

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***WRIT PETITION (ST) NO. 5352 OF 2016
ALONG WITH
WRIT PETITION (ST) NO. 5355 OF 2016***

Sou. Suwarna Mohan Kondekar,
R/o 1182/4, New Rajaram Puri Takala,
Kolhapur, Dist. Kolhapur.

... Petitioner in
both petitions.

v/s

The Dean,
Rajrshi Chhatrapati Shahu Maharaj
Government Medical College, Kolhapur.

... Respondent in
both petitions.

Mr. Shashank C. Mangle for the petitioner in both petitions.

Mr. S. D. Rayrikar, A.G.P. for the Respondent in both petitions.

CORAM: N.M. JAMDAR, J.

DATED : 29 FEBRUARY 2016

ORAL ORDER:

Both these petitions are filed by the same petitioner involving the connected issue and have been argued together and therefore taken up for disposal together.

2 The Petitioner filed Complaint (ULP) No.10 of 2005 which is a subject matter of Writ Petition (St) No.5352 of 2016. She filed a subsequent Complaint bearing (ULP) No.72 of 2014, which is a

subject matter of Writ Petition (St) No. 5355 of 2016.

3 The Petitioner filed Complaint (ULP) No.10 of 2005 under Items 5, 6, 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971, praying that the Petitioner be granted privileges and status of permanency in the post of Assistant Librarian and confirm her in the said post. The Industrial Court, Kolhapur, considered the fact that the Petitioner was working in a Government Medical College and the law relating to entry in Government service. The Industrial Court concluded that the appointment of the Petitioner by appointment letter dated 29 January 2004 was on contractual basis. Subsequently, she was continued on oral assurances. The Industrial Court noted the case of the Petitioner herself that the appointment on contractual basis which started on 29 January 2004, was to come to an end on 14 January 2005. Before it ended, the Petitioner filed Complaint (ULP) No.10 of 2005 seeking permanency in service and was granted an order of status-quo on 13 January 2005. The Industrial Court concluded that there was no breach of Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 and the Petitioner was not entitled to the relief prayed for. Accordingly, the Complaint was dismissed by an order dated 11 January 2016.

4 While this Complaint was pending, the Petitioner filed another Complaint (ULP) No.72 of 2014, seeking a direction to treat her on par with other regular Librarian and to prevent the Respondent authority from preventing her from discharging duties

of Librarian. It was contended by her that during the pendency of the earlier complaint, the petitioner was given duties of Librarian and the regular Librarian retired on superannuation and since the Respondent had adequate qualification and experience, she was appointed on 1 July 2013. When this complaint came up for consideration, the Industrial Court noted the dismissal of the earlier complaint and held that the Petitioner could not be termed as an employee and she had worked on contract. By the impugned order dated 3 February 2016, the Industrial Court dismissed the Complaint.

5 Heard learned counsel for the Petitioner.

6 The law relating to powers of the Industrial adjudicator and entry in public service is settled. The Apex Court in the case of *Secretary, State of Karnataka & ors. v/s Umadevi(3) & ors.*¹ has mandated against back-door entry in public service. The Petitioner clearly accepted the contractual appointment. There was no regular appointment in Government service as contemplated by the decision of *Umadevi-3*. The Petitioner accepted this order with full knowledge and just before the appointment came to an end continued on the basis of interim order, which is nothing but a litigious engagement of service. Based on this interim order, further reliefs have been claimed. It is also settled that merely because an employee has continued on the basis of interim orders, when the initial entry is in public service is a back door entry, no

1 (2006) 4 SCC 1.

equities will flow from such appointment.

7 The argument that the Petitioner had completed 240 days and therefore automatically she is entitled to permanency, also cannot be granted as there is a clear finding that there was no long standing exploitation. The Petitioner had moved the Complaint and sought interim orders only to extend her back door entry in public service. The Apex Court in the case of *Umadevi-3* has specifically laid down that such back door entries are violative of Articles 14 and 16 and are unjust to all those unemployed waiting patiently for employment in public service.

8 Learned counsel for the Petitioner submitted that the Petitioner was appointed after an interview. This may be so but the appointment was clearly on contractual basis which the Petitioner accepted with full knowledge. The appointment therefore cannot be considered as on permanent basis.

9 In the circumstances, there is no illegality in the impugned orders. The second order passed by the Industrial Court is based on the first order and the first order as stated above has implemented the law laid down by the Apex Court in the case of *Umadevi-3*. No relief therefore can be granted to the Petitioner. Both the petitions are rejected.

(N. M. JAMDAR, J.)