

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

Writ Petition No. 10441 of 2016

Vinod S/o Hiranman Patil. **.. Petitioner.**

Versus

The Municipal Corporation of City
of Jalgaon, Jalgaon & Others. **.. Respondents.**

Shri. Kishore C. Sant, Advocate, for petitioner.

Shri. P.R. Patil, Advocate, for respondent Nos.1 and 2.

Shri. S.G. Karlekar, Assistant Government Pleader, for
respondent Nos.3 and 4.

**Coram: Dr. MANJULA CHELLUR, CJ &
R.M. BORDE, J.**

Date : 30 June 2017

ORDER:

1) Heard learned counsel for the petitioner as well
as the respondent - Municipal Corporation.

2) It is not disputed that the petitioner came to be
appointed as Vaidya by the erstwhile Municipal Council

Jalgaon by an order said to have been signed by the President of the Municipal Council. Subsequently on the request of the petitioner the Municipal Council also started paying him honorarium for one year. Later on subsequent to 2001, his services came to be terminated but with the intervention of the Labour Court Jalgaon he continued in service and ultimately the said petition came to be dismissed by opining that the petitioner does not come within the definition of workman. Later on, as per resolution dated 5-10-2006 the General Body seems to have enhanced the honorarium to Rs.10,000/- per month with effect from 1-7-2005, the very fact that it was never the permanent post. On 30-12-2008 according to the petitioner he applied for appointment on a post considering his nomination of freedom fighter by late Barku Bala Patil. He seeks said benefit on the ground that in 1991 and 2004 there was Government policy to extend such benefit of appointment to the freedom fighters or their nominees.

3) Another person by name Dr. Sachin Digambar Wani who was also appointed as Vaidya came to be

terminated by order dated 17-6-2008 which order came to be challenged in a writ petition i.e. Writ Petition No.1059/2014 which came to be heard along with Writ Petition No.11123/2010. Apparently this petitioner was also made a party to the proceeding in the earlier round of litigation which came to be disposed of by order dated 21-4-2015. It was the contention of the petitioner - Dr. Sachin Wani in the said writ petition that even the present petitioner, Dr. Vinod Patil, who was the respondent, was appointed similarly like Dr. Sachin Wani, therefore, since services of present petitioner, Dr. Vinod Patil are continued, similar benefit should be extended to Dr. Sachin as well. In that context respondent Municipal Corporation submitted before the Bench in the earlier litigation that even the appointment of Dr. Vinod is not in accordance with the procedure contemplated. The Bench came to conclusion that so far as the appointment of the petitioner is concerned, in the light of the statement made by the respondent Corporation, the respondent-Corporation is at liberty to take suitable or appropriate steps and measures to correct the earlier decision as expeditiously as possible. It is pertinent to mention that so

far as Dr. Sachin's appointment the Bench opined that Dr. Sachin Wani had no right to assail the appointment order of present petitioner since said appointment was only on temporary and honorarium basis. Apparently said order never came to be challenged either by Dr. Sachin or by the present petitioner Dr. Vinod. It is noticed from record that subsequent to the disposal of these writ petitions, the matter was taken before the general body in terms of page 103 and page 104. Page 103 is recommendation of the general body that report has to be submitted to the general body after hearing present petitioner and in the next general body a decision will be taken on the subject matter or the controversy. Apparently no such report was submitted and neither the general body took a decision. By virtue of Exhibit "S" at page 104, the Commissioner of Municipal Corporation after referring to the Division Bench judgment of 2015 opined that the services of the petitioner cannot be continued and they are terminated. The petitioner is before this Court aggrieved by the said termination contending that in terms of 1991 and 2004 policy of the Government he had a priority, his application had to be

considered on priority basis and he ought to have been appointed as nominee of freedom fighter. Though he applied for the said post in terms of the 1991 and 2004 policy of the Government, it never resulted in positive manner. He did not approach the Court at that point of time invoking thereby the benefit in terms of the 2004 policy of the State. For the first time after modification of the policy, he applied in 2008 for regularization of the appointment and only in 2013 he was again appointed on temporary basis. Even at that point of time the petitioner did not approach this Court.

4) Whatever appointment in whatever manner described, the appointment was given to him it was at no time a permanent appointment against a clear vacancy. It was always temporary appointment and on the payment of honorarium at a fixed amount. In all probability, if Dr. Sachin's case had not come up for consideration wherein direction was given to the respondent Corporation to act in accordance with the procedure contemplated, the appointment of the petitioner would have been continued in the similar manner and now because he is terminated

by order at Exhibit "S", he is before this Court. In the light of the above factual situation the controversy which needs our attention now is whether the petitioner is entitled for a hearing or explanation or show cause notice like a regular employee before termination of his temporary services rendered to the respondent Corporation as a Vaidya. The respondent has to consider whether the appointment of the petitioner itself was valid, in accordance with procedure and so also in the light of the law developed by the Apex Court. The learned counsel for the respondent-Corporation placed before us two decisions of the Apex Court. One is reported as **(2006) 4 SCC 1** in the case of **State of Karnataka v. Umadevi** and another is reported as **(2006) 6 SCC 430** in the case of **R.S. Garg v. State of U.P.** So far as Uma Devi's case is concerned, the Apex Court held that wide powers of the High Court under Article 226 are not intended to be used for issuing of directions especially which would defeat the concept of social justice, equal opportunity and the constitutional scheme of public employment. It further opines that the Court is bound to insist on the State making regular recruitment and

appointments and the State should not encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. It further proceeds to say that the Court cannot ignore equity for the teeming millions seeking employment and fair opportunity for competing for employment. It is further opined that Courts must be careful in ensuring that they do not interfere unduly with the economic/financial arrangements of the affairs of the State or its instrumentality. Subsequent to this judgment in the case of State of Karnataka v. Uma Devi, there was mass regularisation of blunders committed by the State or its instrumentality in making mass appointments on daily wages or contract basis or temporary basis. In order to protect the interests of the individuals by virtue second judgment in Uma Devi, certain directions were issued in order to protect the employment provided the employees had put in service for a particular period. Apparently we are not concerned with such situation in the present matter. Even the petitioner never claimed such benefit subsequent to Uma Devi's second judgment.

5) In the case of R.S. Garg it was held that any appointment made without complying with the rules or procedure made under proviso to Article 309 of the Constitution would be *void ab initio* and incapable of regularisation.

6) In the light the above decisions of the Apex Court when Dr. Sachin's appointment could be terminated since it was temporary appointment with honorarium payment we are of the opinion that the petitioner does not stand on a better footing than Dr. Sachin. Even otherwise if the case of the petitioner is taken into consideration on its own facts, right from 1999 till the problem arose his appointment was always on temporary basis with a definite amount as honorarium per month. Even if there were clear posts available, by virtue of 1991 policy also merely as a nominee of freedom fighter, the petitioner cannot, as a matter of right, seek such appointment as a special category person. He must come in the queue and if reservation is made for such category i.e. nominee of freedom fighter, he can always compete with others if there are other persons of the same

nature. Merely because he is nominee of freedom fighter, there is no procedural law which says that he shall be appointed without undergoing any selection process. As a matter of fact, the modified policy of the State seems to be that such persons who claim to be nominee of freedom fighter must register with the District Collector and the procedure is contemplated how their names should be recommended. Even such candidates had to follow the procedure meant for such priority or recommendation. In the absence of such procedure being followed by the petitioner, we fail to understand how he could still insist and hold on the post he was holding till he was terminated.

7) The argument of the petitioner's counsel that the general body resolution was not followed by the Commissioner while terminating the services of the petitioner in terms Exhibit "S", we are of the opinion that the initial appointment itself was not made by the Commissioner of the Municipal Corporation. The appointing authority at that point of time was Chief Officer of the Municipal Council but the appointment

order was issued by the President of the Municipal Council. It cannot be said that the Commissioner has no power to terminate the services of the petitioner. There is no procedure contemplated under the Act in question whereby the general body could pass such resolution directing the Commissioner to hear the petitioner and submit report and then such report will be considered in the next general body. This is unknown to law.

8) In the light of the above discussion and reasoning, we are of the opinion that there cannot be any positive directions in favour of the petitioner in the present petition. Accordingly we decline to interfere and the petition is dismissed. It is needless to say that in case respondent-Corporation advertises and calls applications for filling the post of Vaidya, there is no impediment or obstacle for the petitioner to apply and such application shall be considered strictly adhering to the procedure for selection untrammelled by any of the observations.

Sd/-
(R.M. BORDE, J.)

Sd/-
(CHIEF JUSTICE)

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