

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

WRIT PETITION NO.7039 OF 2017

Syed Ashfaq Syed Vazir Ali

VERSUS

The State Of Maharashtra And Others

WITH

WRIT PETITION NO.7040 OF 2017

Mohammed Basit Ansari Riyasat Ansari

VERSUS

The State Of Maharashtra And Others

WITH

WRIT PETITION NO.7741 OF 2017

Deepa Suresh Tandale And Others

VERSUS

The State Of Maharashtra And Others

WITH

CIVIL APPLICATION NO.8144 OF 2017

IN

WRIT PETITION NO.7741 OF 2017

Deepa Suresh Tandale And Others.

VERSUS

The State Of Maharashtra An

WITH

WRIT PETITION NO.8026 OF 2017

Khushbu Vijayraj Mehta And Another

VERSUS

The State Of Maharashtra And Others

Ms.Pradnya S. Talekar i/by Talekar And Associates, Advocate for the
Petitioners.

Mr.L.M.Acharya, Special Counsel a/w Mr.A.R.Kale, A.G.P. for

Respondent/State Authorities.
Mr.S.V.Adwant, Advocate for Respondent No.3.
Mr.K.K.Kulkarni, Advocate for Respondent No.4.

**CORAM: S.C. DHARMADHIKARI
AND
MANGESH S. PATIL, JJ.**

DATE :- 01st August, 2017

PC.:

1 By these petitions under Article 226 of the Constitution of India, the Petitioners are seeking the following reliefs:-

- "(A) To quash the termination order dated 31.05.2017 issued by the respondent No.5, terminating the services of the petitioner on the post of Mechanical Engineering, by issuing writ of certiorari, or any other writ order or direction as the case may be;
- (B) To direct respondent Nos.1 and 2 to fill in all the sanctioned and/or admissible posts of Asst. Professors, Associate Professors and Professors in all the subjects in the Government College of Engineering, Aurangabad on regular basis within a period of 3 months, by issuing writ of mandamus, or any other writ order or direction as the case may be;
- (C) To grant interim injunction restraining the respondents from relieving the petitioner from the post of Asst.Professor in Mechanical Engineering, pending hearing and final disposal of the petition;
- (D) To direct the respondent to continue the petitioner as Assistant Professor in Mechanical Engineering, pending hearing and final disposal of the petition;
- (E) To direct respondent Nos.1 and 2 to publish an advertisement inviting applications to fill in all the vacant and admissible posts of Asst. Professors, Associate Professors and Professors in all the subjects in the Government College of Engineering, Aurangabad on regular basis within 2 weeks, pending hearing and final disposal of the petition;

- (F) *To hold and declare that the Government Resolution dated 06.05.2017 issued by the Government of Maharashtra, Higher and Technical Education Department is ultra-vires the Constitution of India and unsustainable in the face of ratio of the judgment of the Hon'ble Supreme Court in the matter of State of Haryana v. Piara Singh reported in (1992) 4 SCC 118;*
- (G) *To grant interim stay to the operation, execution and implementation of the Government Resolution dated 06.05.2017 issued by the Government of Maharashtra, Higher and Technical Education Department, pending hearing and final disposal of the petition;"*

2 Barring the details of individual Petitioners including their dates of appointments and the period or term thereof, essential issue and controversy remains the same. Hence, a common order will dispose of all these petitions.

3 The Petitioners have approached this Court pointing out that they have been appointed on the establishment of the Government College of Engineering, Aurangabad. The Petitioners invite our attention to the pleadings and contend that the posts were sanctioned. The procedure, which is being followed for filling up such sanctioned posts, was adopted. Thus, everything which has to be done for the purpose of making regular appointments, has been done in the instant case. The posts were vacant. They were duly sanctioned. Despite this position, the Respondents chose to adopt the mode of appointment, namely, to appoint the Petitioners on

contract basis. The Petitioners' contract was subsisting and would have ordinarily come to an end in the month of June, 2017. However, prior thereto, the Government issued the Resolution dated 06.05.2017. By that resolution, the Government deleted clause 10(xiii) of the earlier Government Resolution dated 23.10.2012. Earlier Government Resolution permitted the Government autonomous Institutions to make through its Board of Managements, temporary appointments. Those are to fill up the vacancies on contract basis as a stop gap arrangement. However, regular appointments by nomination in the Government autonomous Institutions shall be carried out by the Government as per the existing procedure.

4 Thus, this facility of making temporary appointments to fill up the available vacancies and which appointments shall be made on contract basis as a stop gap arrangement, has now been done away with. The result is that the Government will now make appointment not on contractual basis, but will resort to make a temporary appointment on clock hour basis. That would result in exploitation of teachers like the Petitioners. That means temporary or stop gap employee is replaced by another temporary or stop gap or adhoc employee. That is gross violation of the mandate of Articles 14 and 16 of the Constitution of India. This is public employment.

5 Mr.Acharya, learned counsel appearing on behalf of the contesting Respondents, would submit that there is a specific object and

purpose sought to be achieved by the current Government Resolution dated 06.05.2017. That is to do away with such temporary appointments which results in unnecessary expenditure, appointments not strictly made in accordance with law resulting in judicial proceedings and pendency of the same resulting in total chaos. It is, therefore, to enable the Government to evolve the procedure whereby, all posts will now be filled in by the settled norms, that the present scheme has been introduced.

6 However, Mr.Acharya was fair to state, on instructions, that even if there are 100 posts which are sanctioned, regular appointments can be made either through the Maharashtra Public Service Commission (MPSC) or through the procedure set out in the Recruitment Rules and Regulations, still 10% to 20% posts are filled in by making clock hour or temporary arrangements. This is not an ideal situation, but this enables the Government to get talented people and who are not interested in abiding by the procedures, rules and regulations applicable to the permanent employees much less strict disciplinary regime. This is not affecting the quality of education nor dilution of standards, is reported because of the same. Therefore, when the Petitioners possess no right to seek any appointment as they were purely temporary employees whose appointments were for a period of one year, this Writ Petition deserves to be dismissed.

7 It is common ground that the Petitioners applied for certain

posts pursuant to an advertisement. That advertisement was issued by the Government College of Engineering, Aurangabad. The advertisement for various faculty positions, copy of which is at page 42 of the paper book, itself stated that the appointments would be on purely temporary basis for a period of 11 months. The date of this advertisement is 24.06.2016. True it is that the qualifications and eligibility criteria is identical to regular appointments, but the selection procedure, which is set out at page 45 of the petition paper book, enables the employer/ Government Engineering College to make temporary appointments. The appointment on purely temporary basis for a period of 11 months is still an appointment in public educational institution. This is as much public employment as anything else which is done regularly and through the MPSC or other modes. Therefore, Rules are bound to be applied and followed. That does not elevate the status of the Petitioners as contended by Ms.Talekar to an employee, who has worked for a long duration as a temporary employee and it is only that nomenclature which has hurt him immensely and caused prejudice. That he continued as an adhoc or temporary employee for years and decades together, deprived him of the rights of permanency. This is nothing but contracting out of the rights and which are conferred by law in the regular employees. This is only because of the nomenclature. That is how in the judgments relied upon by Ms.Talekar, the Honourable Supreme Court directed that one stop gap or one temporary employee or

one adhoc appointee, cannot be replaced by another of the same category. That would be making mockery of the rule of law. Then, somebody who has rendered the services for years and decades together would lose all benefits simply because the Government has chosen the nomenclature convenient to it and attached to their appointments.

8 We do not see that such situation emerges. The appointment is made pursuant to the powers vested in the Authorities vide Government Resolution dated 23.10.2012. Now, the situation is that this Government Resolution itself is withdrawn. The manner in which these appointments have been made and the order to that effect, copy of which is at pages 51 and 52 of the paper book, would indicate that they were appointed only for 11 months. How that sub-serves the purpose is unknown to us.

9 Today, the Government has, for whatever it is, discontinued such policy. The Government has issued the Government Resolution dated 06.05.2017 which takes away the power conferred by the Government Resolution dated 23.10.2012 and particularly clause 10(xiii). The preamble to this Government Resolution dated 06.05.2017 indicates that there is a proper plan and scheme drawn up of identifying vacant posts. The sanctioned posts which are vacant have been hitherto filled in on contract basis or by making appointments of the nature discussed above. That has resulted in the Government facing litigation in the Courts, the Government is being approached for the purposes of regularizing these

appointments, which are ex-facie illegal and consequent financial burden. That is why clause 10(xiii) itself is done away with. That takes away the power also in terms of the same and appearing in the Government Resolution dated 23.10.2012. That Government Resolution may be continued, but the power to make an appointment in terms of clause 10(xiii) is now taken away. Further, we have noted at page 60 that the Government has issued the Government Resolution dated 01.03.2017 through it's Department of Higher and Technical Education. It says that the posts under the auspices of this Directorate and which have been styled as adhoc, would be continued from 01.03.2017 till 30.09.2017.

10 We are of the firm opinion that the Petitioners do not have any right and to seek appointments on permanent basis when there is no procedure initiated to make such appointments presently. The Government has decided not to continue the contract employees and taken away the power of the Authorities like the Government Engineering College to make temporary appointments, but the scenario is indeed not happy. To treat teachers like this, would be really insulting them and their teaching ability. If at all they are able, competent, efficient and willing to teach, it is expected that the State treats them respectfully and then cares for their rights as well. If they are invited to teach the students only lecture-wise or period-wise, that hardly does any justice to their talent and equally inconveniences the students. If the Government really feels that

something should be done to repair this malady of students not attending classes for lack of permanent teachers and being forced to attend the coaching classes or take extra teaching by paying hefty fees, then, the Government must do away with this adhocism. There is no point in saying that though there are 100 sanctioned posts and they are vacant, but only 80 posts will be advertised. If there is workload, there are students, the college is running smoothly and to its capacity and it is popular and attracts students years after years and sessions after sessions, then, we see no reason not to make appointments to all 100 posts. It may be that several other policies intervene, in the sense, the Government will have to adhere to the rules and regulations strictly, even the roster point will have to be then operated. However, that is not the reason not to venture and make regular appointments.

11 The Government Resolution dated 01.03.2017 has not been done away with. We see no reason for allowing that Government Resolution to continue and thereafter, the same Directorate says that it wants to improve the quality of technical education. It wants to improve the quality of not only its own institutions, but 100% Government aided institutions, deemed universities and autonomous colleges. Everybody will suffer merely because the Government resorts to and encourages such adhocism. We do not see how that will not breed corruption or will not result in unnecessary burden much less on the finances of the State. We

also see no reason for the litigation getting discouraged. Every such person, who is continued as clock hour appointee and for years after years and sessions after sessions, is bound to drag the Government to the Court. He will not take consolidated meager salary. He is bound to claim and assert his rights. In these circumstances, we do not see any reason for an adhocism flourishing in the State.

12 We have seen enough of this. The Government may be fed up of the litigation, but we equally are. We do not wish to waste our precious judicial time on such litigation where we have to direct the Government years after years to make regular appointments and on sanctioned posts which are lying vacant. That there is no talent in the State of Maharashtra, is difficult to imagine and believe. That there will be no talent across the country when there is large scale unemployment, is also difficult to accept as a proposition and general in terms. We, therefore, see no reason for not filling up the posts on regular basis. Equally, the vacancies have to be filled in by that process. Until the vacancies are filled in, if there is any contingency or emergency or necessity, on exceptional basis some appointments can be made, but this cannot be a general rule. Presently, we find a scenario where the Government keeps all posts vacant and for decades together. Merely because some temporary employees are willing to work and continue as such, does not mean that the process has to be stopped and midway. That is because the Government feels that it saves

funds. This hardly saves funds and monies as precious public funds are then lost in defending the court proceedings and legal actions.

13 In such circumstances, while denying any substantive relief to the Petitioners, we direct that the present posts and which are filled in on Clock Hour Basis be advertised, if they are duly sanctioned and lying vacant. If there is workload, then, there is no reason not to publish an advertisement inviting the applications to fill in all such vacant and sanctioned posts of Assistant Professors, Associate Professors and Professors in all subjects in the Government Engineering College, Aurangabad. Let this process be initiated as expeditiously as possible and within a period of THREE MONTHS from today. We dispose of these Writ Petitions with these directions, but by clarifying that since the Petitioners do not possess any legal rights, we are unable to issue any writ of mandamus as claimed.

14 Needless to clarify that when we say that the appointments have to be made on regular basis and in accordance with law, then, they must adhere to the Recruitment Rules and traceable to Article 309 of the Constitution of India as it is public employment.

15 All the pending Civil Applications are disposed of.