

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 287 OF 2008

Mahabdi Trupti Shriram & ors. ... Petitioners
v/s
Brihanmumbai Municipal Corporation & ors. ... Respondents

Mr.Prakash V. Dhopatkhar for the petitioners.
Ms.Shobha Ajithkumar for the respondent B.M.C.

***CORAM: MRS. VASANTI A. NAIK &
MRS. MRIDULA BHATKAR, JJ.***

DATED : 9TH MARCH, 2015

ORAL JUDGMENT (Per Mrs.Vasanti Naik, J.):

Heard.

By this petition, the petitioners impugn the order of the Mumbai Municipal Corporation dated 12th September, 2007 absorbing the petitioners in service with effect from 8th September, 2007.

The petitioners were qualified to be appointed as teachers and they were appointed as such on ad-hoc basis by the office orders issued by the Corporation from time to time after 2000. It was clearly mentioned in the appointment orders that the appointments of the petitioners were temporary on ad-hoc basis and till the Schedule Tribe candidate was available to the

Corporation. The appointment was subject to the filling of the backlog of the reserved category candidates and the services of the petitioners were discontinued from time to time. In a writ petition filed by the petitioners bearing Writ Petition No.3126 of 2006, the counsel for the respondent Nos.1 and 2 Corporation made a statement that the petitioners would be absorbed as Assistant Teachers in the school run by the Corporation, immediately. On the statement made by the counsel for the Corporation, the writ petition was disposed of. After the writ petition was disposed of by the order dated 12th September, 2007, the petitioners were absorbed in service with effect from 8th September, 2007. The petitioners have claimed their absorption from the date of joining of the service, as according to the petitioners, they were entitled to be absorbed from that date.

On hearing the learned counsel for the parties and on perusal of the order in the writ petition filed by the petitioners bearing Writ Petition No.3126 of 2006 and the law laid down by the Hon'ble Supreme Court, it appears that the relief sought by the petitioners cannot be granted. It is not clear from the averments made in the writ petition that the appointment of the petitioners was made by following the due procedure prescribed by law. The appointment orders are annexed to the writ petition. They show that the petitioners were appointed temporarily on ad-hoc basis till the reserved category candidates were available for appointment. Merely because the previous petition filed by the petitioners was

disposed of on the statement made by the counsel for the Corporation that the process to absorb the petitioners would be initiated at the earliest, the petitioners cannot seek their absorption on the post with effect from the date of their joining. It is well settled that an appointment made without following due process of selection would be illegal. It would be necessary to refer to the judgment in the case of *State of Orissa & anr. v/s Mamta Mohanty*, reported in *2011 A.I.R. SCW 1332* and *Renu & ors. v/s District & Sessions Judge, Tees Hajari & anr.*, reported in *2014 (2) Scale 262*, in this regard. Even otherwise, we find that though the petitioners continued in service on year to year basis, every year there was a break in the services of the petitioners. In the facts of the case, the petitioners could not have sought their regularization from the date of their appointment. Also, the petitioners could have sought the relief claimed in the instant petition in Writ Petition No.3126 of 2006. Even if it is assumed that the petitioners had sought the relief in Writ Petition No.3126 of 2006, it is clear from the order dated 2nd July, 2007 in Writ Petition No.3126 of 2006, that the claim of the petitioners for regularization from the date of their appointment, if made, was not favourably considered. The present writ petition would not be tenable in view of the principles akin to the principles of constructing *res judicata*.

Since the relief sought by the petitioners cannot be granted, the writ petition stands dismissed with no order as to costs.

(MRIDULA BHATKAR, J.)

(VASANTI A. NAIK, J.)