

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2656/2015

Vinod s/o Pandurang Ubale

...Versus...

State of Maharashtra, Health Department, through its Secretary, Mantralaya,
Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.S. Khubalkar, AGP for respondent no.1
Shri Amol Deshpande, Advocate for respondent nos.2 to 5

CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATE : 26.08.2015

By this petition, the petitioner challenges the order of the respondent no.2 dated 13.2.2015, terminating the services of the petitioner.

The petitioner claims to have been appointed as a driver by the respondent no.2 on 9.4.2013. According to the petitioner, the petitioner was relieved from his services on 13.2.2015. It is averred in the petition that though the petitioner requested the respondent to allow him to join his duties, the respondent no.3 did not allow the petitioner to join his duties. The petitioner has sought a direction to the respondent no.3 to allow the petitioner to join his duties as per the communication-order dated 13.2.2015.

The respondent cannot be directed to permit the petitioner to join his duties in the circumstances of the case. It is not the case of the petitioner that the petitioner was appointed as a driver in a clear vacancy by following the due selection procedure.

There is nothing in the writ petition to show that an advertisement was issued by the respondents before the petitioner was appointed on 9.4.2013 as a driver and his candidature was considered along with the other candidates that had applied for the said post. The petitioner has also not annexed the copy of the appointment order to the writ petition. It is apparent from a reading of the writ petition that the petitioner is appointed temporarily by the respondent nos.2 and 3 on 12.4.2013. According to the learned Counsel for the respondent nos.2 to 5, the petitioner was appointed on purely temporary basis. The learned Counsel for the respondents has further stated that the petitioner was not appointed by following the due procedure. It is stated that drivers have been appointed on the vacancies by issuing the advertisement on 4.9.2015. It is stated that the petitioner had not applied in pursuance of the advertisement issued by the respondent nos.2 and 3.

In the circumstances of the case, the relief sought by the petitioner cannot be granted. No employee has a right to continue in a post if the appointment is not in clear vacancy and is not made by following the due procedure prescribed by law. It would be necessary to refer to the judgments reported in 2007 (6) Mh.L.J. 667 (Priyadarshini Education Trust and others...Versus...Ratis (Rafia) Bano d/o Abdul Rasheed and others) and 2014 (2) SCALE 262 [Renu & others...Versus...District & Sessions Judge, Tis Hazari & Anr.].

Since there is no merit in the writ petition, the same is dismissed with no order as to costs.

JUDGE

JUDGE