

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4927 OF 2015

Shri K.S. Kadam & Anr.

... Petitioners

Vs.

The Director,

Directorate of Technical Education & Ors.

... Respondents

Mr. A.M. Kulkarni, Adv. for the Petitioner.

Mr. A.B. Borkar, Adv. for Respondent No.2.

Mr. Chetan G. Patil, Adv for Respondents Nos. 4 & 5.

Mr. C.P. Yadav, AGP for the Respondent – State Nos. 1 and 3.

**CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.**

DATE : 29 JUNE 2017.

J U D G M E N T :- (Per B.R. Gavai, J.)

1. Rule. Rule made returnable forthwith.

2. Heard Shri Kulkarni, learned counsel for the Petitioners on the question of grant of interim protection.

3. The Petitioners challenges the validity of the Government Resolution dated 10th September 2012 and seeks mandamus to the 1st Respondent to accept the proposal submitted by the management to appoint the Petitioner as Head of the Department.

4. It appears that initially the Respondent management had decided to fill up the post of Head of the Department by promotion and accordingly a proposal was sent for grant of approval to the appointment of the Petitioners as Head of the Department. However, in the meantime, the GR which is under challenge came to be issued and in pursuance to the said G.R., advertisements were issued. The candidates who are intervenors and the Petitioners appeared for the interview, which were held on 15th and 16th November 2013. It appears that the intervenors were found to be successful in the said interview and the Petitioners were not found to be successful. The Petitioners thereafter after waiting for a period of two years have filed present Petition in the month of May 2015.

5. Mr. Kulkarni, the learned counsel for the Petitioner submitted that since the rules on the basis of which intervenors are

selected are not applicable to the private polytechnics, the Petitioners have good merits for grant of interim relief. By now it is settled principle of law that a candidate after participating in the selection process and after having declared unsuccessful is normally precluded from approaching the Court, challenging the selection process, on the ground of 'taking chances'. The reliance in this respect could be placed on the judgment passed by the Apex Court in the case of ***Madan Lal & Ors. Vs. State of J & K & Ors.***¹ , which has been followed subsequently by various judgments.

6. No doubt that, Shri Kulkarni, the learned counsel for the Petitioners is justified in relying on some judgments of the Apex Court which held that the said rule is not hard and fast rule and exceptions are permissible. However, in the present case participation in the selection process, permitting the selection process to complete, waiting for a period of almost two years and thereafter approaching this Court, in our considered view would at least *prima facie* does not not make out a case for departure from the rule laid down by the Apex Court in the case of ***Madan Lal (Supra)***.

1 (1995) 3 Supreme Court Cases 486

7. In that view of the matter, the case is not made out for grant of interim relief. In any case if the Petitioners succeed they can always be compensated in the monetary terms.

8. The prayer for interim relief stands rejected.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)