

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12626 OF 2015

1. Dr. Smita P. Hule }
Age 28 years, Occ: Service }
Residing at - B-304, Raigad }
Co-operative Housing }
Society, Building No. 87, }
Near Janta market, }
Kannamwar Nagar No. 2, }
Vikhroli (East) Mumbai - }
400 083 }
2. Dr. Sateja Sanjeev Sharma }
Age 33 years, Occ: Service }
Residing at 508, Shiv }
Shankar Apartment, near }
Ambika Mata Mandir, }
Ulhasnagar (East), }
Dist - Thane - 421 004 }
3. Dr. Rashmi U. Thakur }
Age 39 years, Occ: Service }
Residing at L-3, 104 Lok }
Kedar JSD Marg Mulund }
West, Mumbai 400 080 }
4. Dr. Madhuri S. Solanke }
Age 28 years, Occ: Service }
E-201, Balaji Angan, }
Sector-3, Belpada, Kharghar, }
Navi Mumbai 410 210 }
5. Dr. Adhwaryu A. Gaurkar }
Age 35 years, Occ: Service }
Residing at RX-4, B-308, }
Maruti Darshan Co-operative }
Housing society, Sudarshan }
Nagar, MIDC, Dombivali }
(East), Dist. Thane }
6. Dr. Anupama G. Salave }
Age 35 years, Occ: Service }

Residing at C/o. Dhananjay }
 B. Wankhede, A/404, Asha }
 Angan Suryoday, Near P&T }
 Colony, Back Side of Star }
 Colony, Dombivali (East), }
 Dist. Thane }

7. Dr. Trunali S. Mahatekar }
 Age 40 years, Occ: Service }
 Residing at 449, Sai Section, }
 Suryoday Society, 2nd floor, }
 Ambarnath (East), }
 Dist. Thane }

8. Dr. Deepali I. More }
 Age 33 years, Occ: Service, }
 Residing at 702, Suryoday }
 Paradise, B Wing, Opposite }
 Ram mandir, Near Damodar }
 Hall, Kalyan (West), }
 Dist. Thane 421 301 }

9. Dr. Vaishali P. Kashikar }
 Ae 36 years, Occ: Service, }
 Residing at Behind Block }
 A/480, Opposite Punjab }
 Gurudwara, Near Darshan }
 Darbar, Lal Chakki Road, }
 Ulhasnagar (East), }
 Dist. Thane 421 004 }

Petitioners

versus

1. Kalyan Dombivali }
 Municipal Corporation }
 through Municipal }
 Commissioner, Shankarrao }
 Chowk, Near Dena Bank, }
 Kalyan (West), }
 Maharashtra 421 301 }

2. State of Maharashtra }
 through Secretary, (UD-2), }
 Urban Development }
 Department, 4th floor, }
 Mantralaya, }
 Mumbai 400 032 }

Respondents

WITH
WRIT PETITION NO. 12794 OF 2015

Dr. Sheetal Kishor Patil	}	
Age 30 years, Occ: Service	}	
Residing at 3-402,	}	
Rajvaibhav Complex,	}	
Near Church, Ganesh Nagar,	}	
Dombivali (West) 421 201	}	Petitioner

versus

1. Kalyan Dombivali	}	
Municipal Corporation	}	
through Municipal	}	
Commissioner, Shankarrao	}	
Chowk, Near Dena bank,	}	
Kalyan (West),	}	
Maharashtra 421 301	}	
	}	
2. State of Maharashtra	}	
through Secretary, (UD-2),	}	
Urban Development	}	
Department, 4 th floor,	}	
Mantralaya,	}	
Mumbai 400 032	}	Respondents

WITH
WRIT PETITION NO. 12299 OF 2015

1. Dr. Pratim P. Ambekar	}
Aged 39 yrs., Occ: Service	}
	}
2. Dr.(Ms.)Pratibha Panpatil	}
Aged 39 yrs., Occ. Service	}
	}
3. Dr. Santosh S. Kembhavi	}
Aged 38 yrs., Occ. Service	}
	}
4. Dr. (Ms.) Nita Bhagwat	}
Aged 42 yrs., Occ. Service	}
	}
5. Dr. Niren Pagare	}
Aged 40 yrs., Occ. Service	}

6. Dr. (Ms.) Shobhana D.	}	
Lawankar	}	
Aged 39 yrs., Occ: Service	}	
	}	
7. Dr. (Ms.) Mamta D.	}	
Lawankar	}	
Aged 39 yrs., Occ. Service	}	
	}	
8. Dr. Sanjay R. Jadhav	}	
Aged 36 yrs., Occ. Service	}	
	}	
9. Dr. (Ms.) Poonam	}	
Amarsing Walvi	}	
Aged 34 yrs., Occ. Service	}	
	}	
10. Dr. Hemraj Deore	}	
Aged 33 yrs., Occ. Service	}	
	}	
11. Dr. (Ms.) Rohini Dhawale	}	
Aged 33 yrs., Occ: Service	}	
	}	
12. Dr. Jitendra Attarde	}	
Age 33 yrs., Occ. Service	}	
	}	
13. Dr. Parag Padavi	}	
Aged 38 yrs., Occ: Service	}	
	}	
All working as doctors with	}	
Kalyan Dombivali Municipal	}	
Corporation, Kalyan,	}	
Dist. Thane	}	Petitioners

versus

1. Kalyan Dombivali	}	
Municipal Corporation	}	
Kalyan, Dist. Thane	}	
through its Commissioner	}	
	}	
2. The State of Maharashtra	}	
through the Secretary,	}	
Urban Development	}	
Department, Mantralaya,	}	
Mumbai - 400 032	}	Respondents

Mr. Anil V. Anturkar – Senior Advocate i/b. Mr. Abhijeet A. Desai and Ms. Vrushali L. Maindad for the petitioners in WP/12626/2015.

Mr. Abhijeet A. Desai and Ms. Vrushali L. Maindad for the petitioners in WP/12794/2015.

Mr. N. V. Bandiwadekar with Mr. Sagar A. Mane for the petitioners in WP/12299/ 2015.

Mr. A. S. Rao with Mr. Prashant Kamble for respondent no. 1 in all petitions.

Ms. M. S. Bane – 'B' Panel Counsel for respondent no. 2 in all petitions.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

**Reserved on 9th March, 2017
Pronounced on 21st April, 2017**

Judgment :- (Per S. C. Dharmadhikari, J.)

1. By these petitions under Article 226 of the Constitution of India, the petitioners are seeking a writ of mandamus or any other writ, order or direction in the nature thereof to direct the first respondent-Kalyan Dombivali Municipal Corporation (hereinafter referred to as “the KDMC”) to absorb, regularise and confer permanency benefits on the petitioners. The petitioners claim that they have been appointed as medical officers on contractual basis in Urban Health Centers of the first respondent. Now, there is an advertisement inserted on 19th November, 2015. Though this advertisement has been inserted and to fill up the

posts, including even the posts held by the petitioners on contractual basis, that is to circumvent and get over the right of the petitioners of being absorbed/their services regularised with the first respondent. Alternatively and without prejudice though these petitioners are eligible for being appointed to the posts advertised, they are not being considered for reasons wholly untenable and unsustainable in law.

2. The petitioners are domiciled in the State of Maharashtra. They are employed by the first respondent from 17th July, 2012. The circumstances in which they have been working as lady medical officers in Urban Health Centers from this date are that on 10th July, 2012, respondent no. 1 issued an advertisement under the nomenclature “walk-in-interview” for the purpose of recruitment of various specialists and “Lady Medical Officers” on contractual basis for initial period of six months. The said interview was scheduled to be held on 13th July, 2012 at 11.00 a.m. for the post of Gynecologist, Pediatrician, Anesthetic, Physician, Radiologist and Lady Medical Officers. It is pertinent to mention that the instant petitioners had made application for the 12 vacant posts for appointment as Lady Medical Officers to be posted at the Urban Health Centers. According to the advertisement, the necessary qualification for appointment of

Lady Medical Officer was stipulated as Bachelor of Ayurvedic Medicines and Surgery (BAMS). The said post required three years' experience and registration with the Medical Council of Maharashtra. The copy of the advertisement dated 10th July, 2012, published in Dainik Navakal, Dainik Punya Nagari and Dainik Janmat is annexed as Annexure 'A' to the petition.

3. The petitioners state that they made necessary applications for being appointed as the Lady Medical Officers in the Urban Health Centers as against the 12 vacant posts. Upon scrutinising the applications and necessary certificates/documents as stipulated in the advertisement, the petitioners were invited and accordingly appeared for the interviews of the post of lady medical officer.

4. The petitioners state that the selection process was duly carried out under section 54 of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as "BPMC Act") by respondent no. 1. The petitioners had undergone the interview for the aforesaid post of Lady Medical Officer before the selection committee duly constituted under the provisions of section 54 of the BPMC Act. The petitioners state that the said committee comprised of the Commissioner being the Chairman or any other officer designated by the Commissioner together with Chief

Accounts Officer as a member, the concerned Head of the Department as a member, one another officer designated by the Commissioner/representative of backward class as member, the District Women and Child Welfare Officer as member, District Social Welfare Officer as member, Project Officer Integrated Tribal Development Project as member and the Deputy Commissioner (Establishment) as the Secretary and Convener of the said selection committee. The petitioners state that the constitution of the said selection committee and the process undertaken by it for selection had been published by respondent no. 2 in one of the Government Gazette dated 16th December, 2010. The said Government Gazette also prescribes the qualifications with respect to the appointment for the post of Medical Officers. The petitioners state that the rules and regulations with respect to the selection procedure for the aforesaid posts had been stipulated in the Gazette, copy of which is annexed as Annexure 'B' to the petition.

5. The petitioners further state that they, pursuant to the aforesaid “walk-in-interview”, were declared to be the successful candidates as against the 12 posts advertised for recruitment as Lady Medical Officers for Urban Health Centers upon duly being interviewed by the aforesaid selection committee on 13th July,

2012. Therefore, according to the petitioners, the said selection was as per the recruitment norms set out in the aforesaid Government Gazette.

6. The petitioners further states that on 17th July, 2012, respondent no. 1 issued an appointment order on contractual basis to the petitioners with a fixed salary of Rs.20,000/- per month for six months on the terms and conditions more specifically mentioned in the appointment order dated 17th July, 2012, copy of which is annexed as Annexure 'C' to the petition.

7. The petitioners further state that respondent no. 1, vide its office order dated 19th July, 2012, notified the destinations with respect to each of the candidates/petitioners in the Urban Health Centers within the jurisdiction of the respondent corporation. Copy of the said office order dated 19th July, 2012 is annexed as Annexure 'D' to the petition. On 23rd January, 2013, upon finding the services of the petitioners satisfactory, the first respondent revised the contractual period of the petitioners for further six months as against the post of Lady Medical Officer in Urban Health Centers with effect from 18th January, 2013. Copy of the said appointment order dated 23rd January, 2013 on contractual basis is annexed as Annexure 'E' to the petition. The petitioners state that the said contractual appointment is till date

periodically revised by the first respondent vide its respective orders dated 25th July, 2013, 1st March, 2014, 1st August, 2014, 5th February, 2015, 6th August, 2015 and 27th August, 2015. Copies of the said orders are annexed as Annexures 'F' collectively to the petition. Therefore, according to the petitioners, as per the last order issued by the first respondent, the petitioners' services with the first respondent corporation are ceased with effect from 31st December, 2015.

8. The petitioners further state that on 1st August, 2014, a joint representation came to be addressed by the petitioners to respondent no. 1 in order to regularise the services of the petitioners, who were otherwise appointed on contractual basis as lady medical officers. Copy of the said representation is annexed as Annexure 'G' to the petition.

9. The petitioners state that on 4th June, 2015, the second respondent, through its Government Resolution, came to a conclusion that in view of the growing population within the jurisdiction of the first respondent corporation and simultaneously 27 new villages having been included in its jurisdiction and also instantaneous urbanisation of the said villages being taking place, it is the need of the hour to enhance the number of Urban Health Centers within the jurisdiction of the

first respondent corporation. Therefore, it was proposed, by way of the said resolution, to introduce two major hospitals, three dispensaries, 13 Urban Health Centers/9 newly proposed Urban Health Centers. In view of the same, around 83 posts for meeting the aforesaid requirement came to be sanctioned/approved at the instance of respondent no. 2 for respondent no. 1, essentially in view of section 51(4) of the BPMC Act. The copy of the Government Resolution dated 4th June, 2015 is annexed as Annexure 'H' to the petition.

10. The petitioners state that in compliance of the aforesaid Government Resolution dated 4th June, 2015, the first respondent issued an advertisement dated 19th November, 2015, whereby, about 90 posts came to be advertised for recruitment of Medical Officers pertaining to different area of specialisation. In the said advertisement, about 29 posts came to be advertised under the caption of “General Medical Officer”. For the said post of General Medical Officer, the qualification as stipulated in the advertisement is MBBS/BAMS (Ayurved)/BHMS (Homeopathy) from Government recognised universities or any other equivalent degree as approved by the Government. The copy of the said advertisement dated 19th November, 2015 is annexed as Annexure 'I' to the petition. Further, an experience of three years

in the Government/semi Government/private hospital was required for appointment of the General Medical Officer. Also, the candidate should be registered with the Maharashtra Medical Council. The age requirement for the General Medical Officer is 33 years and 38 years for reserved candidates. The petitioners state that they had applied for the post of General Medical Officer in the aforesaid advertisement under protest. The petitioners state that they, as on date, fulfill the qualification requirement with regard to the appointment as General Medical Officer though they are currently being employed under the caption of Lady Medical Officer, which has the same profile as that of the General Medical Officer. Hence, it is stated that rather than issuing advertisement with respect to the aforesaid post of General Medical Officer, it ought to have been deemed necessary by the first respondent to convert the employment status of the instant petitioners from contractual basis to regular basis. In view of the same, the representations asking for regularisation of services came to be addressed by the petitioners on 18th September, 2015, 26th October, 2015, 16th November, 2015 and 23rd November, 2015 to the first respondent. However, as on date, no cognizance was taken by the first respondent. In the said representations, copies of which are annexed as Annexure 'I-1' collectively, it was urged at the behest of the petitioners to convert the employment

on contractual basis of the petitioners into permanent basis *inter alia* for a reason that due process of law had been followed by respondent no. 1 during making such appointments on contractual basis by complying with the provisions of section 54 of the BPMC Act. The qualification as required for the current recruitment as General Medical Officer is akin to the one imposed at the time of recruitment on contractual basis. Hence, in view of the judgment and order passed by this court in Writ Petition No. 2046 of 2010, wherein the similarly placed candidates as that of the petitioners came to be regularised, as the appointment was upon being approved by the selection committee and the candidates having experience of three years in contractual employment and continuing to remain in the service, the candidature of such employees came to be regularised by the aforesaid order of this court dated 19th October, 2013. The petitioners state that the said order came to be challenged by the respondents in the Hon'ble Supreme Court of India. However, the same came to be rejected vide an order dated 6th January, 2015 passed by the Hon'ble Supreme Court of India, whereby, the order of this court had attained finality.

11. The petitioners state that on 27th January, 2015, in a similar matter in Writ Petition No. 10145 of 2014 and Writ

Petition No. 7461 of 2014, this court was pleased to regularise the services of the petitioners in those petitions, thereby conferring the permanency benefits on them, who were appointed on contractual basis and whose selection was made through selection committee and who have completed three years' services with technical breaks. The ratio laid down in Writ Petition No. 2046 of 2010 as aforestated came to be followed in the aforesaid writ petitions, wherein this court, vide its order dated 27th January, 2015 allowed the regularisation and conferred permanency on the services of the petitioners who had completed three years of service with technical breaks and who continue to remain in service. The respondents were directed to absorb the petitioners within six weeks and pay regular salary from the date of their absorption. Similarly, on 11th February, 2015, in a similar matter in Writ Petition No. 491 of 2014 this court regularised and conferred permanency on the services of the petitioners who had completed three years of service to be absorbed as regular employees thereby allowing the regular salaries to the said petitioners from the date of absorption. Therefore, in the said case also this court applied the ratio laid down by this court in Writ Petition No. 2046 of 2010. The petitioners state that in Original Application No. 126 of 2014, the Maharashtra Administrative Tribunal, vide its order dated 11th

March, 2015 regularised the services of the applicants who have completed three years service with technical breaks, who were in the continuous service till the date within a period of six weeks. The copy of the said order dated 11th March, 2015 passed by the Maharashtra Administrative Tribunal is annexed as Annexure 'N' to the petition.

12. The petitioners state that, upon having the knowledge of the aforesaid advertisement dated 19th November, 2015 they made applications for the post of General Medical Officer under protest. The petitioners state that they individually were issued experience certificates bearing different dates, which, *inter alia*, envisaged the petitioners' services so rendered till date with respondent no. 1 being satisfactory as mentioned by respondent no. 1 in the said experience certificates. The petitioners further state that they, during the tenure of their employment with the first respondent, were subjected to increment in their salaries from fix salary of Rs.20,000/- per month to 23,000/- per month with the fact that the petitioners had independently completed three years of continuous service as Lady Medical Officers in Urban Health Centers with a technical break.

13. The petitioners further state that the notification dated 30th October, 2000, published by the Public Health Department, State of Maharashtra, stipulated the provision for appointment to the post of Medical Officer in Maharashtra Medical and Health Services of a candidate with BAMS as his/her necessary qualification as what had been contemplated in Rule 31 of the said notification. Copy of the said notification is annexed as Annexure 'P' to the petition.

14. The petitioners state that on 14th January, 2015, the first respondent, through its Department of Higher Technical Education, issued a Government Resolution, whereby, the services of the 62 candidates, who were, at that instance, appointed on contractual basis, came to be regularised vide the said Government Resolution upon duly complying with the order dated 19th October, 2013 in the aforesaid Writ Petition No. 2046 of 2010. The copy of Government Resolution dated 14th January, 2015 is annexed as Annexure 'Q' to the petition.

15. The petitioners further state that they are aggrieved with the inaction on the part of respondent no. 1 for having failed to regularise the services of the petitioners, thereby further having failed to confer permanency on their services and further advertising the already recruited posts of the petitioners under

the caption of “General Medical Officer”. The petitioners seek to challenge the aforesaid inaction inasmuch as the advertisement so published on 19th November, 2015 vide the instant writ petition by invoking writ jurisdiction of this court under Article 226 of the Constitution of India.

16. It is on such petitions being served that the first respondent appeared through their advocate and sought time to file a reply. However, while granting that request on 22nd December, 2015, this court directed that no coercive steps, including to terminate the services of the petitioners be taken by the first respondent. However, this court directed that the recruitment process can continue, however, that will be subject to further orders of this court. Accordingly, these petitions were listed on 17th March, 2016, but at the request of the first respondent, they were adjourned to 31st March, 2016. Thereafter, on 7th April, 2016, the petitions were adjourned to 12th April, 2016. The parties were directed to file their written submissions. The matters were directed to be disposed of finally at admission stage. That is how we would refer to the affidavit in reply. That is filed on behalf of the first respondent municipal corporation. The affidavit was directed to be filed and indicating therein the procedure, practices, whereby merely because the posts are sanctioned as

per the requirement and demand, whether the first respondent is entitled to issue fresh advertisement and select candidates despite on the same posts, other candidates, though appointed temporarily, have been working for past more than 3/8/10 years. The KDMC was directed to file a chart and a reply also was directed to be filed by the State Government. It is after such an order and direction that the affidavits came to be filed.

17. The affidavit filed by Mr. Milind Ramchandra Dhat on behalf of the KDMC, on 9th February, 2016 and the additional affidavit filed as directed on 13th July, 2016 may now be referred.

18. In the first affidavit, the deponent sets out the stand of the KDMC in the following words:-

“4. I say that as per the provisions of the Maharashtra Municipal Corporation Act, 1949 the Corporation is maintaining municipal hospitals, maternity centers etc. in the territorial limits of the Corporation. I say that vide Government Resolutions dated 13.1.1999 and dated 18.3.2008 issued by the Urban Development Department, the State Government had created 32 (27+5) posts of Medical Officers for the Kalyan Dombivli Municipal Corporation.

5. Afterwards, the Standing Committee of the Corporation accorded sanction for the creation of 54 (15+39) posts of Medical Officers purely on temporary basis, vide their Resolutions dated 28.8.2003 and 19.11.2003 respectively. In the process, an advertisement was published by the Corporation to fill 21 posts of Medical Officers purely on temporary basis for a period of 6 months, on 10.7.2012. Out of these 21 posts, 12 posts were of Lady medical Officers. The required qualifications for these posts, were:

- i) A recognized degree in BAMS (Ayurved)
- ii) 3 years experience in hospitals run by Government, Semi Government or Private Management.
- iii) The candidate should be duly registered with the Maharashtra Medical Council.

The interviews for the said posts were conducted on 13.7.2012.

6. I say that the interview were held on 13.7.2012 for 12 posts of Lady Medical Officers. Accordingly 12 candidates were selected and the appointment order was issued on 17.7.2012. The order clearly stated that:

- i) The said appointments are on fix pay and are purely on temporary basis for the period of 6 months.
- ii) The candidates shall not have any right for regularization or for any permanency on the establishment of the Corporation.
- iii) The candidates shall give undertaking on Stamp Paper that they will not claim any permanency or regularization.

7. Accordingly the following candidates were appointed on temporary basis as Lady Medical Officers for the temporary period of 6 months:

1. Dr. Rashim U. Thakur
2. Dr. Madhuri S. Solanke
3. Dr. Trinali S. Mahatekar
4. Dr. Snehal D. Patil
5. Dr. Shubhangi Wankhedkar
6. Dr. Adhvaryu Gaurkar
7. Dr. Leena Jadhav-Pawar
8. Dr. Deepali Ishwar More

9. Dr. Sateja S. Sharma
10. Dr. Anupama Salve
11. Dr. Seema Ramesh Jadhav
12. Dr. Samita Prakash Hule

8. I say that the aforesaid 12 candidates were appointed vide order dated 17.7.2012 purely on contract/temporary basis for the period of 6 months at honorarium of 20000/- p.m. as Lady Medical Officers w.e.f. 17.7.2012 to 16.1.2013 and as per the terms and conditions mentioned therein.

9. It is submitted that out of 12 appointed candidates Dr. Leena Jadhav-Pawar did not join. Therefore, in her place Dr. Vaishali Kashikar who was on the waitlist was appointed for the contract/temporary basis w.e.f. 3.8.2012 to 16.1.2013. Similarly Dr. Shubhangi Wankhedkar left the job after 6 months. Hence, another advertisement was issued and after interviewing Dr. Sheetal Kishor Patil was appointed for the contract/temporary basis for the period of 6 months w.e.f. 27.6.2013. I say that since there was a necessity of the Lady Medical Officers, the said temporary appointments were continued after giving technical break of one day as detailed below:

Sr. No.	Order dated	Period of temporary appointment	
		From	To
1	17.7.2012	17.7.2012	16.1.2013
2	23.1.2013	18.1.2013	17.7.2013
3	25.7.2013	19.7.2013	18.1.2014
4	1.8.2014	21.7.2014	20.1.2015
5	5.2.2015	22.1.2015	21.7.2015
6	6.8.2015	23.7.2015	31.12.2015
7	8.1.2016	2.1.2016	30.6.2016

10. I say that as stated hereinabove all these appointments are on contract/temporary basis for the period of 6 months and the respective candidates have given their undertakings on Stamp Paper to the Corporation that they will not claim any permanency in appointments and also that they will not litigate for regularization.

11. I say that as per the establishment staffing pattern of the Corporation, there were about 32 sanctioned posts of Medical Officers. However, in view of the continuous increase in the population and further due to inclusion of 27 villages in the territorial limits of the Corporation, which were earlier excluded, the Municipal Administration felt it necessary to increase the medical staff of the Corporation. Keeping this in view, the Urban Development Department of Government of Maharashtra vide Resolution dated 4.6.2015 sanctioned 83 posts of Specialist Medical Officer for Kalyan Dombivli Municipal Corporation. Thus as on today there are total 115 (32+83) sanction posts of Medical Officers in the Corporation. The current position of these posts is as follows:

- i) **Permanent posts:** Out of the 115 posts of permanent Medical Officers, 23 permanent Medical Officers are presently working and remaining 92 posts are lying vacant.
- ii) **Temporary posts on contractual basis:** As elaborated in Para 5 above, there are 54 temporary posts, out of these, 44 posts are filled in and 10 are vacant.

12. I say that as stated in Para 11 above, 92 posts were vacant. Out of these the requisite qualification for 2 posts of Post Mortem Specialist is not mentioned in the Government approved Recruitment Rules of the Corporation. Hence, excluding these 2 posts, an advertisement for 90 posts of Medical Officers was published by the Corporation on 10.11.2015 on its website as well as in the local newspapers inviting applications from suitable and qualified candidates upto 4.12.2015.

13. I say that as per the Recruitment Rules sanctioned by the Government of Maharashtra, the qualifications for the posts of Medical Officers/Emergency Medical Officers/Medical Record Officers, are as follows:

- i) Degree in MBBS/BAMS (Ayurved), BHMS (Homeopathy) Degree from a recognized University or an equivalent.
- ii) Three years experience in the Hospital run by Government/Semi Government/Private Organisation in the relevant field.
- iii) The candidate should be duly registered with the Maharashtra Medical Council.

14. I say that as stated hereinabove, the recruitment for filling up total 90 posts of Medical officers is in process. After completion of the said process temporary posts that were created by the Standing Committee for intermittent and emergency purposes will not be continued as there will not be any necessity for these posts.”

19. Consistent with this stand, the first respondent denies the allegations in the writ petitions. It is also pointed out that the petitioners have also applied for regular appointment. There is a justification provided for the stand in the further paragraphs of this affidavit.

20. In the additional affidavit filed pursuant to the order of 1st July, 2016, the first respondent states and with reference to the specific provisions of the BPMC Act that sections 51, 53, 54(1) and (2) thereof permit the first respondent to make the appointments, whether temporary or permanent. However, a procedure has to be followed in that behalf and that is duly followed. It is submitted that even the Standing Committee, by its resolution dated 28th August, 2003, has created only 4 posts of Casualty Medical Officers out of 30 posts as the remaining are specialised posts. Further, the Resolution of 19th November, 2003 of the Standing Committee allowed the Corporation 39 posts for different medical officers in different hospitals. Then, there is a reference made to the following facts:-

“11. I say that as per the sanction granted on 13.1.1999, only 6 posts of Casualty Medical Officers were sanctioned. Hereto annexed and marked as **EXHIBIT-C** is a copy of said sanction of the Govt. of Maharashtra, dt. 13.1.1999. Similarly vide sanction dt. 18.3.2008 only 5 posts of Casualty Medical Officers were sanctioned. Hereto annexed and marked as **EXHIBIT-D** is a copy of said sanction granted by the Govt. of Maharashtra on 18.3.2008.

12. I say that the Municipal Corporation had submitted proposal dt. 27.3.2015 seeking additional posts in view of increase in population due to merger of 27 villages in the territorial limits of the Corporation. The Govt. of Maharashtra has sanctioned about 83 posts, out of which about 6 posts are of Casualty Medical Officers/General Medical Officers for Kolsewadi Hospital as well as for Maternity Home, Dombivli. 25 posts are of General Medical Officers for 13 City Health Centers and 3 Small Dispensaries at Kalyan and Titwala and for 9 proposed City Health Centers and further about 15 posts of General Medical Officers for Rukminibai Hospital at Kalyan and Shastri Nagar General Hospital at Dombivli. Hereto annexed and marked as **EXHIBIT-E** is a copy of said sanction of the Govt. of Maharashtra dt. ...6.2015. I say that as on 1.1.2016 the strength of various medical officers, who are actually working on the establishment of the Corporation is as shown in the statement attached herewith as **EXHIBIT-F**.

13. I say that as per Recruitment Rules sanctioned by the Government, qualifications prescribed are Degree of MBBS/BAMS/BHMS and registration from Maharashtra Medical Council. I say that at the time of making temporary posts though the Corporation has appointed certain BAMS candidates for the posts of Medical Officers but when making the regular appointment, it was found that in view of the condition of registration with Maharashtra Medical Council being mandatory, it resulted in filtration of Ayurvedic and Homeopathy category doctors. I say that the Corporation cannot go beyond the recruitment rules nor has any right/power to relax the same. Therefore vide letter dt. 25.5.2016 and 15.6.2016 the Corporation sought clarification from the government considering the above position of recruitment rules as to whether the Corporation can consider BAMS & BHMS qualification for the purpose of General Medical Officers or Casualty Medical Officers. The Corporation followed up the

matter by sending reminder on 24.6.2016. Hereto annexed and marked as **EXHIBIT-G** (Colly.) are copies of said letters/reminder dt. 25.5.2016, 15.6.2016 & 24.6.2016.

14. I say that as far as the contention of the petitioners that some of the petitioners have become age barred for the appointment on the establishment of the Government and Semi Government is concerned, though it is true that as per the existing Rules the maximum age limit for Regular candidates is 33 and for the reserved candidates is 38, however as per the Recent G.R. issued by the Government of Maharashtra dt. 25th April, 2016, the said maximum age limit has been extended to 38 years in case of open candidates and 43 in case of reserved category candidates. Therefore, the said contention of the petitioners is not tenable. Hereto annexed and marked as **EXHIBIT-H** is the copy of the said G.R. Of the Government of Maharashtra dt. 25th April, 2016.

15. I say that the Respondents have completed the process of appointments for the posts of various specialists contained in the Advertisement dt. 4/12/2015. In the said process the respondents have selected the Petitioner No. 8 Dr. Sanjay Jadhav and Petitioner No. 9 Dr. Poonam Walvi in W.P. No. 12299/15 and Dr. Madhuri Shekokar for the post of Specialists. However, the Petitioner No. 9 and Dr. Shekokar have refused the said appointment on regular basis. Hereto annexed and marked as **EXHIBIT-I** (Colly) are the copies of the said refusal.”

21. It is in the above facts and circumstances, it is prayed that the Municipal Corporation has not committed any illegality in refusing to regularise the petitioners. That would cause serious prejudice to those who come by the regular mode. For all these reasons, the reliefs be denied.

22. A rejoinder affidavit was placed on the file by the petitioners on 1st September, 2016, in which, there is a specific stand taken. That is in the following words:-

“2) I say that, the aforesaid aspect is more clear in view of the chart annexed by the Respondent No. 1 dated 01.01.2016 wherein it came to the notice of the Petitioners that, out of total 45 posts earmarked for General Medical Officer, only 29 posts was sought to be advertised in the impugned advertisement dated 19.11.2015 inter-alia for reason that, the remaining 14 posts who are already into municipal service were undisturbed. It further came to the notice of the Petitioners that, the said 14 Medical Officers were appointed prior the date of sanctioning of their post on 18.03.2008 (wherein only 5 posts for general medical officers were sanctioned) on permanent basis. Despite the fact the post of General Medical Officer came to sanctioned for the first time on 18th March of 2008 to the extent of 5 posts, the Respondent No. 1 had failed to offer any explanation as to how the said post were appointed on permanent basis during the year 1987-1995 despite the same were not sanctioned by the State Government till 2008 that too only 5 posts. The said aspect is clarified from the chart prepared by the Respondent No. 1 disclosing the said details. Hereto annexed and marked as **Exhibit A-1** is the copy of the chart. Also annexed and marked as **Exhibit A-2** is the copy of the details of the said 14 Medical Officers vis a vis their date of appointments. The said chart reflects that, by and large most of the candidates came to be appointed on permanent basis before the date of sanction of the posts by the state government.

3) I say that, as contemplated in section 54(2) of BPMC Act and also in view of the appointments made as described herein above on permanent basis without granting sanction to the same, the appointment of the instant Petitioner should be regularized by following the same uniform principle as was made applicable to the aforesaid 14 post which were appointed on permanent basis prior to the date of sanction upon invoking the provision under section 54 (2) of the BPMC Act.

4) I say that, the impugned advertisement does not earmark the post independently and separately for the MBBS and BAMS candidates which means, the candidates of MBBS and BAMS degree can jointly compete for the said 29 posts. I say that, the Petitioner had prepared a chart which seeks to offer the employment details of the Petitioner vis-a-vis the date of appointment and date of renewal of their contract which Hereto annexed and marked as **Exhibit-A-3** is the copy of the said Chart.

5) I say that, in view of the Government Resolution dated 26th May 1981 issued by the Urban Development and

Public Health Department, the said GR imposes a mandate upon the Primary Health Centers to reserve 25% of the total posts for BAMS category. Hereto annexed with and marked as **Exhibit-A-4** is the copy of the said Government Resolution.

6) I say that, if the petitioners are not regularized by applying the same set of principles as made applicable to the aforesaid 14 posts, this shall violate their fundamental rights guaranteed under Article 14 to them by the Constitution of India in as much as right to Equality is concerned and that, they shall be subjected to unfair discrimination vis a vis other employees are concerned who were regularised by adopting a different yardstick or policy despite being appointed by the same method as the instant petitioners.”

23. Then, there is an affidavit in reply filed by the State Government, which seeks to support the Municipal Corporation. The State also justifies the Municipal Corporation's stand by referring to the provisions of the BPMC Act and the KDMC City Municipal Corporation (Recruitment and Classification of Service) Rules, 2010. It is submitted that qualification and eligibility criteria are laid down in these rules and they have to be fulfilled before even a relief of regularisation can be sought by any aggrieved party like the petitioners. The State also makes a reference to the Government Resolution dated 4th June, 2015 granting approval to the posts for the hospitals/Urban Health Centers administered and managed by the KDMC. The details of the posts are also set out in para 11 at pages 461 and 462 of the paper book. Further, in para 12, the State-second respondent states as under:-

“12. I say that, the Kalyan-Dombivali Municipal Corporation vide its letter dated 25.05.2016 and 15.06.2016 has sought clarification from the Government considering the position of Recruitment Rules, as to whether the Corporation can consider BAMS and MHS qualification for the purpose of General Medical Officers or Casualty Medical Officers. In this regard the Medical Education Department of the State Government has opined that as per the recruitment Rules for the posts of Medical Officers/Emergency Medical Officers/Medical Record Officers, the candidate should be duly registered with the Maharashtra Medical Council. In view of this, the candidates possessing BAMS/BHMS degree cannot be considered eligible for appointment on the said posts.”

24. With the above factual background, we heard these petitions on 15th December, 2016 at some length. After that hearing, we came to the conclusion that further details would be required. Therefore, the following order was passed on 15th December, 2016:-

“ During the course of arguments, especially by Mr.Bandiwadekar, it was noticed by us that in the Petition filed by Mr. Desai as well as Mr. Bandiwadekar, the Kalyan Dombivali Municipal Corporation has filed a common affidavit in reply.

2 In paragraph 4 of this affidavit, it is stated that as per the provisions of the Maharashtra Municipal Corporation Act, 1949, the corporation is maintaining municipal hospitals, maternity centers etc in the territorial limits of the corporation. The Government Resolutions dated 13th January, 1999 and 18th March, 2008 issued by its Urban Development Department permitted creation of 32 posts of Medical Officers for the said corporation. It is then alleged that afterwards the Standing Committee of the corporation accorded sanction for the creation of 54 posts of Medical Officers purely on temporary basis by Resolution dated 28th August, 2003 and 19th November, 2003. In the process, an advertisement was published by the corporation to fill 21 posts of the Medical Officers purely on temporary basis for a period of six months on 10th July, 2012. Out of these 21 posts, 12 posts were of Lady Medical Officers.

3 In the petition of Dr. Pratim Ambekar and others (Writ Petition No. 12299 of 2015) a specific factual statement is made that the Petitioners therein have been in the services of the municipal corporation from the year 2003. Their statement is that in order to provide the indoor and outdoor medical services, the first respondent corporation has been running 2 big hospitals, 2 small dispensaries and 13 public health centers. In order to fill up the full time posts of Medical Officers, an advertisement was published in the local newspapers. Petitioner No.1 made an application in the recruitment initiated in the year 2003 and he came to be selected. He was appointed on 29th October, 2003. Thereafter, an advertisement was issued on 16th August, 2004 inviting applications from qualified candidates for the post of Medical Officers in different faculties. The first Respondent received several applications for various posts and these candidates came to be interviewed on 19th August, 2004 and 21st August, 2004. In that process, Petitioner No.2 came to be selected and appointed on 24th August, 2004.

4 In regard to such a specific case, and with illustrations as highlighted together with the copies of the appointment orders, naturally a query was raised by the Court as to when the Government Resolutions dated 13th January, 1999 and 18th March, 2008 are stated to be the Resolutions sanctioning the post, then, how come the appointments were made in the year 2003. If those were made as against the posts sanctioned by the Standing Committee Resolution and recorded in further paragraphs of the affidavit in reply, namely 28th August, 2003 and 19th November, 2003, then, when another and subsequent Resolution of the Government of Maharashtra dated 18th March, 2008 sanctioned posts on the establishment of the municipal corporation, whether the appointments of such of the Petitioners referred above are against the Government Resolutions or the Standing Committee Resolution, and therefore, purely temporary, has not been clarified with the records.

5 Further we fail to understand as to what was the occasion for issuance of the advertisement to fill up 21 posts of Medical Officers purely on temporary basis relying on the Standing Committee Resolution of the Corporation dated 28th August, 2003 and 19th November, 2003, when the Government Resolution sanctioned and permitted creation of 32 posts of Medical Officers in the Corporation.

6 Mr. Bandiwadekar has relied upon the further affidavit in reply filed by the municipal corporation purporting to clarify this position. We do not find from a reading of that affidavit and particularly the chart at page 212 that the corporation has prima facie satisfied the Court that the temporary appointments were made in pursuance of its Standing Committee Resolutions to meet immediate and emergent exigencies. Though the Government Resolutions of 1999 and 2008 were in place and sanctioning 32 posts, these additional posts had to be created on temporary basis to man the hospitals, dispensaries and primary health centre. Thus, the requirement of the Municipal Corporation far exceeds the permanently created posts (32 in number vide Government Resolutions of 1999 to 2008) and 83 (vide Government Resolution of 2015). How, the Municipal Corporation has filled in the 32 posts and yet required the 54 temporary posts has not been clarified at all. If there is a workload requiring appointment of Medical Officers particularly after 27 villages have been included in the Municipal Corporation limits, then, that needs proper and complete explanation. Why then against so many sanctioned permanent posts, temporary appointments are made and for decades together, why those already working and duly qualified cannot be absorbed in these posts requires elaboration and over and above the cryptic explanation in the Affidavits filed by Shri Milind Dhat.

7 Let, therefore, the Municipal Commissioner file an affidavit as to on what basis the Municipal Corporation is issuing advertisement after advertisement for temporary appointments, how does the corporation intends to regularize its affairs or whether it is intending to perpetuate a temporary arrangement created in 2003 for the benefit of somebody who was not entitled and eligible to hold the post.

8 The affidavits filed by Mr. Milind Dhat, the Assistant Municipal Commissioner are relevant for what they are not setting out. They do not convey to the Court the Corporation's views with clarity and precision. Such selective statements would create doubts about the records and their maintenance. If this is how the establishment is functioning, then, indeed these are sorry state of affairs and if tomorrow the entire workforce comprising of these Petitioners is thrust upon the Municipal Corporation, then, it is entirely its fault and it alone should be blamed rather than anybody else. We would be constrained to pass orders on the lines of the

Division Bench judgments of this Court, if the records are not forthcoming. If that will be contravening the larger public interest, then, it is for the corporation and those in-charge of its administration and supervising its affairs who must take a call and not this Court.

9 We are, therefore, directing a affidavit to be filed by the Municipal Commissioner and none else. Let, all the original records and available with the Municipal Corporation be produced on the returnable date. We place these matters on 12th January, 2017. The interim order to continue until further orders.”

25. The sum and substance of these directions are that the Municipal Corporation is duty bound to place before the court the correct facts and particulars with regard to the subsequent advertisement issued for making temporary appointments and whether it ever intends to frame a proper policy for regularisation and if framed, its implementation. After that, several adjournments were sought so as to file the affidavit. The affidavit could not be filed until 17th February, 2017. That affidavit explains the position as under:-

“2. I say that on 1.10.1983 the Kalyan Dombivli Municipal Corporation came to be constituted by merging mainly the 3 Municipal Councils i.e. Kalyan Municipal Council, Ambernath Municipal Corporation and Dombivli Municipal Council. At the time of constitution of the Corporation, the strength of the Medical Officers in the said 3 Municipal Councils was as follows :-

Sr. No.	Municipal Council	No. of posts	Remarks
1.	Kalyan	3	Resident Medical Officer
2.	Dombivli	1	For Maternity Home
		1	IPD RMO
		1	Patkar Dispensary

		1	Shastri Nagar Hospital
		1	Ayurved dispensary
		1	Manjunath Urban Health Centre
3.	Ambernath	6	Chhaya Hospital
	Total	15	

So also there was **1 post** of Anesthetist sanctioned on Ambernath Municipal Council's establishment.

Hereto annexed and marked as **ANNEXURE-I** is a copy of the chart showing total number of posts of Medical Officers including Anesthetist.

3. I say that after the constitution of the Kalyan Dombivli Municipal Corporation the then Administrators created the posts of Medical Officers by passing Administrative Resolutions, based on the then requirements. The details of the posts created are as follows:

Sr. No.	Name & No. of posts	No. and date of Resolution	Posts created for
1	Anesthetists-1	744/12.9.85	Dombivli Hospital
2	Anesthetists-2	405/7.8.89	Rukminibai Hospital, Kalyan & Shsttri Nagar Hospital, Dombivli
3	Medical Officer-1	92/12.10.1984	Ambernath T. B. Clinic
4	Medical Officer-3	157/16.11.1984	For mobile Clinic of Kalyan Corporation
5	Medical Officer-1	258/11.1.1985	Family Welfare Centra of Municipal Corporation, Dombivli
6	Medical Officer-2	54/16.4.1986	Rukminibai Hospital, Kalyan
7	Medical Officer-3	413/16.9.1986	Shastri Nagar Hospital, Dombivli
8	1. Medical Officer (Medicine Specialists)-3 2. Medical Officer	968/19.1.1991	Rukminibai Hospital, Kalyan Shastri Nagar Hospital, Dombivli

	(Surgery Specialists)-3 3. Medical Officer (Gynecologist Specialists)-3		Chhaya Hospital, ambernath (one each in each Hospital)
9	Medical Officer-6	936/19.10.1991	Kulgaon Badlapur Hospital

Hereto annexed and marked as **ANNEXURE-II** (Colly.) are the copies of said administrative resolutions, through which the then Administrators created various posts of Medical Officers and Anesthetists.

4. I say that as on 1991, there were total 44 posts of Medical Officers, out of which 31 were General Medical Officers and 13 were Specialists (4 - Anesthetists, 3 - Surgeons, 3 - Medicine, 3 - Gynecologists) on the establishment of the Municipal Corporation.

5. I say that during the aforesaid period, the then administration issued advertisement and filled in the said posts created firstly on probation and thereafter confirmed them on successful completion of probation. Dr. Satpute, regarding whose appointment the petitioners made allegation that the said Dr. Satpute has been appointed on temporary basis and thereafter regularized, came to be appointed on probation on 04.08.2987 on a pay-scale of Rs.600-30-750-40-1150 + allowances for a period of 1 year, and thereafter confirmed on the said post on the completion of probation period. Similarly, there were other officers appointed in the Health Department during the said period. Hereto annexed and marked as **ANNEXURE-III** is a copy of said appointment order of Dr. Satpute dt. 04.08.87.

6. I say that w.e.f. 14.4.1992 the Ambernath Municipal Council and some other villages were deleted from the territories of the then Municipal Corporation and constituted as 2 separate Municipal Councils. In view of the said bifurcation of the Corporation, the then administrator passed Administrative Resolution No.417 dt. 30.8.1993, which contained the Establishment Schedule of the Corporation. In this Establishment Schedule, a total of 44 posts of General Medical Officers and Specialists were included, the details of which are as follows :

Sr. No.	Name of post	Number of posts
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1	Medical Officer (Medicine Specialist)	3
2	Medical Officer (Surgery Specialist)	3
3	Medical Officer (Gynecologist Specialist)	3
4	Medical Officer (General)	31
5	Anesthetists	4
	Total	44

This Resolution along with the proposed Establishment Schedule was forwarded to the Government, vide letter dated 15.9.1993, with request to sanction the same. Hereto annexed and marked as **ANNEXURE-IV** is a copy of the said Administrative Resolution No. 417 dt. 30.8.1993. The outcome of this proposal is not known, as the Government has neither accorded a sanction to this proposal nor it has rejected it.

7. It appears that thereafter an establishment schedule for the entire Corporation (Considering the requirement of next ten years for the eight wards formed in the Corporation) was sanctioned by the General Body in its meeting No.19, vide Resolution No.240 dated 18.3.1997. Thereafter based on the same resolution, a request letter to sanction posts on establishment schedule for Ward Officers, Unauthorised Construction Department, KDMC's hospital service and Medical Officer Health (medical department) was submitted vide letter dated 30.5.1997. During the pendency of the above establishment schedule to the Government, the Corporation submitted a proposal for 27 posts of Medical Officers for 2 Hospitals and maternity home (on the basis of General Body Resolution No.240 dated 18.3.1997 as clearly mentioned in the preface of the Government Resolution) and the same has been sanctioned by the Government vide G.R. Dated 13/1/1999 (Pl. see page 167) sanctioning 27 posts. The details of these 27 posts are as follows:-

Sr. No.	Name of the post	No. of posts
1	Physician	2
2	Gynecologists	2
3	Skin Specialists	1
4	Psychiatrics	--

5	Ear, Nose, Throat Specialists	2
6	Radiologists	2
7	Anesthetists	2
8	General Surgeon	2
9	Pediatrician	2
10	Pathologist	2
11	Ophthalmic Specialists	1
12	Orthopedic Specialists	2
13	Casualty Medical Officer	6
14	Dentist	1
	Total	27

This statement shows that out of the 27 posts, only 6 are that of Casualty Medical Officers and remaining 21 posts are that of Specialists.

Thereafter the Government has sanctioned the entire establishment schedule vide Government Resolution dated 9.12.99, however the schedule sanctioned vide Government Resolution dated 9.12.99 did not contain any post of Medical Officers.

Hereto annexed and marked as **ANNEXURE-V (Colly.)** are the copies of the letters dated 3.4.1997 and 30.5.1997 submitted by the Respondents to the Government, along with the Resolution No.240 dated 18.3.1997 and the Government Resolution dated 9.12.1999.

8. I say that the recruitments were made for the posts created by the Administrators as per administrative resolutions. Hereto annexed and marked as **ANNEXURE-VI** is a chart showing appointments of various medical officers made by the Corporation during the period from 1983 to 2011. I say that thus, it clearly appears that the posts which were created, were filled in, firstly on probation and subsequently made permanent on completion of probation period.

9. I say that as the posts of General Medical Officers sanctioned by the Government were insufficient and further due to increased stress on the Hospitals, since there being no district level Government hospital in Kalyan, requiring more Medical Officers (General Medical as well specialists). Hence, a proposal for creation of temporary posts of Medical Officers for a period of 6

months on monthly stipend (Rs.10,500/- per month) basis for a period of six months as per the Provisions under section 53(3) of the Municipal Corporation Act, subject to Government approval, came to be submitted to the Standing Committee and the Standing Committee, vide Resolution No.71, dated 28.8.2003 sanctioned the said proposal for 15 posts, to be filled in temporarily. Similarly, vide Resolution No.117, dated 19.11.2003 the Standing Committee has created 39 posts of Medical Officers on temporary basis. The details of these resolutions is given below:-

(A) Resolution No.71, dated 28.8.2003

Sr. No.	Name of post	Number of posts
1	Gynecologists	4
2	Pediatrician	2
3	Anesthetists	3
4	Physicians	2
5	Casualty Medical Officer	4
	Total	15

(B) Resolution No.117, dated 19.11.2003

Sr. No.	Name of the Hospital/Health Post	Number of Medical Officers posts
1	Shastrinagar Hospital, Dombivli	12
2	Rukminibai Hospital, Kalyan	11
3	Maternity Home, Dombivli	3
4	H.M.Dalal Kolsewadi Dispensary/maternity Home	4
5	Saleh Mahmed Ansari Chowk Dispensary/Maternity Home	2
6	Urban Health Centers	7
	TOTAL	39

The said resolutions are already annexed at page-165 and 166 of the compilation. It is submitted that vide General Body Resolution No.181 dated 2.4.42006, the stipend for these Medical Officers and specialists was revised and the Commissioner has been authorised to extend the period for those Medical Officers appointed on posts of temporarily basis after six months and also to

appoint the alternative candidates on the posts vacated by the left out Medical Officers.

10 I say that Dr. Zoya Patil, Dr. Manjusha Itkar and Dr. Nitin Zabak were appointed on purely temporary posts of Medical Officers on contract basis on honorarium of Rs.5000/- per month initially for a period of six months by orders dt. 24.10.2003. I say that in the year 2007, the then Commissioner sent a proposal dt. 23.6.2007 for regularization of services of senior most Dr. Zoya Patil (OBC and Child Specialist), Dr. Manjusha Itkar (Open and Dentist) and Dr. Nitin Zhabak (Open and General Surgeon) after calling their willingness and an undertaking that they will not claim back wages for the past service and other benefits as there were posts of the said category were vacant and the General Body has accepted the said proposal and passed the Resolution no.33, dt. 17.08.2007 and accordingly their services were regularized, however thereafter Dr. Zoya Patil and Dr. Nitin Zhabak have resigned their respective jobs and left the Corporation's services. Dr. Manjusha Itkar is still working with KDMC.

11 It is stated that for the programme of R.C.H. Phase-II to be continued in Corporation area after 2007, for implementing this programme as per the General Body Resolution No. 108, dated 19.10.2005, a proposal dated 14.08.2007 was submitted to the Government, and the Government was accorded sanction to 51 posts vide Government Resolution dated 18.3.2008, in which 5 posts of Medical Officers are also sanctioned.

12. I say that after the sanction accorded to posts in Medical Department by Government Resolution dt. 13.1.1999 a proposal to sanction 332 posts for Medical Department was sent to the government by letter dt. 31.8.2006.

In pursuance of the above proposal as suggested by the then Principal Secretary UDD by letter dt. 16.6.2007 a fresh proposal for sanction of total 90 posts for Medical Department (including 38 Medical Officers) was sent to the government on 14.8.2007 since there is no government hospital in and around KDMC area. The detailed proposal was submitted to the government by giving the reference of the earlier General Body resolution no. 240 dt. 18/3/1997 and the sanctioned schedule as per government resolution dated 9.12.99 and 7.1.99. The outcome of this proposal is not known, as the government has neither

accorded sanction to this proposal nor it has rejected it.

The proposal dated 14.8.2007 for the RCH programme and the other proposal dated 14.8.2007 for the above 90 posts are hereby attached herewith and marked as **Annexure-VII (Colly.)**

13. I say that vide Advertisement dated 21st December, 2010, the Respondents called upon the candidates for filling the 5 vacant specialist Medical Officer posts on permanent basis (Physicians-2, Child Specialists-2 and Radiologist-1 reserved in the categories V.J.(A)-1, N.T.(C)-1, N.T.(D)-1, Sp.B.C-1 and OBC-(1). Hereto annexed and marked as **ANNEXURE-VIII** is a copy of the said Advertisement. Pursuant to the said advertisement Dr. Yogesh Chowdhary (OBC) has been appointed as Child Specialist. It is also submitted that Advertisements for filling the posts of Medical Officer and Specialists created on temporary basis through Walk-in-Interviews, were issued in the years 2011, 2012 and 2013 and eight, fourteen and eight candidates were selected in those interviews respectively.

14. I say that the Corporation made a request to the Government, stating that the Corporation has under its control 2 big Hospitals and 6 dispensaries and 13 Urban Health Centers. Considering the increase in the population and further due to the decision of the Government to include 27 villages in the Corporation limits, the existing manpower in the Health Department is insufficient. Therefore the Commissioner vide his letter dt. 27.3.2015 has requested for creation of 83 posts of Medical Officers. The Government of Maharashtra after considering the said proposal has sanctioned the same vide Government Resolution dt. 4/6/2015. Out of said 83 posts, about 40 posts are of General Medical Officers and 6 posts are of Casualty medical Officers.

15. I say that, therefore, as on 4.6.2015, total 115 posts of Medical Officers on permanent basis were existing on the KDMC establishment schedule. The information of the same is illustrated in the chart given below:-

Sr. No.	Government Resolution date creating the post	Name of the post	Number of post	Remarks	
				Vacant	filled

1	13.01.1999	Casualty Medical Officers	6	1	5
2	18.03.2008	Medical Officers	5	0	5
3	04.06.15	Casualty Medical Officers	6	6	0
		Medical Officers (General)	40	17	23
		Total	57	24	33
Total Medical Officers including Casualty Medical Officers.					
4	13.01.1999	Physician	2	2	0
		Gynecologists	2	0	2
		Skin Specialists	1	0	1
		Ear, Nose, Throat Specialists	2	0	2
		Radiologists	2	2	0
		Anesthetists	2	0	2
		General Surgeon	2	1	1
		Pediatrician	2	0	2
		Pathologist	2	0	2
		Ophthalmic Specialists	1	0	1
		Orthopedic Specialists	2	0	2
		Dentist	1	0	1
		Total	21	5	16
5	04/06/15	Gynecologists	10	10	0
		Pediatrician	8	7	1
		Anaesthesiologist	6	4	2
		Skin Specialist	1	0	1
		Ophthalmic	1	0	1
		Dentist	1	1	0
		Psychiatrist	2	2	0
		Physician	2	2	0

		Surgeon	2	2	0
		Pathologist	2	2	0
		Post-Mortem	2	2	0
		Total	37	32	5

Total Specialist Medical Officers = **58**

Grand Total (Medical officers, Casualty Medical Officers
and Specialists = **115**

16. I say that there are 54 posts created for appointing medical officers/specialists on temporary/contract basis as per Standing Committee Resolution as mentioned in para 9 above.

Temporary Posts created by Standing Committee Resolution u/s 53(3) of MMC Act

Sr. No.	Standing Committee Resolution No. and date creating the post	Name of the post	Number of posts	Remarks	
				Vacant	filled
1	71/28.8.2003	Casualty Medical Officer	4	4	0
2	117/19.11.2003	Medical Officers	39	23	16
		Medical+Casualty Medical Officers	43	27	16
3	71/28.8.2003	Gynecologists	4	2	2
		Pediatrician	2	2	0
		Anaesthesiologist	3	3	0
		Physician	2	1	1
		Dentist	0	0	1
		Ophthalmic	0	0	1
		Total Specialist	11	8	5

Grand total of Temporary posts (Medical Officers, Casualty Medical Officers and Specialist) = **54**

17. The present position of the Petitioners who are/were working in KDMC as Medical/Specialist Officer is attached herewith and marked as **Annexure-IX**.

Here, it is pertinent to note that, as per the Government sanctioned recruitment rules vide GR dated 16.12.2010, the basic criteria for selection in the Corporation as Medical Officer, is “to possess a registration of Maharashtra Medical Council”. As can be seen from the above mentioned statement in **Annexure-IX**, the 9 Petitioners in Writ Petition No. 12626/2015 and Petitioners in Writ Petition No. 12794/2015 who are having B.A.M.S. As their educational qualification, do not qualify for permanent selection in the Corporation, as a B.A.M.S. Degree Holder cannot possess the said registration. Hence, these petitioners cannot claim for the selection on permanent post of Medical Officer in the Corporation.

18. I say that as per the above mentioned seniority list dt. 1.1.2016, there were about 23 Medical Officers working on the establishment of the Corporation and out of which there are 15 General Medical Officers (including 1 Casualty Medical Officer) and the remaining 8 are Specialists (Anesthetists-2, Gynec-2, Pathologist-1, Dentist-1 & Pediatrician-1 and General Surgeon-1). Their appointment ranges from 1985 till 2011. Hereto annexed and marked as **ANNEXURE-X** is a copy of the said seniority list as on 1.1.2016. Further, as a result of recruitments made after 1.1.2016, the total number of permanent Medical Officers working as on today is 54. These include 32 General Medical Officers (27 General Medical Officers+5 Casualty Medical Officers) and 22 Specialists (Ortho-3), Anesthetists-4, Pathology-2, Gynec-2, Surgeon-1, Dentist-1, Child Specialists-3, Ophtho-2, Skin-2 & ENT-2).

19. Here, it is also stated that the Section 53(3) of the Maharashtra Municipal Corporation Act stipulates that:-

“Save as otherwise provided in this Act, the power of appointing Municipal Officers and servants whether permanent or temporary, vests in the Commissioner. Provided that, such power in respect of permanent appointments shall be subject to the statement for the time being in force prepared and sanctioned.

Under Section 51 Provided further that, no temporary appointment shall be made by the Commissioner for any period exceeding six months and no such appointment (carrying a salary equivalent to or higher in rank than the post of Clerk) shall be renewed by the Commissioner on the expiry of the said period of six months without the previous sanction of the Standing Committee.”

Hence, as per this provision, the then Commissioners, by giving regular advertisement in the newspaper and prescribing the requisite qualification for the posts from time to time, have filled in the 54 posts of Medical Officers on temporary/contract basis, sanctioned by the Standing Committee vide Resolutions dated 28.8.2003 and 19.11.2003 as per the provisions of Section 53(3) of MMC Act, 1949. As per the provision in section 53(1) of MMC Act, 1949, a Resolution of General Body No. 181 dated 24.4.2006, these Medical Officers after giving a break of one day were given extension of 6 months from time to time till the State Government has accorded sanction to posts on permanent basis by G. R. Dt. 4.6.2015. Out of these 54 temporary posts of Medical Officers and Specialists, 21 Medical Officers and Specialists are working with the Corporation at present. Therefore, the total number of Medical Officers (working on permanent as well as temporary) working at present in the Corporation is 75. I crave leave to refer to and rely upon the available letter of appointments and the service book registers as and when necessary.

20. I say that as stated herein above, it is clear that, in the year 2007 three Medical Officers were regularised. Rest of the Medical Officers were appointed by issuing advertisements for posts on permanent basis in the year 2010, save and except the petitioners who were appointed on the temporary posts created by the Standing Committee, no other recruitments were made either by way of regularisation or by way of advertisement on permanent basis for the Medical officers. The total vacancies (Permanent and Temporary) in the Health Department were also brought to the notice in the above paragraphs. The calculation of posts in the proposal submitted in the 2015 to the Government has been made on the basis of the posts sanctioned in the year 1999 and 2008 (posts for RCH-II), ignoring the earlier posts that were originally existed and created between 1983-1993.

21. I say that, so far as the petitioners, they were made clear that their appointments are on temporary basis for a period of six months on contractual basis on monthly honorarium as revised from time to time and there is no chance of Regularization. Since the Respondents are making a new recruitment for permanent posts, the Petitioners cannot seek regularization as it would amount to back door entry which is not a mode of recruitment in the Recruitment Rules. Hereto annexed and marked as **ANNEXURE-XI** is a copy of the Recruitment Rules duly sanctioned by the Govt. Hence the petitioners are not entitled to be regularized and the present petition is liable to be dismissed with Costs.”

26. On the above material we have heard the learned senior counsel Mr. A. V. Anturkar appearing for the petitioners in Writ Petition Nos. 12626 of 2015 and 12794 of 2015 and Mr.N.V. Bandiwadekar appearing for the petitioners in Writ Petition No.12299 of 2015. As far as Mr. Anturkar's submissions are concerned, he firstly invited our attention to the Maharashtra Medical Practitioners Act, 1961. This is an Act to regulate the qualifications and to provide for the registration of practitioners of the Ayurvedic (Siddha) and Unani Systems of Medicine, with a view to encourage the study and spread of such systems and to make certain provisions relating to medical practitioners generally in the State of Maharashtra and for that purpose to consolidate and amend the law relating thereto. Mr. Anturkar would submit that several qualifications have been set out in the Schedule, which would entitle a person to registration. Thus, he would submit that these are not systems of medicines, which

altogether rule out appointment of such doctors to man the post in District Hospitals/Health Centers. The post is of Medical/Health Officer. Mr. Anturkar would submit that one can understand a distinction being made between a Medical Officer and a Specialist. If a specialisation that would specifically refer to Allopathic System of Medicine is set out in the subject advertisement, then, the insistence on the requirement of registration under the Maharashtra Medical Council Act, 1965 and the Maharashtra Medical Council Rules, 1967 can be understood. However, when a candidate like the petitioners is qualified and can apply, then, merely because he holds a registration not under the Maharashtra Medical Council Act, 1965, but under the Maharashtra Medical Practitioners Act, 1961 and the rules made thereunder, namely, the Maharashtra Council of Indian Medicine Rules, 1961, he cannot be said to be ineligible or disqualified. Mr. Anturkar would submit that in the subject advertisement, as far as the requirement for filling the posts of Lady Medical Officer is concerned, BAMS candidates are not ineligible. In fact, the advertisement itself makes a reference to the BAMS degree. A candidate possessing the same would be entitled to a lumpsum salary of Rs.20,000/- per month. As far as the educational qualifications are concerned [for the post of Lady Medical Officer (at Urban Health Centers)], a candidate must

possess the BAMS degree from a recognised university. The candidate must have experience of three years of work in Government/semi Government/private hospital. The third requirement of registration under the Maharashtra Medical Council Act, 1965 and rules framed thereunder cannot be said to be consistent with the educational qualifications prescribed by Column 6(a) and (b). Further, the Condition No. 7 states that if BAMS candidates possess degree recognised by the Maharashtra Council of Indian Medicine, they would be appointed only at the Urban Health Centers. In these circumstances, from a reading of the advertisement itself and which advertisement was dated 19th July, 2012, Mr. Anturkar would submit that it would be apparent that the KDMC does not rule out applications by such candidates. Even as far as the subject advertisement is concerned, namely, dated 19th November, 2015, it sets out that there are 90 vacant posts. Out of the 90 vacant posts, one post is of General Health Officer. There also a candidate possessing MBBS, BAMS (Ayurvedic), BHMS (Homeopathy) or any Government recognised degree on par, with experience of three years can apply. The third condition that there should be a registration obtained from the Maharashtra Medical Council thus does not accord with the candidate holding a BAMS degree. That must be held to be applicable to only those candidates who are holding

MBBS degree. Mr. Anturkar's argument is that something which the law itself does not envisage, namely, the Maharashtra Medical Council Act, 1965, that cannot be insisted, as far as the candidates possessing BAMS degree. Mr. Anrutkar would submit that Ayurved is a faculty of medicine and once it has been clarified by even the Minister for Health in the Parliament that specialised and experienced competent teachers, physicians, surgeons, gynecologists etc. are encouraged and hereafter would be promoted, then, it is incorrect to argue that BAMS doctors do not qualify for surgical post or they are not entitled to perform any surgery. Mr. Anturkar submits that the premise on which the Municipal Corporation has proceeded is entirely incorrect.

27. Mr. Anturkar's arguments are adopted by Mr. Desai appearing in the other petition. As far as Mr. Bandiwadekar is concerned, it is urged by him that the petitioners in this petition have put in meritorious service. The petitioners were appointed after advertisements were published in local newspapers inviting applications from qualified candidates. After several applications were received, proper interviews were held that the petitioners were appointed as Medical Officers. The petitioners have been appointed on various dates after being selected in the selection process undertaken by the respondents. The petitioners have

been so appointed from the year 2003 onwards on various dates as mentioned in the chart annexed to the petition. These petitioners are continuously working in the said post. Though the appointment was on temporary basis, a notional break was given and again the appointment was continued. It is the first respondent Municipal Corporation which requested the State to sanction about 90 posts and as per its requirement. These requests were made though the first respondent was aware that duly qualified candidates like the petitioners were serving the Municipal Corporation from 2003. Be that as it may, the second respondent issued a Government Resolution granting approval to create 87 posts of Medical Officers in various faculties of respondent no. 1 Municipal Corporation. It appears that the first respondent decided to fill up the posts and called for a report from the in-charge Health Officer. Mr. Bandiwadekar submits that from the 115 sanctioned posts of Medical Officers, 23 posts are filled in and 92 are vacant. It was further stated that the General Body of the Municipal Corporation approved 40 posts of temporary Medical Officers and at present all temporary Medical Officers are working. Considering their period of service in the Corporation, educational qualifications and experience, they should be permanently absorbed in the services. The recommendation was that only after these temporary officials are

absorbed then the remaining posts be advertised and filled up by direct recruitment.

28. Mr. Bandiwadekar submits that instead of following this rule, the first respondent issued advertisement in newspapers inviting applications for filling up vacant posts of Medical Officers, including the posts in which the petitioners are appointed. It is in these circumstances that there is grave and serious injustice to these Medical Officers.

29. Mr. Bandiwadekar then submitted and in the alternative that despite the exercise carried out, the Municipal Corporation, now and pursuant to the recent advertisement, was unable to fill in the posts. Some posts are still vacant.

30. Mr. A. S. Rao appearing for the Municipal Corporation sought to justify the Municipal Corporation's stand, but could not dispute the factual position that several candidates applied, including those in service, still, all the posts could not be filled in. It is not disputed that some posts are lying vacant. Mr. Rao could not dispute the fact that the advertisement carried an insertion and to the effect that those possessing BAMS degree can also apply.

31. It is in the above factual circumstances and backdrop that we indicated to the first respondent Municipal Corporation that when duly qualified candidates are available and they can be considered for appointment even now, instead of keeping the posts vacant. The Municipal Corporation would submit that it would abide by the orders and directions of this court, but on its own it cannot take any decision.

32. After hearing both sides, we find that concededly all the posts, pursuant to the advertisement inserted in the newspapers, could not be filled up. We have also found that for the post of Lady Medical Officer and Medical Officer, the BAMS candidates could have applied and could have been duly considered. In these circumstances, not considering them for appointment only because they do not possess a registration under the Maharashtra Medical Council Act, 1965 would be unjust and improper. It would be unfair and contravening the mandate of Articles 14 and 16(1) of the Constitution of India. We are not, for a minute, suggesting that those who are not qualified to man specialised posts should be appointed. We are only concerned here with the post of the General Medical/Health Officer. If the advertisement itself postulates and permits candidates from BAMS faculty to apply and they can be considered for

appointment, then, the requirement that they should possess a registration under the Maharashtra Medical Council Act, 1965 does not apply at least to them. They can be appointed on the post at the Urban Health Centers. Some of the petitioners herein have indeed applied pursuant to the fresh advertisement. The petitioners represented by Mr. Anturkar and Mr. Desai have gone as far as stating that even if now they are appointed and pursuant to the advertisement issued in 2015 and the process initiated in pursuance thereof, they would not claim any benefit of the past services, save and except for the purposes of continuity and other permanency benefits. Meaning thereby, they are ready and willing to forgo their entitlement though they were working and serving the Municipal Corporation from 2012 albeit on temporary basis. If for the purposes of seniority, continuity in service and pension or terminal benefits these services are reckoned, they would have no objection in accepting the appointment in terms of the current recruitment process.

33. Mr. Bandiwadekar appearing for the petitioners in Writ Petition No. 12299 of 2015 also obtained instructions and submitted that not all the petitioners in this petition have indicated their readiness and willingness to serve the Municipal Corporation. From the chart at page 67 of the paper book,

Mr.Bandiwadekar submitted that there are Medical Offices and who are holding the MBBS degree. The candidate at serial number 3 from the chart is interested and can be considered for the appointment. Some of the petitioners are already appointed. Therefore, the others may be considered and their appointments be regularised. These appointments can be regularised by reckoning them against the permanent vacancies.

34. It is in the above facts and circumstances peculiar to this case and without this order being treated as a precedent, we direct the first respondent in these petitions to consider the petitioners in the first two petitions, namely, Writ Petition Nos. 12626 of 2015 and 12794 of 2015 in terms of the existing vacancies and on permanent posts, but subject to their concession as recorded above. As far as the petitioners in Writ Petition No.12299 of 2015 are concerned, as per the position recorded above, these petitioners be considered for granting permanency benefits/regularisation/absorption in the Municipal Corporation services against the existing vacancies.

35. In issuing the above directions, we proceeded in terms of an order passed on 16th March, 2017 in Writ Petition Nos. 1007 and 1006 of 2013. There, the petitioners were working as Junior Medical Officers, Extension Officers (Health), Technical Services,

Class-III. They joined the services of the Kolhapur Zilla Parishad and Sangli Zilla Parishad. They had argued that they have served the Government and the Zilla Parishad successfully and at the fag end of their career and upon retirement, the pensionary and other benefits so also the increased pay scales were denied on the footing that they were not qualified to be appointed at all. Their qualifications were not in tune with the Maharashtra Medical Practitioners Act, 1961 and the Indian Medicine Central Council Act, 1970. Noting these arguments, we found that it is not as if the educational qualification possessed by these petitioners is not the same as mentioned and required for Junior Medical Officers/Extension Officers (Health) under District Technical Services and mentioned in para A and A-1 to the Schedule to the Act of 1970. If they are working in the Health Department of the Zilla Parishad, Kolhapur, then, the said Zilla Parishad and the Government, through its Health Department was directed to clarify the status of the Petitioners, the position of their qualification and registration.

36. After granting time in that behalf, the State agreed with the contentions of the petitioners therein. That is how on 16th March, 2017, the following order was passed:-

“1 By these writ petitions under Article 226 of the Constitution of India, the petitioners seek a writ of

mandamus or any other writ, order or direction directing the respondents to pay to them salary at the scale, more particularly mentioned in prayer clause (b) of this writ petition. A further direction to the respondents to make payment of consequential arrears and interest, release the non-practising allowance and to refund the amounts in terms of the averments in paragraphs 13 and 14 of the Writ Petition No.1007 of 2013.

2 The petitioners before us were working as Junior Medical Officers, Extension Officers (Health), Technical Services, Class-III. Their respective qualifications, dates of joining the service of the Kolhapur Zilla Parishad-second respondent to the writ petition are set out. Some of the petitioners joined the services of the Sangli Zilla Parishad. The respective dates of retirements are also mentioned. The grievance raised in this writ petition was noted in great details by us while noting the stand of the State. On 10th February, 2017, this Court passed the following order :

“Mr. Deshmukh appearing for the Petitioners has raised three contentions in this Petition.

2 The first contention is that the Petitioners having served the Government and the Zilla Parishad at the fag end of their career and upon retirement the pensionary and other benefits so also the increased pay scales are denied on the footing that they were not qualified to be appointed at all. The reliance placed on the affidavit in reply at page 125 on paragraph 6, is inaccurate in as much as in the Indian Medicine Central Council Act, 1970, there is a Schedule and referable to Section 14. Section 14 of that Act and this Schedule together sets out the recognized medical qualification in Indian Medicine granted by Universities, Board or other medical institutions In India. The institution at Item No.12 All India Aayurved Vidyaphith, Delhi is identical and same to the one mentioned in paragraph 6 page 125 of the affidavit in reply in Writ Petition No.1007 of 2013. Similarly, the institution and degree that is referred in Item 59 is also on par with this requirement and as stipulated.

3 The next argument of Mr. Deshmukh is that if the Aayurved Vidyaphith which is referred to in paragraph 6 is not a recognized medical qualification in Indian Medicine and granted by the Universities, Boards or other medical institutions

set out in the Second Schedule, then, on the strength of that no registration could have been obtained under the Maharashtra Medical Practitioners Act, 1961. Inviting our attention to the provisions of that Act and particularly the Part-A, A-1 and Part-E to the Schedule to that Act, it is submitted that the degree obtained by the Petitioner from the Aayurved Vidyaphith is recognized qualification for registration under the Maharashtra Act.

4 The third argument is that if non practicing allowance is made admissible from 1st April, 1981 and to all such practitioners who are in the service of the Government, Zilla Parishads and rather in public Health Service, then, exclusion of the Petitioners therefrom and the entitlement thereto only on a strength of the letter or a clarification copy of which is at Exhibit-3 page 139 to the affidavit-in-reply is impermissible. No specific order or direction is required prohibiting private practice by such medical or health official. It is implicit in their appointment that they must be available at the primary / rural health centre or any public / civil hospital round the clock. They need not be specifically directed to stop a private practice or undertake it. Therefore, irrespective of such communication, as is warranted by page 139, the non practicing allowance is admissible and ought to be released.

5 For all the three contentions to be met, it is stated by Ms.Vhatkar that she would obtain necessary instructions and verify the position as brought to the notice of this Court by Mr. Deshmukh by thoroughly studying and researching on the Schedules to both the Acts. She would also take instructions as to whether in Kolhapur Zilla Parishad was there any specific order or direction necessary and to be issued by the Rural Development Department of Government of Maharashtra directing the Doctors and Health Officers in Zilla Parishad Health Service not to undertake or stop private practice. For Ms. Vhatkar to obtain the above instructions and get ready to argue this case, we list this matter as part-heard on 22nd February, 2017.'

3 On the three contentions noted in great details in this order, the State was directed to issue a clarification. On

22nd February, 2017, and on 2nd March, 2017, we granted time to Ms. Bhende appearing for the State in both the petitions.

4 We inquired from her specifically as to why the petitioners were disentitled and she would rely upon an affidavit-in-reply which has been filed on behalf of the State in both matters. The affidavit is filed by the Administrative Officer, Grade-B, Health Department, Zilla Parishad, Kolhapur. In that affidavit in paragraphs 6 and 8, the following statements are made:

“6 I say that educational qualification possessed by the petitioners are not the same as mentioned and required for Junior Medical Officers / Extension Officers (Health) under District Technical Services and mentioned in para A and A-1 to the schedule to the said Act. Also certificates issued by Nikhil Bharatvesiy Ayurved Vidyaphith, New Delhi to the Petitioners are not recognized by any University.

... ..

8 As regards petitioners' claim for payment of non practicing allowance with effect from 1.4.1981, I say that the State Government addressed a letter dated 4.1.2008 to the Chief Executive Officer, Zilla Parishad, Kolhapur and mentioned therein that Junior Medical Officers / Extension Officers (Health) under District Technical Services falling in category III are not entitled for non practicing allowance for the reasons mentioned in the said report. The said letter is in force till date. Hereto annexed and marked Exhibit-3 is the letter dated 4.1.2008.”

5 It is precisely because of this understanding that we called upon the learned Assistant Government Pleader to clarify as to what is the understanding of the Public Health Department of the Government of Maharashtra with respect to the qualifications and registration of the petitioners. It is now claimed before us that the Registrar of the Maharashtra Council of Indian Medicine who was approached by the state through this Department on 15th March, 2017, has clarified that each of the petitioners are holding recognized qualifications inasmuch as not only the qualifications, but the institutions from where the petitioners educated themselves and underwent training, are duly recognized and in terms of the Indian Medicine Central Council Act, 1970. The registration is obtained under the Maharashtra Medical Practitioners Act, 1961,

which can also register the practitioners in the branch of Ayurved. The communication dated 15th March, 2017, from the Registrar is shown to us. We take a copy of the same on record in both the petitions and mark them as “X” and “X-1” for identification.

6 Overleaf, the main communication, the Registrar of Indian Medicine reproduces the extract of the second Schedule of the Indian Medicine Central Council Act, 1970. At Sr. No.12, the Institution details, including the Nikhil Bharatvarshiya Ayurved Vidyapeeth, New Delhi. It is in these circumstances that we inquired from Ms. Bhende as to what is now the position and stand of the State. On taking instructions from the official of the Department of Public Health, Government of Maharashtra, present in Court, Ms. Bhende fairly states that the contents of paragraphs 6 and 8 of the affidavit-in-reply reproduced above and the entire affidavit be ignored. The stand of the Government is that the petitioners are holding recognized degrees / qualifications and from institutions which are equally recognized. Once the State has taken this fair stand before us, then, each of the writ petitions must succeed. They, accordingly, succeed.

7 All consequences in law will follow inasmuch as the pay scales of the period prayed would be admissible and if any arrears have to be released, they must be released, including any other benefits, such as terminal, retiral benefits, pension etc. The monetary entitlement in terms of the above shall be made as expeditiously as possible and within a period of three months from the date of receipt of a copy of this order. We direct the Department of Public Health to instruct and inform all other Departments, including the Department of Finance and Directorate of Pay & Accounts so that the petitioners emoluments in terms of our directions would be released and within the time stipulated.

8 We have passed this order after informing Ms. Bhende and making aware the official present in Court that the position as emerging from the stand of the State before us would now be common to all Zilla Parishads and particularly in the services which have been referred by us in great details. If not these services in other Zilla Parishads such of the doctors and practitioners and on par with the petitioners have been appointed, then, needless to clarify that the State's position may benefit them depending upon the other facts and circumstances.

9 Both the petitions are, therefore, allowed. Rule is made absolute in both the petitions. However, there shall be no order as to costs.”

37. Thus, it is not as if these petitioners are altogether ruled out for consideration and appointment in the Health Services. If they can be considered and as held above, then, we do not see why the KDMC should be allowed to deny them appointments.

38. Consistent with these directions in the other matters and by the above clarifications and directions, we dispose of these writ petitions. There would be no order as to costs.

39. We are informed that about 24 posts are still vacant and after the November, 2015 advertisement and the recruitment process in furtherance thereof. The case of the petitioners for appointment against these vacancies, therefore, be considered and if they are otherwise eligible, the appointment orders be issued. This is subject to the statements made by Mr. Desai and Mr. Anturkar on behalf of the petitioners in the respective petitions. Equally, Mr. Bandiwadekar has also stated before us that the petitioners who are represented by him and who can be considered for appointment as above will forego their claim for back wages/past salaries. They would be granted continuity in service and notional benefit in service, if appointed, and this process to be completed within three months.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)