

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No.7155 of 2005

- 1) The State of Maharashtra
Through the Secretary,
Public Health and Medical
Education Mantralaya,
Mumbai - 400 032.
- 2) The Director of Public Health
St. Georges' Hospital Compound
C.S.T. Mumbai 400 001.
- 3) The Dean,
Government Medical College
Hospital, Aurangabad. **.. Petitioners.**

Versus

- * Anil s/o Ramesh Kamble,
Age 29 years,
Occupation : Nil,
R/o 48, Nandanvan Colony,
Aurangabad. **.. Respondent.**

Shri. A.S. Shinde, Assistant Government Pleader, for
petitioners.

Shri. Rajendra Deshmukh, Advocate, for respondent.

**Coram: T.V. NALAWADE &
SANGITRAO S PATIL, JJ.**

Date: 8 June 2017.

JUDGMENT (Per T.V. Nalawade, J.):

1) The proceeding is filed to challenge the judgment and order of Maharashtra Administrative Tribunal, Bombay, Bench at Aurangabad (for short, "M.A.T.") delivered in Original Application No.694/2003. By this decision the Tribunal gave direction on 10-2-2005 to the present petitioners, Government and the Government Medical College and Hospital, Aurangabad to give to the present respondent and one more applicant in other proceeding appointments on Class IV posts on the establishment of the Medical College and Hospital, Aurangabad in the vacancies which may occur in future as the candidates from open category. Heard learned Assistant Government Pleader for the petitioners. The learned counsel for the respondent is also heard.

2) The respondent had filed the proceeding before the M.A.T. and he had contended that he had filed application in the office of the Dean, Government Medical College & Hospital on 26-9-2003 for getting appointment to Class IV post. He had contended that he had registered his name in the Employment Exchange also as he was

unemployed. It is his contention that on 9-10-2003 he was interviewed and he was selected for Class IV post which was to be filled from handicapped category. It was contended that appointment order dated 16-10-2003 was issued in his favour. When he was asked to resume the duty he was not allowed to join the duty. It is contended that due to pressure and influence of the union leader who had objected to this appointment order he was not allowed to resume the duty. He had claimed the relief to declare that he was entitled to get such appointment and relief of aforesaid nature is given after hearing both the sides by the Tribunal. It appears that the relief is given mainly due to a circumstance like relief granted to another similar person in Writ Petition No.5483/2003 by this Court.

3) Defence was taken by the present petitioners that there was no process of selection, recruitment of candidates for such posts and even interview was not taken of present respondent for the recruitment. It was contended that a Clerk of the office obtained signature of the Dean on the appointment order virtually by fraud and

so no right as such is vested in the present respondent to get appointment to the post of Class IV cadre. It was contended that when such mischief was realized, the respondent was not allowed to resume the duty.

4) The submissions made and the record show that procedure for recruitment was not followed. Petitioner No.3 is Government College and Hospital from Aurangabad and the appointment is said to be made in the year 2003. There is no record to show that any advertisement was published. Even if it is presumed that the Dean was the appointing authority, it appears that a committee is required to be constituted and then the process of recruitment needs to be started. No such process was started and even names of candidates available on the list of Employment Exchange were not called. In view of these circumstances, the so called appointment order which the respondent was having, was cancelled. This order was not challenged and direction of aforesaid nature was claimed from M.A.T.

5) This Court is avoiding to make observations with regard to the direction given in previous writ

petitions by this Court in similar circumstances. Only because a person is physically handicapped, even this Court cannot make such order which gives a go-by to the procedure and which enables a candidate to get back door entry in Government Department. All these circumstances are not considered by the M.A.T. and only due to some observations made by this Court in previous writ petition in favour of some similar persons a direction of aforesaid nature is given by the M.A.T. against the present petitioners. Such direction cannot sustain in law. As the respondent has no right as such to get appointment on the post on the basis of the so called letter of appointment given to him, this Court holds that the decision of the Tribunal needs to be set aside. In the result, the petition is allowed. The decision of the M.A.T. in Original Application No.694/2003 is hereby set aside and the proceeding filed by the respondent before the M.A.T. stands dismissed. Rule made absolute in these terms. No order as to costs.

Sd/-
(SANGITRAO S PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

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