

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1086 OF 2014

Mr. Sharad Kumar	..	Petitioner
versus		
The Union of India & Anr.	..	Respondents

Ms Pooja Thorat i/b. M. V. Thorat for Petitioner.
Mr. R. R. Shetty with Mr. M. S. Bharadwaj and P. S. Gujar for
Respondent No. 1.
Ms Kavita Anchan i/b. M/s. M. V. Kini & Co. for Respondent No. 2.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.
DATE : 24 OCTOBER 2016**

P.C.:

1] The petitioner is before this court seeking the following reliefs :

“(a) call for the relevant records and papers from the office of the Respondent authorities and after going into the legality of the same quash and set aside the impugned termination order dated 18.11.2013 and for that purpose issue appropriate writ and/or order.

(b) direct the Respondent University to forthwith appoint Petitioner as Personal Assistant to the Director of Respondent No. 2 Institute with effect from his initial appointment under physically handicapped category.

(c) direct the Respondent no. 1 and 2 to forthwith disburse Petitioner's salary for the last 11 months of service i.e. from January 2013 to November 2013.

(d) restrain the Respondent No. 2 from evicting the Petitioner from the service quarters provided to him by the Respondent College.

(e) Pending the hearing and final disposal of this Writ Petition, operation and/or implementation and/or execution of impugned termination order dated 18.11.2013 be stayed.

(f) pending the hearing and final disposal of this Writ Petition, the Respondent University be directed to forthwith appoint Petitioner as Personal Assistant to the Director of Respondent No.2 Institute with effect from his initial appointment under physically handicapped category.

(g) pending the hearing and final disposal of this Writ Petition, the Respondent no.1 and 2 be directed to forthwith disburse Petitioner's salary for the last 11 months of service i.e. from January 2013 to November 2013

(h) pending the hearing and final disposal of this Writ Petition, the Respondent No.2 be restrained from evicting Petitioner from the service quarters provided to him by Respondent College.

(i) interim and ad-interim reliefs in terms of prayer clause (e), (f), (g) and (h) above.

(j) pass any other just and equitable orders in favour of the Petitioner as the nature and circumstance of this case may require.

(k) cost of the petition."

2] According to the petitioner in response to the advertisement to the post of personal assistant to Director of respondent no.2 which was reserved for physically handicapped candidate, the writ petitioner had applied and got selected and was even appointed in the year 2013 in the month of January. Subsequently the said appointment came to be terminated on the ground that the petitioner who was appointed as personal assistant to the Director in permanent capacity w.e.f. 15th January 2013 on certain terms and conditions deserves to be removed from services with immediate effect in terms of letter No. Dir/2013/267

dated 18th November 2013 (page 55) from the Government of India, New Delhi. According to the petitioner in the absence of any deficit in the appointment of the writ petitioner there was no justification to remove the petitioner from the service since the said appointment was after regular process of recruitment by way of advertisement and selection process.

3] The respondents have placed on record reply to the writ petition contending that totally ignoring the instructions of the department in question, the post of personal assistant to the Director was taken though there was a requirement that if any post which has remained vacant for more than a year, shall not be revived except in very rare and unavoidable circumstances and after seeking clearance of the Department of Expenditure. According to the respondents themselves the information was from the Ministry of Finance and Department of Expenditure by Office Memorandum dated 1st November 2012. That apart, according to them the procedure contemplated for appointing personal assistant to the 2nd respondent is altogether different from what procedure they have followed since recruitment rules for the post refer to by promotion as assistant to the Director and direct recruitment is not the procedure contemplated.

4] According to learned counsel for the writ petitioner such document like Exhibit R-3 (page 78) is placed on record in several cases pertaining to the respondent institute and the same cannot be accepted as the procedure. She also relies upon pages 41 to 44 to contend that in the year 2012 there was a specific direction to fill up all the posts i.e. backlogs pertaining to reserved category especially persons with disability (PWD). Therefore, without seeking revival, there was no justification on the part of the respondent authorities to

remove the writ petitioner from the post of a personal assistant to Director.

5] On perusal of the annexures with reference to the submissions made across the bar, we cannot totally ignore the specific office memorandum dated 1st November 2012 wherein it clearly indicated that there has to be clearance of the Department of Expenditure. Subsequently, appointment of the petitioner was removed only after receiving a letter from the concerned department, when disbursement of salary was sought, that there was no clearance from the Expenditure Department as indicated in the letter sent to the respondents on earlier occasion.

6] In that view of the matter, the appointment of the writ petitioner is against the very procedure to be adopted i.e. if the post is vacant for more than one year which could be filled up only in a rare and special circumstances with the approval of the Department of Expenditure. Even if there was a general circular to fill up all the backlogs, this specific direction cannot be ignored.

7] Then coming to the source of appointment, the post being a promotional one, we fail to understand how the very recruitment of the writ petitioner through advertisement was possible. It is totally ignoring the procedure contemplated for filling up the post of personal assistant to the Director. In that view of the matter, the very recruitment process adopted by the respondent authorities was in violation of the recruitment procedure contemplated. The argument of the learned counsel for the petitioner that this is not the recruitment process cannot be accepted. However, they have not placed before the court what was the actual process of recruitment to contend that the direct

recruitment was also possible. Even otherwise, the document at page 78 is placed on record along with affidavit in reply as one of the documents along with various other correspondence and the office note. We cannot reject the said document as non est in the eyes of law. Accordingly, we are of the opinion that there was justification for the removal of the writ petitioner from the post of personal assistant to the Director, since it was also against the procedure contemplated and the post was meant for the employees already in service in the institute, by way of promotion.

8] We note from the interim orders of this court that certain amounts are paid to the writ petitioner during the pendency of the writ petition since no salary was paid right from the date of appointment of the writ petitioner. The amounts paid is towards the salary for the period for which the writ petitioner discharged the duties of personal assistant to Director. Therefore, the same need not be recovered from the writ petitioner.

9] For the reasons discussed above, we are of the opinion that the writ petition deserves to be dismissed and is accordingly dismissed.

CHIEF JUSTICE

(M. S. SONAK, J.)