

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

WRIT PETITION NO.113 OF 2013

Dr.Prashant V. Kumavat

... Petitioner

Vs.

Municipal Corporation of Greater Mumbai

... Respondent

Mr.N.V. Bandiwadekar for the Petitioner

Mr.Anil Singh, Senior Advocate a/w Anil Yadav and Ms.Shobha Ajitkumar
for Respondent

**CORAM: SMT. VASANTI A. NAIK &
SHRI C.V. BHADANG, JJ.**

DATE: 16th JANUARY, 2015

P.C.:

By this petition, the petitioner seeks a declaration that the petitioner was appointed as an Assistant Professor in Pathology on regular – permanent basis and the respondents are liable to pay all consequential benefits to the petitioner w.e.f. 6.7.2011.

The petitioner had applied for the post of Assistant Professor in Pathology as one of them was reserved for NT(B) category candidate. It is the case of the petitioner that though the petitioner was entitled to be appointed on regular – permanent basis, the respondent – Corporation appointed the petitioner on adhoc basis. It is stated that the petitioner

became aware, after receiving information on an application filed under the Right To Information Act that the post of Assistant Professor in Pathology in NT(B) category was available at the time of issuance of the advertisement. The petitioner has, therefore, approached this Court seeking the aforesaid declaration.

Mr.Bandiwadekar, the learned Counsel for the petitioner, submits by taking this Court through the advertisement that only in cases where the vacancy could not be filled by a reserved category candidate, the post could be filled on adhoc basis. It is submitted that the petitioner could not have been appointed on adhoc basis when the post was vacant and was liable to be filled by regular appointment. It is submitted that the action of the respondent No.1 – Corporation in appointing the petitioner on adhoc basis is bad in law and is liable to be set aside.

Mr.Singh, the learned Senior Counsel for the Corporation, submitted that it was clearly mentioned in the advertisement that the posts mentioned in the advertisement could be filled on regular basis or adhoc basis. It is submitted that before securing the appointment, the petitioner had furnished an undertaking accepting that he was appointed on adhoc basis and his appointment was liable to be terminated on the availability of

an eligible candidate. It is stated that the petitioner had agreed to accept the post on adhoc basis in terms of the undertaking and the petitioner is estopped from seeking the declaration, sought in this petition, after a lapse of 2 years from the date of his appointment.

On hearing the learned Counsel for the parties, it appears that the relief sought by the petitioner cannot be granted. Though the petitioner had tendered an undertaking at the time of securing the appointment on adhoc basis that he was aware that he was being appointed on adhoc basis and that his services were liable to be terminated on the availability of an eligible candidate, the petitioner had not disclosed this fact initially, in the original petition. Only when the respondent – Corporation has brought this fact to the notice of this Court by annexing a copy of the undertaking, to the affidavit in reply, that the petitioner has urged before this Court that the undertaking has been secured from the petitioner forcibly. The petitioner ought to have approached this Court with clean hands and ought to have mentioned at the initial stage that the undertaking was forcibly secured from the petitioner. However, this was not done. Also, it appears from a reading of the advertisement that the Corporation had reserved its right to make changes and vary the posts that were advertised and also the category of reservations. It is also lastly mentioned in the advertisement

that the advertisement is issued for filling the posts on regular basis and also on adhoc basis. In any case, the petitioner ought to have disclosed the fact in regard to the submission of the undertaking in the petition. Also, we do not find any cogent reason for filing the petition nearly 2 years since the date of appointment.

For the reasons aforesaid, we dismiss the writ petition with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)