

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 14065 OF 2016**

Mr. Milind Ashok Natu

....Petitioner.

Vs.

State of Maharashtra & Ors.

....Respondents.

WITH**CIVIL APPLICATION NO. 1051 OF 2017****IN****WRIT PETITION NO. 14065 OF 2016**

Government College of Engineering

....Applicant

IN THE MATTER BETWEEN

Mr. Milind Ashok Natu

....Petitioner.

Vs.

State of Maharashtra & Ors.

....Respondents.

ALONG WITH**WRIT PETITION NO. 465 OF 2017**

Anant Subhash Khatik

....Petitioner.

Vs.

State of Maharashtra & Ors.

....Respondents.

WITH

**CIVIL APPLICATION NO. 1049 OF 2017
IN
WRIT PETITION NO. 465 OF 2017**

Government College of EngineeringApplicant

IN THE MATTER BETWEEN

Anant Subhash KhatikPetitioner.

Vs.

State of Maharashtra & Ors.Respondents.

ALONG WITH

WRIT PETITION NO. 471 OF 2017

Prashali Hemchandra ZodapePetitioner.

Vs.

State of Maharashtra & Ors.Respondents.

WITH

**CIVIL APPLICATION NO. 1050 OF 2017
IN
WRIT PETITION NO. 471 OF 2017**

Government College of EngineeringApplicant

IN THE MATTER BETWEEN

Prashali Hemchandra ZodapePetitioner.

Vs.

State of Maharashtra & Ors.Respondents.

ALONG WITH**WRIT PETITION NO. 4717 OF 2017**

Mr. Abhaysingh Balasaheb PatilPetitioner.

Vs.

State of Maharashtra & Ors.Respondents.

ALONG WITH**WRIT PETITION NO. 4868 OF 2017**

Mr. Arun Baban DahatondePetitioner.

Vs.

State of Maharashtra & Ors.Respondents.

ALONG WITH**WRIT PETITION NO. 14074 OF 2016**

Ravindra Nandalal RathodPetitioner.

Vs.

State of Maharashtra & Ors.Respondents.

WITH**CIVIL APPLICATION NO. 1052 OF 2017**

IN

WRIT PETITION NO. 14074 OF 2016

Government College of EngineeringApplicant

IN THE MATTER BETWEEN

Ravindra Nandalal Rathod

....Petitioner.

Vs.

State of Maharashtra & Ors.

....Respondents.

Mr. Tejas J. Kapre a/w J.S. Kapre for the Petitioner in all Writ Petitions.

Mr. V.N. Sagare, AGP for Respondent Nos. 1 and 3 in all the Writ Petitions.

Mr. L.M.Acharya i/by Mr. Anish Khandekar for Respondent No.2 in all the Writ Petitions and for the Applicant in the Civil Applications.

**CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.
DATE : 15 JUNE 2017.**

P.C.:-

The Petitioner in Writ Petition No. 14056 of 2016 was initially appointed in pursuance to an advertisement issued by Respondent No.2 in the year 2006. The Petitioner, thereafter, was continued till 2010, after giving a technical break. The Petitioner thereafter, resigned in the year 2010.

2 The Petitioner in Writ Petition No. 14065 of 2016, along with other Petitioners in all other Petitions, in response to the advertisement issued by Respondent No.2 in the year 2014, had applied and were selected against the temporary posts on the establishment of Respondent No.2. Again in the year 2016, a fresh

advertisement were issued by Respondent No.2. All these Petitioners again appeared in the said selection process in pursuance to the advertisement of the year 2016. In the said selection process, four candidates (Petitioners) were found eligible and two were found ineligible. The Petitioners, thereafter, on the basis of the Judgment of the Division Bench of this Court in the case of **Sachin Ambadas Dawale & Ors. Vs. State of Maharashtra & Anr.**¹ had approached this Court in extra ordinary jurisdiction under Article 226 of the Constitution of India, seeking their regularization.

3 Ms. Kapare, the learned counsel appearing for the Petitioner submits that the Petitioner has put in almost more than 10 years of service regularly. She submits that, the rest of the Petitioners are also duly selected in the selection process conducted by Respondent No.2. It is, therefore, submitted that the Petitioners having been regularly selected, having undergone the regular selection process, cannot be denied regularization by Respondent No. 2, in view of the Judgment of the Division Bench of this Court in the case of **Sachin Ambadas Dawale & Ors. (Supra).** The learned counsel also

1 2014(2) Mh.L.J. 36

submits that the posts, on which the Petitioners were working, are permanent and sanctioned posts and that the work is of a continuous nature.

4 Mr. Aacharya, the learned counsel appearing on behalf of Respondent No.2, on the contrary, submits that insofar as the Petitioner in Writ Petition No. 14065 of 2016 is concerned, though he initially worked from 2006 to 2010, he voluntarily resigned from the year 2010 and thereafter had applied again to the advertisement which were issued by Respondent No.2 in the year 2014, against the posts which were created in a project, sanctioned by the World Bank. He submits that the rest of the Petitioners have also been selected against the posts sanctioned by the World Bank in the year 2014. He submits that the said posts were against the project sanctioned by the World Bank and were for the limited period of time. He further submits that the project has come to an end after 31 March 2017 and as such, the continuation of the Petitioners, is not permissible.

5 The learned counsel appearing for the Respondents submits that the Judgment of the Division Bench of this Court in

Sachin Ambadas Dawale & Ors. (Supra) would not be applicable to the facts of the present case, inasmuch as in the said case, the posts were sanctioned by the Government.

6 Perusal of the material placed on record reveals that, the advertisement in response to which the Petitioners had applied, is specifically for the appointment purely on the temporary and contractual basis and it specifically provides that the candidate shall not be entitled for any other benefits of regular/permanent employee. Not only this, but so far as the Petitioner in Writ Petition No. 14065 of 2016 is concerned, the Respondent No.2 has also placed on record his resignation letter dated 1 July 2010. It could thus be seen that, the Petitioner in Writ Petition No. 14065 of 2016 cannot be said to be continued in the employment continuously from the year 2010 till this date. The advertisement of the year 2014 would also clearly and specifically show that the appointments were against the temporary posts and on a contractual basis and the employees appointed, will not have any rights of a permanent employee. Not only that, but a specific averments are made by the Respondent No.2 that in the subsequent selection process held in pursuance to the advertisement

of the year 2016, the Petitioner in Writ Petition No.14065 of 2016 failed and thereafter requested for the appointment as an Adjunct Lecturer, which request was accepted. Insofar as the rest of the Petitioners are concerned, they were for the first time appointed in the year 2014, in response to the advertisement, which specifically stipulated that the advertisement was for the posts which are temporary in nature and are on the contract basis.

7 Insofar as the Judgment in the case of **Sachin Ambadas Dawale & Ors. (Supra)**, to which one of us (Gavai, J.) was a party is concerned, the facts were totally different. In the said case, since the Lecturers in the different faculties in the Government Polytechnics of the Government of Maharashtra were not available on account of the selection not been conducted by the MPSC, the Government of Maharashtra had specifically notified a Government Resolution dated 25 July 2002, which came to be subsequently modified vide Government Resolutions dated 2 September 2003 and 3 October 2003 thereby, specifying a special procedure for filling up a vacant posts in the polytechnics of the Government of Maharashtra.

8 In the said case, though initial appointment was on a contract basis for a period of 2 years, the same was in pursuance to an advertisement issued as per the Government Resolution and after the Petitioners therein had undergone a due selection process by a Selection Committee, duly constituted under the said Government Resolution, which consisted of various experts. This Court found that the law laid down by the Apex Court in the case of Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors.² could not be made applicable to the facts of the said case, inasmuch as the initial entry of the Petitioners therein could not be said to be a back-door entry. The Court, further found that the posts were sanctioned posts and that the Petitioners therein, were continued in service uninterruptedly for more than 10 years. It was further found that, it could not be said that the Petitioners therein were appointed in an arbitrary or haphazard manner. On the contrary, it was held that they were duly selected by a duly Selection Committee, duly constituted under the Government Resolution.

9 The Court also relied upon the law laid down in the case

2 AIR 2006 SC 1806(1)

of Central Inland Water Transport Corporation Ltd. & Anr. Vs. Brojo Nath Ganguly³ and the Constitution Bench of the Apex Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress⁴.

10 In the present case, it is only the Petitioner in the Writ Petition No.14065 of 2016, was initially appointed in the year 2006, however, he has himself voluntarily resigned in the year 2010 and therefore, along with other Petitioners, has appeared for the selection process for the posts which, as per the advertisement, were purely on temporary and contractual basis, in the year 2014. The appointments, as per the advertisement, are for the period of 2 years on the contractual basis. Not only this, but in the subsequent selection process, conducted in the year 2016 also, all the Petitioners have appeared without any grievance and some of them have been successful and some of them have been unsuccessful. After that the Petitioners approached before this Court, seeking their regularization on the basis of this Court in the case of Sachin Ambadas Dawale & Ors. (Supra).

3 AIR 1986 SC 1571

4 AIR 1991 SC 101

11 We find that since the appointments of the Petitioners are in pursuance of the advertisement dated 30 June 2014, which clearly specifies that they are for a specific period and purely on the temporary and contractual basis and since the posts are not sanctioned, even as per the affidavit filed by the State Government, the Petitioners have not made out a case for grant of any relief, as prayed for.

12 In view of above, the prayer of all the Petitioners for regularization in service is rejected. As such, the Petitions are rejected.

13 In view of the rejection of the Writ Petitions, nothing survives in the Civil Applications and the same are also disposed of.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)