

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 WRIT PETITION NO. 5700 OF 2007

1. The State of Maharashtra
Through its Secretary,
(Medical Education & Research),
Mantralaya, Mumbai 400 032
2. The Dean,
Bhausahab Hire Medical College
and Hospital, Dhule
3. The Director,
Medical Education & Research,
Mumbai
4. The Collector, Dhule

VERSUS

- | | | |
|---|-----|--------------------|
| 1. Ambadas Shadeo Yedwar,
Age: Major, Occu: Nil,
R/o Dhule Chalisgaon Road,
June Naka, Dhule | | |
| 2. Nandini Pandurang Shegaonkar,
Age: Major, Occu: Nil,
R/o Behind Manohar Talkies,
Dhule | ... | Respondents |

Mrs. M. A. Deshande, Addl. G.P. for the petitioners
Mr. A. D. Sugdare, Advocate for respondents 1 and 2.

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 28th November, 2016

JUDGMENT :

1. Heard the learned counsel for the parties.
2. The judgment delivered by the Maharashtra

Administrative Tribunal is assailed in the present Writ Petition.

3. Mrs. Deshpande, the learned Addl. G.P. for the petitioners submits that the Tribunal has failed to consider the Government policy and the judgment of the Apex Court in the case of **A. Umarani Vs. Registrar, reported in AIR 2004 SC 450**, wherein, the Apex Court has specifically directed that the persons whose appointments are without following due procedure of law are not entitled for regularization in service. The learned Addl. G.P. submits that a Circular has been issued on 25th August, 2005 by the Government thereby directing not to regularize illegal appointments. The learned Addl. G.P. further submits that on the date when the respondents were appointed for the first time i.e. on 6th February, 2002, they were age barred. respondent No.1 was 34 years of age and respondent No.2 was 33 years of age. The respondents could not have been indicted in service as, on the date of their appointment on temporary basis, they were over aged.

4. Mr. Sugdare, the learned counsel for the respondents submits that in fact the order impugned in the present writ petition is based on the order dated

18th October, 2004 in Original Application No. 235/2003 and Misc. Application No. 158/2005. Under the said order, the present respondents were duty bound to maintain the seniority lists in Part-I and Part-II. In the IInd seniority list, the respondents are at Serial Nos. 1 and 2. The petitioners had appointed five persons on compassionate ground without following the seniority list as directed by the Tribunal. As the other persons were appointed, the respondents moved the Tribunal and the Tribunal has rightly considered the earlier order passed. No illegality has been committed by the Tribunal while passing the impugned order.

5. We have considered the submissions.

6. We could have considered the case of the present respondents, had, at the time of their initial appointment, they would have been eligible to be appointed. The respondents herein had crossed the upper age limit at the time of their initial appointment. The same is not disputed. Had the present respondents being eligible to be appointed initially itself, then in that case, the respondents could seek regularization. It is submitted by the petitioners that those five persons who were appointed, were belonging to backward classes

and were appointed on compassionate ground as per the roster.

7. As observed, above, we could have considered the length of services of the respondents and would have considered their case as per the Lad Committee recommendations, had the respondents being eligible to be appointed at the first instance. As the respondents were not eligible to be appointed at the first instance/initial dates, the Tribunal ought not have passed the impugned order. The impugned order is quashed and set aside.

8. It would be seen that the respondents are given work as and when the work is available. There are about 9 vacancies of Safai Kamgar. At present, the respondents are allowed to work by issuing orders from time to time. The petitioners shall issue orders in favour of the respondents from time to time as per availability of the work.

9. Rule is made absolute accordingly. There shall be no order as to costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC