

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

WRIT PETITION NO.8199 OF 2014

Dr.Hemlata Jayant Neve,
Age: 49 years, Occu.Medical Practitioner
with Jalgaon Municipal Corporation,
R/o.448/2, Plot No.5,
Mohannagar, Jalgaon,
Dist. Jalgaon.

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
- 2] The Municipal Corporation,
Jalgaon, Dist. Jalgaon,
Through its Commissioner
- 3] Dr.Neha Nitin Bharambe,
Age: Major, Occu.Medical Practitioner
with Jalgaon Municipal Corporation,
Jalgaon, Dist. Jalgaon.
- 4] Dr.Vinod s/o.Hiraman Patil,
Age: Major, Occu. Medical Practitioner
with Jalgaon Municipal Corporation,
R/o. 34, Ghanshamnagar,
Near Khotenagar, Bus Stop,
Jalgaon, Dist. Jalgaon.

RESPONDENTS

...
Mr.A.B.Jagtap, Advocate holding for
Mr.V.D.Sapkal, Advocate for the petitioner
Mr.M.M.Nerlikar, AGP for Respondent no.1 /
State
Mr.P.R.Patil, Advocate for respondent no.2
Mr.G.V.Wani, Advocate for respondent no.3
Mr.L.V.Sangit, Advocate for respondent no.4

...
**CORAM: S.S.SHINDE &
SUNIL K.KOTWAL,JJ.**

Date: 04.01.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] This Petition is filed with the
following prayers:

- B) To direct the respondent No.2 the
Commissioner, Jalgaon Municipal
Corporation, Jalgaon to implement
the Resolution dated 15.04.2008
(Exhibit 'L') passed by the
respondent No.2 Jalgaon Municipal
Corporation, Jalgaon by appointing
the petitioner as Medical Officer,
by issuing appropriate writ, order
or directions, as the case may be.
- C) To direct the respondent No.2 the
Commissioner, Jalgaon Municipal
Corporation, Jalgaon to pay the

salary to the petitioner in the pay scale of Rs.9,300/- to Rs.34,800/- which is the pay scale for the Medical Officer, by issuing appropriate writ, order or directions, as the case may be.

- D) To quash and set aside the appointment order dated 06.11.2007 issued in favour of respondent No.3 (Exhibit 'J') and the appointment order dated 03.05.2013 issued in favour of respondent No.4 (Exhibit 'R'), issued by the respondent No.2 Jalgaon Municipal Corporation, appointing them as Medical Officer by issuing appropriate writ, order or directions, as the case may be.

2] Learned counsel appearing for the petitioner submits that, though the petitioner is working with respondent no.2 since the year 2002 on permanent vacant post, the petitioner is not appointed on regular basis. Learned counsel appearing for the petitioner invites our attention to the

appointment letter of the petitioner and submits that, since the petitioner has served since the Year 2002, the petitioner's services ought to have been regularized thereby issuing appointment letter. It is submitted that, though respondent nos.3 and 4 are not qualified, they have been appointed subsequently. Their services have been continued, and service benefits are extended to them, however, the said benefits are refused to the petitioner. It is submitted that, since the petitioner is working as a Medical Officer, she is entitled for the equal pay scale of Rs.9,300/- to 34,800/-, which is being given to the other two Medical Officers i.e. respondent nos.3 and 4. It is submitted that, there is clear cut violation of Article 39 (a) r/w. 21 of the Constitution of India, and the petitioner has been denied the service benefits. Learned counsel appearing for the petitioner pressed into

service exposition of law by the Supreme Court in the case of ***State of Punjab & Ors. Vs. Jagjit Singh & Ors.***¹.

3] Learned counsel appearing for the respondent no.2 relying upon the affidavit-in-reply and additional affidavit-in-reply submits that, there is no work available to the Ayurvedic Doctors in Municipal Corporation Jalgaon. There are no patients requiring Ayurvedic treatment. Therefore, two dispensaries namely Pandit Dindayal Ayurvedic Dispensary and Shahir Amar Shaikh Ayurvedic Dispensary were required to be closed down, and therefore, the petitioner namely Dr.Hemlata Neve, respondent No.3 namely Dr.Neha Bharambe and respondent no.4 namely Dr.Vinod Patil are working in Allopathic Dispensary as Assistants. There is one more Ayurvedic Dispensary run by the Municipal Corporation Jalgaon namely Mohammad Yusuf

1 AIR 2016 SC 5176

Ayurvedic Dispensary. Even there also hardly two or three patients visit the dispensary. It is further submitted that, it appears from the record that, the appointment orders were issued without advertisement, and therefore, the appointments cannot be regularized. In this reference, the Government Resolutions / Directions dated 25.08.2005, 16.11.2006 and 27.02.2008 clearly state that these candidates are to be treated as back door entry and they should be removed from their posts. It is further submitted that, as far as the present petitioner is concerned, she was appointed on 01.11.1999 and her services came to an end on 24.06.2002. Thereafter, she was not on duty in the Jalgaon Municipal Corporation. She was re-appointed on 22.02.2007 due to litigation. She has not completed continuous service of 10 years without intervention of the Court. Therefore, she is not entitled for the

benefit of law laid down in the case of ***Secretary, State of Karnataka & others Vs. Umadevi & others***².

4] Learned counsel appearing for respondent no.3 relying upon the averments in the affidavit-in-reply submits that, respondent no.3 possesses requisite qualification. She is appointed since the year 1990. She was required to approach the Industrial Court at Jalgaon twice. It is submitted that, the State Government, vide its communication dated 24th June, 2007, had given approval to the appointment of respondent no.3. The Directorate of Medical and Research has also issued a letter to the Municipal Corporation, Jalgaon, on 30th June, 2004, and thereby communicated that, respondent no.3 is eligible to practice in State of Maharashtra.

5] Learned counsel appearing for

2 [2006] 4 SCC 1

respondent no.4 submits that, notice is issued to respondent no.4 to terminate his services. It is submitted that, the allegations made as against respondent no.4 in the Petition are contrary to the record. Learned counsel further submits that, respondent no.4 was appointed on 13.12.1999 as Medical Officer, thereafter by Resolution No.468 dated 21.10.2001 continued for a period of one year. Thereafter, respondent no.4 filed ULP No.63/2002 before the Labour Court, seeking continuity of service. The Labour Court granted status quo and thereafter respondent no.4 is continued in service. The Jalgaon Municipal Corporation, by Resolution No.108 dated 18.06.2005, granted approval to the appointment of respondent no.4 on consolidated salary of Rs.10,000/- from 1st July, 2005. Respondent no.4 is nominated by his grandfather, who was the freedom fighter, namely Shri Barku Bala

Patil. The said nomination is also accepted by the Government of Maharashtra. Respondent no.4 is continued in service, and rendered uninterrupted service, and the approval was granted to his service as Medical Officer by order dated 3rd May, 2013. Therefore, the petitioner has no locus standi to challenge the appointment of respondent no.4. There is inordinate delay in challenging the order dated 3rd May, 2013, which is not satisfactorily explained.

6] We have considered the submissions of the learned counsel appearing for the respective parties. With their able assistance, we have carefully perused the pleadings in the Petition, annexures thereto, affidavit-in-replies and additional affidavit in reply filed by the respective respondents. The Petition and also replies filed by the respondents raise disputed questions of facts, and therefore, it is not desirable to

undertake exercise of adjudication of the disputed questions of facts while exercising writ jurisdiction. Respondent no.2 has made statement in the additional affidavit-in-reply that, there is no work available to the Ayurvedic Doctors in Municipal Corporation, Jalgaon. There are no patients requiring Ayurvedic treatment. Therefore, if there is no workload available and already the services of respondent no.4 have been terminated, in our opinion, it is not desirable to issue any mandatory directions to respondent no.2 in terms of the prayers in the Petition. However, in our opinion, respondent no.2 may undertake exercise to find out availability of work befitting educational qualification of the petitioner, and also respondent nos.3 and 4, on the establishments of the Municipal Corporation. Thereafter, if the work is available, keeping in view above observations, take decision

regarding grievances raised by the petitioner, and also respondent nos.3 and 4 on its own merits.

7] Para No.53 of the judgment in the case of **Secretary, State of Karnataka & others Vs. Unamdevi & others [cited supra]** reads thus:

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa³, R.N.Nanjundappa⁴ and B.N.Nagarajan⁵ and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten year or more but without the intervention of orders of the courts or of tribunals. The

3 [1967] 1 SCR 128

4 [1972] 1 SCC 409

5 [1979] 4 SCC 507

question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that

regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

8] In the light of discussion herein above, it would be appropriate for respondent no.2 to take into consideration the qualifications of the petitioner and respondent nos.3 and 4, length of service rendered by them with the Municipal Corporation, experience gained by them while working on the establishment of the Municipal Corporation, while considering their grievances, and give weightage to the aforesaid factors, as and when the workload would be available on the establishment of the Municipal Corporation in future. We

impress upon respondent no.2 that, Corporation may not proceed to appoint any other candidates for the work available befitting the qualifications of the petitioner and respondent nos.3 and 4 in future, unless the claim of the petitioner is considered on merits, keeping in view the discussion herein above.

9] With the above observations, Writ Petition stands disposed of.

10] We make it clear that, we have not made any observations on merits about the entitlement either of the petitioner or respondent nos.3 and 4.

[SUNIL K.KOTWAL]
JUDGE

[S.S.SHINDE]
JUDGE