

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

WRIT PETITION NO.2352 OF 2007

Nagnath Devidasrao Padhye,
Age : 35 years, Occu. Service
as Lab Assistant,
Govt. Medical College, Nanded
R/o Vakratunda, N-D42, J-1, 2/5,
HUDCO, Nanded

PETITIONER

VERSUS

1. The State of Maharashtra,
through the Secretary,
Medical Education & Drugs
Department, Mantralaya,
Mumbai
2. The Director,
Medical Education & Research,
St. Georges Hospital Compound,
Dental College Building,
Mumbai – 400 001
3. The Dean,
Govt. Medical College,
Nanded
4. The Secretary,
Regional Selection Board,
Aurangabad

RESPONDENTS

AND

WRIT PETITION NO.129 OF 2010

Balaji s/o Bhimrao Tidke,
Age : 32 years, occu. Government
Service as Laboratory Assistant
with Government Medical College,
Nanded, R/o "Shivam Niwas",
Kaleshwar Nagar, Vishnupuri,
Nanded, Tq. And District Nanded

PETITIONER

VERSUS

1. The State of Maharashtra,
through the Secretary,
Department of Health,
M.S., Mantralaya,
Mumbai
2. The Dean,
Government Medical College,
Nanded

RESPONDENTS

Mr. Ajay S. Deshpande, Advocate for the petitioner
in Writ Petition No. 2352/2007
Mr. A.S. Deshmukh, Advocate holding for Mr. R.S.
Deshmukh, Advocate for the petitioner in
Writ Petition No. 129/2010
Mr. S.N. Morampalle, A.G.P. for the respondents
in both Writ Petitions

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

**JUDGMENT RESERVED ON : 21st NOVEMBER, 2017
JUDGMENT PRONOUNCED ON : 20th DECEMBER, 2017**

COMMON JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Common questions of law and facts are involved
in both of these writ petitions. Therefore, they are
being decided by this common judgment.

2. For the sake of convenience, the petitioners
are hereinafter referred to by their first names, i.e.
Nagnath and Balaji, respectively.

3. The facts, which are not in dispute, are that Nagnath and Balaji were holding the certificates issued by the District Rehabilitation Officer, Nanded, declaring that they are project affected persons and are entitled to get benefit of the scheme for rehabilitation of the project affected persons in the form of concession in getting the Government service. Nagnath and Balaji applied for being appointed to the post of Laboratory Assistant from the quota meant for project affected persons on 16th April, 1998 and July, 1997 respectively.

4. Balaji was appointed to the post of Laboratory Assistant for a period of 29 days as per the order dated 30th august, 1997. He was again appointed for the same period by another order dated 2nd September, 1998. Apprehending that his services would be terminated, he filed Original Application No.529 of 2008 before the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad ("Tribunal", for short), seeking regularisation of his services, on 25th September, 1998. Interim relief was granted in his favour on 29th September, 1998, protecting his services during pendency

of the Original Application before the Tribunal. Accordingly, he continued to be in service. However, after hearing the matter on merits, the Tribunal dismissed the said Original Application on 9th October, 2009.

5. The application filed by Nagnath for appointment to the post of Laboratory Assistant was not considered for a long period. Therefore, he filed Original Application No. 777/1999 before the Tribunal, seeking directions to the Appointing Authority i.e. the Dean, Government Medical College, Nanded for getting himself appointed to the post of Laboratory Assistant. The Tribunal passed an interim order in favour of Nagnath on 1st November, 1999. In compliance with that order, the Dean, Government Medical Collge, Nanded issued appointment order in favour of Nagnath on 12th November, 1999 subject to final decision of the Original Application. The said Original Application also came to be dismissed by the Tribunal after hearing the parties on 28th February, 2007.

6. The Dean, Government Medical College, Nanded had opposed both of the Original Applications mainly on

the ground that there were only 20 sanctioned posts of Laboratory Assistants, while the quota of 5% meant for the project affected persons was already exhausted and therefore, the above named petitioners were not liable to be appointed or confirmed in the service under the scheme of rehabilitation of the project affected persons.

7. The learned Members of the Tribunal dismissed the Original Applications on the basis of the judgments in the cases of ***Secretary, State of Karnataka and others Vs. Umadevi and others 2006 AIR SCW 1991*** and ***Rajendra pandurang Pagare and another Vs. State of Maharashtra and others 2009(4) Mh.L.J. 961*** respectively, holding that the petitioners have no right to seek appointment and confirmation in the service without following due procedure meant for recruitment even for the post reserved for the project affected persons.

8. The learned counsel for the petitioners submit that the reason shown by the Dean for not appointing the petitioners to the posts of Laboratory Assistants that the quota meant for the project affected persons was already exhausted, would not survive since after

appointing these petitioners, the Dean has appointed six more persons who were project affected. It is further their contention that the judgment in the case of **Umadevi** (supra) cannot be applied mechanically as held in the case of **U.P. State Electricity Board Vs. Pooran Chandra Pandey and others 2007 AIR SCW 6904**. According to them, in the present cases, the petitioners were not seeking regularisation in their services, but they were seeking appointments to the posts of Laboratory Assistants, to which they had a right to be appointed (under the policy decision of the State Government) since they were the project affected persons. Therefore, the case of **Umadevi** would not be applicable in the present cases.

9. It is not disputed by the petitioners that there were only 20 sanctioned posts of Laboratory Assistants in the Government Medical College at Nanded. If that be so, only one post would be available for the project affected persons. The petitioner Nagnath has produced the seniority list of the employees appointed to the posts of Laboratory Assistants in the Government Medical College at Nanded. One Maqsum Iftekar Malik (serial no.132 in the seniority list) has been appointed

as the Laboratory Assistant with effect from 1st July, 1997 from the category of project affected persons. His date of retirement is 30th September, 2036. The names of the petitioners i.e. Nagnath and Balaji are at serial nos. 135 and 142 respectively of the seniority list. It is the specific plea of the Dean of the Government Medical College that the quota meant for project affected persons was already exhausted and therefore, both the petitioners could not be appointed to the posts of Laboratory Assistants under the said quota. This plea is fortified by the seniority list of the candidates produced by petitioner Nagnath, who were expecting appointments under the quota meant for project affected persons.

10. Here, reference may be made to the circular dated 3rd January, 1997, whereunder the appointments of the project affected persons were excluded from the purview of the Regional Selection board. It was clarified in paragraph No.3 of the said circular that the project affected persons having priority for being appointed to 5% of the posts could directly file applications to the Appointing Authority. It was further clarified that such persons also would be

entitled to apply for the posts which were not reserved for project affected persons by sending their applications to the Selection Board pursuant to the advertisement. However, they would not be entitled to have priority in appointments as project affected persons in the process of selection conducted by the Selection Board. In that selection process, the candidates from the category of project affected persons would be required to compete for being selected with other candidates. From this circular, it is clear that it is only when the appointment is sought to be made from the quota of 5% meant for the project affected persons that a candidate falling under the category of project affected persons could apply directly to the Appointing Authority without subjecting himself to the regular selection process conducted by the Selection board pursuant to an advertisement. However, if such candidate claims appointment to the post in excess to the quota of 5%, he would be required to undergo the regular selection process conducted by the Selection Board and compete with other candidates.

11. In the present case, as stated above, the quota meant for project affected persons was already exhausted

since the candidate at serial No.132 namely Maqdam Iftekar Malik was appointed from the category of project affected persons on 1st July, 1997. His date of retirement is 30th September, 2036. If that be so, both the petitioners were not entitled to seek appointment to the posts of Laboratory Assistants from the quota meant for the project affected persons. In view of the circular dated 3rd January, 1997, they were not entitled to claim appointment to the posts of Laboratory Assistant by directly making applications to the Appointing Authority and the Appointing Authority also was not legally authorised to appoint them by entertaining such applications.

12. Both the petitioners, though were not entitled to be appointed from the category of project affected persons, had secured appointments pursuant to the interim reliefs granted by the Tribunal. It cannot be said that the petitioners were appointed to the posts of Laboratory Assistants by following due procedure that was prescribed in the circular dated 3rd January, 1997.

13. The facts of the case of **U.P. State Electricity Board** (supra), cited on behalf of the

petitioners, are quite different than that of the present petitions. In that case, 34 petitioners, who were daily wage employees of the Cooperative Electric Supply Society, had prayed for regularization in the service in the U.P. State Electricity Board since the said Society had been taken over by the Electricity Board on 3rd April, 1997. While taking over the Society, it was decided that the daily wage employees of the Society, who were being taken over by the Board, would start working in the Board "in the same manner and position". Accordingly, the petitioners/employees were absorbed in the services of the Board. Earlier, the Board had taken a decision to regularize services of its employees working on daily wage basis prior to 4th May, 1990 on the then existing vacant posts after holding examination for selection. The petitioners were denied benefit of the said decision. In that background, it was held that since the petitioners were appointed in the Society prior to 4th May, 1990, they cannot be denied the benefit of the decision of the Board permitting regularization. In view of these distinguishing facts, it was held that the decision in the case of **Umadevi** (supra) would not be applicable to the facts of the said case. Consequently the said judgment would be of no help

to the petitioners either to seek appointment or regularization in service, as claimed.

14. When there was no post available for being filled up from the candidates from the category of project affected persons, the Dean of Government Medical College, Nanded had no authority to appoint the petitioners by entertaining their applications. Therefore, the appointments of the petitioners, which were made without following the due procedure, would be covered by the judgment in the case of **Umadevi** (supra).

15. The learned counsel for the petitioners pointed out to paragraph No.13 of the judgment in the case of **Rajendra Pandurang Pagare and another** (supra), wherein it is observed that if the appointing authority has initiated procedure for appointment of project affected persons, prior to 13th September, 2000, the procedure prescribed under Circular dated 13th September, 2000 would not be applicable. In our view, these observations would not come to the assistance of the petitioners in seeking appointments or regularization of their appointments to the posts of Laboratory Assistant. As stated above, when there was no post available for being

filled up from the category of project affected persons, in view of the Circular dated 3rd January, 1997 the appointing authority could not have given appointments to the petitioners by directly entertaining their applications and the petitioners were under an obligation to approach the Selection Board pursuant to the advertisement and compete with other candidates applying for the said posts. Thus, the petitioners were not entitled to get appointed to the posts of Laboratory Assistants on the basis of their applications directly sent to the appointing authority.

16. The contention of the learned counsel for the petitioners that some other persons from the category of project affected persons have been appointed by the Dean, even after their appointments, would not be of any help to the petitioners to seek appointments or regularization in service. Only because the Dean of the Government Medical College appointed some other persons from the category of project affected persons without following due procedure, the petitioners cannot claim parity seeking benefit of such irregular/illegal act. When the petitioners seek the assistance of the Court, it is necessary for them to establish their legal right

to get appointed to the posts of Laboratory Assistants. They cannot get appointed to the said posts illegally by pointing out to some other illegal appointments.

17. As stated above, both the petitioners were appointed by the Dean, Government Medical College, Nanded pursuant to the interim orders passed by the Tribunal. It is well settled that the Tribunals or Courts cannot direct the employer to fill up the posts ignoring the prescribed procedure for selection and appointment. The Tribunal, after considering the cases of the petitioners on merits, rightly dismissed the Original Applications. We do not find any reason to interfere with the decisions rendered by the Tribunal in the Original Applications filed by the petitioners. The Writ Petitions are liable to be dismissed. The interim relief granted in favour of petitioner Nagnath is liable to be vacated. In the result, we pass the following order:-

O R D E R

(A) Writ Petition Nos. 2352 of 2007 and 129 of 2010 are dismissed.

(B) The interim relief granted in favour of the petitioner in Writ Petition No. 2352 of 2007 is vacated.

(C) No costs.

(D) Rule stands discharged.

18. At this stage the learned counsel for the petitioner in Writ Petition No.2352 of 2007 prays for continuation of the interim relief granted in his favour protecting his service for a period of eight weeks. Interim relief is granted for a period of eight weeks from today as sought.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

npj/wp2352-2007-129-2010