

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

WRIT PETITION NO.1 OF 2016

Mrs. Sushila Satyaprakash Nair and others .. Petitioners

Versus

Smt. Rupali Prabhakar Parab and others .. Respondents

Shri. Prakash Devdas a/w Mrs. Vidula Patil for the Petitioners.

Shri. Kishore Shankar Shetty for the Respondent Nos.1 to 20.

**Shri. A. V. Bukhari, Senior Advocate a/w Shri. Burhan V. Bukhari i/by
Shri. Vinod Mahadik for the Respondent Nos.21 to 26.**

CORAM : R.M. SAVANT, J.

DATE : 18th AUGUST 2016

PC.

1 The order dated 03.12.2015 passed by the Learned Member of the Industrial Court, Mumbai allowing Review Application (ULP) No.17 of 2015 is taken exception to by way of the above Petition. The Petitioners herein are the original Complainants in Complaint (ULP) No.226 of 2014. The Respondent Nos.1 to 20 herein are the newly added Respondents in the said complaint pursuant to the application made by them in that behalf.

2 It is not necessary to burden this order with unnecessary details having regard to the nature of the direction to be issued. By the Review Application, review was sought of the order dated 22.08.2014

passed by the Learned Member Shri. A. R. Mahajan. By the said order, certain directions came to be issued which are contained in clauses (a) and (b) of the operative part which read thus :-

“(a) The respondents are directed not to issue appointment letters to the candidates who have acquired qualification of Post Basic B.Sc. Nursing from Open University i.e. IGNOU in case such candidates are available and selected. Such posts shall not be filled in pending hearing and final disposal of main complaint from open category.

(b) But this does not prevent the respondents to go ahead with selection programme.”

Hence, the Respondents i.e. the Municipal Corporation of Greater Mumbai was directed not to issue appointment letters to the candidates who have the qualification of Post Basic B.Sc. Nursing from Open University i.e. IGNOU. The Respondent Nos.1 to 20 were thereby adversely affected by the directions issued. The Respondent Nos.1 to 20 therefore filed an application for their impleadment in the said Complaint (ULP) No.226 of 2014. The said application came to be allowed and they were impleaded as Respondent Nos.1 to 20. They thereafter filed the instant Review Application (ULP) No.17 of 2015 seeking review of the said order dated 22.08.2014. The Learned Member A. R. Mahajan who had passed the said order dated 22.08.2014 had by then become the President of the Industrial Court, Maharashtra and therefore assigned the said Review

Application to Shri. R. A. Gaikwad, Member, Industrial Court. The Learned Member, Shri. R. A. Gaikwad has thereafter dealt with the Review Application and has passed the impugned order dated 03.12.2015. By which order, the Review Application came to be allowed and the direction as contained in the operative part came to be issued.

3 The principal ground on which the order dated 03.12.2015 is challenged is on the ground that the Review Application ought to have been heard by the same Learned Member Shri. A. R. Mahajan who had passed the order dated 22.08.2014.

4 The Learned Counsel appearing for the Petitioners sought to raise contentions on merits as regards the eligibility of the candidates who have acquired Post Basic B.Sc. Nursing from Open University i.e. IGNOU for being appointed as sister tutor.

5 The Learned Senior Counsel appearing on behalf of the MCGM Shri. A. V. Bukhari also sought to urge contentions in support of the impugned order dated 03.12.2015 by relying upon material which comprised of the letters issued by the Nursing Council etc.

6 In my view, it is not necessary to delve into the second aspect namely as regards the eligibility and the entitlement of the candidates who

have done Post Basic B.Sc. Nursing from Open University i.e. IGNOU. However it is the first issue which is required to be addressed namely whether the Review Application could have been heard by another Learned Member of the Industrial Court. In so far as the jurisdiction of the Learned President of the Industrial Court is concerned, the same can be said to be co-extensive with the jurisdiction of a Member of the Industrial Court. As a President, he has certain administrative powers of distributing the work amongst the Members of the Industrial Court. In the instant case, though Shri. A. R. Mahajan who is now the President of the Industrial Court had passed the order dated 22.08.2014 he had assigned the Review Application to another Member Shri. R. A. Gaikwad who has passed the impugned order. In my view, since the Learned Member who had passed the order dated 22.08.2014 Shri. A. R. Mahajan was available though he has now become the Learned President of the Industrial Court, it would have been appropriate if he had himself dealt with the Review Application since having passed the order dated 22.08.2014 of which review is sought. In my view, therefore, the impugned order dated 03.12.2015 is required to be set aside and the Review Application is required to be relegated back to the Industrial Court to be heard and for being adjudicated by the Learned President Shri. A. R. Mahajan as he has passed the said order dated 22.08.2014. Since the issue as regards the eligibility of the candidates who

have Post Basic B.Sc. Nursing from Open University i.e. IGNOU for appointment as sister tutor is a contentious issue between the parties and since it is causing hardship to the MCGM in so far as the functioning of its hospitals is concerned. In my view, it would be just and proper to direct the Learned President to decide the Review Application latest by 30.09.2016.

7 Needless to state that the contentions of the parties on merits are kept open for being urged before the Learned President. With the aforesaid directions the Writ Petition is disposed of.

8 Additional affidavits or replies if any to be filed on or before 08.09.2016. To avoid further complications, the ad-interim order which is operating in the above Petition since 23.12.2015 granting status-quo is continued till the decision is rendered in the Review Application.

9 The Learned President, Industrial Court would decide the Review Application uninfluenced by the instant order or the impugned order.

10 Parties to act upon a copy of this order duly authenticated by the Court Shirestedar/Associates.

[R.M. SAVANT, J]