतेही लाभ अनुज्ञेय नसून, सदर पदावरील नियुक्तीसाठी कायमस्वरुपी हक्क सांगता येणार नाही. तसेच १२० दिवसांच्या कालावधीनंतर आपली तात्पुरती नियुक्ती पुढे चालू न ठेवल्यास आपोआप संपुष्टात येईल.

३) सदर पदावर महाराष्ट्र लोकसेवा आयोगाकडून नियमित उमेदवार प्राप्त होईपर्यंत किंवा बदलीने किंवा अन्य कोणत्याही प्रशासकीय कारणास्तव नियमित उमेदवार उपलब्ध होईपर्यंत यापैकी जे काही अगोदर घडेल त्या तारखेला तात्पुरती नियुक्ती आपोआप संपुष्टात येईल.

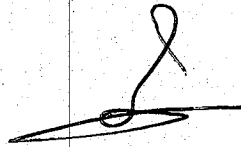
४) ”

११) संबंधित महाविद्यालयाच्या अधिष्ठाता यांचेकडून आपली वैधकीय तपासणी आणि चारित्र्यविषयक तपासणी करून घेतली जाईल. वैधकीय तपासणीमध्ये आपण शासकीय सेवेसाठी पात्र नसल्याचे आढळून आल्यास आणि आपला चारित्र्यविषयक अहवाल प्रतिकूल आढळल्यास आपली सेवा कोणतीही पूर्वसूचना न देता समाप्त केली जाईल.

वरील अटी मान्य असल्यास आपण नियुक्तीच्या पदावर दिनांक ७.११.२०१३ पर्यंत रुजू व्हावे. आपण दिनांक ७.११.२०१३ रोजी पदावर रुजू न झाल्यास, आपण नियुक्ती स्विकारण्यास इच्छुक नाही असे समजून नियुक्ती तात्काळ रद्द करण्यात येवून गुणवत्तेनुसार व प्रतिश्वायादीनुसार अन्य उमेदवारास नियुक्ती देण्यात येईल.”

(Condition nos. 2,3 & 11 are quoted from page no. 15 & 17 of paper book of O.A.)

15. The applicant was re-appointed by orders dated 12-11-2013, 5-5-2014, 4-9-2014 & 7-9-2015. Copies of these appointment orders are placed on record by the applicant at page nos. 19 to 28. All these four appointment orders were



concurrent as to the spirit and object of the conditions of appointment contained / quoted in the foregoing paragraph.

16. It reveals from the discussion contained in the foregoing paras, that the applicant was appointed and continued in the situation which is liable to be described as "locum" i.e. appointed till candidates duly selected from MPSC would be selected or otherwise received and appointed or till the period/duration of appointment whichever be former.

17. It is not in dispute that the post of Assistant Professor held by applicant for fixed duration requires to be filled in by advertisement and through MPSC and is a Gazetted Class-II post, carrying in the pay scale of Rs. 15600-39100 with Grade Pay of Rs.6000.

18. It is seen from the Judgment i.e. in W.P. No.8118 of 2015, that in said Writ Petition which is relied upon by the applicant as well as respondent no.3 that:

- (a) The writ petitioners were appointed on temporary posts.
- (b) The posts/vacancies on which those candidates were appointed were not advertised by the Govt. for filling on regular basis, through MPSC.
- (c) Writ Petitions were continued from time to time from 2009 to 2013 in the aforesaid manner, including without advertising vacancies through MPSC.
- (d) They were appointed without attaching the conditions that they are appointed to occupy vacancy (like locum vacancy) to filling the post till candidates to be selected by MPSC for regular appointment would be received.

19. The Hon'ble High Court has specifically observed in the Judgment in W.P. No. 8118 of 2015 as follows :-

"It is not the case that during the said period the MPSC was also conducting the selection process simultaneously. It therefore cannot be said that the petitioner had choice to participate in the selection process through the MPSC as well as through the Committees constituted under the concerned Government Resolution".



(Quoted from page no. 20 at internal page no. 19 in W.P. No.8118/2015 of the Judgment)


20. This Tribunal has perused all other judgments cited at bar by the respondent no.3. However, discussion of other Judgment relied by respondent no.3 does not appear to be necessary in view of the fact and background that the facts of the case at hand i.e. in present O.A. are eloquent and obvious and other precedents do not in any manner direct the locus of present case.

21. The learned P.O. has relied upon the Judgement of Hon'ble Supreme Court in case of State of Maharashtra Vs. Anita & others (2016) 2 SCC(L&S) 384=(2016) 8 SCC 293.

22. While relying on aforesaid case State of Maharashtra Vs. Anita & Ors., Learned P.O. has laid emphasis on the conditions contained in the appointment order, which make it explicit that, in the conditions contained in the order are not acceptable, the applicant would not be appointed and hence by joining and accepting the conditions, now the applicant is not entitled to complain or recile therefrom. Admittedly, the applicant had applied furtherance to an advertisement which contained the announcement that the appointment to post were for fixed duration i.e. in the nature of locum vacancy. Ld. PO therefore argues that in view of the ratio as laid down by Hon'ble Supreme Court in the case of State of Maharashtra Vs. Anita & Ano. (cited supra), now applicant is fait accompli, and does not have right of absorption.

23. From the aforesaid discussion, it has become evident that the applicant was appointed for fixed duration on conditions namely :-

- (i) The appointment was purely on temporarily basis and for fixed duration.
- (ii) The appointment was made awaiting candidates from MPSC and services would be terminated inter alia, no sooner candidate, would be received from MPSC.



- (iii) Applicant was appointed on the condition that the applicant would not be appointed, if applicant does not accept the conditions.
- (iv) The vacancy against which applicant was appointed was notified within 2 months of applicant's appointment.
- (v) The applicant has not shown that the applicant has applied and offered candidature for selection process through MPSC.

24. On facts it is shown by the respondent state and the respondent no. ⁴3 that :-

In view of order passed in MCA No. 16/17 in OA No. 17/116 by Hon'ble Vice-chairman of MAT, Nagpur on dt: 22.3.17, corrections are made.

- (i) The State had already initiated selection process.
- (ii) The MPSC has advertised the vacancies immediately (within 2 months) and had even completed the selection process.
- (iii) Selection process had begun, was in motion and appointment of respondent no. ⁴3 has been ordered.
- (iv) The applicant cannot be said to have suffered any loss due to any misrepresentation nor is entitled to any protection of principle of promissory and / or equitable estoppel or doctrine of legitimate expectations.

25. From foregoing discussion it is vivid that the applicant in present O.A. does not have any right whatsoever for being continued and absorbed in the vacancy on which applicant was appointed. In fact applicant had occupied a locum vacancy, for which selection process was already initiated and the posts were advertised within two months from applicant's appointment. An opportunity was available to the applicant, to undergo selection process. Applicant's case is not similar to the case of the applicants in W.P. No.8118 of 2015 (Aurangabad Bench of Hon'ble High Court). Hence, present OA does not have any merit and it deserves to be dismissed and it is dismissed.

26. Parties are directed to bear own costs.

Sd/-

(Justice A.H. Joshi)
Chairman.

dnk.

(P.T.O.)

O.A. No.17/2016

CORAM : Justice A.H. Joshi : Chairman

DATE : 27/2/2017

1. After pronouncing of the judgment the learned Advocate for the applicant orally makes two prayers :-

a) For expediting the certified copy;

b) For keeping the operative order in suspension for 4 weeks and continuation of interim order during this period.

2. The learned Advocate appearing for R/3 and 4 strongly opposes the prayer for keeping the order under suspension and for continuation of the order of the status-quo.

3. In support of the objection, the learned Advocate for ^{R/4}~~R/3~~ has urged following submissions :-

a) Admittedly the applicant was appointed on fixed tenure and awaiting the receipt of candidate to be selected from MPSC, and hence the applicant does not have any right whatsoever to continue even for one day, once the candidate who is selected by the MPSC is received and is appointed by the Government.

b) Due to the status-quo order and the time which was consumed in hearing and decision of the petition, the ^{R/4}~~R/3~~ who is a candidate duly selected by MPSC and appointed is kept away from the employment.

c) Applicant's case does not fall in the category of same facts and circumstances in which the W.P. No.8118/2015 (of Aurangabad) is decided.

4. After considering the applicant's submission and the Respondent No. ⁴~~3~~'s objection it is seen that the applicant has already gained the benefit of appointment by virtue of the order of status-quo during the pendency of this

In view of an order passed in MCA NO 16/17 in O.A. NO 17/16 by Hon'ble Vice-Chairman of MAT, Nagpur on dt: 22.3.17 corrections are made.

Reg'dm 28/3/2017

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O.A. Now it has become evident that the applicant does not have right whatsoever, and the respondent No ⁴3 appointment is already delayed.

5. Therefore continuation of the status-quo any more will not achieve the end of justice rather would defeat it. The balance of justice tilts in favour of ^{R/4}R/3 than in favour of the applicant.

6. Therefore the applicant's request for keeping the final order passed in present O.A. under suspension, and for continuation of the order of status-quo for four weeks, does not deserve any latitude. Hence oral request for continuation of order of status-quo is hereby rejected.

7. Certified copy is expedited. It be delivered forthwith

sd/-
Chairman

Skt. In view of an order passed in MCA No. 16/17, in O.A No 17/16, Passed by Hon'ble Vice-Chairman of MAT, Nagpur on dt. 22-3-17 corrections are made.

Am
Registrar
29/3/2017