

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.736 OF 2005

Suresh s/o. Sakharam Kharat,
Age : 38 years, Occ. Nil,
r/o. Sakshi Niwas, Plot No.4,
Venkatesh Colony, Deolai,
Tq. and Dist. Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Ministry of Health,
Mantralaya, Mumbai
2. Maharashtra University of
Health Sciences,
Gangapur Road, Anandvalli,
Nashik – 422 013
3. Mahatma Gandhi Mission's
Medical College, N-6, CIDCO,
New Aurangabad – 431 003

RESPONDENTS

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Mr.V.S.Bedre, Advocate for petitioner
Mr.A.S.Shinde, AGP for respondent no.1
Mr.K.D.Bade-Patil, Advocate for respondent no.2
Mr.V.D.Salunke, Advocate for respondent no.3

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**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

DATE : 22nd JUNE, 2017

ORAL JUDGMENT (PER : T.V. NALAWADE, J.) :

Heard the learned counsel for the contesting
parties and the learned A.G.P.

2. The petitioner has prayed for the following reliefs :-

(B) By issuing appropriate writ in the nature of directions, respondent no.3 Medical College may be directed to allow the petitioner to resume his duties as a Tutor in Microbiology w.e.f. 27/6/1998 in the interest of justice.

(B-1) By issuing appropriate writ in the nature of directions, respondent no.3 Medical College may be directed to issue necessary appointment order to the petitioner as a Tutor in Microbiology w.e.f. 27.6.1998 in the interest of justice.

(C-i) By issuing appropriate writ in the nature of directions, the respondents may be directed to pay to the petitioner the salary of the post of Tutor in microbiology w.e.f. 27.6.1998 in the interest of justice.

(C-ii) By issuing appropriate writ in the nature of directions, the respondents may be directed to pay the difference of salary along with 18% interest to the petitioner w.e.f. 27.6.1998 in the interest of justice.

(C-iii) By issuing appropriate writ in the nature of directions, the respondents may be directed to grant the benefits of promotion with and all service benefits including the

deem date and other statutory benefits to the petitioner w.e.f. 27.6.1998 in the interest of justice.

3. The learned Counsel for the petitioner submits that in response to the advertisement dated 02.09.1997 published by respondent no.3 for the post of Tutor in Microbiology, the petitioner, being eligible since he was M.Sc. in Medical Microbiology, applied for the said post. He was interviewed on 27.06.1998 and was selected for the said post. However, respondent no.3 did not issue appointment order without any sufficient cause or reason and despite several representations made by the petitioner. The petitioner then approached the authorities concerned of Dr.Babasaheb Ambedkar Marathwada University, Aurangabad and also the Grievance Committee of Maharashtra University of Health Sciences, Nashik for redressal of his grievance. Both the Universities directed respondent no.3 to appoint the petitioner to the post of Tutor, however, respondent no.3 did not respond positively and compelled the petitioner to approach this Court.

4. This Court, as per the order dated 12.04.2005, granted interim relief in terms of prayer Clause (D) and

directed respondent no.3 to appoint the petitioner to the post of Tutor. Accordingly, respondent no.3 appointed the petitioner as Tutor on 06.06.2005 on consolidated salary of Rs.7,000/- without any pay scale, increments, etc.

5. The learned Counsel for the petitioner submits that the claim of the petitioner for appointment to the post of Tutor has been wrongly refused since year 1998. Therefore, the petitioner claimed the above mentioned reliefs.

6. On the other hand, the learned Counsel for respondent no.3 submits that the petitioner, in fact, was not holding the requisite educational qualification for the post of Tutor and therefore, he was not appointed to the said post. He further submits that the petitioner was not an employee of respondent no.3. Therefore, the Grievance Committees of Dr.Babasaheb Ambedkar Marathwada University, Aurangabad and Maharashtra University of Health Science, Nashik had no jurisdiction to entertain the grievance of the petitioner and issue any directions to respondent no.3. According to him, the said directions were without jurisdiction. He further submits that mere selection of

a candidate to any particular post would not vest any indefeasible right in him to get appointment. In support of this contention, he relied upon the judgments in the cases of **Shankarsan Dash Vs. Union of India, (1991) 3 SCC 47** and **Union Territory of Chandigarh Vs. Dilbaghsingh, (1993) 1 SCC 154**. He submits that the petitioner came to be appointed only because of the interim relief granted by this Court. According to him, the petitioner, who has not at all been appointed by respondent no.3, is not entitled to continuation in the service. He submits that the petitioner is not entitled to seek reliefs as prayed for.

7. In the case of **Union Territory of Chandigarh Vs. Dilbaghsingh** (supra), the Hon'ble Apex Court in paragraph 11 of the judgment has observed as under :-

"11. If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific Rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the

Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily."

8. In the case of **Shankarsan Dash Vs. Union of India** (supra), it is observed in paragraph 7 of the judgment as under :-

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that

the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

9. Respondent No. 3 – Institution has not disputed that the recruitment process was started by it and as per the procedure laid down in the Statutes framed under the Marathwada University Act, 1974, Dr. Babasaheb Ambedkar Marathwada University had constituted a Committee for selection. Though in the reply-affidavit, respondent No. 3 has contended that the petitioner had applied for the post of Lecturer, the correspondence and submissions made show that the petitioner had applied for the post of Tutor. In view of this circumstance, there is no need to consider the contention of respondent No. 3 that the petitioner was not satisfying the eligibility conditions which were required for the post of Lecturer. The correspondence on record is sufficient to infer that the proposal made by the Selection Committee was accepted by the University. The

selection process was completed in June, 1998 and the selection of the petitioner was approved by the University by letter dated 4th October, 2000. In view of the observations made by the Hon'ble the Apex Court in the two cases of **Shankarsan Dash** and **Union Territory of Chandigarh** (supra), it needs to be ascertained as to whether it is binding on respondent No. 3 to give appointment to the petitioner on the post of Tutor.

10. The attention of this Court was drawn to the provisions of the Maharashtra University of Health Sciences Act, 1998. The provision of Section 1 of the said Act shows that the said Act of 1998 came into force on 3rd June, 1998. Thus, on the day when the candidates were interviewed for selection by the Selection Committee, the Maharashtra University of Health Sciences Act, 1998 had come into force. The Committee, which took interviews, was constituted under the Maharashtra Universities Act, 1994 and not under the Maharashtra University of Health Sciences Act, 1998. Thus, the question arises as to the competency of the Selection Committee which took the interviews for selection.

11. The correspondence on record shows that ultimately, Dr. Babasaheb Ambedkar Marathwada University

had informed the petitioner, vide communication dated 21st August, 2002, that the University created under the Maharashtra University of Health Sciences Act, 1998 had the jurisdiction over the subject and that he should contact the said newly created University for further action in the matter. Though there is correspondence showing that the Maharashtra University of Health Sciences had also considered the grievance of the petitioner and had directed respondent No. 3 to see that the appointment was given to the petitioner, it can be said that his selection itself was not made as per the new Act of 1998 and hence, the petitioner did not have any right to say that he was entitled to get the appointment in view of his selection made by the Committee constituted under the provisions of the previous Act i.e. the Maharashtra Universities Act, 1994 by the other University. The purpose behind creation of one more University under the Maharashtra University of Health Sciences Act, 1998 is different and the Selection Committee will consist of the experts in different field. In this view of the matter, we hold that it was not binding on respondent No. 3 to give appointment to the petitioner on the post of Tutor.

12. The submissions made show that in view of the interim order passed by this Court, the petitioner got

the appointment and he is getting the consolidated salary though not regular pay scale. He has worked for the period starting from the date of appointment given to him on such post. This circumstance cannot be considered in favour of the petitioner for getting ultimate relief. In the circumstances, we hold that the directions as sought by the petitioner cannot be granted in view of the peculiar facts of the present case. In the result, we pass the following order:

O R D E R

- (i) The Writ Petition is dismissed.
- (ii) Rule stands discharged.
- (iii) The interim relief granted by this Court vide order 12th April, 2005 is hereby continued for a period of six weeks from today, at the request of the learned counsel for the petitioner.
- (iv) No costs.

[SANGITRAO S. PATIL]
JUDGE

[T.V. NALAWADE]
JUDGE