

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5491 OF 2016**

**1 Municipal Corporation of Greater Mumbai)
Mahapalika House, Mahapalika Marg,)
Mumbai 400 001)**

**2 Municipal Commissioner)
Municipal Corporation of Greater Mumbai)
Mahapalika House, Mahapalika Marg,)
Mumbai 400 001)**

**3 Asst. Municipal Commissioner)
Municipal Corporation of Greater Mumbai)
Mahapalika House, Mahapalika Marg,)
Mumbai 400 001)**

..Petitioners

Vs.

**1 Maharashtra Navnirman Mahapalika)
Kamgar Karmachari Sena)
A Union duly registered under the Trade Unions)
Act, 1926 having its office at Matoshree Towers)
Padmabai Thakkar Marg,)
Matunga, Mumbai 400 016.)**

**2 Municipal Nursing & Para Medical Staff Union))
A registered Trade Union, under the)
Trade Unions Act, 1926)
having its office at 237-239)
N. M. Joshi Marg, Opp Bawala Masjid,)
Lower Parel, Mumbai 400 013)**

..Respondents

Mr. A. V. Bukhari, Senior Advocate a/w Ms Fauzia Bukhari and Mr. Vinod Mahadik for the Petitioners

Mr. Arshad Shaikh i/b Mr. K. S. Shetty for the Respondent No.2

**CORAM : R. M. SAVANT, J.
DATE : 14th SEPTEMBER, 2016**

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court under Article 226 of the Constitution of India is invoked against the order dated 5-4-2016 passed by the Learned Member of the Industrial Court, Mumbai by which order the application Exhibit U-12 filed for interim reliefs came to be allowed and resultantly the directions mentioned in the operative part of the said order, came to be issued. The said operative part for the sake of ready reference is reproduced hereinunder:-

“(1) The application Exh. U-12 is allowed.

(2) The Respondent Municipal Corporation is directed to verify the testimonials of the 19 nurses appointed as stop gap arrangement from 2010 in the process of 'walk in selection' and give them preference for their appointment as the staff nurses with effect from the date of appointment who were working in the various hospitals run by the Respondent Municipal Corporation, before preparing the list of the selected candidates as per the advertisement dated 19-3-2010.

(3) The selection list of the staff nurses as per the advertisement dated 19-2-2016 shall not be enforceable until the complainant staff nurses appointed on the contract basis are absorbed in the service from the date of their first appointment.

(4) The Respondent Corporation is at liberty to adopt any other mode for the selection of the complainant staff nurses who were appointed on contract basis, but till their selection in the

service, their posts be kept vacant till the final decision of Complaint (ULP) No.214 of 2014.

(5) The cost of the application shall be in the main cause of the complaint.

(6) The complaint is adjourned for written statement of the Respondents.”

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the advertisement dated 19-3-2016 by which the Petitioner Corporation advertised 533 posts of staff nurses triggered of the filing of instant application for interim reliefs in the pending complaint filed by the Respondent No.1-Union. The said pending complaint is Complaint ULP No.214 of 2014. The said complaint has been filed by the Respondent No.1 Union espousing the cause of about 350 nurses working on contract basis in the hospitals run by the Petitioner, Municipal Corporation. The said complaint was filed in the aftermath of the earlier advertisement dated 12-7-2014 also issued for recruitment of staff nurses, the post advertised then were about 887 out of which 90% of the posts were earmarked for the candidates who had completed the nursing course from the Nursing Schools run by the Petitioner Corporation and 10% of the posts were earmarked for the outsiders. In so far as the said complaint is concerned, an application for interim relief being Exhibit U-12 came to be filed therein and the interim reliefs claimed in the said complaint were almost co-extensive with the interim reliefs sought vide the instant application Exhibit U-12. The said application for interim reliefs

came to be rejected by the Learned Member of the Industrial Court by order dated 8-8-2014 for the reasons mentioned therein. The said order dated 8-8-2014 was not carried further by the Respondent No.1 Union.

4 As indicated above the instant application Exhibit U-12 was in respect of the 533 posts of staff nurses which were advertised vide advertisement dated 19-3-2016, out of the said 533 posts 480 posts were meant for the candidates from the Nursing Schools of the Petitioner Municipal Corporation and 53 posts were meant for outsiders. The selection procedure that was adopted was in the nature of walk in selection. The advertisement inter-alia stipulated the dates on which the walk in selection were to be held in respect of various categories of candidates. The said walk in selection commenced on 29-3-2016 for the open category and thereafter on other dates for the candidates belonging to other categories including the reserved category candidates. The instant application Exhibit U-12 for interim reliefs came to be filed on 4-4-2016, by the said date the walk in selection was already over. The said application was opposed to on behalf of the Petitioner. The Learned Member of the Industrial Court on the basis of the relief claimed and on the basis of the pleadings of the parties framed issues which are three in number, amongst which is the issue which is as follows : “who will suffer greater hardship and injury”. The said issue was answered in favour of the Respondent No.1. To the said application Exhibit-U-12 was annexed a list of 19

nurses as Exhibit U-14. The Learned Member of the Industrial Court heard the said application and allowed the same by the impugned order dated 5-4-2016 and has issued the directions which have been mentioned in the operative part of the impugned order and which directions have been already reproduced hereinabove in the instant order.

5 The Learned Counsel appearing for the parties i.e. the Learned Senior Counsel Mr. Bukhari appearing for the Petitioners and the Learned Counsel Mr. Shaikh appearing for the Respondents, were heard at length. After such hearing, the Learned Counsel after taking instructions from their respective clients, i.e. the Learned Senior Counsel Mr. Bukhari from Mrs Maya Vadgaonkar, Superintendent, Nursing Services who is in charge of the selection process and the Learned Counsel Mr. Shaikh from Mr. Pramod Khamkar who has been instructed by Mr. Pramod Rane the office bearer of the Respondent No.2, are agreeable to the following order being passed:-

(i) The directions as contained in the operative part of the impugned order dated 5-4-2016 are quashed and set aside and substituted by the following:

(a) Since by the ad-interim order dated 5-5-2016, passed in the above Petition 19 posts of staff nurses were directed to be kept vacant, the Petitioner Corporation would consider the 19 nurses who are part of list Exhibit-U-14 annexed to the application Exhibit U-12 for appointment to the posts of staff

nurses in terms of the eligibility and the selection procedure mentioned in the advertisement dated 19-3-2016. The same to be done within two weeks from date.

(b) In so far as the list of 514 nurses who have been selected is concerned, since the appointment orders have been issued and since the appointees have assumed their respective posts, their position would be unaffected.

(ii) The direction as contained in clause (i)(a) of the instant order is without prejudice to the rights and contentions of the Respondent No.1 in the said Complaint ULP NO.214 of 2014 as also without prejudice to the defences if any of the Petitioner Corporation in the said Complaint.

(iii) However, it is clarified that the same would not be an impediment for the Petitioner Corporation to consider the said 19 nurses for appointment as staff nurses in terms of the advertisement dated 19-3-2016.

6 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]